

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:)	
)	
Earnest Durant, Jr.,)	
)	
Complainant,)	PERB Case No. 09-U-15
)	
v.)	Opinion No. 1315
)	
Government of the District of Columbia)	
Department of Corrections,)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

I. Statement of the Case:

On January 22, 2009, Earnest Durant, Jr. ("Complainant") submitted a document styled "5th Amendment to Unfair Labor Practice Complaint PERB Case No. 07-U-43 & 08-U-57." On January 29, 2009, the Board responded Mr. Durant's submission with the following:

The consolidated complaints [referenced in the submission title] were heard before Hearing Examiner Arline Pacht on August 21, 2008, September 4, 2008, September 26, 2008 and October 23, 2008. Furthermore, the Hearing Examiner's report and recommendation was due January 21, 2009.¹

In light of the above, it is clear that the hearing concerning PERB Case Nos. 07-U-43 and 08-U-57 has been closed. The Board has held that after a hearing is closed a party cannot submit additional evidence. *Elliot v. D.C. Department of Corrections*, 43 DCR 2940, Slip Op. No. 455 at p. 2, PERB Case No. 95-U-09 (1995). In the present case, you are seeking to provide the Board

¹ The Hearing Examiner was granted an extension and her Report and Recommendation in PERB Case Nos. 07-U-43 and 08-U-57 was issued on February 24, 2009.

with additional evidence to support allegations not made in the consolidated complaints or at the hearing. Furthermore, you do not contend that you were denied a full opportunity to either meet your burden of proof and/or establish your case before the record was closed. Therefore, you have not presented[,] nor do I find any compelling reason for reopening the record.

Consistent with *Elliot*, I am denying your attempt to introduce new allegations. As a result, I am denying your "request for immediate consolidation." Instead, your January 22, 2009 submission will be treated as a new complaint and will be assigned "PERB Case No. 09-U-15." Also, a review of your January 22, 2009 submission reveals that it does not comply with Board Rule 501.12. Specifically, the "certificate of service" does not state the date of service.

In accordance with Board Rule 501.13, you have ten days from the date of this letter to cure the above-referenced deficiency. Failure to submit the required information by the close of business (4:45 p.m.) on February 18, 2009, could result in the dismissal of this action.

(footnotes and emphasis omitted).

~~On February 15, 2009, Mr. Durant supplied this Office with a letter indicating that "on the date of January 22, 2009 and by First Class United States Mail I did serve respondent, Debra Allen Williams a true copy of the unfair labor practice complaint and am forwarding a second true copy of the above unfair labor practice complaint on this date of February 17, 2009 by First Class United States Mail." Appended to this letter was a document styled "Amended Certificate of Service" stating that this "5th Amendment to Unfair Labor Practice Complaint PERB Case Number 07-U-43, PERB Case Number 08-U-57 and Request for Motion for Consolidation and Expedited Hearing Date and Hearing before Hearing Examiner Arline Pacht was served on this date of January 22, 2009 by First Class United States Mail to Respondent Debra-Allen Williams DC Office of Labor Relations and Collective Bargaining [(OLRCB)] at the office of the Public Employees Relations Board (PERB) at 717) 14th Street NW Washington DC."~~

Based upon Mr. Durant's submission, there is no indication that Mr. Durant properly served Respondent with the "Amended Certificate of Service". Moreover, the "Amended Certificate of Service" continued to refer to the matter as the 5th Amended Complaint. In addition, the Board received a letter from OLRCB on February 6, 2009, indicating that it had not received the documents ordered by the Board in its January 29 letter.

On May 21, 2009, the Board again instructed Mr. Durant to provide the documents outlined in its January 29 letter to cure the deficiencies of his January 22 submission to OLRCB. Neither the Board nor OLRCB received any of the documents. Specifically, the Board stated:

This is a follow-up to our May 18, 2009 telephone conversation. As discussed, the Complainant will transmit a copy of the above-referenced complaint to Ms. Debra Allen-Williams.² Also, consistent with Board Rule 501.12, the Complainant will provide Ms. Williams with copies of his letters dated February 15, 2009 and May 12, 2009.

Pursuant to Board Rules 520.6, the District of Columbia Department of Corrections shall file an answer "within fifteen (15) days from service of the complaint."

In addition to Board Rule 501.13, Board Rule 520.3 details the necessary contents of an unfair labor practice complaint. One of the required elements of an unfair labor practice complaint is: "A clear and complete statement of the facts constituting the alleged unfair labor practice, including date, time and place of occurrence of each particular act alleged, and the manner in which D.C. Code Section 1-617.04 of the CMPA is alleged to have been violated. (PERB Rule 520.3(d)). See *Derrick Hunter v. American Federation of State, County and Municipal Employees, AFL-CIO, District Council 20, Local 2087*, __ DCR ___, Slip Op. No. 1201, PERB Case No. 05-U-22 (2011). In the January 29, 2009 PERB Letter, Complainant was informed that his Complaint was deficient and he must provide additional information by February 18, 2009, or risk having the case dismissed. Complainant neglected to respond by the deadline. Again, Complainant failed to provide the required information when the Board requested he supply the information in PERB's May 21, 2009 letter. There is no indication the Complainant attempted to correct the deficiencies identified in the PERB Letter. Therefore, the Complaint in this matter is not deemed to have conformed to Board Rule 520.3.

Moreover, this Board has held that while a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged statutory violations. See, *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 DCR 6876, Slip Op. No. 491 at 4, PERB Case No. 96-U-22 (1996); *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); and *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996). In addition, when considering the pleading of a *pro se* Complainant, the Board construes the claims liberally to determine whether a proper cause of action has been alleged and whether the Complainant has requested proper relief. See, *Osekre v. AFSCME Council 20, Local 2401*, 47 DCR 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (2000); *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). In the present case, Complainant alleges the Department of Corrections violated the CMPA as a result of numerous personnel infractions ranging from disciplinary matters to promotional disputes. The allegations, however, do not assert that these actions concerned Mr. Durant's exercise of his

² This letter provided Complainant with the appropriate address for correspondence to OLRCB as located at 441 4th Street N.W., Washington, D.C. 20001.

rights under the CMPA. 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), (3), 4) and (b)(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. *See American Federation of Government Employees, Local 2553 v. District of Columbia Water and Sewer Authority, ___DCR___, Slip Op. No. 1252, PERB Case No. 06-U-35 (2012).* Even viewing the claims liberally, as Complainant is *pro se*, the Board finds a proper cause of action has not been alleged.

As a result, Mr. Durant's Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint filed by Earnest Durant Jr. 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.

April 24, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Nos. 09-U-15, Slip Opinion No. 1315 was transmitted via U.S. Mail and e-mail to the following parties on this the 22nd day of August, 2012.

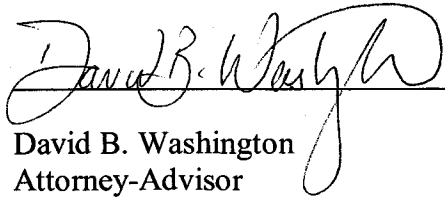
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