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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
Calvin B. Stover)	
)	
Complainant,)	PERB Case No. 12-U-06
)	
v.)	Opinion No. 1355
)	
The Board of Trustees for the)	
University of the District of Columbia,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

On October 28, 2011, Calvin Stover (“Complainant”) filed an Unfair Labor Practice Complaint (“Complaint”) against the Board of Trustees for the University of the District of Columbia (“Respondent” or “Employer”). Pursuant to Board Rule 501.13, the Executive Director notified the Complainant of deficiencies in the Complaint and provided additional time to the Complainant to correct them. The Complainant did not submit any additional information to correct the deficiencies. On January 18, 2012, Respondent filed its Answer to Complaint of Unfair Labor Practices (“Answer”).

The Complaint alleges that Respondent committed unfair labor practices, when it retaliated against and wrongfully terminated the Complainant in violation of the D.C. Code § 1-615.51, *et seq.* (Complaint at 1).

The Answer denies the Complaint’s allegations. In addition, the Answer asserts the affirmative defense that the Board lacks jurisdiction and the Complaint fails to assert claims for which relief may be granted. (Answer at 3).

II. Discussion

In January 2011, Complainant was appointed Respondent’s Assistant Vice President of

Human Resources. (Complaint at 2). That position is not in any bargaining unit. On July 1, 2011, the Complainant was terminated. *Id.* The Complaint alleges retaliation and wrongful termination for protected disclosures made by the Complainant in accordance with the D.C. Code § 1-615.51, *et seq.* (Complaint at 5-6).

The Comprehensive Merit Personnel Act (“CMPA”) is the statutory authority for the Board. The Board is only empowered to hear and decide legal matters that are covered by the CMPA. The Board has primary jurisdiction to determine whether a particular act or omission constitutes an unfair labor practice under the CMPA. D.C. Code § 1-605.02. (2001 ed.). See *Hawkins v. Hall*, 537 A.2d 571 (D.C. Cir. 1981).

In order to determine the Board’s jurisdiction, it is necessary to determine whether the allegations, if proven, would violate the D.C. Code § 1-617.04(a). While a Complainant need not prove his or her case on the pleadings, allegations must be pled or asserted 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 D.C. Reg. 6876, Slip Op. No. 491, PERB Case No. 96-U-22 (1996); *Gregory Miller v. American Federation of Government Employees, Local 63, AFL-CIO and D.C. Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994).

The Complaint alleges retaliation and termination for conduct in violation of the D.C. Code § 1-615.51, *et seq.* In addition, Mr. Stover is a non-bargaining unit employee, and his Complaint does not allege any violation of the CMPA. Consequently, the Complaint’s alleged facts, viewed in the light most favorable to Complainant, do not raise any question as to whether the Employer, either directly or indirectly, took any action prohibited by §1-617.04(a). The Complaint’s allegations fail to allege a cause of action under the CMPA over which the Board possesses jurisdictional authority.

As a result, Mr. Stover’s Unfair Labor Practice Complaint is dismissed on the basis of failure to state a cause of action. Furthermore, the Executive Director notified the Complainant of filing deficiencies of the Complaint. The Complainant failed to correct these deficiencies. In accordance with Board Rule 501.13, a “[f]ailure to cure deficiencies shall result in dismissal without further notice.” Therefore, the Complaint would have been dismissed for failing to cure procedural deficiencies, if the Board had jurisdiction to decide the Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint filed by Mr. Stover is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

February 1, 2013

CERTIFICATE OF SERVICE

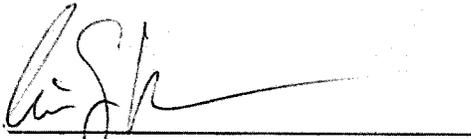
This is to certify that the attached Decision and Order in PERB Case No. 12-U-06 was transmitted via U.S. Mail to the following parties on February 1, 2013.

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