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

In the Matter of:)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,)	
Complainant,)	PERB Case No. 11-U-53
v.)	Slip Opinion No. 1223
District of Columbia Metropolitan Police Department, ¹)	
Respondents.)	STAFF RECOMMENDATION
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DECISION AND ORDER

I. Statement of the Case

On September 14, 2011, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) filed an Unfair Labor Practice Complaint against the Metropolitan Police Department (“MPD”) alleging violations of the Comprehensive Merit Protection Act D.C. Code §1-617.04(a) and D.C. Code §1-617.04(b). On September 29, 2011, the MPD filed an Answer to the Unfair Labor Practice Complaint denying all allegations.

II. Discussion

¹ Additional respondent names have been removed from the caption in the instant matter pursuant to the Board’s decision in Fraternal Order of Police/Metropolitan Police Department Labor Committee and Metropolitan Police Department, DCR, Slip Op. No. 1118 at p. 5, PERB Case No. 08-U-19 (2011).

This matter arises from the following set of facts: On or about May 16, 2011, Ms. Celia Taylor, a member of the Washington Regional Threat and Analysis Center, Metropolitan Police Department, Intelligence Fusion Division, observed FOP Chairman Kristopher Baumann stopping or assisting a motorist. On May 16, 2011, during a conversation with Mr. Tom Wilkins, her supervisor, Ms. Taylor mentioned her observation of Chairman Baumann. Mr. Wilkins communicated Ms. Taylor's account to Assistant Chief Michael Anzallo, head of the MPD's Internal Affairs Division. Assistant Chief Anzallo ordered his Administrative Lieutenant, James Brown, to pull IS numbers and assign the matter to the Labor and Employee Relations Unit for investigation. Lieutenant Linda Nischan was ordered to initiate an investigation of Chairman Baumann. On July 19, 2011, Lieutenant Nischan issued a Final Investigative Report. According to the FOP, the Investigative Report stated the following:

Ms. Taylor's email concerning her observation of the incident contains no allegations or evidence of any violation of any District of Columbia or MPD rules, regulations or laws. (See Complaint at p.4)

Complainants request that the Board find that Respondents have engaged in an Unfair Labor Practice; request that the Respondents be ordered to cease and desist from the alleged retaliatory actions against the FOP; request the Board order the MPD to post no less than two notices of their alleged violation and Board's order in each Department building; and request that the Board order the Respondents to pay the Complainant's costs and fees associated with the proceeding.

Complainants allege that Respondents have violated the CMPA by interfering, restraining, coercing or retaliating against the exercise of the rights guaranteed by the CMPA. Specifically, complainants allege that (a) Chairman Baumann was engaged in protected union activities through his representational duties as Chairman of the FOP; (b) Respondents knew of the protected union activities; (c) there was express anti-union animus by the MPD that Respondents demonstrated by the imposition of an unwarranted, improper and retaliatory investigation; and (d) that Respondents attempted to interfere, restrain, coerce, and retaliate against the FOP in the exercise of its guaranteed rights. (See Complaint at pgs. 5-6.)

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 p. 4, PERB Case No. 96-U-22 (1996); and *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). Also, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. (See *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 24*, 40 DCR 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992).) "Without the existence of such evidence, Respondent's 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." (See *Goodine v.*

FOP/DOC Labor Committee, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996.)

In the present case, the FOP's Complaint alleges violations of D.C. Code §1-617.04(a)(1). D.C. Code §1-617.04(a)(1) (2001 ed.), provides that "[t]he District, its agents and representatives are prohibited from: . . . [i]nterfering, restraining or coercing any employees in the exercise of the rights guaranteed by this subchapter[.]"²

Complainants have asserted that Respondent's actions violate the CMPA but have no factual record to support their claims that Chairman Baumann was engaged in union activities when he stopped or assisted the motorist, much less that Respondents knew of such activities. Further, Complainants have offered no factual record to demonstrate "anti-union animus" on the part of the MPD. Having failed to demonstrate that Chairman Baumann was engaged in protected union activities during the above-cited incident, they cannot then claim that Respondents attempted to interfere, restrain, coerce, and retaliate against the FOP in the exercise of such activities. Moreover, the parties' pleadings present no issue of disputed facts. Whereas the Union has not provided any allegations that, if proven, establish a violation of the CMPA and finding no disputed issue of fact, the Board finds that the circumstances presented warrant a decision on the pleadings. As presented, we find that the Complaint has failed to plead facts which, if proven, establish a statutory cause of action under the CMPA.

As a result, the Board dismissed the FOP's Complaint for failure to state a cause of action.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ISSUANCE OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.
November 17, 2011

² "Employee rights under this subchapter are prescribed under D.C. Code [§1-617.06(a) and (b) (2001ed.)] and consist of the following: (1) [t]o organize a labor organization free from interference, restraint or coercion; (2) [t]o form, join or assist any labor organization; (3) [t]o bargain collectively through a representative of their own choosing . . . ; [and] (4) [t]o present a grievance at any time to his or her employer without the intervention of a labor organization[.]" *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks*, 45 DCR 5078, Slip Op. No. 553 at p. 2, PERB Case No. 98-U-03 (1998).

CERTIFICATE OF SERVICE

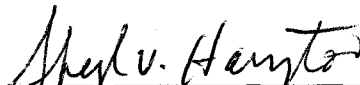
This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 11-U-53 are being transmitted via Fax and U.S. Mail to the following parties on this the 17th day of November, 2011.

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