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

In the Matter of:)	
)	
American Federation of Government Employees, AFL-CIO, Local 1403 and Clifford Pulliam,)	
)	
Complainants,)	
)	PERB Case No. 13-U-16
v.)	
)	
District of Columbia Housing Authority,)	Opinion No. 1404
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

On February 7, 2013, the American Federation of Government Employees, AFL-CIO Local 1403 ("Local 1403") and Clifford Pulliam ("Pulliam") (collectively "Complainants") filed an unfair labor practice complaint ("Complaint") against the D.C. Housing Authority ("Respondent" or "DCHA"). Complainants allege that DCHA discharged Pulliam because of his union activity. Respondent filed an answer with affirmative defenses ("Answer").

The Complaint alleges that Pulliam was employed in DCHA's Office of the General Counsel. The Complaint further alleges that Pulliam assisted in various ways known to DCHA with a petition for recognition that Local 1403 filed with the Board. Through the recognition petition (PERB Case No. 11-RC-01), Local 1403 sought to become the exclusive bargaining representative of attorneys and paralegals in the Office of the General Counsel. Pulliam also assisted in the preparation of comments and a motion in support of certification. Pulliam signed the motion. Management of the Office of General Counsel received a copy of the motion. The Complaint alleges, "In or about May 2011, after the filing of the Comments with PERB, Pulliam's supervisor, General Counsel Hans Froelicher called Pulliam and other staff to a meeting in which he expressed the DCHA's dismay with DCHA OGC employees and threatened them to 'work smarter, or we will find people who will.'" (Complaint ¶15). On October 23, 2012, employees of the putative bargaining unit elected Pulliam shop steward. On November 13, 2012, DCHA presented Pulliam with a letter notifying him that he would be discharged in ten business days. On November 27, 2012, he was discharged. Nicole Mason, another DCHA employee who had worked with Pulliam in the recognition effort, had been discharged the

previous March. The Complaint states that an unfair labor practice complaint brought on her behalf has been settled and withdrawn. The Complaint alleges that “[b]y the foregoing conduct, DCHA engaged in a pattern of reprisals against supporters of AFGE Local 1403 to discourage support for the union and to punish them for their activities at the PERB.” (Complaint ¶24).

The Complaint presents three “counts” of unfair labor practices. First, the Complaint alleges that Pulliam’s discharge discriminated against him in regard to the tenure and terms of his employment to discourage union membership in violation of D.C. Code section 1-617.04 (a)(1) and (3). Second, the Complaint alleges that DCHA discharged and otherwise took reprisals against Pulliam because he signed or filed an affidavit, petition, or complaint or gave information or testimony, in violation of section 1-617.04(a)(1) and (4). Third, the Complaint alleges DCHA interfered with, restrained, or coerced its employees including Pulliam in violation of section 1-617.04(a)(1).

The Respondent’s Answer admitted that the Respondent was aware of Pulliam’s recognition efforts and admitted that he was terminated. The Respondent denies that it engaged in a pattern of reprisals and denied the allegations of the three counts. As affirmative defenses, the Answer asserts that the Complaint “or portions thereof” failed to state a claim and was untimely and that it “should be stayed pending the final resolution of all related unfair labor practice complaints.” Finally, the Answer asserts that DCHA’s actions were justified. (Answer at p. 6).

II. Analysis

The Answer provides no grounds for the affirmative defenses. In particular, the Answer does not identify any pending unfair labor practice complaints that are related to this case nor does the Complaint. The Answer does not indicate which portions of the Complaint it maintains are untimely. Pulliam was discharged November 27, 2012, and the Complaint was filed less than 120 days later on February 27, 2013. With regard to the discharge, the Complaint was timely filed. Paragraph 15 of the Complaint alleges that the general counsel threatened Pulliam and other staff in May 2011. It is unclear whether Local 1403 alleges that this incident was a violation. If so, the Complaint was not timely filed with regard to the May 2011 alleged violation. However, that alleged incident could be relevant to show anti-union or retaliatory animus. See *FOP/Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t*, Slip Op. No. 1391 at pp. 25-26, PERB Case Nos. 09-U-52 and 09-U-53 (May 28, 2013).

To establish a *prima facie* case the Complainants must show that (1) Pulliam engaged in protected activity, (2) DCHA knew about the protected activity, (3) DCHA exhibited anti-union or retaliatory animus, and (4) as a result, DCHA took adverse employment action against him. See *Id.* at p. 24. The Complaint alleges facts which, if proven, would establish these elements. The Answer denies that DCHA took action against Pulliam as a result of his protected activities. Therefore, the pleadings present questions of fact warranting a hearing. Accordingly we direct the development of a factual record through an unfair labor practice hearing at which the Complainants will have the burden of proving the allegations of the Complaint by a

preponderance of the evidence as provided by Rule 520.11. Prior to the hearing, the parties will participate in mandatory mediation, pursuant to Board Rule 558.4.

ORDER

IT IS HEREBY ORDERED THAT:

1. The unfair labor practice claim will be referred to a hearing examiner for an unfair labor practice hearing. That dispute will be first submitted to the Board's mediation program to allow the parties the opportunity to reach a settlement by negotiating with one another with the assistance of a Board appointed mediator.
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 29, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-16 was transmitted to the following parties on this the 30th day of July, 2013.

Betty Grdina
1920 L St. NW, suite 400
Washington, D.C. 20036

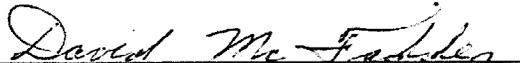
VIA FILE & SERVEXPRESS

Clifford Pulliam
1138 West Central Avenue
Davidsonville, MD 21035

VIA U.S. MAIL

David R. Warner
Venable LLP
8010 Towers Crescent Drive, suite 300
Tysons Corners, VA 22182

VIA FILE & SERVEXPRESS


David McFadden
Attorney-Advisor