

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 2553,)	
)	PERB Case No. 06-U-35
Complainant,)	
)	Opinion No. 1252
vs.)	
)	
District of Columbia Water)	
and Sewer Authority,)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, Local 2553 (“Complainant” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) alleging that the District of Columbia Water and Sewer Authority (“Respondent” or “Agency”) violated Section 1-617.04(a)(1) of the CMPA by threatening two Union members with disciplinary action if they did not file written statements regarding meeting they attended in their capacity as Union representatives. Complaint at 3. Complainant requests relief in the form of a cease and desist order, a notice posting, and an award of costs incurred in processing the Complaint. *Id.*

Respondent filed an Answer to the Union’s Complaint, denying any threats to the Union representatives or any attempts to interfere with their duties. Answer to Unfair Labor Practice Complaint (“Answer”) at ¶¶ 7-9. Additionally, Respondent states that the Complaint fails to allege an unfair labor practice and disputes the Union’s claims for relief. Answer at 4.¹

¹ Respondent failed to number the pages of its Answer; this reference is to the fourth un-numbered page of the Answer under the headings marked “Second Defense,” “Third Defense,” and “Fourth Defense.”

The issue before the Board is whether the Agency interfered with, restrained, or coerced two of its employees in the exercise of their statutory rights guaranteed in Section 1-617.01 of the CMPA.

II. Discussion

On December 28, 2005, Kevin Conner, Acting Manager of the Agency's Pumping Division, held a meeting with employee Sherwood Ward. Attending as Union representatives on behalf of Mr. Ward were Charles Dwyer and Shawn Henson, also employed by the Agency. The purpose of the meeting was to address Mr. Ward's concerns regarding problems with his supervisor. *See* Complaint at 2; Answer at ¶3; Respondent's Ex. 4.

Carol Mason-Loubon, a Labor Relations Specialist with the Agency, was assigned to investigate allegations of discrimination against Mr. Ward's supervisor. *See* Complaint at 2; Answer at ¶ 4. According to the Agency, part of Ms. Mason-Loubon's investigation involved obtaining a statement from the participants of the December 28 meeting where the allegations were made. Answer at ¶ 4.

On January 30, 2005, and again on February 6, 2006, Ms. Mason-Loubon requested a written statement from Mr. Dwyer regarding the December 28 meeting. *See* Complaint at 2; Answer at ¶¶ 4-5. On February 7, 2006, Mr. Dwyer and Mr. Henson gave Ms. Mason-Loubon a letter asking for clarification about the written statements. Complainant's Ex. 1.

The Union alleges that over the next ten days, Ms. Mason-Loubon threatened Mr. Dwyer and Mr. Henson with disciplinary action for obstructing an internal discrimination complaint investigation unless they complied with her request for a written statement. Complaint at 2; Complainant's Exhibits 2-3. On February 16, 2006, Mr. Henson met with Ms. Mason-Loubon and gave a statement. Complainant's Ex. 2. Mr. Dwyer did the same on February 17, 2006. Complainant's Ex. 3.

The Agency denies that Ms. Mason-Loubon threatened the employees. Answer at ¶¶ 7-8. Instead, the Agency asserts that Ms. Mason-Loubon explained to the employees that she was investigating an Equal Employment Opportunity complaint, and that they were required to cooperate with her investigation pursuant to the Agency's Equal Employment Opportunity policy. Answer at ¶¶ 7-8; Respondent's Exhibit 2. Ms. Mason-Loubon also informed Mr. Dwyer and Mr. Henson that refusal to cooperate with the investigation could result in disciplinary action for insubordination. Answer at ¶ 8.

This Board has held that while a Complainant is not required to prove his or her case on the pleadings, he or she must plead or assert allegations that, if proven, would establish the alleged statutory violation. *See, e.g., Hunter v. AFSCME, AFL-CIO, District Council 20, Local 2087*, ___ D.C. Reg. ___, Slip Op. No. 1201, PERB Case No. 05-U-22 (October 7, 2011). What is more, "to maintain a cause of action, [a] Complainant must [allege] the existence of some evidence that, if proven, would tie the Respondent's actions to the asserted [statutory violation]. Without the existence of such evidence, Respondents' actions [cannot] be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such

evidence does not present allegations sufficient to support the cause of action.” *AFGE Local 2978 v. Government of the District of Columbia, Department of Health*, ___ D.C. Reg. ___, Slip Op. No. 987, PERB Case No. 08-U-47 (September 30, 2009) (quoting *Goodine v. FOP/DOC Labor Comm.*, 43 D.C. Reg. 5163, Slip Op. No. 476 at 3, PERB Case No. 96-U-16 (1996).

In the present case, Complainant has failed to assert allegations or evidence that would tie the Agency’s actions to the asserted violation of Section 617.04(a)(1). The Complaint does not offer any proof that the request for a written statement and the warnings of discipline for non-compliance were due to Mr. Henson and Mr. Dwyer’s union activities. To the contrary, Ms. Mason-Loubon also asked for and received a written statement about the December 28 meeting from Mr. Connor, the non-union participant of the meeting. Respondent’s Ex. 1. Without a nexus between the Agency’s actions and the employees’ exercise of their Section 1-617.01 rights, the Unfair Labor Practice Complaint must be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint is 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.

March 28, 2012.

CERTIFICATE OF SERVICE

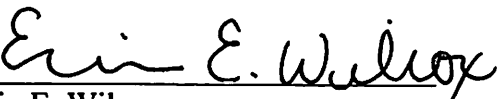
This is to certify that the attached Decision and Order in PERB Case No. 06-U-35 is being transmitted via U.S. Mail to the following parties on this the 28th day of March, 2012.

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