

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:)	
Ronald M. Lewis,)	
Complainant,)	PERB Case No. 10-U-08
v.)	Opinion No. 1274
District of Columbia Department of Mental Health,)	
Respondent.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

The Department of Mental Health (“Department” or “Respondent”) imposed a thirty-day suspension on Ronald M. Lewis (“Lewis” or “Complainant”), who at the time was a mental health counselor with the Department. Lewis filed *pro se* a complaint with the Board raising objections to the suspension and to the subsequent denial of a grievance request.

Along with denying the complainant’s allegations, the Respondent’s answer to the complaint raises the following affirmative defenses. First, the complaint fails to allege an unfair labor practice prohibited by section 1-617.04 of the D.C. Official Code. Second, the complaint is deficient in that it omits a statement of the relief sought, the names and addresses of the complainant and respondent, a clear and complete statement of the facts constituting the alleged unfair labor practice, a statement as to the existence of any related proceedings, and a copy of the collective bargaining agreement. Third, the complaint is untimely because it was filed more than 120 days after the first day of the Complainant’s suspension. Fourth, the collective bargaining agreement required the Department to reject the Complainant’s grievance request. The Department moved that the Board dismiss the complaint with prejudice and declare that its conduct was not an unfair labor practice.

The Complainant cured some of the alleged deficiencies by filing an amended complaint which contained the names and addresses of the Complainant and Respondent and attached a copy of the collective bargaining agreement.

II. Discussion

Lewis's complaint lists four issues (Complaint at p. 4)¹ and, under the heading of "Legal Argument," argues four apparently corresponding points (Complaint at pp. 5-9). The first three issues and corresponding points allege errors in a hearing officer's decision suspending Lewis. To be timely, a complaint claiming that those errors constituted unfair labor practices would have had to be filed not later than 120 days after the date Lewis admits he became aware of his suspension. See Board Rule 520.4; *Bagenstose v. Washington Teachers' Union, Local No. 6*, Slip Op. No. 894 at p. 5, PERB Case No. 06-U-31 (June 22, 2007). Lewis admits that the suspension became effective July 2, 2009. (Complaint at p. 3.) Thus, logic dictates that Lewis was aware of his suspension by July 2, 2009. The complaint was filed December 21, 2009, 172 days later.

Therefore, the first three issues have not been raised in time to bring them as an unfair labor practice claim. The Board's time limit for the filing of unfair labor practice claims is mandatory and jurisdictional. *Gibbons v. D.C. Pub. Employee Relations Bd.*, 785 A.2d 1238, 1241 (D.C. 2001). The Respondent's motion to dismiss on grounds of untimeliness is granted as to issues 1-3.

The fourth issue in the complaint's list of issues is: "Did the DMH commit an unfair labor practice?" (Complaint at p. 4.) The fourth issue is presented somewhat differently under the sub-heading of "Point IV" under the heading of "Legal Argument." There the Complaint asserts, "The DMH deprived employee of his due process rights by denying his request for Step #5 grievance arbitration." (Complaint at p. 8.)

Exhibit K to Lewis's complaint contains a letter from the Department denying Lewis's request for a step 5 grievance arbitration. The letter is dated September 11, 2009. In addition, Exhibit K contains an e-mail Lewis sent on September 24, 2009 in response to the denial. The complaint was filed within 120 days of both of those dates. Hence, the fourth issue was raised timely.

As the fourth issue was raised timely, we turn to the question of whether it states a claim upon which relief may be granted by the Board. As noted, this issue is presented as an unfair labor practice claim in Lewis's list of issues, but in his legal argument it is presented as a claim of a denial of due process. When the Board considers the pleadings of a *pro se* claimant, "we consider the claim liberally to determine whether a proper cause of action has been alleged." *Beeton v. D.C. Dep't of Corrections*, 45 D.C. Reg. 2078, Slip Op. No. 538 at p. 3 n.1, PERB Case No. 97-U-26 (1998). Considering that Lewis does not argue issues of due process under Point IV of "Legal Argument" and that the only power of the Board under section 1-605.2 of the D.C. Official Code that he could be invoking is the Board's "[p]ower to decide whether unfair labor practices have been committed," Complainant's claim is construed as a claim that the Department committed an unfair labor practice by denying Lewis's request for a step 5 grievance arbitration.

¹Lewis did not number the pages of his Complaint. This reference is to the fourth un-numbered page of the Complaint.

In response to Lewis's step 5 grievance arbitration request, the Department sent Lewis a letter stating:

Please be advised the agency is unable to accept your request to arbitrate this matter. The request to elevate this matter to the Step 5 level rests solely with Union officials. In accordance with Article 19 "Grievance Procedure," Section 4 "Who May Grieve," of the collective bargaining agreement between the Department and American Federation of State, County and Municipal Employees Local 2095, ". . . Whenever the Union shall raise or is associated with a grievance under this procedure such a grievance shall become the Union's grievance with the Employer." Therefore, the agency cannot accept the request directly from you.

(Complaint, appendix K).

The documents submitted by the parties confirm the Department's basis for rejecting Lewis's request. The forms raising step 3 and step 4 grievances had the Union's name printed at the top, were signed by a union official, and were not signed by Lewis. (Complaint appendices I & K; Answer exhibits 6 & 7.) The collective bargaining agreement, which both parties have submitted, states: "If raised by the Union, the employee may not thereafter raise the grievance him/herself. . . ." (Art. 19, §4.) Thus, the collective bargaining agreement required the Department to reject Lewis's step 5 grievance arbitration request. This provision of the collective bargaining agreement is fully consistent with the Comprehensive Merit Personnel Act. Although section 1-617.06(b) states that "an individual employee may present a grievance at any time to his or her employee without the intervention of a labor organization," that section goes on to provide that "[a]ny employee or employees who utilize this avenue of presenting personal complaints to the employer may not do so under the name, or by representation, of a labor organization." Lewis had already presented his complaint under the name and by representation of a labor organization when he attempted to do so individually.

As an employer does not commit an unfair labor practice by taking actions pursuant to the terms of a collective bargaining agreement, *Am. Fed'n of Gov't Employees, Local 2741 v. D.C. Dep't of Recreation & Parks*, 45 D.C. Reg. 6722, Slip Op. No. 556 at p. 2, PERB Case No. 98-U-03 (1998), issue four does not allege an unfair labor practice. Respondent's motion to dismiss is granted as to issue four.

All of the remaining issues were dismissed as untimely. Therefore, the complaint in its entirety is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint is dismissed.
2. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

May 30, 2012

CERTIFICATE OF SERVICE

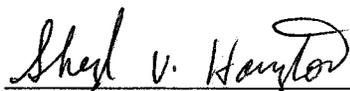
This is to certify that the attached Decision and Order in PERB Case No. 05-U-41 is being transmitted via U.S. Mail to the following parties on this the 31st day of May 2012.

Ronald M. Lewis
P.O. Box 30683
Washington, D.C. 20030-0683

U.S. MAIL

Frankie T. Wheeler, CPM, SPHR
Assistant Attorney General
Department of Mental Health
64 New York Ave. NE, 5th Floor
Washington, D.C. 20002

U.S. MAIL



Sheryl V. Harrington
Secretary