GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BOARD FOR THE CONDEMNATION OF INSANITARY BUILDING
P.O. BOX 37200
WASHINGTON, D.C. 20013-7200

Find enclosed a list of buildings against which condemnation proceedings have been instituted. This list is current as of **January, 2005.** The following paragraphs will give some insight into why these buildings were condemned and the meaning of condemnation for insanitary reasons.

Each listed property has been condemned by the District of Columbia Government's Board for the Condemnation of Insanitary Buildings (BCIB). The authority for this board is Title 6, Chapter 9, of the District of Columbia Code, 2001 Edition. The BCIB has examined each property and has registered with the record owner (via condemnation) a strong disapproval of the condition in which the property is being maintained. The BCIB has recorded at the Office of the Recorder of Deeds an Order of Condemnation against each property for the benefit of purchasers and the real estate industry.

These properties were condemned because they were found to be in such an insanitary condition as to endanger the health and lives of persons living in or in the vicinity of the property. The corrective action necessary to remove the condemnation order could take the form of demolition and removal of the building by the owner or the BCIB. However, most buildings are rendered sanitary, i.e., the insanitary conditions are corrected by the owner or the BCIB.

The administration of the condemnation program does not take title to property. The title to each property remains with the owner. Accordingly, inquiries for the sale or value of these properties should be directed to the owner of record. Inquiries regarding the owner or owner's address should be directed to the Office of Tax and Revenue, Customer Service, Office of Real Property Tax (202) 727-4829, 941 North Capitol Street, NE, 1st floor.

For further assistance, contact the Support Staff of the BCIB on 442-4486.

THE BOARD FOR THE CONDEMNATION OF INSANITARY BUILDING

Enclosure:

BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

NOTICE OF PUBLIC INTEREST

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northwest			
1102 Buchanan Street	124	2918	4
1102 Buchanan Street-Rear	124	2918	4
7100 Chestnut Street	808	3184	4
1323 Corcoran Street	21	240	2
1502 Decatur Street	32	2707	4
519 Florida Avenue	25	3093	1
1461 Florida Avenue	147	2660	1
3003 Georgia Avenue	111	3052	1
3200 Georgia Avenue	909	2892	1
3200 Georgia Avenue-Rear (West)	909	2892	1
3200 Georgia Avenue-Rear (East)	909	2892	1
3626 Georgia Avenue	135	2897	1
3801 Georgia Avenue	55	3028	4
1235 Ingraham Street	64	2931	4
1342 Ingraham Street-Rear	75	2804	4
641 Keefer Place	19	3041	1
440 Kenyon Street	43	3049	1
709 Kenyon Street	806	2892	1
1331 Kenyon Street	47	2843	1
416 Luray Place, NW-Rear	77	3044	1
430 Manor Place	65	3036	1
37 Missouri Avenue	39	3393	4
39 Missouri Avenue	40	3393	4
3500 Nebraska Avenue	24	1599	3
1713 New Jersey Avenue	16	507	5
1424 North Capitol Street	10	616	5
1424 North Capitol Street-Rear	10	616	5
509 O Street	479	2001/2002	2
820 Otis Place	119	2895	1
1001 Quebec Place	63	2902	4
1000 Rhode Island Avenue	19	337	2
1427 Rhode Island Avenue	27	210	2
1429 Rhode Island Avenue	28	210	2
1355 Shepherd Street	45	2823	4
201 T Street	832	3088	1
613 Upshur Street	72	3226	4
613 Upshur Street-Rear	72	3226	4

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northwest (cont'd)			
1325 V Street-Rear	184	235	1
1505 Varnum Street	25	2698	4
1329 Wisconsin Avenue	68	1232	2
1202 3rd Street	837	523	2
5311 3rd Street-Rear	6	3328	4
1221 4th Street	848	523	2
1416 5th Street	26	479	2
1555 9th Street	819	397	2
4001 5th Street-Rear	42	3238	4
1104 6th Street	859	449	2
1523 8th Street-Rear	13	421	2
1301 9th Street	801	399	2
1303 9th Street	62	399	2
1305 9th Street	63	399	2
1307 9th Street	803	399	2
1309 9th Street	804	399	2
1513-1515 11th Street	815	337	2
3637 13th Street	145	2829	1
3564 14th Street	24	2688	1
1825 19th Street	218	132	2
3222 19th Street-Rear	817	2604	1
4513 45th Street	73	1588	3

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northeast			
4952 Blaine Street	1	5189N	7
3027 Channing Street	54	4360	5
3042 Clinton Street	826	4319	5
600 Division Avenue	13	5196	7
4237 Dix Street	812	5088	7
5900 Foote Street	805	5256	7
2001-R Gales St-Rear #1	800	4525	7
2001-R Gales St-Rear #2	800	4525	7
2001-R Gales St-Rear #3	800	4525	7
2001-R Gales St-Rear #4	800	4525	7
2001-R Gales St-Rear #5	800	4525	7
2001-R Gales St-Rear #6	800	4525	7
2001-R Gales St-Rear #7	800	4525	7
2001-R Gales St-Rear #8	800	4525	7
2001-R Gales St-Rear #9	800	4525	7
2001-R Gales St-Rear #10	800	4525	7

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northeast (cont'd)			
303 K Street	804	775	6
612 M Street	8	855N	6
1227 Meigs Place	106	4055	5
917 New Jersey Avenue	15	738	6
919 New Jersey Avenue	16	738	6
1524 Olive Street	34	5165	7
1524 Olive Street-Rear	34	5165	7
115 Riggs Road	85	3701	5
1741 Trinidad Avenue	26	4082	5
234 V Street	11	3561	5
415 W Street	41	3601	5
1020 3rd Street	34	749	6
1022 3rd Street	33	749	6
4413 16th Street	5	4617	5

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Southeast			
4928 A Street	23	5331	7
27 Atlantic Street	54	6170	8
4504 Bowen Road	811	5365	7
5000 Call Place	35	5323	7
5500 Central Avenue	29	5282	7
1425 Congress Place	48	5889	8
1107 D Street	50	992	6
1229 E Street	816	1019	6
3326 Ely Place	807	5444	6
2412 Martin Luther King Jr	243	5806	8
3600 Martin Luther King Jr	42	5331	7
3600 Martin Luther King Jr-Rear	42	5331	7
1008 South Carolina Avenue	23	970	6
1225 Sumner Road	980	5865	8
1518 W Street	814	5779	8
4001 4th Street	39	6167	8
1012 7th Street	11	906	6
1014 7th Street	10	906	6
2304 16th Street	76	5753	8
1550 41st Street	55	5370	7

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Southwest			
78 Darrington Street-Rear	23	6223S	8
71 Forrester Street	67	6240	8

BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections and Ethics hereby gives notice that there is a vacancy in **one (1)** Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed.

VACANT: 1A11

Petition Circulation Period: **Tuesday, February 22, 2005 thru Monday, March 14, 2005**
Petition Challenge Period: **Thursday, March 17, 2005 thru Wednesday, March 23, 2005**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N

For more information, the public may call **727-2525**.

District of Columbia
BOARD OF ELECTIONS AND ETHICS

Monthly Report

of

VOTER REGISTRATION STATISTICS

for the period ending

January 31, 2005

Covering Citywide Totals by:

WARD, PRECINCT, and PARTY

One Judiciary Square
441 - 4th Street, NW, Suite 250N
Washington, DC 20001
(202) 727-2525
http://www.dcboee.org

FEB 1 8 2005

D.C. BOARD OF ELECTIONS AND ETHICS

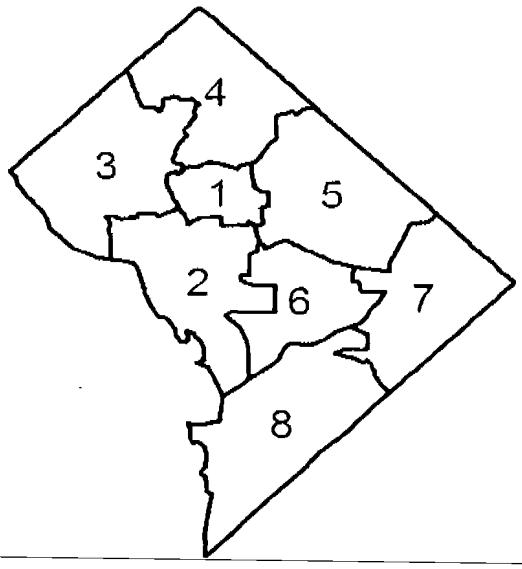
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE SUMMARY

Party Totals and Percentages by Ward for the period ending January 31, 2005

WARD	DEM	REP	STG	N-P	OTH	TOTALS
1	32,597	2,795	1,072	9,470	270	46,204
2	27,125	5,870	541	9,652	204	43,392
3	32,159	8668	475	10,151	138	51,591
4	43,891	2,884	671	7,540	215	55,201
5	42,901	2,207	684	6,833	230	52,855
6	37,500	4,947	683	8,065	209	51,404
7	41,303	1,698	538	5,849	163	49,551
8	34,148	1,719	611	5,617	165	42,260
TOTALS	291,624	30,788	5,275	63,177	1,594	392,458
TOTAL Percentage (by party)	74.3%	7.8%	1.3%	16.1%	0.4%	100.0%

Wards



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D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 1

For the Period Ending: January 31, 2005

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
20	1515	41	21	425	31	2,033
22	1954	212	54	503	20	2,743
23	1482	89	61	455	13	2,100
24	1882	218	46	572	17	2,735
25	3392	509	105	1033	13	5,052
35	2879	257	106	887	19	4,148
36	2959	215	96	782	26	4,078
37	2778	151	50	726	33	3,738
38	2046	128	58	516	13	2,761
39	2762	233	143	859	21	4,018
40	2827	240	148	939	20	4,174
41	2225	164	85	776	12	3,262
42	1307	61	37	366	13	1,784
43	1206	72	29	249	7	1,563
136	735	165	13	243	6	1,162
137	648	40	20	139	6	853
TOTALS	*32,597*	*2,795*	*1,072*	*9,470*	*270*	*46,204*

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D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 2

For the Period Ending: January 31, 2005

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
2	464	145	9	287	7	912
3	1152	464	11	541	9	2,177
4	997	351	16	493	11	1,868
5	2047	780	33	772	8	3,640
6	2688	1417	59	1770	22	5,956
13	1140	320	14	405	5	1,884
14	2566	483	40	836	20	3,945
15	2756	389	48	841	20	4,054
16	2292	323	44	633	12	3,304
17	3264	540	75	1110	34	5,023
18	3174	218	81	748	17	4,238
21	1246	77	42	274	9	1,648
129	1226	117	23	332	10	1,708
141	2113	246	46	610	20	3,035
TOTALS	27,125	5,870	541	9,652	204	43,392

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D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 3 For the Period Ending: January 31, 2005

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
7	1006	445	13	460	7	1,931
8	2120	774	39	689	8	3,630
9	944	667	10	411	3	2,035
10	1706	639	15	655	10	3,025
11	2895	868	67	1224	24	5,078
12	474	211	4	173	4	866
26	2471	508	38	827	9	3,853
27	2259	352	26	534	7	3,178
28	2177	781	28	807	7	3,800
29	1129	305	25	341	3	1,803
30	1132	318	13	259	2	1,724
31	2034	444	30	548	10	3,066
32	2421	462	35	564	5	3,487
33	2549	459	47	689	11	3,755
34	3110	654	41	1022	16	4,843
50	1899	367	19	424	5	2,714
138	1833	414	25	524	7	2,803
TOTALS	***32,159***	***8668***	***475***	***10,151***	***138***	***51,591***

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D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 4 For the Period Ending: January 31, 2005

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
45	1961	99	36	340	13	2,449
46	2707	108	43	460	16	3,334
47	2274	153	43	538	14	3,022
48	2548	158	44	433	11	3,194
49	626	36	15	149	3	829
51	3007	660	40	637	9	4,353
52	1195	298	8	237	1	1,739
53	1056	101	21	240	6	1,424
54	2002	129	39	399	16	2,585
55	2394	108	33	358	17	2,910
56	2918	97	41	539	16	3,611
57	2425	103	34	400	18	2,980
58	2171	66	36	333	7	2,613
59	2519	87	31	351	12	3,000
60	1693	104	35	491	10	2,333
61	1540	80	21	231	5	1,877
62	3110	192	40	350	6	3,698
63	2864	138	66	464	16	3,548
64	2294	80	19	289	7	2,689
65	2587	87	26	301	12	3,013
TOTALS	*43,891*	*2,884*	*671*	*7,540*	*215*	*55,201*

D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 5 **For the Period Ending: January 31, 2005**

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
19	2999	171	90	617	14	3,891
44	2441	281	39	563	23	3,347
66	4195	126	31	437	19	4,808
67	2888	133	23	371	15	3,430
68	1786	185	34	339	8	2,352
69	2105	94	15	234	13	2,461
70	1409	78	25	224	5	1,741
71	2409	91	37	346	11	2,894
72	3616	137	44	533	14	4,344
73	1715	99	28	312	7	2,161
74	3385	208	56	630	18	4,297
75	2478	121	63	476	22	3,160
76	697	47	16	150	12	922
77	2546	109	43	397	13	3,108
78	2266	91	39	375	10	2,781
79	1766	67	30	260	7	2,130
135	2464	125	56	439	15	3,099
139	1736	44	15	130	4	1,929
TOTALS	42,901	2,207	684	6,833	230	52,855

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D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 6 *For the Period* Ending: January 31, 2005

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
1	2718	188	49	562	18	3,535
81	4149	292	72	673	25	5,211
82	2309	183	36	454	10	2,992
83	2689	188	53	517	16	3,463
84	1894	405	34	450	14	2,797
85	2375	547	38	604	13	3,577
86	2038	244	33	400	8	2,723
87	2574	176	48	442	15	3,255
88	1924	288	30	405	5	2,652
89	2263	683	42	647	9	3,644
90	1297	240	26	339	7	1,909
91	3175	291	71	676	18	4,231
127	3294	309	67	631	14	4,315
128	1540	141	28	403	8	2,120
130	1463	560	34	477	16	2,550
131	623	33	13	107	5	781
142	1175	179	9	278	8	1,649
TOTALS	37,500	4,947	683	8,065	209	51,404

D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 7 For the Period Ending: January 31, 2005

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
80	1255	53	17	188	8	1,521
92	1317	67	18	200	8	1,610
93	1249	64	16	182	5	1,516
94	1675	74	20	214	6	1,989
95	1313	36	23	198	2	1,572
96	1787	74	26	287	3	2,177
97	1096	41	19	170	2	1,328
98	1539	52	17	198	11	1,817
99	1131	47	22	194	6	1,400
100	1491	67	24	220	7	1,809
101	1517	49	14	184	6	1,770
102	1995	79	25	243	9	2,351
103	2935	115	40	450	11	3,551
104	2116	101	32	322	13	2,584
105	1812	77	36	260	5	2,190
106	2648	100	31	336	7	3,122
107	1334	67	18	233	2	1,654
108	1101	52	7	105	5	1,270
109	984	44	12	101	2	1,143
110	3664	132	39	456	16	4,307
111	1828	64	26	314	6	2,238
112	1854	72	24	262	12	2,224
113	1957	97	16	290	6	2,366
132	1705	74	16	242	5	2,042
TOTALS	**41,303**	**1,698**	**538**	**5,849**	**163**	**49,551**

D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 8 *For Period Ending:* **January 31, 2005**

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
114	2499	148	52	392	36	3,127
115	2026	75	42	401	5	2,549
116	2943	132	52	501	20	3,648
117	1154	58	25	182	2	1,421
118	2029	106	46	332	4	2,517
119	2340	144	51	362	10	2,907
120	1766	81	35	285	6	2,173
121	2852	123	43	464	7	3,489
122	1479	59	22	208	5	1,773
123	2069	222	43	396	7	2,737
124	2100	75	35	306	5	2,521
125	3365	154	59	537	16	4,131
126	2862	148	38	515	11	3,574
133	1265	56	13	189	9	1,532
134	1728	65	26	261	6	2,086
140	1671	73	29	286	16	2,075
TOTALS	34,148	1,719	611	5,617	165	42,260

GOVERNMENT OF THE DISTRICT OF COLUMBIA
THE DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH ADMINISTRATION
BUREAU OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION
Notice
of
Water Quality Research Grant

Pursuant to Section 1300.4 of the District of Columbia Water Quality Research Grant Regulation (Chapter 13 DCMR, Title 21; D.C. Register, May 13, 1988) (henceforth, Regulations), notice is hereby given regarding the potential availability of grants for conducting research and studies in the areas identified in the attached list as well as on the District of Columbia Funding Alert website (http://opgd.dc.gov/opgd/cwp/view,a,1318,q,587660,opgdNav_GID,1658.asp).

The sources of funding for these proposed studies are varied and may include the Government of the District of Columbia and grants from the U.S. Environmental Protection Agency for FY 2005. The amount of available funds for each of the projects, the time of the award of a grant, and the actual award of a grant, if selected, are completely dependent on the final availability of the funds.

Under the Regulations, universities and nonprofit organizations are eligible to receive grants under this program. The Regulations exclude commercial companies which operate on a for-profit basis.

Selection of a proposal for award of a grant will be in accordance with the Regulations. It will be based on an evaluation of the technical merit of the proposal, experience and capabilities of the investigators, cost effectiveness of the proposed work, usefulness of the proposed work for water quality management in the District of Columbia and final approval, where applicable, by the federal agency providing funding. Proposals selected may not be funded within the year selected. Proposals on more that one subject may be submitted by the same individual from the same institution. Please review Section 1301 of the Regulations to see the various elements to be included in your proposal.

Proposals must be submitted to the Environmental Health Administration, Bureau of Environmental Quality, Water Quality Division (WQD) by March 18, 2005, unless otherwise noted.

For additional information, please contact Ms. Jerusalem Bekele or Ms. Lucretia Brown at (202) 535-1603 or (202) 535-1807, respectively. Proposals should be submitted to: Water Quality Division, Bureau of Environmental Quality, Environmental Health Administration, Department of Health, Attention: Ms. Jerusalem Bekele, Program Manager, 51 N Street, N.E., Fifth Floor, Washington, D.C. 20002.

FEB 1 8 2005

FY 2005 Proposed Research/Study Subjects

1. Tidal Basin and Washington Ship Channel Toxics Monitoring.

2. Fish Tissue Analysis Study in the District of Columbia.

3. Anacostia Model Diurnal Calibration with New Phosphorous Flux.

4. Goose Management for Wetlands Protection.

5. Determination of Hydro-Morphological Effects on the District of Columbia Nutrient Allocation for the Chesapeake Bay Agreement.

6. Atmospheric Deposition Monitoring in the District of Columbia.

7. Kenilworth/Beaverdam Creek PCB Monitoring.

FRIENDSHIP PUBLIC CHARTER SCHOOL

(21ST CENTURY COMMUNITY LEARNING CENTER PROJECT)

900 Pennsylvania Avenue, SE

Washington, DC 20003

REQUEST FOR PROPOSALS

FOR WIRELESS LAPTOPS AND MOBILE CART PURCHASE

Sealed proposal (an original and four (4) legible copies), in an envelope clearly marked "RFP FOR WIRELESS LAPTOPS AND MOBILE CART PURCHASE", will be received in the office of Friendship Public Charter School, Inc. located at 900 Pennsylvania Ave, SE Washington, DC 20003 marked to the attention of A. Jerry Haley, Jr. until **4:00 PM on March 4, 2005** for:

"PROVIDING HARDWARE AND SOFTWARE TO EQUIP A WIRELESS LAPTOP COMPUTER LAB TO SUPPORT EDUCATIONAL AND TECHNOLOGY TRAINING FOR CHILDREN, YOUTH AND ADULTS, THROUGH THE 21ST CENTURY COMMUNITY LEARNING CENTER (CCLC) LOCATED WITHIN JOHN PHILIP SOUSA MIDDLE SCHOOL."

FPCS reserves the right to reject any and all qualification statements, to cancel this solicitation, and to waive any informalities or irregularities in procedure.

Introduction

FPCS is soliciting proposals from offerors having specific interest and qualifications in the areas identified in this solicitation. Qualification statements and proposals for consideration must contain evidence of the offeror's experience and abilities in the specified area and other disciplines directly related to the proposed work. Other information required by FPCS includes the submission of references, illustrative examples of similar work performed, and any other requested information which will clearly demonstrate the offeror's expertise in the area of this solicitation.

A selection committee will review and evaluate all qualification statements and may request offerors to make oral presentations. The selection committee will rely on the qualification statements in selection of finalists and, therefore, offerors should emphasize specific information considered pertinent to this solicitation and submit all information requested.

Project Description

FPCS has been awarded a grant from District of Columbia Public Schools to establish a 21st Century Community Learning Center at John Philip Sousa Middle School. The 21st CCLC @Sousa Middle School will provide year-round after-school and summer recess activities achieving all three authorized purposes of 21st CCLC. Activities will be available to students, parents, and community members six days a week (six days of service available to students and two days of service available to parents). The project will purchase a cart of 24 wireless laptops that will be used across all activities. This is an immediate need. Therefore, all offerors are expected to demonstrate that they have the existing capacity to provide the aforementioned services.

FPCS desires to have these services commence by March 15, 2005.

Qualification Statement Requirements

The offeror shall provide the following information organized as follows in their qualification statement:

1. A brief discussion of the firm, its organization, and services offered;

2. Information which demonstrates a history of providing hardware and software to schools and/or Local Education Agencies.
3. Owner/Client's name, contact person, telephone number, project description, project value, and prime contractor's name and address for at least three (3) similar projects during the past three (3) years.
4. Provide proof if LSDBE certified firm as LSDBEs will receive preferential consideration. See http://olbd.dc.gov/ will receive preference

Proposal Requirements:

Offerors shall submit the following in addition to qualifications for the following items:

1. Proposed pricing
2. Estimated Time of Delivery

QTY	DESCRIPTION /MFG. PART NUMBER
24	IBM TP R51 6/1.3 30GB CDR XPP
1	BRETFORD 24-UNIT W/ELEC UNIT CART
2	HP PHOTOSMART R707XI 5.1MP
1	3COM 7250 802.11G WIRELESS AP
1	CANON ZR80 DV CAMCORDER
1	ACAD MS MBA W2003 SRV STD
24	ACAD MS MBA W2003 CAL DEVICE
1	MS WWF W2003 SRVR STD MEDIA
24	ACAD MS MBA OFFICE PRO ENT 2003
1	MS WWF OFFICE PRO ENT 2003 MEDIA
1	HP COLOR LASERJET 3700N PRINTER
1	IBM X235 7/3.2 1GB SRVR
1	OBI-IBM SVC PK SRV 3YR 9X5 4HR
2	IBM 36.4GB U160SCSI 10K 80P TRAY
1	SIMPLE 1GB KIT IBM X235 W/SERVICE
1	APC SMART UPS 1500 BLK USB 1500VA
1	NETWORK SOFTWARE LABOR
1	NETWORK SOFTWARE LABOR installation fee to load w2003 svr

Should you have any questions with regard to this solicitation, please contact A. Jerry Haley, Jr. at 202-675-9242.

EXECUTIVE OFFICE OF THE MAYOR
Serve DC

PUBLIC NOTICE

NOTICE OF FUNDING AVAILABILITY

DISTRICT OF COLUMBIA
COMMISSION ON NATIONAL AND COMMUNITY SERVICE

National Youth Service Day 2005

Freddie Mac National Youth Service Day 2005 Mini Grants

Summary: *Serve DC, in partnership with the Freddie Mac Foundation,* is offering grants to support community service projects organized for National Youth Service Day 2005, April 15-17, a weekend of service focused on the contributions of youth in the community. Grants worth up to $750.00 will be awarded. The Freddie Mac Youth Service Grant can be found at www.serve.dc.gov, or you may call Kristin Yochum at (202) 727-8006 for more information.

Criteria for eligible applicants: Eligible applicants include nonprofits, schools or universities, community groups, faith-based organizations, corporations, government agencies, or public organizations. The deadline is March 4, 2005.

Applications can be obtained from 441 4th Street NW, Suite 1040S, Washington, DC 20001 or downloaded and printed from our website at www.serve.dc.gov. For additional information please call Kristin Yochum at (202)-727-7925.

MaryAnn Miller

MaryAnn Miller, Interim Executive Director
Serve DC

District of Columbia
Police Officers Standards and Training Board

NOTICE OF PUBLIC MEETING

The District of Columbia Police Officers Standards and Training Board will hold an open meeting on Monday, April 4, 2005. The meeting will begin at 5:00 p.m. and end no later than 7:00 p.m. The meeting will be held in Room #1117 South, 441 4th Street, Northwest, Washington, D.C. 20001. You must present picture identification in order to enter the building.

Copies of the materials to be voted on by the Board at the meeting may be obtained in advance through Wednesday, March 30, 2005, at 5:00 p.m. Typed written comments on the materials may be submitted in advance of the meeting to the Office of the Board through Wednesday, March 14, 2005. Written comments received via e-mail or postmarked after March 14, 2005 will not be accepted.

Anyone interested in the work of the District of Columbia Police Officers Standards and Training Board may attend the meeting. Citizens may make oral comments during a thirty-minute comment period at the end of the meeting. The comments will be limited to three minutes. Anyone interested in making oral comments may sign up in advance. Slots will be allotted on a "first come-first served" basis.

Anyone interested in obtaining written materials or participating in the open comments portion of the meeting may contact:

Ms. Sharon Barbour on (202) 727-1516 or mail.post@dc.gov

Written comments may be mailed to:

District of Columbia Police Officers Standards and Training Board
300 Indiana Avenue, Northwest
Washington, D.C. 20001 Room 5031
Attn: Ms. Sharon Barbour

Or E-Mailed to:
mail.post@dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES, Petitioner, and FRATERNAL ORDER OF POLICE/ DEPARTMENT OF HUMAN SERVICES LABOR COMMITTEE, Respondent.	PERB Case Nos. 02-A-04 and 02-A-05 Opinion No. 717 Motion for Reconsideration FOR PUBLICATION

DECISION AND ORDER

This matter involves a Motion for Reconsideration filed by the Office of Labor Relations and Collective Bargaining (OLRCB) on behalf of the Department of Human Services (DHS). DHS is requesting that the Board vacate its Decision and Order issued on November 21, 2002. (Opinion No. 691). In Opinion No. 691,[1] the Board found, *inter alia*, that Arbitrators Lois Hochhauser and Barry

[1]The facts and issues presented by this case are set forth in the Board's Decision and Order, Slip Op. No. 691. However, a brief summary of the facts and main issue follows:

> DHS filed two Arbitration Review Requests (PERB Case Nos. 02-A-04 and 02-A-05) seeking review of two separate Arbitration Awards (Awards) which found that a valid and enforceable agreement obligated DHS to arbitrate employee grievances. Upon the Petitioner's request, both cases were consolidated because they shared similar parties and issues. The common issues were whether the Arbitrators were without authority and exceeded their jurisdiction by finding that: (1) a bargaining representative and an Employer are bound by the terms of a prior contract executed by an Agency and a predecessor union; (2) a bargaining representative

Shapiro did *not* exceed their authority or violate the law and public policy by finding that: (1) a valid and enforceable *express* agreement existed which obligated DHS to arbitrate disputed grievances; (2) DHS's attempts to cancel the agreement failed; and (3) the underlying grievances which formed the basis of the arbitration cases were arbitrable.[2] In its Decision and Order, the Board observed that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based." See, Department of Human Services and Fraternal Order of Police/Department of Human Services Labor Committee, 50 DCR 5028, Slip Op. No. 691, PERB Case Nos. 02-A-04 and 02-A-05 (2003) and Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee, 47 DCR 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000). Moreover, the Board noted that it would not substitute its own interpretation or that of the Agency, in place of the duly designated Arbitrator's interpretation. See, Id.

In denying DHS's Arbitration Review Request, the Board concluded that the Arbitrators decided the precise issues that were given to them for decision; namely, whether there was a valid

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> and an Employer are required to arbitrate grievances absent an effective contract requiring such; and (3) the grievances are arbitrable, in the absence of a valid collective bargaining agreement. (Request at p. 2). DHS also raised an issue concerning the validity of Arbitrator Hochhauser's finding of an implied-in-fact contract. FOP opposed the Request. Stated more concisely, the issue before the Board was whether "the Arbitrator was without or exceeded his or her jurisdiction... in making the findings noted above." D.C. Code §1-605.02(6) (2001 ed).

[2]By way of background, a dispute existed concerning whether there was a valid and enforceable contract which obligated DHS to arbitrate grievances. The dispute arose because DHS had not negotiated a new agreement with FOP, once it succeeded the American Federation of Government Employees, Local 383 (AFGE, Local 383). Relying on National Labor Relations Board (NLRB) and Supreme Court precedent, Arbitrator Shapiro found that DHS and FOP were bound by the terms of an agreement negotiated by the Agency and AFGE, Local 383 (the predecessor Union). See, American Seating Boston Machine Works, 89 NLRB 59 (1950) and American Seating Co., 106 NLRB 250 (1953). Department of Human Services and Fraternal Order of Police/Department of Human Services Labor Committee, 50 DCR 5028, Slip Op. No. 691, PERB Case Nos. 02-A-04 and 02-A-05 (2003).

contract in place between the parties[3] and whether the underlying grievances were arbitrable. As a result, the Board denied DHS's Arbitration Review Requests and refused to set aside the Arbitration Awards.[4] Department of Human Services and Fraternal Order of Police/Department of Human Services Labor Committee, 50 DCR 5028, Slip Op. No. 691, PERB Case Nos. 02-A-04 and 02-A-05 (2003). On the same day that the Board issued this Decision and Order, DHS, through its representative, OLRCB, faxed a letter to the Board requesting that it be allowed to brief additional issues concerning the duty to arbitrate a claim once a contract expires. Shortly thereafter, DHS filed this Motion for Reconsideration with the Board.

DHS's Motion for Reconsideration (Motion) asserts several reasons in support of its contention that the Board erred when it denied DHS's Arbitration Review Request. In the present motion, DHS reiterates many of the arguments raised in its initial filing. In addition, DHS includes several new arguments, which it previously had an opportunity to raise, but did not. Specifically, DHS makes a procedural argument and contends that the Board's Decision and Order (Slip Op. No. 691) should be reconsidered and is not final because the Agency's Motion for Reconsideration was timely filed.[5] (Motion at p. 1). In addition, the Motion disagrees with the Board's specific findings in Opinion No. 691. However, the bulk of DHS's arguments center around its assertion that Arbitrator Hochhauser and the Board misread the Supreme Court precedent in the Litton Financial Printing Division v. NLRB (Litton) and Nolde Brothers, Inc. v. Bakery Workers (Nolde Brothers)

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[3]Arbitrator Hochhauser found that the *express agreement* (AFGE, Local 383 contract), under which the parties operated and processed grievances, was still valid and had not expired. Department of Human Services and Fraternal Order of Police/Department of Human Services Labor Committee, 50 DCR 5028, Slip Op. No. 691, PERB Case Nos. 02-A-04 and 02-A-05 (2003). As a result, the Board did not have to consider the issue of whether Arbitrator Hochhauser exceeded her authority by finding an implied-in-fact contract in the absence of a properly executed and statutorily approved collective bargaining agreement.

[4]The Board also noted that if DHS intended to make a "contrary to law" argument when it asserted that the Arbitrator's findings were in contravention of the *RCA del Caribe* line of cases, the Board failed to find relevance in the *RCA del Caribe* lines of cases when those facts that were applied to the ones presently before the Board. 262 NLRB 963 (1982). Therefore, the Board declined to reverse the Arbitrators' decisions based on any violation of law or public policy. Department of Human Services and Fraternal Order of Police/Department of Human Services Labor Committee, 50 DCR 5028, Slip Op. No. 691, PERB Case Nos. 02-A-04 and 02-A-05 (2003).

[5]DHS relies on Board Rule 559.2 and Ellowese Bargainier and Ellsworth Alexander v. Fraternal Order of Police/Department of Corrections Labor Committee in support of this argument. 46 DCR 7224, Slip Op. No. 484, PERB Case No. 95-S-02 (1999).

cases. 501 U.S. 190 (1991) and 430 U.S. 243 (1977).[6] Specifically, DHS asserts that the cases were misread as a result of an omission that Arbitrator Hochhauser made when citing the Nolde Brothers case. The Litton and Nolde Brothers cases address the parties' duty to arbitrate once the collective bargaining agreement under which the parties have operated expires.[7] We will summarize

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[6]Text and Cite from Arbitrator Hochhauser's Original Opinion and Award:

> However, the Supreme Court has also found a post expiration duty to arbitrate a creature of the collective bargaining agreement, rather than [the] compulsion of law." Id at p. 250-251. (Hochhauser's Award a pgs. 4 and 5 We note that the last case cited before the Id. in this instance was the *Litton* case. This statement is contained in the Litton case.

Text and Cite from Arbitrator Hocchauser's Reissued Opinion and Award:

> However, the Supreme Court has also found a post-expiration duty to arbitrate **a dispute which arises from the express or implied terms of an expired contract. Nolde Brothers, Inc. v. Bakery Workers, 430 U.S. 243(1977). The Court stated that the duty to arbitrate was "** a creature of the collective bargaining agreement rather than [the] compulsion of law." Id. at pp.250-251. (See Page 5 of Nolde and page 8 of Litton). **[Hochhauser's reissued Award at pgs. 4 and 5]. Bold text indicates text that was different from the original issuance.**

[7] In Litton, the Supreme Court reviewed the issue of whether an Employer had a duty to arbitrate grievances concerning layoffs where the layoffs occurred almost one year after the contract had expired. 501 U.S. 190, 193 (1991). The Supreme Court held that there was no post-expiration duty to arbitrate a dispute unless the dispute arose under the expired contract. Id.

In Litton, the Supreme Court also interpreted its holding in the Nolde Brothers, Inc. v. Bakery Workers case. See, Id. at pp. 203-204 and Nolde Brothers, Inc. v. Bakery Workers, 430 U.S. 243 (1977). In Nolde Brothers, the Supreme Court held that the employees' claim for severance pay arose under the collective bargaining contract and was subject to the contract's arbitration terms even though it arose after the contract was terminated. In Nolde Brothers , the Court also stated that, unless "negated expressly or by clear implication", there is a "presumption in favor of post-expiration arbitration of matters" where the expired agreement between the parties contained a broad arbitration clause. Id. In interpreting Nolde Brothers, the Court observed that it "does not announce a broad rule that post-expiration grievances concerning terms and conditions of employment remain arbitrable." Id. at 204-205. Rather, the Nolde Brothers presumption is limited to disputes arising under the contract. Id. Moreover, the Court noted that the "arbitrability presumption" was "limited by the vital qualification that arbitration was of

many of the arguments raised by DHS in the following footnote[8]. In its Response to DHS's Motion

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matters and disputes arising out of the relation governed by contract." Id.

After reviewing the Litton and Nolde Brothers cases, the Board noted that, in those cases, there was *no* dispute as to whether the collective bargaining agreement had expired. 501 U.S. 190 (1991); 430 U.S. 243 (1991). Id. This fact, alone, distinguishes Litton and Nolde Brothers from the case presently before the Board. Both arbitrators in the present case found that the AFGE, Local 383 collective bargaining agreement was applicable to the parties and had *not* expired. Therefore, the Board finds that it is not necessary for us to review the Arbitrators' finding concerning whether there was a post-expiration duty to arbitrate the grievances.

[8] In the following paragraphs, we will summarize DHS' major arguments and include the Board's response, where relevant:

1. DHS claims that the Board properly recognized the Petitioner's argument concerning the Arbitrator's finding of an implied-in-fact contract. *We note that the Board did not indicate that the argument was properly made. Instead, we merely summarized the Petitioner's argument on this issue.*

2. DHS contends that the Board violated its own rules (Board Rule 538.2) by failing to request a full briefing on the issue once the discrepancy was found and the request to brief was made. *The Board's Rules, as correctly noted in the Executive Director's January 9th written response to this issue, provide that briefing is only required where the Board finds that there may be grounds to modify or set aside an Arbitrator's award. No such finding was made in this case.*

3. DHS asserts that the Board had an obligation to review briefs prior to reaching a decision on the issues raised. *As indicated in the Executive Director's January 9th Response, the Board does not have an obligation to review or consider briefs where the Board does not order the parties to submit briefs.*

4. DHS asserts that Fundamental Due Process requires that the Board order briefing on an issue as complex as the termination of a collective bargaining agreement and the residual obligation of the parties. *We believe that DHS had an opportunity to explain its position on this and any other complex issue in its: (1) brief to the Arbitrator*; (2) *original Arbitration Review Request,* and (3) *Motion for Reconsideration. As a result, the Board is not persuaded by this due process argument.*

5. DHS asserts that Arbitrator Hochhauser's decision to uphold arbitrability is a significant misreading of the Supreme Court's limitation of the Nolde Brothers case, which is cited in Litton. In addition, DHS asserts that there was no post-expiration duty to arbitrate in PERB Case No 02-A-04, because the dispute arose after the contract expired. DHS argues that the post-expiration duty to arbitrate is limited to cases where the dispute arose under contract. DHS says it needs an opportunity to brief the issue and explain the

for Reconsideration (Response), FOP asserts that the Petitioner's motion should be summarily denied because the Board's Opinion in this matter is well reasoned and correct as a matter of law. In addition, DHS argues that pursuant to Board Rule 559.2,[9] the Board does not contemplate or permit a Motion for Reconsideration under circumstances where, as here, the Board's decision was made final upon issuance.

After reviewing the current motion, we find that DHS's arguments amount to nothing more than a disagreement with the Board's determination in Opinion No. 691. Furthermore, we find that DHS's motion does *not* state adequate grounds for reversing Opinion No. 691.

In view of the above, the Board finds that DHS has not presented evidence which supports a reversal of Opinion No. 691. Therefore, we deny DHS' Motion for Reconsideration.

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proper application of the Litton and Nolde Brothers cases. Furthermore, DHS asserts that it needs an opportunity to present its case and explain why the application of those holdings to these facts require a reversal of Opinion No. 691. *The Board believes that DHS did attempt to explain the applicability of Litton and Nolde to the Arbitrator. The Board summarized and noted DHS's reliance on those cases in Footnote 11 of its Opinion in this case. DHS acknowledged in its Motion that the Board noted their reliance on these cases. Nevertheless, the Board is not persuaded that DHS's explanation necessitates a finding of error or the reversal of Opinion No. 691.*

6. DHS claims that it was prejudiced by its failure to know the full extent of the Arbitrator's Award. *We find no merit in this argument, nor do we find that our actions prejudiced DHS in any way.*

[9]Board Rule 559.2 provides, in relevant part, that:

> the Board's Decision and Order shall not become final if any party files a motion for reconsideration within ten (10) days after issuance of the decision, or if the Board reopens the case on its own motion within 10 days after issuance of the decision, unless the order specifies otherwise.

Even though the Decision and Order contained the language "final upon issuance", this fact does not foreclose DHS from filing a Motion for Reconsideration if it is done in a timely manner. DHS's Motion was timely. As a result, FOP's argument on this issue lacks merit.

ORDER

IT IS HEREBY ORDERED THAT:

1. DHS' Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

July 17, 2003

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Grievant, David Blue, et. al- Spring Valley Detail), Petitioner, and District of Columbia Metropolitan Police Department, Respondent.	PERB Case No. 03-A-03 Opinion No. 726 **FOR PUBLICATION**

DECISION AND ORDER

The Fraternal Order of Police /Metropolitan Police Department Labor Committee ("FOP" or "Union") filed an Arbitration Review Request ("Request") in the above captioned matter. FOP seeks review of an Arbitration Award which dismissed a grievance because the Arbitrator determined that it was not arbitrable.[1] Specifically, FOP claims that the Arbitration Award is contrary to law and public policy pursuant to D.C. Code §1-605.2(6) (2001 ed.)[2]. The Metropolitan Police Department ("MPD" or "Agency") opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy" pursuant to D.C. Code Sec. 1-605.2(6)(b). Upon consideration of the Request, we find that FOP has *not* established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, FOP's request for review is denied.

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[1]The Arbitrator reached this conclusion after reviewing the collective bargaining agreement (CBA) and determining that the section of the CBA cited by FOP, which concerned overtime under the Fair Labor Standards Act, was inoperative during the relevant time period.

[2]Throughout this Opinion, all references to the D.C. Code refer to the 2001 edition.

A number of police officers represented by FOP volunteered and were assigned to work a detail which involved overtime, hereinafter referred to as the Spring Valley Detail. The officers assigned to the overtime detail provided security and escort services to assist in the clean-up and detoxification of a World War II-era hazardous waste site. This detail was operated 24-hours a day, 7 days a week and required continuous police oversight. MPD solicited volunteers for the detail with the understanding that overtime would be paid for all qualifying hours of duty performed. From March 24, 2002 until May 14, 2002, MPD paid no overtime to union members working the Spring Valley Detail. Consequently, FOP filed a grievance on May 14, 2002 based on MPD's failure to make timely payments for overtime labor performed by David Blue and similarly situated police officers.[3] In its grievance, the Union contended that this was a violation of the parties' collective bargaining agreement (CBA) and the Fair Labor Standards Act (FLSA). The Arbitrator[4] found that the grievance was *not* arbitrable because Article 30, §2[5], the section of the CBA cited by FOP in its grievance, was inoperative[6]. Therefore, FOP's grievance was denied.

FOP now seeks review of the Arbitrator's decision to dismiss its grievance on the basis that it is contrary to law and public policy. Specifically, the Union claims that its failure to cite the correct and operative section of the CBA was a mere technicality and that public policy favors arbitration where parties have previously agreed to arbitrate matters.[7] In addition, FOP contends that

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[3]The record reflects and it is not disputed that the officers did receive their overtime payments; however the payments were delayed. As a result, the Union contends that the untimeliness of the overtime payment is a violation of the CBA and the Fair Labor Standards Act (FLSA). Therefore, FOP requested liquidated damages as a remedy for the delay in payment pursuant to the applicable section of the FLSA.

[4]Arbitrator Donald H. Doherty issued this decision.

[5]Article 30, §2, as cited in FOP's grievance, provides as follows:

> To the extent that the Employer's present policies, procedures and practices equal or exceed the requirements of the Fair Labor Standards Act, those policies, procedures, and practices shall remain in effect, except as otherwise provided herein.

[6] In its brief to the Arbitrator, FOP admitted that the section of the CBA which it cited was inoperative.

[7]FOP relies on Gateway Coal Co. v. United Mine Workers of America, 414 U.S. 368, 377-78 (1974) as authority for its positions. Specifically, it asserts that "[A]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." See also, Gateway Coal Co. v United Mine Workers of America, 414 U.S. 368, 377-78 (1974) and United Steelworkers of America v Warrior & Gulf Navigation Co., 363 U.S. 574, 582-583 (1960). "The public policy favoring arbitration is

the officers who prepare the grievances are not lawyers, and should not be held to the higher standard of interpreting the contract in order to cite the correct section. FOP also asserts that MPD had an obligation to notify it of the error and provide an opportunity to resubmit the grievance in its corrected form[8]. Finally, FOP argues that MPD should be required to pay the liquidated damages because it acknowledged responsibility for its duty to pay the overtime in its initial response to the Union's request for overtime.

MPD asserts that the Chief of Police made the Union aware that the grievance cited an inoperative provision in his first response to the grievance/arbitration demand.[9] In addition, MPD asserts that if the Arbitrator had allowed review of a grievance that was based on an inoperative section of the parties' CBA, he would have been impermissibly adding to the CBA in violation of Article 19E, §5, Part 4 of the parties' CBA. [10] Finally, MPD contends that the Union has not cited any language which supports its premise that the denial of a grievance because it is based on inoperative language is against law and public policy. Therefore, MPD has not stated any statutory basis for reversing the arbitrator's decision.

Notwithstanding the authority cited above, we believe that FOP's asserted grounds for review only involve a disagreement with the Arbitrator's interpretation of the parties' CBA and his determination that the grievance was not arbitrable. Moreover, FOP merely requests that we adopt its view that the grievance was arbitrable.

We have held that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." D.C. Dept. of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). In addition, we have held that "[b]y agreeing to submit the settlement of [a] grievance to arbitration, it [is] the Arbitrator's interpretation, not the Board's, that the parties have bargained for." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 39 DCR 9628, Slip

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grounded in the understanding that labor arbitration is 'the substitute for industrial strife." Id.

[8]In response to this claim, the Board notes that in correspondence to the Union, MPD informed FOP, on at least two occasions, of its belief that the section of the CBA which FOP cited in its grievance was inoperative and that the grievance had no basis. In addition, the record contains a response from FOP which indicates its willingness to allow the Arbitrator to determine whether: (1) the cited section of the CBA was operative and (2) the grievance was arbitrable.

[9] In addition, the Chief of Police noted that he believed that the grievance was initially filed at the wrong level of authority and should have been filed at a lower level before it reached him.

[10]MPD also argued that based on Article 19E, §5, Part 2 of the parties' CBA, FOP should not be permitted to assert any ground or rely on any evidence at arbitration that was not previously disclosed to the other party. Specifically, MPD refers to FOP's argument that its members who file grievances are not lawyers and should not be held to that higher standard when filing grievances. MPD asserts that this argument should not be entertained because it was not presented to the Arbitrator. MPD also contends that FOP's argument on this issue should be rejected because the police officers who file grievances were released by MPD to attend training on the topic of preparing grievances.

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Op. No. 320 at p. 2, PERB Case No 92-A-04 (1992). Also, we have found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." Id. Moreover, "[t]he Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator." District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union No. 246, 34 DCR 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987).

We have also held that a "disagreement with the arbitrator's interpretation. . . does not make the award contrary to law and public policy." AFGE, Local 1975 and Dept. of Public Works, 48 DCR 10955, Slip Op. No 413, PERB Case No. 95-A-02 (1995). To set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the arbitrator arrive at a different result. See, AFGE, Local 631 and Dept. of Public Works, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1993). In the present case, FOP's claim involves only a disagreement with the Arbitrator's interpretation of the parties' CBA and his decision on arbitrability. Moreover, FOP does not cite any applicable legal precedent or any public policy which supports its position. Thus, FOP has failed to point to any clear or legal public policy which the Award contravenes.

We find that the Arbitrator's conclusion is based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. Rather, FOP merely disagrees with the Arbitrator's conclusion of non-arbitrability. This is ***not*** a sufficient basis for concluding that the Arbitrator's Award is contrary to law and public policy. For the reasons discussed, no statutory basis exist for setting aside the Award; the Request is therefore, denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Review Request is denied.

2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 5, 2004

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 36,	**PERB Case No. 04-N-02**
Petitioner,	**Opinion No. 742**
v.	**FOR PUBLICATION**
DISTRICT OF COLUMBIA DEPARTMENT OF FIRE AND EMERGENCY MEDICAL SERVICES,	
Respondent.	

DECISION AND ORDER

This matter involves a Negotiability Appeal (Appeal) filed by the International Association of Firefighters, Local 36[1] ("IAFF" or "Union") against the District of Columbia Department of Fire and Emergency Medical Services (" FEMS" or "Agency"). This Appeal concerns the negotiability of the Union's proposal concerning the composition of the Agency's Disciplinary Trial Board,[2] a non-compensation matter.[3] In a written response to IAFF's proposal, FEMS declared the proposal

[1]The International Association of Firefighters, Local 36 represents all uniformed members of the Fire and Emergency Services Department in the ranks of firefighter through captain.

[2]The Disciplinary Trial Board is currently established through a Memorandum of Understanding between the parties that was executed in 1988 and attached to the Appeal as Exhibit 5. Under the Agreement, the Trial Board consists of two bargaining unit captains and a battalion chief, all chosen by the current Fire Chief. (Exhibit 5).

[3]IAFF and FEMS are engaged in negotiations for new collective bargaining agreements covering non-compensation and compensation matters.

non-negotiable.[4] As a result, IAFF filed this Appeal. Instead of seeking a definitive ruling from the Board on whether the proposal is negotiable, as is customarily requested in these types of Appeals, the Petitioner is requesting that the Board allow the parties to brief the issue of whether the proposal is negotiable.[5]

Under the challenged provision of IAFF's proposal, Article 44-"Disciplinary Procedures", the Fire Chief would select a Trial Board composed of one uniformed officer and two captains. This three-member Trial Board would determine the appropriate disciplinary action to be taken in cases where the penalty would be termination, demotion, or a 120-hour or more suspension.[6]

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[4]FEMS made its declaration of non-negotiability, through its representative, the Office of Labor Relations and Collective Bargaining (OLRCB), in its Final Outstanding Working Conditions Proposals dated December 31, 2003.

[5]IAFF bases its request for briefing on Board Rule No. 532.4(b).

[6] Article 44, §§6(a) and (b)- Disciplinary Procedures

Section 6: Trial Board
All cases in which an employee is charged with an infraction for which the penalty that may be imposed is termination, demotion, or a 120-hour suspension or greater shall be submitted to a Trial Board. The previously established procedures applicable to Trial Boards shall continue to be followed, with the following amendments:

(a) Each Trial Board shall consist of one (1) uniformed member of the Department designated by the Fire Chief and two (2) Captains selected by the Fire Chief.

(b) Except as otherwise provided in this section, the Fire Chief shall have complete discretion in selecting the members of the Trial Board and in determining the length of time that appointees serve on Trial Boards, subject to the right of an affected employee to challenge any member of the Trial Board pursuant to Article VII, § 12 of the Department's Rules and Regulations.

(Appeal Exhibit 2)

FEMS asserts that §§ 6(a) and (b) of the Union's proposed Article 44, entitled "Disciplinary Procedures"[7], are non-negotiable pursuant to D.C. Code §1-617.08(a)(2) (2001 ed.), the management rights provision of the Comprehensive Merit Personnel Act ("CMPA") which concerns discipline.[8] In addition, FEMS argues that these sections of Article 44 should be deemed non-negotiable because of their effect. Namely, FEMS asserts that the Agency is restricted from imposing a higher level of discipline against a bargaining unit employees if the two bargaining unit employees (on the Trial Board) issue a lesser form of discipline. Furthermore, FEMS asserts that these sections should be deemed non-negotiable because the Agency is prevented from imposing any manner of discipline if the two (2) bargaining unit captains on the Trial Board recommend a dismissal of charges against the bargaining unit member. Finally, FEMS requests to brief the issue of negotiability in detail, only if the Board does not declare the proposal non-negotiable on its face.

In its appeal, IAFF does not state an official position on whether the challenged provision of the proposal is negotiable.[9] Rather, it seeks to have the Board order the parties to brief the issue of negotiability.[10]

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[7]The language in the current Memorandum of Understanding provides that the Trial Board "shall consist of one Battalion Fire Chief and two Captains." (See Exhibit 5 at §6(a)). This language is slightly different than the language proposed in Article 44.

When FEMS indicated its unwillingness to accept the Union's Proposal for Article 44, the Appeal suggests that the Union then decided to propose that the language embodied in the current Memorandum and its Proposal of August 14, 2003, be accepted. (See, Appeal at p. 3).

[8]Specifically, FEMS contends that the Union's proposal interferes with management's exclusive right to discipline employees because two members of the Trial Board are bargaining unit captains and only one is a management official.

[9]Despite the fact that IAFF does not make a specific claim that the proposal is negotiable, the Board can infer that this is their position based on the fact that it urges the Board not to adopt the Department's view on this issue.

[10]The Union also contends that historically, the Trial Board has been made up of two captains and a battalion chief and should remain that way. In addition, IAFF asserts that if the Board finds that this proposal is non-negotiable, and agrees with the Department's new position that the Fire Chief is free to place whomever he wants on the Board, the Trial Board would become an instrumentality of the Fire Chief. Furthermore, IAFF points to the fact that FEMS's proposed composition of the Trial Board would affect the morale of the uniformed members. Furthermore, IAFF notes that FEMS has not cited any case law in support of its position of non-negotiability. As a result, IAFF recommends that the Board order the parties to brief the issues concerning their position on negotiability.

The Board has the authority to consider the negotiability of proposals pursuant to Board Rules 532.1 and 532.4.[11]

The specific issue presented in this Negotiability Appeal concerns whether the Petitioner's proposal, which sets forth the composition of a Disciplinary Trial Board, is negotiable.

As the Board considers this issue, it is guided by the following Board precedent:

> D.C. Code §1-617.08(b)(2001 ed.) provides that "all matters shall be deemed negotiable, except those that are proscribed by this subchapter." As a result, there is a presumption of negotiability. However, the Board has stated that "in view of specific rights reserved solely to management under this same provision, i.e. D.C. Code §1-617.08 (a), the Board must be careful in assessing proffered broad interpretations of either subsection (a) or (b)." Washington Teachers' Union and District of Columbia Public Schools, 46 DCR 8090, Slip Op. No. 450 at p. 4, PERB Case No. 95-N-01 (1999).
>
> The Board has also held that D.C. Code §1-617.08 (a)(2) (2001 ed.) provides as a sole management prerogative, the right to "suspend, demote, discharge, or take other *disciplinary* action against employees for cause." Washington Teachers' Union and D.C. Public Schools, 46 DCR 8090, Slip Op. No. 450 at p. 11, PERB Case No. 95-N-01 (1995). However, the Board has also held that *procedural* matters concerning *discipline* are negotiable. See, Washington Teachers' Union and D.C. Public Schools, 46 DCR 8090, Slip Op. No. 450 at p. 12, PERB Case No. 95-N-01 (1995).

Given the Board precedent noted above, and the state of the pleadings submitted by the parties, we believe that there is still insufficient information upon which to make a ruling as a matter

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[11]Board Rule 532.4 outlines the Board's options for resolving a Negotiability Appeal once it is filed. This rule provides, in pertinent part, that the Board may: (1) issue a decision on the Appeal; (2) order the submission of written briefs and/or oral arguments; (3) order a hearing, which may include briefs and arguments; or (4) direct the parties to an informal mediation or conference concerning the issue.

of law.[12] Therefore, pursuant to Board Rule 532.4 (b), we are requesting that the parties submit briefs[13] in support of their respective positions on the narrowly tailored issue that follows:

> **In light of the parties' past practice concerning Disciplinary Trial Boards and the Board's precedent that procedural matters concerning discipline are negotiable, should this proposal be treated as non-negotiable? We are asking that you cite specific authority to support your position and explain your position on this issue thoroughly.**

The parties' briefs should satisfy the requirements of Board Rule 532.

The briefs will provide both parties with an equal opportunity to present their views on the issue. Moreover, it will provide the Board with sufficient information upon which to make a determination.

ORDER

IT IS HEREBY ORDERED THAT:

1. The parties shall submit briefs concerning this matter on an expedited basis. The briefs shall be filed seven (7) days from the service of this Decision and Order.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 2, 2004

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[12]On February 23, 2004, the Board met and considered this Appeal at its regular meeting.

[13] In the present case, both parties requested to submit briefs concerning the negotiability issue in their initial pleadings. We note for the record that Board Rule 532.4(b) does not convey an automatic right to brief an issue raised in a negotiability appeal before the Board rules on it, simply because a party requests briefing. Therefore, in the future, the Board strongly urges the parties to thoroughly brief all issues that they consider relevant in their initial pleadings. This will expedite the resolution of future Negotiability Appeals.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of Government Employees, Local 2725,	
Petitioner,	PERB Case No. 02-RC-06
and	Opinion No. 743
District of Columbia Department of Consumer and Regulatory Affairs,	**FOR PUBLICATION**
Respondent.	

DECISION ON UNIT DETERMINATION

The American Federation of Government Employees, Local 2725 ("AFGE" or "Petitioner"), filed a Recognition Petition ("Petition") in the above-captioned proceeding. AFGE seeks to represent for purposes of collective bargaining, a proposed unit of seven attorneys employed by the District of Columbia Department of Consumer and Regulatory Affairs, Office of Compliance ("DCRA" or "Respondent"). The Petition was accompanied by authorization cards signed by each of the attorneys in the proposed unit, a roster of the Petitioner's Officers, and a copy of the Petitioner's Constitution and Bylaws, as required by Board Rules 502.2 and 502.1(d).

On October 30, 2002, DCRA, through its representative Office of Labor Relations and Collective Bargaining ("OLRCB"), objected to the proposed unit on the ground that the DCRA is a subordinate Agency under the District of Columbia Legal Services Act ("LSA"). [1] In making its objection, OLRCB asserted that a city-wide unit of all subordinate agency attorneys is the only

[1] The District of Columbia Legal Services Act is codified at D.C. Code §1-608.51-62, Subchapter VIII-B. (2001 ed.). This Act establishes "within the District government a Legal Service for independent and subordinate agencies to ensure that the law business of the District government is responsive to the needs, policies and goals of the District and is of the highest quality."

appropriate unit for their representation. After a preliminary investigation into this matter, the Board's Executive Director, referred this matter to a Hearing Examiner in order to determine what the appropriate unit should be.[2] A hearing was scheduled for January 30, 2003.

The day before the scheduled hearing, the original parties to this proceeding, along with the District of Columbia Office of the Corporation Counsel ("OCC") and other "subordinate" agencies, filed a document styled "Joint Stipulation for Exclusive Non Compensation Unit Determination" ("Joint Stipulation"). [3] In this Joint Stipulation, the named parties agreed upon and suggested that the appropriate unit for representation be the following: "[all] attorneys within the Legal Service who come within the personnel authority of the Mayor...excluding attorneys employed exclusively by the OCC."[4] (R & R at p. 2).

The hearing in this matter convened on January 30, 2003. Upon consideration of the Joint Stipulation, the Hearing Examiner concluded that additional information and legal argument was required before she could make an informed recommendation as to the appropriateness of the stipulated city-wide unit.[5] After reviewing the parties' submissions, relevant Board precedent and other information gathered during the proceeding, the Hearing Examiner concluded that a multi agency unit is appropriate and permissible.[6]

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[2] Normally, non compensation units are comprised of one unit at one agency, instead of multi-agency units. As a result, further investigation was needed in order to determine whether a proposed city wide unit of attorneys was a unique situation.

[3] By their Joint Stipulation, the parties requested that the Board issue a Decision and Order finding the city-wide unit appropriate and order an election for that unit, absent a petition for intervention by any other labor organization. In addition, the Joint Stipulation requested that a revised list of potential unit employees be prepared.

[4]The Joint Stipulation also named each of the agencies, other than DCRA, that were to be included in the unit. As a result, they assumed the position of Respondents in this matter through their representative, OLRCB, even though they were not named as Respondents in the original filing of this matter.

[5]After the hearing concluded, the parties agreed to provide additional submissions concerning the issue no later than February 26, 2003, and to be available for a follow-up teleconference once their submissions were in. The follow-up teleconference was held on March 7, 2003 and the parties were asked to submit further information concerning the number of affected employees and the lines of supervision. OLRCB submitted the requested information on March 26, 2003 and the record closed.

[6] D.C. Code §1-617.09(a) provides, in pertinent part, that the determination of an appropriate unit will be made on a case by case basis. In reviewing the appropriateness of this

No other party sought to intervene and no additional comments were received.[7] The Hearing Examiner's Report and the Joint Stipulation are before the Board for disposition.

In her report, the Hearing Examiner is recommending that the: (1) Unit proposed by the parties' Joint Stipulation be accepted by the Board and (2) Board find that the proposed multi agency unit is an appropriate unit.[8] There were no exceptions filed concerning the Hearing Examiner's Report.

AFGE seeks to represent the following proposed unit:

> All attorneys within the Legal Service who come within the personnel authority of the Mayor of the District of Columbia, excluding attorneys employed exclusively by the Office of the Corporation Counsel, management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of

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proposed unit, the Hearing Examiner found that the Board's Rules and case precedent do not prohibit the establishment of terms-and-conditions (non compensation) units that cut across agency lines. See, Doctors Council of the District of Columbia and District of Columbia Government, 33 DCR 3912, Slip Op. No. 139, PERB Case No. 84-R-12 (1986). In fact, in Doctors Council of the District of Columbia and District of Columbia Government, the Board found that a unit of physicians, dentists and podiatrists employed in the Department of Human Services and the Department of Corrections was appropriate. Id. In a later case, the Board modified its earlier certification to include physicians employed by the Department of Public Works. See, Doctors Council of the District of Columbia and District of Columbia Government, et.al., 41 DCR 1593, Slip Op. No. 298, PERB Case No. 92-R-01 (1992). On this basis, the Hearing Examiner concluded that a unit of attorneys from different independent agencies would be appropriate. In view of the above, we find that the Hearing Examiner's finding on this issue is reasonable and consistent with Board precedent. Therefore, we adopt the Hearing Examiner's conclusion that a multi agency unit is appropriate.

[7] A representative of AFGE, Local 1403, the exclusive representative for attorneys employed by the OCC, attended the January 30, 2003 hearing and was given an opportunity to file an intervention petition. However, the representative failed to make a submission.

[8] In her decision, the Hearing Examiner stated that she concludes that "the totality of the circumstances establish a community of interest among nonsupervisory attorneys employed at the subordinate agencies". (R & R at p. 9). In addition, she concluded that "a city-wide unit would promote effective labor relations and efficiency of agency operations." (R & R at p. 9).

Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

Board Rule 502.2. provides in pertinent part that, a "petition for exclusive recognition shall be accompanied by proof, not more than one (1) year old, that at least thirty percent (30%) of the employees in the proposed unit desire representation by the Petitioner." The Original Petition was supported by a showing that at least 30% of the attorneys at DCRA desired to be represented by AFGE, Local 2725. However, the Joint Stipulation and request was not accompanied by any additional showing of interest, which would constitute a 30% showing of interest for the larger proposed unit. [9] In light of the above, AFGE has not yet met the showing of interest requirement of Board Rule 502.2.

Our review of the Joint Stipulation, Hearing Examiner's Report, parties' supplemental submissions and exhibits, reveal the following concerning the proposed consolidated unit. The proposed unit consists of the following employee positions: "all attorneys within the Legal Service who come within the personnel authority of the Mayor...excluding attorneys employed exclusively by the Office of the Corporation Counsel." Under the terms of the Joint Stipulation, in addition to DCRA, subordinate agencies would include: the Office of Cable Television and Telecommunications; Department of Corrections; Department of Health; Department of Employment Services; Department of Public Works; Department of Insurance and Securities Regulation; Department of Human Services; Office of Contracts and Procurement; Office of Banking and Financial Institutions; Office of the Chief Medical Examiner; Alcoholic Beverage Regulation Administration, and the Department of Parks and Recreation. Although the attorneys in this proposed unit are assigned to the General Counsel's offices of different subordinate agencies, they still have reporting responsibility to the OCC. As noted earlier in footnote 6, we find that the Hearing Examiner's finding that the proposed multi agency unit is appropriate is reasonable and consistent with Board precedent. In view of the above, we adopt the Hearing Examiner's finding on this issue.

D.C. Code §1-617.09(a) (2001 ed.), requires that a community of interest exist among employees in order for a unit to be found appropriate by the Board for collective bargaining over terms and conditions of employment. An appropriate unit must also promote effective labor relations and efficiency of agency operations.

In this case, the Hearing Examiner found that subordinate agency attorneys share many indicia of the community of interest required by D.C. Code §1-617.09(a). For instance, they share common skills and common supervision at one step removed from their immediate supervisor. In addition,

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[9]Based on the preliminary evidence submitted in response to the Hearing Examiner's inquiries, this unit would cover 15 agencies and approximately 50 positions.

they are subject to common control,[10] common standards and common objectives for the performance of their work.[11] The Board has held that common overall supervision is probative of community of interest and "some dissimilarity among positions" need not preclude a finding of appropriateness where under the total circumstances, a general community of interest prevails. See, Washington Teachers' Union, Local 6, AFT-AFL-CIO and Public Schools of the District of Columbia, 29 DCR 1048, Slip Op. No. 34 at p.2, PERB Case No. 80-R-09 (1982); District 1199E-DC, National Union of Hospital and Health Care Employees, Service Employees International Union and Department of Human Services Commission of Public Health, 39 DCR 8651, Slip Op. No. 298 at p.4, PERB Case No. 91-R-01 (1992); and Committee of Interns and Residents and D.C. General Hospital Commission, 37 DCR 737, Slip Op. No. 237, PERB Case No. 89-R-02 (1990). The Hearing Examiner also indicated that she was not troubled by the differences in work locations because the Board has often found appropriate units that include employees at different locations throughout the city.[12] (R & R at pg. 9).

We believe that the Hearing Examiner's finding on this issue is reasonable and consistent with Board precedent. As a result, we conclude that sufficient factors exist for the Board to find that these employees share a community of interest. Finally, there is no collective bargaining agreement in effect covering any of these employees. In view of the above, we find that the proposed unit would promote effective labor relations and efficiency of agency operations.

Regarding the question of representation, we believe that the proposed unit listed above is an appropriate unit for a representation election. However, at this time, no election can be ordered in

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[10]According to the "Respondents' Position Paper Concerning the Appropriate Unit" ("Respondents' Position Paper), as supported by an affidavit from Darryl Gorman, OCC exercises authority in the hiring, firing, and disciplining process, as well as performance evaluations, reduction-in-grade, and incentive awards. (Respondents' Position Paper at pgs. 8-11). Mr. Gorman is the Senior Deputy Corporation Counsel, whose primary area of responsibility is the supervision of Agency Counsel working in various subordinate agencies of the District of Columbia. (Respondents' Position Paper at pgs. 8-11).

[11]The Attorneys' methods of drafting regulations, legislation and opinions, are generally similar and circumscribed by the requirements established by the OCC. (See, R & R at p. 9)

[12]The Hearing Examiner points to examples of teachers and police officers who are located at different places throughout the city; nevertheless, the Board certified the Unions to represent these individuals. See, e.g., Washington Teachers' Union, Local 6, AFT, AFL-CIO and Public Schools of the District of Columbia, 29 DCR 2358, Slip Op. No. 39, PERB Case No. 81-S-01 (1982); Fraternal Order of Police/Metropolitan Police Department Labor Committee and District of Columbia Metropolitan Police, 28 DCR 4608, PERB Case No. 81-R-05, Slip Op. No. 17 (1981).

this case because no labor organization has presented a recognition petition supported by an adequate showing of interest. Therefore, in this case, it would remain for AFGE or any other interested labor organization to file a recognition petition supported by an adequate showing of interest. Only after those submissions are received can the Board make a showing of interest determination and order that an election be held in accordance with the provisions of D.C. Code §.1-617.10 (2001 ed.) and Board Rules 510-515, in order to determine whether or not all eligible employees desire to be represented by AFGE, Local 2725 or another labor organization for purposes of collective bargaining.

ORDER

IT IS HEREBY ORDERED THAT:

1. The following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

   > All attorneys within the Legal Service who come within the personnel authority of the Mayor of the District of Columbia, excluding attorneys employed exclusively by the Office of the Corporation Counsel, management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.[13]

2. The American Federation of Government Employees, Local 2725 and any other interested labor organization who desires to represent the above noted unit, is hereby notified by the Board that it is to file a recognition petition supported by the appropriate showing of interest in order to represent this unit and prior to any election being ordered.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 31, 2004

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[13]We note that the Board has already certified one unit of attorneys at the D.C. Public Services Commission, an independent Agency. See, American Federation of Government Employees, AFL-CIO and Public Service Commission of the District of Columbia, Certification No. 124, PERB Case No. 02-RC-04 (December 2002). As a result, the proposed unit does not include attorneys who are currently employed at the Public Service Commission of the District of Columbia.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: **REBECCA OWENS,** **Complainant,** **v.** **AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 2095,** **and** **NATIONAL UNION OF HOSPITAL AND HEALTHCARE EMPLOYEES, DISTRICT 1199,** **Respondents.**	**PERB Case No. 02-U-27** **Opinion No. 750** **FOR PUBLICATION**

DECISION AND ORDER

This case involves an unfair labor practice complaint filed by Rebecca Owens ("Complainant" or "Owens") against the American Federation of State, County, and Municipal Employees, Local 2095 ("Respondent" or "Local 2095") and the National Union of Hospital and Healthcare Employees, District 1199. ("Respondent" or "NUHHCE"). The Complainant is alleging that Local 2095 and NUHHCE breached their duty of fair representation and violated various subsections of D.C. Code §§ 1-617.04 and 1-617.06[1] by failing to: (1) adequately assist her in the processing of a

[1]See, the Hearing Examiner's Report and Recommendation for the full text of the D.C. Code sections that Owens' alleges were violated. (R & R at pgs. 5 and 6). In summary, the Complainant is contending that pursuant to D.C. Code §§1-617.04 and 1-617.06, the Union, *inter alia*: (1) violated its duty to fairly represent her; (2) discriminated against her; (3) refused to bargain in good faith; and (4) did not properly pursue her grievance. Furthermore, in light of the Complainant's *pro se* status, and the Respondents' clear understanding of the allegations made by

grievance and (2) move her grievance to arbitration. The Respondents denied the allegations.[2]

A hearing was held. The Hearing Examiner found that the Respondents did *not* violate the sections of the Comprehensive Merit Personnel Act (CMPA) noted above. The Complainant filed Exceptions to the Hearing Examiner's Report and Recommendation (R & R). The Respondents filed an Opposition to the Complainant's Exceptions. The Hearing Examiner's R &R and the parties' Exceptions and Opposition are before the Board for disposition.

I. Background:

In 2002, the Complainant sought a promotion to a DS-9 Program Support Assistant at the Department of Mental Health.[3] (R & R at pg. 2). Complainant sought this promotion based on the additional duties she was performing. Owens contends that her supervisor originally told her she could receive the promotion, but later told her she could not be promoted because funds were not available. On March 11, 2002, Owens met with Greg Williams, a Local 2095 officer, to seek assistance in getting the promotion. Shortly thereafter, Mr. Williams met with the Complainant's supervisor about the matter and was told that no funds were available to support the promotion.

Owens, the Hearing Examiner made a finding that the Complaint alleged a breach of the Respondents' duty of fair representation. (R & R at pg. 7).

[2]In her Post-hearing brief, the Complainant alleges that her Employing Agency, D.C. Department of Mental Health Services (DMH), violated the Comprehensive Merit Personnel Act and the District Personnel Manual when it failed to promote her. In addition, she claimed that DMH created a hostile and abusive environment. However, the Hearing Examiner did not make any findings with respect to any of DMH's alleged actions because the Complainant did not name DMH as a Respondent in this case.

In addition, the Hearing Examiner did not consider the Complainant's claims that the Respondents-Unions failed to bargain in good faith, in violation of D.C. Code §1-617.04 (b)(3). The Hearing Examiner observed that the Board has held that the right to require a union to bargain in good faith belongs exclusively to the District of Columbia, as the Employer, and an individual employee represented by the Union has no standing to allege violations of D.C. Code §1-617.04 (b)(3). See, Taylor, et. al. v. University of the District of Columbia Faculty Association/NEA, 41 DCR 6687, Slip Op. No. 324, PERB Case No. 90-U-24 (1994). Furthermore, the Hearing Examiner found that the Complainant presented no evidence that the Respondents violated D.C. Code §1-617.06 (a)(3).

[3]At the time she sought this promotion, Complainant was working as a Program Support Assistant, DS-7.

However, Owens' supervisor suggested to Williams that there was a potential DS-8 promotion opportunity available in another department. Williams advised the Complainant of what he had learned in the meeting regarding the other promotion opportunity. In response, Owens informed him that she was not interested in the other promotion opportunity. (R & R at pg. 2).

When the Complainant was dissatisfied with Mr. Williams' findings, she contacted Ed Ford, the Area Director for NUHHCE, and requested assistance from someone " efficient and effective" in order to get her complaint resolved.[4] (R&R at pg. 2). By April 8, 2002, Complainant filed a grievance over her failure to receive the promotion she contends she was promised. She filed the grievance without the assistance of the Union. On May 17, 2002, once the grievance had been denied, Owens notified the Director of DMH that she was invoking arbitration. Ms. Mary Horne, then President of Local 2095, signed the "Request for Arbitration Panel", which Complainant submitted to the Federal Mediation Conciliation Service (FMCS). Complainant then advised the FMCS to send further correspondence concerning the arbitrators' list to the Union and provided the names and addresses of Ed Ford and Cynthia Perry at NUHHCE, as contacts.

When Owens had not heard anything regarding the status of her arbitration case from Mr. Ford or Ms. Perry by June 26, 2002, she wrote to NUHHCE's President asking him to research the matter. On July 9, 2002, Ms. Owens met with management officials about her matter, without the presence of a Union representative[5], although Ms. Diana Flowers, a shop steward for Local 2095, was present at the meeting as a witness, but not as a Union representative. (R & R at pg. 3). Owens' grievance was not resolved to her satisfaction.

In light of the above, Complainant filed the present unfair labor practice complaint on July 22, 2002.

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[4]She made this contact by letter on April 4, 2002. According to the record, Mr. Ford assigned the matter to Cynthia Perry for handling. Ms. Perry spoke with Ms. Owens in mid-June and informed her that the matter would be investigated and she would contact her again when she had more information. (R& R at pg. 3). In addition, Ms. Perry indicated to Owens that it was the Union that would decide whether or not to proceed to arbitration in this matter. (R & R at pg. 3)

[5]Owens testified that she did not ask Mr. Williams or Ms. Perry to attend the meeting because they had not responded to her previous calls. (R & R at pg. 3; Tr. 89-92).

II. Issue:

> *The principal issue in this matter is whether the Respondents' level of assistance to the Complainant in pursuing her grievance through the various steps of the negotiated grievance procedure and their failure to move that grievance to arbitration constitutes an unfair labor practice and a breach of the Respondents' duty of fair representation.*

III. The Hearing Examiner's Report and Recommendations and the Parties' Exceptions and Opposition:

Based on the pleadings and the record developed in the hearing, the Hearing Examiner determined that the Complainant did *not* submit sufficient evidence to meet her burden of proof regarding any of the alleged violations of the CMPA. As a result, he recommended that the Complaint be dismissed and made further findings, which will be discussed in detail below.

The Hearing Examiner first noted that Board Rules 520.11and 550.15 require that the Complainant prove her case by a preponderance of the evidence. Additionally, the Hearing Examiner points out that this burden is not relaxed because the Respondent is a *pro se*[6] litigant. After reviewing the evidence presented by the Complainant, the Hearing Examiner determined that the Complainant failed to show that the Respondents breached their duty of fair representation. As a result, he concluded that the Respondents did not commit an unfair labor practice in violation of the CMPA.

In making his determination, the Hearing Examiner considered the fact that the Respondents did not prevent the Complainant from filing her grievance and even provided her with some assistance in resolving the matter. For example, he noted that the union representative, when contacted, met with Complainant's supervisor and conveyed information to Owens concerning the opportunity for a promotion in another area. Additionally, the Hearing Examiner noted Complainant's contacts with

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[6]Before discussing his findings in detail, the Hearing Examiner noted that "neither the original Complaint or Complainant's presentation at the hearing are models of clarity." (R & R at pg. 7) As a result, he observed that as a general rule, *pro se* litigants are *not* held to the same standard of technical accuracy or specificity in their pleadings that might be applicable to litigants who are represented by trained counsel. Therefore, he noted that the Board construes those claims liberally to determine whether a proper cause of action has been alleged. Thomas J. Gardner v. District of Columbia Public Schools and Washington Teachers' Union, Local 67, AFT-AFL-CIO, 49 DCR 7763, Slip Op. No. 677, PERB Case Nos. 02-S-01 and 02-U-04 (2002).

Cynthia Perry and Ed Ford (NUHHCE officials), and the fact that the Union representatives were investigating the matter of the promotion. The Hearing Examiner also noted that the Complainant was assisted in pursuing the matter to arbitration. However, once the grievance reached the final stage, the Union declined to pursue the matter through arbitration, as is its right under the parties' collective bargaining agreement. Furthermore, the Hearing Examiner did not find that the Respondents' failure to attend the final meeting with management supported the Complainant's claims that the Union failed to provide her with assistance.

Finally, the Hearing Examiner found that the Respondents' failure to advance the Complainant's grievance to arbitration did *not* constitute a violation of the Comprehensive Merit Personnel Act. Relying on the parties' collective bargaining agreement, the Hearing Examiner determined that the authority to invoke arbitration lies with the Respondent, not with an individual employee. Furthermore, the Hearing Examiner noted that the Complainant failed to present any evidence which would support a finding that the Respondent was required to move her grievance to arbitration.[7]

In reaching his determination, the Hearing Examiner points out that the Board has held that the duty of fair representation does not require a union to pursue every grievance to arbitration. Freson v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, 31 DCR 2290, Slip Op. No. 74, PERB Case No. 83-U-09 (1984).

In order to show that a union has breached its duty of fair representation, the Board has held that a Complainant must demonstrate that the union's decision not to file for arbitration was arbitrary, discriminatory, or the product of bad faith. Ulysses S. Goodine v. Fraternal Order of Police/Department of Corrections Labor Committee, 43 DCR 5163, Slip Op. No. 476, PERB Case No. 96-U-16 (1996). In addition, the complaining employee must allege facts that, if proven, would tie the union's actions to some prohibited factor. Id.

Moreover, a union's handling of an employee's grievance, including its decision on whether to pursue arbitration, is not arbitrary, discriminatory, or the product of bad faith simply because the grievant disagrees with the union's judgment. (Brenda Beeton v. D.C. Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee, 45 DCR 2078, Slip Op. No. 538, PERB Case No. 97-U-26 (1998). Furthermore, the Hearing Examiner notes that the Board has consistently held that the applicable standard in cases involving the duty of fair representation is not the competence of the union, but rather whether the union's representation was in good faith and

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[7]The Hearing Examiner cited the Board's line of cases regarding the duty of fair representation and the failure to process grievances through arbitration. (See, R & R at pgs. 7 and 8).

its actions were motivated by honesty of purpose. Finally, the Hearing Examiner determined that the union cannot violate its duty of fair representation with respect to the filing and processing of a grievance if the aggrieved employee does not even request the union's assistance[8]. The Hearing Examiner made *no* finding that the Unions' conduct was arbitrary, discriminatory, or the product of bad faith

Because the Unions provided Owens with some assistance, the Hearing Examiner determined that the Complainant's claims did not meet the burden required to prove a breach of the duty of fair representation. In addition, the Hearing Examiner did not find a breach of the duty of fair representation because of the Unions' failure to go to arbitration.

In her Exceptions, the Complainant argues that the Hearing Examiner erred in finding that the Respondents did not breach their duty of fair representation. Specifically, she alleges that the Hearing Examiner's findings were "inconsistent, confusing and contradictory." (Exceptions at pg. 2). She also accuses the Hearing Examiner of not being neutral. Furthermore, she alleges that the behavior of the Hearing Examiner demonstrates an "Earmarking of Conspiracy." (Exceptions at pg. 2). As a result, the Complainant requests that the Board make corrections to the Hearing Examiner's decision and render a fair decision. After reviewing the Exceptions[9], the Board finds that Complainant makes no viable substantive challenges to the Hearing Examiner's report. Instead, she merely attacks his credibility and the quality of his work. As a result, the Board believes that the Complainant's Exceptions are nothing more than a disagreement with the Hearing Examiner's findings of fact. The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." Doctors Council of the District of Columbia and Henry Skopek v. D.C. Commission on Mental Health Services, 47 DCR 7568, Slip Op. No. 636 at p. 4, PERB Case No. 99-U-06. Also see Tracey Hatton v. FOP/DOC Labor Committee , 47 DCR 769, Slip Op. No. 451 at p. 4, PERB Case. No. 95-U-02. Therefore, a mere disagreement with the Hearing Examiner's findings is not a sufficient ground for the Board to reject the finding. See, Id.

The Respondents' Opposition to the Complainant's Exceptions refutes Complainant's accusations that the Hearing Examiner: (1) perjured himself; (2) was biased; and (3) abused his power. The Respondent contends that these assertions are wholly and completely baseless and indicates that Mr. Shapiro was fair and neutral. The Respondents agree with the findings made by

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[8]On this basis, the Hearing Examiner concluded that the Respondents did not violate D.C. Code §§1-617.04 (b)(1) or 1-617.06(b).

[9]While each specific Exception made by Complainant is not discussed in detail in this Opinion, the Board did consider each argument made by the Complainant. As a result, the Board has determined that none of the Complainant's argument have merit.

the Hearing Examiner and assert that his findings are correct as a matter of law. Therefore, the Respondents request that the Board adopt the Hearing Examiner's findings in their entirety.

In view of the above, the Board finds that the Hearing Examiner's determination that Local 2095 and NUHHCE did not violate their duty of fair representation is supported by the record. Specifically, we find that the Complainant did not allege facts or submit evidence which demonstrates that the union engaged in arbitrary or discriminatory conduct, or conduct influenced by bad faith. [10] Furthermore, we find that Owens merely disagreed with the union's judgment in the handling of her grievance. The Board's precedent is clear that a disagreement with a union's judgment in handling a grievance or its decision not to pursue arbitration does not breach the duty of fair representation. Brenda Beeton v. D.C. Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee, 45 DCR 2078, Slip Op. No. 538, PERB Case No. 97-U-26,(1998)). Additionally, the Board notes that the Complainant clearly has *not* met her burden, particularly where there is no dispute that the Union provided her with assistance on several occasions. Furthermore, Board precedent and the parties' collective bargaining agreement, in this case, gives the Union discretion to handle the grievance in the way it sees fit and to pursue the grievance to the level it deems necessary. See, Brenda Beeton v. D.C. Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee, 45 DCR 2078, Slip Op. No. 538, PERB Case No. 97-U-26 (1998).

There is no question that Owens was dissatisfied with the union's decision; however, that in and of itself, does not constitute a breach of the duty of fair representation where no evidence of arbitrariness, discrimination, or bad faith is shown. Brenda Beeton v. D.C. Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee, 45 DCR 2078, Slip Op. No. 538, PERB Case No. 97-U-26 (1998)), (Freson v. Fraternal Order of Police/ Metropolitan Police Department Labor Committee, 31 DCR 2290, Slip Op. No. 74, PERB Case No. 83-U-09 (1984). As a result, the Board has no basis to find an unfair labor practice in this matter.

Pursuant to D.C. Code §1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and find them to be reasonable, persuasive and supported by the record. Therefore, the Board hereby adopts the Hearing Examiner's finding and conclusion that Local 2095 and NUHHCE did *not* violate the CMPA in their handling of the Complainant's grievance and by their failure to pursue the grievance through the arbitration stage. As a result, we find that Owens' complaint should be dismissed.

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[10] As noted earlier, in order to show that a union has breached its duty of fair representation, the Board has held that a Complainant must demonstrate that the union's decision not to file for arbitration was arbitrary, discriminatory, or the product of bad faith. Ulysses S. Goodine v. Fraternal Order of Police/Department of Corrections Labor Committee, 43 DCR 5163, Slip Op. No. 476, PERB Case No. 96-U-16 (1996).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint be dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

May 27, 2004

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3721,	**PERB Case No. 02-U-22**
Complainant,	**Opinion No. 760**
	(Withdrawal Request)
v.	
DISTRICT OF COLUMBIA DEPARTMENT OF FIRE AND EMERGENCY MEDICAL SERVICES,	**FOR PUBLICATION**
and	
OFFICE OF LABOR RELATIONS AND COLLECTIVE BARGAINING,	
Respondents.	

DECISION AND ORDER

This matter involves an unfair labor practice complaint[1] filed by the American Federation of Government Employees, Local 3721[2] ("Complainant," "AFGE,"or "Union"), alleging that the District of Columbia Department of Fire and Emergency Services ("Respondent," "FEMS" or "Agency") and the D.C. Office of Labor Relations and Collective Bargaining ("OLRCB" or "Respondent") violated D.C. Code §1-617.04 (a)(5) (2001 ed.)[3]

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[1]Specifically, AFGE alleged that the Respondents committed an unfair labor practice (ULP) by: (1) failing to inform AFGE that the Financial Responsibility and Management Assistance Authority ("FRMAA" or "Control Board) disapproved the parties' 1995 negotiated agreement; (2) denying AFGE the right to have the 1995 negotiated agreement approved in accordance with D.C. Code §1-617.15 (2001 ed.); and (3) preventing AFGE from representing its members under the provisions negotiated in the 1995 negotiated agreement.

[2]The American Federation of Government Employees, Local 3721 represents paramedics at the Fire and Emergency Services Department.

[3]Throughout this Opinion, all references to the D.C. Code refer to the 2001 edition.

DISTRICT OF COLUMBIA ...

FEB 1 8 2005

The Respondents denied the allegations. Furthermore, FEMS, through its representative, OLRCB, filed a Motion to Dismiss and asserting, *inter alia,* that AFGE's complaint should be dismissed because it was not timely filed.

A hearing was held and the Hearing Examiner issued a Report and Recommendation. (R &R). AFGE filed Exceptions to the Hearing Examiner's R&R. and the Respondents filed an Opposition. The Hearing Examiner's R&R and the parties' Exceptions and Opposition went before the Board for disposition at its May 2004 meeting. However, the Board was unable to reach a decision concerning the matter. As a result, we tabled the matter and instructed the Board's staff to research issues that would aid us in reaching a decision.

Subsequently, on June 18, 2004, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of the Respondents, submitted to the Board a letter requesting that AFGE's Unfair Labor Practice Complaint be withdrawn because the parties had reached an agreement concerning the matter. Furthermore, they attached a Memorandum of Agreement (MOA) between the parties which indicated that based on the settlement the matter was "automatically withdrawn."[4]

It has been the Board's policy to encourage settlements between parties. Furthermore, the Board has not issued a final decision in this matter. Therefore, consistent with the reasons noted in OLRCB's letter, this matter is withdrawn. As a result, this case is closed and the Board will take no further action in this matter.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint in PERB Case No. 02-U-22 is hereby withdrawn; the case is closed, and the Board will take no further action concerning this matter.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

August 30, 2004

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[4]Paragraph 6 of the MOA indicated that either party could submit a request to withdraw the matter to the Board.

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government, Employees, Local 2978,	
Complainant,	PERB Case No. 04-U-27 Opinion No. 771
v.	Motion for Preliminary Relief
District of Columbia Department of Health,	**FOR PUBLICATION**
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, Local 2978 ("Complainant" or "Union"), filed an Unfair Labor Practice Complaint, an Amended Complaint and a Motion for Preliminary and Injunctive Relief, in the above-referenced case. In their Complaint the Complainant alleges that the District of Columbia Department of Health ("DOH" or "Respondent") violated D.C. Code § 1-617.04 (a)(1) and (3) (2001 ed.) by: (1) coercing employees in the exercise of their rights; (2) discriminating against employees because of their union activity; (3) threatening reprisals for union activity; (4) relocating the Union's office; and (5) transferring the union president. In addition, the Complainant asserts that the Union's president's "overall performance rating was '[u]nsatisfactory' [and] among the reasons listed for this negative rating was her failure to meet a work quota due to her performance of official union duties." (Compl. at pgs. 2-3).

The Complainant further claims that "the Interim Director of DOH, Herbert Tillery, met with employees in the HIV/AIDS Administration and told them that the fact that they had recently formed a union would make it easier for him to disband the [HIV/AIDS Administration]." (Motion at p. 1)

The Complainant asserts that by making this statement, Mr. Tillery was threatening employees with retaliation for forming a union. (Amended Compl. at p.3 and Motion at p. 1) The Complainant is asking the Board to grant its request for preliminary relief on the basis of Mr. Tillery's alleged statement. In addition, the Complainant is requesting that the Board order DOH to: (1) cease and desist from discriminating against or threatening Union president Jo Ann McCarthy; (2) cease and desist from discriminating against employees at the HIV/AIDS Administration; (3) relocate the Union office to its former location; (4) void the unsatisfactory performance rating issued to Ms. McCarthy; (5) make Ms. McCarthy whole for any and all loses; (6) provide Ms. McCarthy with the option to transfer back to her previous assignment; and (8) cease and desist from violating the Comprehensive Merit Personnel Act. (Motion at pgs. 8-9 and Compl. at p. 4).

The Respondent filed answers to the Unfair Labor Practice Complaint and the Amended Complaint. In their answers the Respondent denies all the substantive charges in the Complaint and Amended Complaint. In addition, DOH filed a response opposing the Complainant's Motion for Preliminary Relief. In its response to the Motion, DOH argues that the Complainant has not satisfied the criteria for granting preliminary relief.

The "Motion for Preliminary and Injunctive Relief" is before the Board for disposition.

II. Discussion

The Complainant claims that on June 3, 2004, Herbert Tillery began his official appointment as the Interim Director of DOH (Motion at p.2.) Also, the Complainant contends that during the month of June, Mr. Tillery held meetings with employees of DOH. Id. The employees in the Department of Health, HIV/AIDS Administration (:HAA"), attended the meetings in groups of about 12-15 employees, by alphabetical order of their last names. Id.. The Complainant contends that on June 23, 2004, Mr. Tillery called a meeting of approximately 12-15 employees in HAA including Chief Shop Steward Deontrense Henderson. Id. Only Mr. Tillery and the HAA employees were present at the meeting. Id..

The Complainant asserts that at the June 23rd meeting, Mr. Tillery said that he intended to disband the HAA and reassign employees to other positions within DOH. Id. The Complainant claims that Mr. Tillery stated that it would be easier to do this because employees in the HAA had recently unionized and the DOH did not have the money for such things. Id.

Since this meeting, the Complainant contends that Mr. Tillery has made statements to the press confirming that he intends to make staffing changes in HAA. Id. "According to Chief Shop Steward Deontrense Henderson, the statements made by Mr. Tillery regarding his intent to disband the recently unionized HAA have created significant fear among the employees and a pronounced reluctance to participate in any activities that may associate them with the Union. Id.

The Complainant claims that "[t]he statement of the Interim Director Tillery directly informing employees in a newly certified bargaining unit that his decision to disband their office and reassign the employees had been facilitated by the employees' recent unionization is a clear-cut and flagrant violation of law." (Motion at p.4) The Complainant argues that threats of discharge and threats to close operations because of union activity are serious and flagrant forms of interference with the free exercise of employee rights. (Motion at pgs 4-5) The Complainant asserts that "[t]his request for preliminary relief is based on the threats of [DOH] Interim Director Herbert Tillery to employees in HAA." (Motion at p. 2). The Complainant claims that Mr. Tillery's actions violate D.C. Code § 1-617.04(a)(1) and (3) (2001 ed.). As a result, the Complainant has filed an unfair labor practice complaint, an amended complaint and a motion for preliminary relief.

The criteria the Board employs for granting preliminary relief in unfair labor practice cases are prescribed under Board Rule 520.15.

Board Rule 520.15 provides in pertinent part as follows:

> The Board may order preliminary relief ... where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged unfair labor practice is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy will be clearly inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. See, AFSCME, D.C. Council 20, et al. v. D.C. Government, et al., 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). In determining whether or not to exercise its discretion under Board Rule 520.15, the Board has adopted the standard stated in Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1971). There, the Court of Appeals-addressing the standard for granting relief before judgement under Section 10(j) of the National Labor Relations Act-held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by pendente lite relief." Id. at 1051. "In those instances where [PERB] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been restricted to the existence of the prescribed circumstances in the provisions of Board Rule [520.15] set forth above." Clarence Mack, et al. v. FOP/DOC Labor Committee, et al., 45 DCR 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

In its response to the Motion, DOH has disputed material elements of all the allegations asserted by the Complainant. Specifically, Respondent denies that Mr. Tillery made the statement attributed to him.

Finally, the Respondent argues that Mr. Tillery made "statements to employees and the press as reflected in the Washington Blade that DOH intends to make changes in HAA in order to improve the effectiveness and efficiency of DOH". Id. Also, the Respondent contends that "on July 13, 2004, Mr. Tillery issued a Memorandum to all DOH employees that outlined the restructuring of the DOH Administration, including organization charts. The [Respondent claims that the] reorganization specifically enhanced HAA operations because it established the HIV/AIDS Administration to report directly to the DOH Director." Id. at p. 3

It is clear that the parties disagree on the facts in this case. The Board has found that preliminary relief is not appropriate where material facts are in dispute. See, DCNA v. D.C. Health and Hospitals Public Benefit Corporation, 45 DCR 6067, Slip Op. No. 550, PERB Case Nos. 98-U-06 and 98-U-11 (1998).

The question of whether DOH's actions occurred as the Complainant claims or whether such actions constitute violations of the Comprehensive Merit Personnel Act ("CMPA"), are matters best determined after the establishment of a factual record through an unfair labor practice hearing.

The Complainant has failed to prove that DOH's actions meet the criteria of Board Rule 520.15. Even if the allegations are ultimately found to be valid, it does not appear that any of DOH's actions constitute clear-cut or flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. DOH's actions amount to a single statement made at one meeting with a small number of employees and do not appear to be part of a pattern of repeated and potentially illegal acts. While the CMPA prohibits District agencies from engaging in unfair labor practices, the alleged violations, even if proved, do not rise to the level of seriousness that would undermine public confidence in PERB's ability to enforce the CMPA.

We conclude that the Complainant has failed to provide evidence which demonstrates that the allegations, even if true, are such that the remedial purposes of the law would be served by pendente lite relief. Moreover, should violations be found in the present case, the relief requested can be accorded with no real prejudice to the Complainant following a full hearing. Therefore, we find that the facts presented are not appropriate for the granting of preliminary relief.

For the reasons discussed above, the Board: (1) denies the Complainant's request for preliminary relief; and (2) directs the development of a factual record through an unfair labor practice hearing which will be scheduled within forty five days of this decision.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The Complainant's Motion for Preliminary and Injunctive Relief is denied.

(2) The Board's Executive Director shall refer the unfair labor practice complaint to a Hearing Examiner and schedule a hearing under the expedited schedule set forth below.

(3) A hearing shall be scheduled within forty five days of this Decision and Order. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.

(4) Following the hearing, the designated Hearing Examiner shall submit a report and recommendation to the Board no later than twenty-one (21) days following the submission of written closing arguments or post-hearing briefs.

(5) Parties may file exceptions and briefs in support of the exceptions no later than seven (7) days after service of the Hearing Examiner's Report and recommendation. A response or opposition to the exceptions may be filed no later than five (5) days after service of the exceptions.

(6) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC RELATIONS BOARD
Washington, D.C.

November 8, 2004

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 1403, AFL-CIO,	
Petitioner,	PERB Case No. 04-CU-05 Opinion No. 772
and	**FOR PUBLICATION**
Public Service Commission of the District of Columbia,	
Agency.	

DECISION AND ORDER ON COMPENSATION UNIT DETERMINATION

On December 2, 2002, the Public Employee Relations Board (Board), in Slip Opinion No. 685, certified the American Federation of Government Employees ("AFGE"), Local 1403, as the exclusive representative for the following unit:

> All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity, and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

On July 13, 2004, AFGE, Local 1403, filed a "Petition for a Compensation Unit Determination" ("Petition"). AFGE, Local 1403 is seeking a determination of an appropriate unit for

the purpose of negotiations for compensation, for the unit of attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia. Notices concerning the Petition were issued on October 7, 2004, for conspicuous posting at the Public Service Commission of the District of Columbia ("Public Service Commission" or "Agency"). The Notice solicited comments concerning the appropriate compensation unit placement for this unit of employees.[1] The Notice required that comments be filed in the Board's office no later than November 8, 2004. The Public Service Commission confirmed that the Notices had been posted. In addition, the Public Service Commission submitted comments concerning the Petition. AFGE's petition is before the Board for disposition.

The compensation unit proposed by AFGE is as follows:

> All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 905 and the DS Special Rate Schedule established pursuant to the Legal Services Establishment Act of 1998; but excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

AFGE contends that the Public Service Commission is an independent agency with independent personnel authority. Therefore, AFGE is requesting that a new compensation unit be created for the attorneys at the Public Service Commission. AFGE claims that all these attorneys perform the same type of work activities.

Furthermore, AFGE asserts that pursuant to the Legal Services Establishment Act ("LSA") attorneys, employed by the District government including the attorneys at the Public Service Commission, are compensated pursuant to a unique compensation system that is not applicable to any

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[1] Labor organizations are initially certified by the Board under the Comprehensive Merit Personnel Act (CMPA) to represent units of employees that have been determined to be appropriate for purpose of non-compensation terms-and-conditions bargaining. Once this determination is made, the Board then determines the compensation unit in which these employees should be placed. Unlike the determination of a terms-and-conditions unit, which is governed by criteria set forth under D.C. Code § 1-617.09 (2001 ed.), unit placement for purpose of authorizing collective bargaining over compensation is governed by D.C. Code § 1-617.16(b) (2001 ed.).

other group of employees of the District government. However, unlike the attorneys in the Office of the Attorney General ("OAG"), the attorneys at the Public Service Commission are not hired by the District's Attorney General or the Mayor. As a result, the attorneys at the Public Service Commission do not report to either the Mayor or the Attorney General. Instead, the attorneys at the Public Service Commission are under the direct supervision of the General Counsel of the Public Service Commission. In light of the above, AFGE claims that a separate compensation unit for attorneys at the Public Service Commission is appropriate.

The Public Service Commission submitted comments. In their comments, the Public Service Commission concurs with AFGE. Specifically, the Agency contends that a new compensation unit should be created for the attorneys employed by the Public Service Commission because Public Service Commission attorneys share a unique community of interest that would make their inclusion in a larger attorney compensation unit inappropriate.

The Agency notes that this unique community of interest is further highlighted by the source of the Public Service Commission Payroll funding defined in D.C. Code § 34-912(b)(1)-(6). Pursuant to this statute, all District funds provided to the Public Service Commission for, *inter alia*, payroll in a fiscal year must be reimbursed during that fiscal year by fees paid by electricity and telecommunication service providers under the regulation of the Public Service Commission. The Agency points out that, unlike other attorneys under the personnel authority of the Mayor or most other independent agencies, the attorneys which are the subject of this Petition derive their payroll funds from contributions from third party service providers rather than from appropriations.

The Public Service Commission claims that because of the independent nature of the agency's funding, the compensation unit that includes its attorneys must be limited to those attorneys alone. The Agency asserts that pursuant to D.C. Code § 34-912 (b)(2), "the formula by which fees assessed against third party service providers in order to pay, *inter alia*, [the Public Service Commission's] payroll obligations is to be determined annually. Such a system is known in the District government as Type O funding." (Agency's Comments at p. 3)

The Agency claims that O Type funding arises from other sources than, for example, agency appropriations for attorneys who work under the personnel authority of the Mayor. Therefore, O Type funded agencies like the Public Service Commission have different fiscal realities than those that receive their funding directly from the District's General Fund. In view of the above, the Public Service Commission contends that compensation negotiations with O Type funded agencies, differ from those funded through direct appropriations. As a result, such agencies have an "organization structure" so different from other agencies that the attorneys at the Public Service Commission do not share a community of interest with attorneys at other agencies. (See, D.C. Code § 1-617.09(a).).

For the reasons noted above, the Public Service Commission contends that the following unit is the most appropriate unit for the purpose of negotiations for compensation pursuant to D.C. Code § 1-617.16 (2001 ed.):

> All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 905 and the DS Special Rate Schedule established pursuant to the Legal Services Establishment Act of 1998; but excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

The standard under D.C. Code § 1-617.16(b) (2001 ed.) for determining the appropriate compensation unit expresses a strong preference for "broad units of occupational groups". Specifically, D.C. Code § 1-617.16 (b) (2001 ed.) provides as follows.

> In determining an appropriate bargaining unit for negotiations concerning compensation, **the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes**. The Board may authorize bargaining by multiple employers or employee groups as may be appropriate. (Emphasis added.)

Under this criteria, the Board has held that a compensation unit limited to a single agency does not meet the mandate that compensation units be based on " broad occupational groups." See, International Brotherhood of Teamsters, Local 246 and D.C. Department of Corrections, 34 DCR 3495, Slip Op. 152, PERB Case No. 85-R-07 (1987). In that case the Board observed that although working conditions for employees of that agency differed from other agency employees in existing compensation units, those issues could best be addressed in non-compensation negotiations. However, where an agency has independent personnel and compensation bargaining authority, the Board has held that a separate compensation unit for that agency is appropriate, notwithstanding the existence of occupational groups that the agency may have in common with agencies under an existing larger personnel authority.[2] (See, Government of the District of Columbia and D.C. General Hospital and Unions Representing Employees in Compensation Units 1, 2, 13, 14, and 19 who are employed by D.C. General Hospital, 37 DCR 5648, Slip Op. No. 241, PERB Case No. 90-R-03 and 90-R-07 (1990) and WASA and AFGE, Local 631, et al., 46 DCR 122, Slip Op. No. 510, PERB Case Nos. 96-UM-07, 97-UM-01, 97-UM-03 and 97-CU-01 (1997). The distinction turns on the

[2] An agency is accorded independent compensation bargaining authority to enable it to negotiate pay that may differ from existing pay systems.

purpose of the criteria for determining compensation units, i.e., "to minimize the number of different pay systems or schemes. The Board has also made one other exception where the pay scheme of the occupational group is so unique as to warrant a separate compensation unit determination. See, SEIU, Local 722 and DHS/HSB, 48 DCR 8493, Slip Op. No. 383, PERB Case No. 93-R-01 (1994) (Compensation Unit 30 was established for personal care aides employed by the Department of Human Services whose pay schemes resembled independent contractors). In both of the above-noted instances, the Board has determined as appropriate, compensation units that consist of a single agency or occupational group.

Both the Public Service Commission and AFGE, Local 1403 claim that the special circumstances of this case make it impractical to place the attorneys at the Public Service Commission in a broad compensation unit. We have reviewed the authority accorded the Public Service Commission under D.C. Code § 1-604.06 (b) (5) and D.C. Code § 34-803, and concluded that these sections of the D.C. Code have indeed vested the Public Service Commission with independent personnel authority and the authority to fix compensation for attorneys employed by the Agency. Therefore, we find that a separate compensation unit for attorneys employed by the Office of the General Counsel of the Public Service Commission, is appropriate. Accordingly, we grant AFGE's Petition for a separate compensation unit consisting of attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia.

ORDER

IT IS HEREBY ORDERED THAT:

The unit of attorneys described below was found appropriate for terms-and-conditions bargaining in Slip Opinion No. 685, is also authorized as a separate unit for the purpose of negotiations concerning compensation:

Compensation Unit No 34:

> All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 905 and the DS Special Rate Schedule established pursuant to the Legal Services Establishment Act of 1998; but excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 19, 2005

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the matter of:	)	
American Federation of Government Employees, Local 1403,	)	PERB Case No. 04-CU-05
Petitioner/Labor Organization,	)	
and	)	
Public Service Commission of the District of Columbia,	)	
Agency.	)	

AUTHORIZATION

Pursuant to the District of Columbia Comprehensive Merit Personnel Act of 1978, as codified (D.C. Code Sections 1-605.02 (2001 ed.) and 1-617.16 (b) (2001 ed.)), the Public Employee Relations Board (Board) has determined that the unit described below, which was found appropriate by the Board for non-compensation bargaining in Opinion No. 685 issued on December 2, 2002, shall constitute a unit for the purpose of compensation bargaining:

COMPENSATION UNIT No. 34:

All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 905 and the DS Special Rate Schedule established pursuant to the Legal Services Establishment Act of 1998; but excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

BY AUTHORITY OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 19, 2005

Julio A. Castillo
Executive Director

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government, Employees, Local 2978,	
Complainant,	PERB Case No. 04-U-27 Opinion No. 773
v.	Motion for Continuance
District of Columbia Department of Health,	**FOR PUBLICATION**
Respondent.	

DECISION AND ORDER

The American Federation of Government Employees, Local 2978 ("Complainant" or "Union"), filed an Unfair Labor Practice Complaint, an Amended Complaint and a Motion for Preliminary and Injunctive Relief, in the above-referenced case. In their Complaint the Complainant alleges that the District of Columbia Department of Health ("DOH" or "Respondent") violated D.C. Code § 1-617.04 (a)(1) and (3) (2001 ed.) by: (1) coercing employees in the exercise of their rights; (2) discriminating against employees because of their Union activity; (3) threatening reprisals for union activity; (4) relocating the Union's office; and (5) transferring the union president. In addition, the Complainant asserts that the Union's president's "overall performance rating was '[u]nsatisfactory' [and] among the reasons listed for this negative rating was her failure to meet a work quota due to her performance of official Union duties." (Compl. at pgs. 2-3).

The Complainant further claims that "the Interim Director of DOH, Herbert Tillery, met with employees in the HIV/AIDS Administration and told them that the fact that they had recently formed a union would make it easier for him to disband the [HIV/AIDS Administration]." (Motion for Preliminary at p. 1)

The Complainant asserts that by making this statement, Mr. Tillery was threatening employees with retaliation for forming a union. (Amended Compl. at p. 3 and Motion for Preliminary at p. 1) As a result, The Complainant requested that the Board grant its request for preliminary relief on the basis of Mr. Tillery's alleged statement.

In Slip Op. No. 771, the Board denied the Complainant's request for Preliminary Relief. In addition, paragraphs 2-5 of the Board's Order provide as follows:

* * *

> (2) [That] the Board's Executive Director shall refer the unfair labor practice complaint to a Hearing Examiner and schedule a hearing under the expedited schedule set forth below.
>
> (3) [That] a hearing shall be scheduled within forty five days of this Decision and Order. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
>
> (4) [That] following the hearing, the designated Hearing Examiner shall submit a report and recommendation to the Board no later than twenty-one (21) days following the submission of written closing arguments or post-hearing briefs.
>
> (5) [That] the parties may file exceptions and briefs in support of the exceptions no later than seven (7) days after service of the Hearing Examiner's Report and recommendation. A response or opposition to the exceptions may be filed no later than five (5) days after service of the exceptions.

* * *

Slip Op. No. 771 was issued on November 8, 2004. Therefore, pursuant to paragraph three (3) of the Board's Order, a hearing was to be scheduled in this case no later than December 23, 2004. However, on November 16, 2004, the Respondent filed a document styled "Statement of Non-Availability of Counsel and Motion for Continuance."

In their motion, the Respondent claims that the individual who is responsible for this case is not available from December 9-15, 2004 and from January 14-21, 2004. In addition, the Respondent contends that it will be difficult to have witnesses available during the holiday season. As a result, the Respondent is requesting that the hearing in this case not be scheduled until the end of January 2005. Pursuant to Board Rule 553.2, the Complainant's response to the Motion for Continuance was due on November 23, 2004.[1] However, to date, the Complainant has not filed a response to the

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[1]On November 19, 2004, the Complainant's counsel advised the Board that she was no longer representing the Complainant in this matter. As a result, the Board's staff attempted to contact Joanne McCarthy, President of Local 2978 in order to determine whether the

motion.

In their "Motion for Continuance," the Respondent notes that the Complainant has filed a document styled "Motion to Strike Respondent's Answer To The First Amended Unfair Labor Practice Complaint." The Respondent claims that the disposition of the motion to strike may affect the Respondent's position on the merits of this case. As a result, the Respondent claims that a "hearing in this matter prior to the disposition of [the motion to strike,] would be premature and potentially prejudicial to either party." (Motion for Continuance at p. 2).

After reviewing the Respondent's request for a continuance, we have concluded that the reasons noted in support of the request, are reasonable. In addition, the Complainant has not filed an objection to the Respondent's motion for a continuance. Therefore, we are granting the Respondent's request for a continuance. As a result, we are directing that the hearing in this case be scheduled the week of January 31, 2005.

As noted in footnote 1, the Complainant's counsel has withdrawn from this case; therefore, by granting a continuance, we are also providing the Complainant with an opportunity to retain new counsel

Concerning the Complainant's motion to strike, we believe that the motion involves some issues of fact. As a result, we are referring the Complainant's motion to strike, to the Hearing Examiner who will be assigned to this case.

For the reasons discussed above, the Board: (1) grants the Respondent's request for a continuance; and (2) directs the development of a factual record through an unfair labor practice hearing which will be scheduled the week of January 31, 2005. Also, we are referring the Complainant's motion to strike, to the Hearing Examiner.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The Respondent's Motion for a Continuance is granted.

(2) The Complainant's Motion to Strike is referred to the Hearing Examiner.

(3) The Board's Executive Director shall refer the unfair labor practice complaint to a Hearing

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Complainant had retained new counsel. However, to date, Ms. McCarthy has not contacted the Board's staff.

Examiner and schedule a hearing under the expedited schedule set forth below.

(4) A hearing shall be scheduled the week of January 31, 2005. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.

(5) Following the hearing, the designated Hearing Examiner shall submit a report and recommendation to the Board no later than twenty-one (21) days following the submission of written closing arguments or post-hearing briefs.

(6) Parties may file exceptions and briefs in support of the exceptions no later than seven (7) days after service of the Hearing Examiner's Report and Recommendation. A response or opposition to the exceptions may be filed no later than five (5) days after service of the exceptions.

(7) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC RELATIONS BOARD
Washington, D.C.

January 5, 2005

Government of the District of Columbia
Public Employee Relations Board

In the Matter of: American Federation of Government Employees, Local 1403, Petitioner, and District of Columbia Government, Respondent.	PERB Case No. 04-RC-01 Opinion No. 777 **FOR PUBLICATION**

DECISION ON DIRECTION OF ELECTION

In PERB Case No. 02-RC-06, the American Federation of Government Employees, Local 2725 ("AFGE, Local 2725"), filed a Recognition Petition. AFGE, Local 2725 was seeking to represent for purposes of collective bargaining, a proposed unit of seven attorneys employed by the District of Columbia Department of Consumer and Regulatory Affairs, Office of Compliance ("DCRA").

The Office of Labor Relations and Collective Bargaining ("OLRCB"), on behalf of DCRA, objected to the proposed unit on the ground that DCRA is a subordinate Agency under the District of Columbia Legal Services Act ("LSA").[1] Specifically, OLRCB asserted that a city-wide unit of all subordinate agency attorneys was the only appropriate unit for collective bargaining over terms and conditions of employment.

[1] The District of Columbia Legal Services Act is codified at D.C. Code §1-608.51-62, Subchapter VIII-B. (2001 ed.). This Act establishes "within the District government a Legal Service for independent and subordinate agencies to ensure that the law business of the District government is responsive to the needs, policies and goals of the District and is of the highest quality."

After considering AFGE, Local 2725's Recognition Petition and OLRCB's objection, the Board determined that a city-wide unit of all subordinate agency attorneys was the appropriate unit because a community of interest existed among all of the employees in the proposed city-wide multi agency unit. Also, the Board found that the proposed city-wide unit would promote effective labor relations and efficiency of agency operations. As a result, in Slip Op. No. 743, the Board found that the following unit was an appropriate unit for collective bargaining over terms and conditions of employment:

> All attorneys within the Legal Service who come within the personnel authority of the Mayor of the District of Columbia, excluding attorneys employed exclusively by the (Office of the Attorney General for the District of Columbia (formerly the Office of the Corporation Counsel), management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.[2]

Board Rule 502.2, provides in pertinent part that, a "petition for exclusive recognition shall be accompanied by proof, not more than one (1) year old, that at least thirty percent (30%) of the employees in the proposed unit desire representation by the petitioner." The original "Recognition Petition" submitted by AFGE, Local 2725 was supported by a showing that a least 30% of the attorneys at DCRA, desired to be represented by AFGE, Local 2725. However, the "Recognition Petition" submitted by AFGE, Local 2725 was not accompanied by any additional showing of interest, which would constitute a 30% showing of interest for the larger proposed multi agency unit. As a result, the Board indicated that it could not order an election in PERB Case No. 02-RC-06 (Slip Op. No. 743). Instead, the Board ordered that the American Federation of Government Employees,

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[2] In Slip Op. No. 743 (PERB Case No. 02-RC-06) the Board noted that the proposed multi agency unit consists of "all attorneys within the Legal Service who come within the personnel authority of the Mayor...excluding attorneys employed exclusively by [either] the Office of the Corporation Counsel. [or by the Public Service Commission]...[However, the city-wide multi agency unit would include attorneys at the following subordinate agencies:],...DCRA, the Office of Cable Television and Telecommunications; Department of Corrections; Department of Health; Department of Employment Services; Department of Public Works; Department of Insurance and Securities Regulation; Department of Human Services; Office of Contracts and Procurement; Office of Banking and Financial Institutions; Office of the Chief Medical Examiner; Alcoholic Beverage Regulation Administration, and the Department of Parks and Recreation." All of the attorneys in this proposed unit are assigned to the General Counsel's offices of the various subordinate agencies; however, they still report to the Office of the Attorney General (formally the Office of the Corporation Counsel).

Local 2725 and any other interested labor organization who desired to represent the proposed multi agency unit, should file a recognition petition supported by the appropriate showing of interest. The Board noted that only after those submissions are received can the Board make a showing of interest determination and order that an election be held in accordance with the provisions of D.C. Code §1-617.10 (2001 ed.) and Board Rules 510-515, in order to determine whether or not all eligible employees desire to be represented by AFGE, Local 2725 or another labor organization for purposes of collective bargaining.

AFGE, Local 2725 did not submit a recognition petition supported by a showing of interest for the larger multi agency unit. The only labor organization which filed a recognition petition for the multi agency unit was AFGE, Local 1403. AFGE, Local 1403 also submitted evidence of showing of interest as required by Board Rule 502.2. AFGE, Local 1403's "Recognition Petition" was assigned PERB Case No. 04-RC-01. The Board's staff conducted an investigation and determined that the recognition petition submitted by AFGE, Local 1403 satisfied the thirty (30%) showing of interest requirement of Board Rule 502.2. As a result, the Board's Executive Director issued a Notice concerning AFGE, Local 1403's Petition. The Office of Labor Relations and Collective Bargaining acknowledged that Notices were posted on bulletin boards at all subordinate agencies. No other labor organization sought to intervene and no comments were received concerning AFGE, Local 1403's Recognition Petition.

In Slip Op. No. 743 we found that a city-wide multi agency unit of attorneys was an appropriate unit. Therefore, the only issue to be determined in the present case (PERB Case No. 04-RC-01), concerns the question of representation. Regarding the question of representation, the Board orders that an election be held in accordance with the provisions of D.C. Code § 1-617.10 (2001 ed.) and Board Rules 510-515, to determine the will of all eligible employees (in the city-wide multi agency unit described above), regarding their desire to be represented by AFGE, Local 1403 for purposes of collective bargaining with the District of Columbia Government. Since employees in the proposed city-wide multi agency unit are at various locations, we believe that a mail ballot election is appropriate in this case.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

> All attorneys within the Legal Service who come within the personnel authority of the Mayor of the District of Columbia, excluding attorneys employed exclusively by the Office of the Attorney General for the District of

Columbia (formerly the office of the Corporation Counsel), management officials, supervisors, confidential employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

(2) A mail ballot election shall be held in accordance with the provisions of D.C. Code § 1-617.10 (2001 ed.) and Board Rules 510-515, in order to determine whether or not all eligible employees desire to be represented for bargaining on terms and conditions of employment by either the American Federation of Government Employees, Local 1403 or no Union.

(3) Pursuant to Board 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 13, 2005

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

NOTICE OF EXTENSION OF COMMENT PERIOD

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION OF THE PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of an extension of time in which to file comments on its intent to adopt amendments to Chapter 13 of Title 15 District of Columbia Municipal Regulations, "Rules Implementing the Public Utilities Reimbursement Fee Act of 1980," ("Chapter 13"). Chapter 13 contains the Commission's regulations governing the reimbursable budgets of the Commission and the Office of the People's Counsel ("People's Counsel"). The amendments establish rules for the assessment of competitive electric suppliers and competitive local exchange carriers. A Notice of Emergency and Proposed Rulemaking was published in the D.C. Register on January 21, 2005 at 52 *D.C. Register* pp. 584-589.

2. The Commission gives notice of its intent to take final rulemaking action to adopt these amendments in not less than 20 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

3. Comments on the proposed amendments to Chapter 13 must be made in writing to Christine D. Brooks, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, DC 20005. All comments must be received within 20 days of the date of publication of this NOPR in the *D.C. Register*. Commenters who advocate a change from the current assessment formula or collection method must provide fully detailed alternatives, and include in their proposals any statutory revisions that would be necessary to effectuate their proposals. Persons wishing to file reply comments may do so no later than 30 days of the date of publication of this NOPR in the *D.C. Register*. Once the comment and reply periods have expired, the Commission will take final rulemaking action.

DISTRICT OF COLUMBIA REGISTER

FEB 1 8 2005

SECRETARY OF THE
DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE
OFFICE OF THE SECRETARY
OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

Memorandum Opinion

Appeal of: The Catholic University Of America
Columbus School of Law
Columbus Community Legal Services

Matter No: MCU No. 427199

Date: January 31, 2005

Arnold R. Finlayson, Esq., Director, Office of Documents and Administrative Issuances, participated in the preparation of this opinion.

MEMORANDUM OPINION

The above-captioned matter is before the Secretary of the District of Columbia for consideration of a formal administrative appeal to Mayor Anthony A. Williams filed by The Catholic University of America, Columbus School of Law, Columbus Community Legal Services.[1]

The subject appeal arises from the alleged failure of the Department of Housing and Community Development

[1] "Columbus Community Legal Services provides . . . legal services to needy families who live in the District of Columbia." http://law.cua.edu/academuc/cle/clinics columbus.edu.

FEB 1 8 2005

("DHCD") to comply with a ten-day time period for providing a written response to Columbia Community Legal Services' request for certain information in accordance with section 202(c) of the District of Columbia Freedom of Information Act, D.C. Official Code § 2-532(c)(2001 and 2004 Supp.).

Section 202 of the D.C.-FOIA, in pertinent part, provides:

> (c) *A public body*, upon request reasonably describing any public record, *shall within 10 days . . . of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible* and the reasons therefor.

D.C. Official Code § 2-532(c), as amended (emphasis added).

If a public body does not "comply with a request . . . within the time provisions [of the D.C.-FOIA]," the failure to timely respond on the part of the public body "shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his [or her] administrative remedies with respect to such request, unless such person chooses to petition the Mayor . . . to review the deemed denial of the request." D.C. Official Code § 2-532(e).[2]

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[2] In "unusual circumstances," a one-time, ten-day extension of the original ten-day time period for a response to an initial request may be taken by a public body upon written notice to the person who made the request

The record on appeal indicates that, by letter dated April 21, 2004, Columbia Community Legal Services, on behalf of its client who is pursuing "claims against unknown contractors," submitted a D.C.-FOIA request which sought the disclosure of the following information:

(1) Information concerning any Weatherization Program through the D.C. government;
(2) Information concerning the Weatherization Assistance Program;
(3) Information concerning loans provided by the Weatherization Fund, Inc.;
(4) Information or files containing information on [client's name redacted] participation in such Weatherization Fund program for her property located at [street address redacted], Washington, D.C. 20019;
(5) Information concerning Home Purchase Assistance Program ("HPAP") loans; and

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(footnote 2 continued)

which sets forth the reasons for such an extension and the anticipated date for a determination. D.C. Official Code § 2-532(d). For the purposes of the D.C.-FOIA, the term "unusual circumstances" is limited to the following situations:

(1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) The need for consultation, which shall be conducted with all practicable speed, with another public body having a substantial interest in the determination of the request or among 2 or more components of the public body having a substantial subject matter interest therein.

Id.

(6) Information or files containing information on [client's name redacted] participation in such HPAP loan for her property located at [street address redacted], Washington, D.C. 20019.

Letter dated April 21, 2004 from H. Swan and J. Normet, CCLS, to S. Jackson, Director, DHCD.

DHCD's alleged nonresponse to Columbus Community Legal Services' April 21, 2004 D.C.-FOIA request prompted it to initiate an administrative appeal by "petition[ing] the Mayor to review the public record to determine whether it may be withheld from public inspection." D.C. Official Code § 2-537(a).[3]

According to Columbia Community Legal Services' appeal letter, which enclosed a copy of its D.C.-FOIA request, "[i]t has been 100 business days since our request was sent to DHCD. Based on the dates in which the requests were sent and [the date of the appeal], this period clearly exceeds the 10 days provided by the statute, thus we deem our request denied." Appeal Letter ¶ 3.

While this matter was pending the issuance of a final decision from the Office of the Secretary, DHCD's FOIA Officer was notified, via electronic mail ("e-mail"), of

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[3] By Mayor's Order 97-177, dated October 9, 1997, the Secretary of the District of Columbia was delegated the authority vested in the Mayor to render final decisions on administrative appeals and petitions for review under the D.C.-FOIA.

Columbia Community Legal Services' filing of the present appeal, to which separate DHCD officials responded that the public body "ha[d] no record of receiving a FOIA request" or "ha[d] no recollection of receiving such a letter." E-mail messages from J. Britton, DHCD, and D. Reed, Office of the Attorney General, respectively, to A. R. Finlayson, Office of Documents and Administrative Issuances ("ODAI"). However, DHCD's FOIA Officer stated that upon her receipt of a copy of Columbia Community Legal Services' D.C.-FOIA Request, she would "WORK 'QUICK FAST' TO RESPOND!" E-mail from J. Britton to A. R. Finlayson.

Seven (7) working days later, the Director of ODAI received an e-mail message from Columbia Community Legal Services that stated that it had "been able to acquire the documents . . . requested from [DHCD]" and that it would "like to cancel [the] appeal to the Mayor's office." E-mail message from S. Liberman to A. R. Finlayson.

It is well settled case law in the District of Columbia that if, during the pendency of an appeal, "an event occurs which . . . renders a decision unnecessary, the question becomes moot and the appeal will be dismissed." Smith v. Worksman, 99 A.2d 712 (D.C. 1953)(quoted in Barber v. District of Columbia, 361 A.2d 194, 196-197 (D.C. 1976); see also Milar Elevator Company v. District of

Columbia Department of Employment Services, 704 A.2d 291, 292-293 (D.C. 1997).

Because DHCD and Columbia Community Legal Services were able to resolve all matters related to the D.C.-FOIA request that is the subject of this appeal, the instant matter is no longer in a posture that is, in legal parlance, "ripe" for a decision by the Office of the Secretary.

CONCLUSION

Based on all the foregoing reasons, the present appeal is hereby dismissed as moot.

This constitutes the final decision of the Secretary of the District of Columbia in this matter.

/s/

SHERRYL HOBBS NEWMAN
SECRETARY OF THE DISTRICT OF COLUMBIA

FEB 1 8 2005

SECRETARY OF THE
DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE
OFFICE OF THE SECRETARY
OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

Memorandum Opinion

Petition of: DC Employment Justice Center

Matter No: MCU No. 428550

Date: February 1, 2005

Arnold R. Finlayson, Esq., Director, Office of Documents and Administrative Issuances, participated in the preparation of this decision.

MEMORANDUM OPINION

The above-captioned matter is before the Secretary of the District of Columbia upon the filing of a petition for review by the DC Employment Justice Center ("EJS") with Mayor Anthony A. Williams. EJS seeks review of the Office of Risk Management's alleged "denial of a request for information previously submitted under the Freedom of Information Act." Appeal Letter ¶ 1.[1]

[1] The DC Employment Justice Center "is a private, non-profit organization with a mission to secure, protect and promote workplace justice in the D.C. metropolitan area" for low-income workers. http://www.dcejc.org/

The record on appeal indicates that, by letter dated August 20, 2004, addressed to the attention of the FOIA Officer, Office of Risk Management, EJC submitted a "request to be provided with copies of [certain] records regarding the District of Columbia's administration of D.C. Code § 1-623.1 et seq. (referred to as the Disability Compensation Program)[.]" Letter dated August 20, 2004 from D. A. Colodny, Esq., Deputy Director, EJC to D.C. Office of Risk Management, Attn: FOIA Officer. A copy of EJC's August 20, 2004 D.C.-FOIA request letter is attached hereto.

The alleged failure of the Office of Risk Management ("ORM") to respond to the August 20, 2004 D.C.-FOIA request within the time limits prescribed in section 202 of the D.C.-FOIA prompted EJC to pursue its right to "petition the Mayor to review the public record to determine whether it may be withheld from public inspection." D.C. Official Code § 2-537(a) (2001 and 2004 Supp.).[2]

Section 202 of the D.C.-FOIA, in pertinent part, provides:

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[2] By Mayor's Order 97-177, dated October 9, 1997, the Secretary of the District of Columbia was delegated the authority vested in the Mayor to render final decisions on administrative appeals and petitions for review under the D.C.-FOIA.

> (c) *A public body*, upon request reasonably describing any public record, *shall within 10 days . . . of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible* and the reasons therefor.

D.C. Official Code § 2-532(c), as amended (emphasis added).

If a public body does not "comply with a request . . . within the time provisions [of the D.C.-FOIA]," the failure to timely respond on the part of the public body "shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his [or her] administrative remedies with respect to such request, *unless such person chooses to petition the Mayor* . . . to review the deemed denial of the request." D.C. Official Code § 2-532(e)(emphasis added).[3]

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[3] In "unusual circumstances," a one-time, ten-day extension of the original ten-day time period for a response to an initial request may be taken by a public body upon written notice to the person who made the request which sets forth the reasons for such an extension and the anticipated date for a determination. D.C. Official Code § 2-532(d). For the purposes of the D.C.-FOIA, the term "unusual circumstances" is limited to the following situations:

> (1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
>
> (2) The need for consultation, which shall be conducted with all practicable speed, with another public body having a substantial interest

In the present matter, EJC elected to file a formal petition for review directly with the Mayor, rather than exercising its right to seek immediate judicial relief by initiating a civil action in the Superior Court of the District of Columbia.

In its petition for review, which enclosed a copy of the underlying D.C.-FOIA request, EJC alleges that "[a]lthough well more than six weeks have passed, [it has] yet to receive any response from ORM. By failing to respond, the Office of Risk Management has violated the Freedom of Information Act." Appeal Letter ¶ 1. EJC "request[s] that, within ten days, the Mayor order the Office of Risk Management to immediately produce the records sought." Appeal Letter ¶ 2.

As mentioned above, the record before the Office of the Secretary indicates that ORM has not responded to EJC's August 20, 2004 D.C.-FOIA request for records regarding the District of Columbia's administration of the Disability Compensation Program. Thus, under section 202(e) of the D.C.-FOIA, ORM has constructively denied EJC's request for

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(footnote 3 continued)

> in the determination of the request or among 2 or more components of the public body having a substantial subject matter interest therein.

Id.

records. Accordingly, EJC is entitled to an administrative order compelling ORM to promptly respond to its D.C.-FOIA request.

DISPOSITION

For all the foregoing reasons, EJC's petition for review is granted and this matter is remanded to ORM for appropriate action in accordance with the requirements of 1 DCMR § 407 (June 2001), entitled **"RESPONSES TO REQUESTS"** and the specific instructions set forth below.

On remand, ORM is directed to provide a written response to EJC, with a courtesy copy to the Office of the Secretary of the District of Columbia and the Mayor's office (via the General Counsel to the Mayor), within seven (7) working days of the date of the receipt of this opinion. In preparing its response, ORM shall fully comply with the specific instructions that follow:

1. If any requested records have been located and are available, ORM shall notify EJC as to where and when: (1) such records are available for inspection; or (2) copies will be provided or made available for copying. The notification shall advise EJC of any fees for processing its D.C.-FOIA request, if applicable.

2. A response denying a written request for any record(s) shall be in writing and shall include the following information:

    (a) The identity of each person responsible for the denial;

(b) A reference to the specific exemption or exemptions authorizing the withholding of the record(s) with (i) a brief explanation of how each exemption applies to the record(s) withheld and (ii) a statement of the public interest considerations which establish the need for withholding the record(s). Where more than one record has been requested and is being withheld, the foregoing information shall be provided for each record withheld;

(c) After deletion of any reasonably segregable portion of a public record which may be withheld from disclosure, justification shall be explained fully in writing and the extent of the deletion shall be indicated on the record which is made available, unless that indication would harm an interest protected by any exemption under the D.C.-FOIA. If technically feasible, the extent of the deletion and the specific exemption(s) shall be indicated at the place in the record where the deletion was made;

(d) If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requester shall be so notified; and

(e) A statement of EJC's appeal rights provided by the D.C.-FOIA, if applicable.

ORM is further directed to provide a written certification to the Mayor within ten (10) working days indicating its compliance with this opinion or the reason(s) for noncompliance with any of the directives herein.

This Memorandum Opinion constitutes the formal disposition of the Secretary of the District of Columbia upon administrative review of this matter.

/s/

SHERRYL HOBBS NEWMAN
SECRETARY OF THE DISTRICT OF COLUMBIA

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
PUBLICATIONS PRICE LIST

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

TITLE		SUBJECT	PRICE
1	DCMR	MAYOR AND EXECUTIVE AGENCIES (JUNE 2001)	$16.00
3	DCMR	ELECTIONS & ETHICS (JUNE 1998)	$20.00
4	DCMR	HUMAN RIGHTS (MARCH 1995)	$13.00
5	DCMR	BOARD OF EDUCATION (DECEMBER 2002)	$26.00
6A	DCMR	POLICE PERSONNEL (MAY 1988)	$8.00
7	DCMR	EMPLOYMENT BENEFITS (JANUARY 1986)	$8.00
8	DCMR	UNIVERSITY OF THE DISTRICT OF COLUMBIA (JUNE 1988)	$8.00
9	DCMR	TAXATION & ASSESSMENTS (APRIL 1998)	$20.00
10	DCMR	DISTRICT'S COMPREHENSIVE PLAN (PART 1, FEBRUARY 1999)	$33.00
10	DCMR	PLANNING & DEVELOPMENT (PART 2, MARCH 1994) w/1996 SUPPLEMENT*	$26.00
11	DCMR	ZONING (FEBRUARY 2003)	$35.00
12	DCMR	CONSTRUCTION CODES SUPPLEMENT (2003)	$25.00
13B	DCMR	BOILER & PRESSURE VESSEL CODE (MAY 1984)	$7.00
14	DCMR	HOUSING (JULY 1991)	$20.00
15	DCMR	PUBLIC UTILITIES & CABLE TELEVISION (JUNE 1998)	$20.00
16	DCMR	CONSUMERS, COMMERCIAL PRACTICES & CIVIL INFRACTIONS (JULY 1998) W/DECEMBER 1998 SUPPLEMENT	$20.00
17	DCMR	BUSINESS, OCCUPATIONS & PROFESSIONS (MAY 1990)	$26.00
18	DCMR	VEHICLES & TRAFFIC (APRIL 1995) w/1997 SUPPLEMENT*	$26.00
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