

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**

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	)	
The American Federation of State, County,	)	
And Municipal Employees, District Council 20,	)	
AFL-CIO, Local 2743	)	
	)	PERB Case No. 26-U-14
Complainant	)	
	)	Opinion No. 1955
v.	)	
	)	
Department of Licensing and Consumer	)	
Protection	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER

I. Statement of the Case

On December 24, 2025, the American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO, Local 2743 (AFSCME) filed an unfair labor practice complaint (Complaint) against the District of Columbia Department of Licensing and Consumer Protection (DLCP). The Complaint asserts that DLCP violated D.C. Official Code §§ 1-617.04(a)(1), (a)(3), and (a)(4) of the Comprehensive Merit Personnel Act (CMPA) by terminating a DLCP Business Licensing Specialist (Grievant) for engaging in protected union activity. On January 16, 2026, DLCP filed its answer and affirmative defenses (Answer), asserting that the Complaint should be dismissed for lack of jurisdiction; failure to state a claim upon which relief may be granted; and failure to state a prima facie case of interference, discrimination, and retaliation.

For the reasons stated herein, the Complaint is dismissed.

I. Background

The following facts are undisputed. On October 24, 2024, the Federal Bureau of Investigation (FBI) and the D.C. Office of the Inspector General (OIG) opened an investigation

into the Grievant's job performance, spanning the period from January 2016 to the present.¹² On October 28, 2024 DLCP placed the Grievant on administrative leave, where she remains to this day.³

On November 13, 2025, the Grievant contacted her AFSCME representative for assistance with addressing a shortage in her October 28, 2025 paycheck and a failure to receive a paycheck for November 11, 2025.⁴ AFSCME emailed DLCP regarding these issues on November 13, 2025, and DLCP responded on November 18, 2025, acknowledging its payroll-related mistakes.⁵

On November 20, 2025, DLCP provided the Grievant with an advanced notice of proposed removal⁶ (Advanced Notice) based on the ongoing investigation into her conduct.⁷ The Advanced Notice cited 6-B DCMR § 1607.2(n), which provides that removal is appropriate where "[a]ny circumstance...prevents an employee from performing the essential functions of his or her position, and for which no reasonable accommodation has been requested or can be made, unless eligible for leave protected under the D.C. Family Medical Leave Act."⁸ DLCP based the Advanced Notice on the theory that the FBI and OIG had evidence that the Grievant abused her position of public trust because the investigation into her conduct had lasted over a year.⁹

On December 24, 2025, AFSCME filed the instant Complaint with PERB. On January 5, 2026, AFSCME submitted a copy of an administrative review of the Grievant's proposed removal. The administrative review, conducted by the General Counsel of the Department of Parks and Recreation¹⁰ found that DLCP had failed to prove by a preponderance of the evidence that the Grievant's conduct warranted removal under 6-B DCMR § 1607.2(n).¹¹

II. Discussion

This dispute arises from AFSCME's allegation that DLCP violated D.C. Official Code §§ 1-617.04(a)(1), (3), and (4) by proposing to remove the Grievant in response to union activity regarding missed pay. Section 1-617.04(a)(3) prohibits discriminating against employees in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Section 1-617.04(a)(4) prohibits discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint, or because he or she has provided information or testimony. Section 1-617.04(a)(1) prohibits interference, restraint, or coercion regarding the exercise of rights guaranteed by that subchapter.

¹ Complaint at 3.

² Complaint at 3.

³ Complaint at 3.

⁴ Complaint at 4.

⁵ Complaint at 4.

⁶ On April 15, 2025, DLCP informed PERB that the Agency has since withdrawn the proposed removal in its entirety.

⁷ Complaint at 3.

⁸ Complaint at 2.

⁹ Complaint at 3.

¹⁰ Complaint's Exhibit 1.

¹¹ Complaint's Exhibit 1 at 3.

In the Complaint, AFSCME asserts that DLCP had no basis to propose termination and that the Agency's action was procedurally flawed because it lacked the requisite legal specificity and evidence to justify termination.¹² AFSCME argues that DLCP has a duty to ensure that consequences are appropriate and are solely imposed for proven misconduct.¹³ The Union asserts that DLCP's decision to propose termination was inappropriate and premature, as the factual investigation concerning her job performance was still ongoing.¹⁴ AFSCME alleges that the proposed termination constituted retaliation for the Grievant engaging in the protected union activity of communicating her pay-related concerns.¹⁵

In its Answer, DLCP asserts that PERB lacks jurisdiction over this matter, as no final decision has been made regarding the Grievant's termination, rendering the Union's claims premature.¹⁶ DLCP further argues that the Advanced Notice advises the Grievant that she is entitled to an administrative review and that once a final agency decision has been issued, it may be appealed to either the Office of Employee Appeals or through the negotiated grievance procedure included in the parties' collective bargaining agreement.¹⁷ DLCP contends that through this action, AFSCME is seeking to impermissibly litigate the same personnel action in parallel.¹⁸ Regarding the jurisdiction issue, AFSCME asserts that since the Complaint alleges a statutory violation of the duty to not interfere, discriminate, or retaliate under the CMPA, PERB has jurisdiction over this case.¹⁹

Additionally, DLCP argues that AFSCME has failed to state a claim for which relief may be granted, as the Complaint does not allege facts that would constitute a violation of the CMPA.²⁰ DLCP alleges that AFSCME has failed to state a *prima facie* case of interference, contending AFSCME has failed to specify what actions DLCP took that interfered with the Grievant's rights.²¹ DLCP also alleges that AFSCME has failed to state a *prima facie* case of discrimination, as the Union does not plead any facts demonstrating discrimination or discouragement of union membership.²² Lastly, DLCP argues that AFSCME has failed to state a *prima facie* case of retaliation, asserting the Union has not alleged any nonconclusory allegations that the challenged action was in response to protected activity.²³

Regarding the claim of interference under D.C. Official Code § 1-617.04(a)(1), the Board has stated that the proper test to apply is "whether the conduct in question had a reasonable tendency in the totality of circumstances to interfere with, restrain, or coerce the employee."²⁴ The

¹² Complaint at 3.

¹³ Complaint at 3.

¹⁴ Complaint at 4.

¹⁵ Complaint at 4.

¹⁶ Answer at 4.

¹⁷ Answer at 3.

¹⁸ Answer at 4.

¹⁹ Complaint at 1-2.

²⁰ Answer at 4.

²¹ Answer at 5.

²² Answer at 7.

²³ Answer at 8.

²⁴ *FOP/D.C. Housing Lab. Committee v. D.C.- Hous. Auth.*, Slip Op. No. 1410, PERB Case No. 11-U-23 (2013).

“standard is satisfied where, *inter alia*, a statement explicitly links an employee’s protected activity with treatment adverse to the employee’s interests.”²⁵ In the instant case, AFSCME has not alleged any coercive conduct by DLCP and has not alleged the Agency suggested any consequences for engaging in protected union activity. While DLCP did issue the Advanced Notice shortly after the Grievant contacted her union representative regarding her paychecks, she had also been under investigation for years and had been on administrative leave since October 2024. AFSCME has not asserted that DLCP coerced or interfered with the Grievant’s protected activity. Regarding the assertion of discrimination under § 1-617.04(a)(3), the Board finds AFSCME has not alleged facts which indicate that the Agency discriminated against the Grievant due to her protected union activity.

Turning to the retaliation allegation, the Board has adopted the National Labor Relations Board’s *Wright Line* Test to determine whether an employee’s protected union activity was the motivating factor for an adverse action.²⁶ To establish a *prima facie* case of retaliation for union activity, a complainant must show that: (1) an employee engaged in protected union activity; (2) the employer knew about the employee’s protected union activity; (3) the employer had anti-union animus or retaliatory animus; and (4) the employer took an adverse employment action against the employee as a result.²⁷ If these elements are met, the burden shifts to the employer to rebut the inference of retaliation by producing evidence that would support the alleged action taken against the employee.²⁸

The instant Complaint alleges that the Grievant raised a payroll issue with her union representative, and that two days later she received the Advanced Notice, proposing her removal. The Board finds that the Grievant did, indeed, engage in protected union activity and that DLCP knew of this protected activity on November 13, 2025, after the Union representative emailed the Agency regarding the payment issue. However, the Board has determined that while the Grievant was served with the Advanced Notice only one week later, the pleadings do not provide information indicating anti-union or retaliatory animus from DLCP. Instead, the undisputed facts show a timeline of the FBI and OIG’s ongoing investigation into the Grievant’s job performance that indicates she was placed on administrative leave pending the results of the investigation. The investigation had been pending for over a year at the time she received the notice, and she had already been on administrative leave for over a year. The Board finds no evidence of anti-union or retaliatory animus in DLCP’s issuance of the Advanced Notice. Thus, the retaliation allegation lacks merit.

²⁵ *FOP/MPD Lab. Comm. v. MPD*, Slip Op. No. 1515 at 8, PERB Case No. 14-U-10 (2015) (adopting FLRA interference standard from *FAA v. NATCA*, 64 FLRA 365 (December 31, 2009)).

²⁶ *Wright Line, A Div. of Wright Line, Inc.*, 251 NLRB 1083, 1089 (1980).

²⁷ *Doctors Council of the District of Columbia v. D.C. Commission on Mental Health Services*, 47 D.C. Reg. 7568, Slip Op. No. 636 at p. 3, PERB Case No. 99-U-06 (2000); *see also D.C. Nurses Association v. D.C. Health and Hospitals Public Benefit Corporation* 46 D.C. Reg 6271, Slip Op. No. 583, PERB Case No. 98-U-07 (1999).

²⁸ *Wright Line, A Div. of Wright Line, Inc.*, 251 NLRB at 1089.

III. Conclusion

The Board finds that DLCP did not violate D.C. Official Code §§ 1-617.04(a)(1), (a)(3), and (a)(4) of the CMPA.

ORDER

IT IS HEREBY ORDERED THAT:

1. This matter is dismissed in its entirety; and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Peter Winkler and Members Mary Anne Gibbons, Renee Bowser, and Douglas Warshof.

April 17, 2026

Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision file an appeal.