Government of the District of Columbia
Public Employee Relations Board

In the Matter of: American Federation of Government Employees, Local 1000, Complainant, v. District of Columbia, Department of Employment Services, Respondents.	PERB Case No. 10-U-54 Opinion No. 1323

DECISION AND ORDER

I. Statement of the Case

This case involves an Unfair Labor Practice Complaint ("Complaint") filed by the American Federation of Government Employees, Local 1000 ("AFGE", "Union" or "Complainant") against the District of Columbia Department of Employment Services ("DOES", "Agency" or "Respondent"). AFGE contends that DOES has failed to bargain in good faith and is in continuous and ongoing violation of D.C. Code § 1-617.04 (a) (1), (3) and (5), by refusing AFGE's request to establish a Joint Labor Management Committee to identify temporary and term employees within the DOES who performed permanent services.

DOES has filed an Answer asserting that: (1) the Complaint fails to state a cause of action; (2) the Board should dismiss the Complaint as untimely; and (3) asserts that the Complaint is moot.

The Union's Complaint and Agency's agency are before the Board for its disposition.

II. Discussion

The Union pleads the following facts in support of its Complaint:

3. The Complainant alleges that the Respondents are refusing to bargain collectively in good faith with the exclusive representative. The Complainant requested on several occasions to establish a Joint Labor Management Committee to identify temporary and term employees within the DOES who performed permanent services. The request was sent to the Respondent. The request to establish a Joint Labor Management Committee was ignored. Therefore, the Union views this unanswered request from the Complainant as a violation of the CMP A, D.C. Code 1-617.04 (a) (1) (3) and (5). This violation is continuous and ongoing.

4. On September 10, 2009, the Complainant sent an email to Respondent . . . requesting the agency to establish a joint Labor-Management committee to identify Temporary and Term employees. Moreover, Article 20 of the Compensation Collective Bargaining Agreement between the District of Columbia Government and Compensations Units 1 & 2 was cited to support [(Richard Campbell's, President AFGE of Local 1000)] request.

5. On September 11, 2009, the Complainant sent an email to Ibrahim Koroma, Chief Financial Officer for DOES requesting information pertaining to Temporary and Term personnel employed by DOES. Moreover, the Complainant [provided] Mr. Koroma with a copy of the email sent to Mr. Walsh on September 10, 2009. Mr. Koroma replied *via* email on September 11, 2009, and instructed the complainant to forward [Mr. Campbell's] request to Ms. Jessica Saavedra, HR Team Lead, DOES. In return, the complainant complied and forwarded the information to Ms. Saavedra the same day sharing Mr. Koroma's email.

6. On November 4, 2009, AFGE Local 1000 listed the establishment of joint labor/management committee regarding conversion of temporary and term personnel as an agenda line item for the scheduled Labor-Management Meeting.

7. On March 15, 2010, the Complainant sent the Respondent a memorandum requesting a list of term and temporary personnel.

8. On March 17, 2010, the Complainant sent an information request email to the Respondent requesting budget information for each and every Program within the Department of Employment Services.

9. On April 01, 2010, AFGE Local 1000 sent Ms. Natasha Campbell, Director, Office of Labor Relations and Collective Bargaining an email requesting assistance in the matter of enforcing DOES to comply with Article 20 of the current Compensation Agreement as it pertains to temps and terms.

10. On April 5, 2010, the Complainant sent an email to Eric Scott, Chief of Staff, for the Department of Employment Services providing agenda items from the union for the April 7, 2010 Labor-Management meeting.

[11]. On May 7, 2010, the Complainant, sent a second information request to Director Walsh in regards to the budget for each Program in DOES and the number of employees and their status as it pertains to Temps and Terms.

[12]. On May 11, 2010, the Complainant sent the Respondent a follow-up email to its September 10, 2009 email regarding establishing a joint Labor-Management Committee.

13. On May 24, 2010, the Respondent acknowledged receipt of the Complainant's memorandum of May 11, 2010, and responded to the request for clarification on temporary and term personnel.

14. On June 10, 2010, Complainant responded to Respondent's May 24, 2010 memorandum. The Respondent continues to restrain, interfere, and coerce the Complainant and its members in exercising their rights guaranteed by the CMPA, which is a violation of D.C. Code Section 1-617.04 (a) (1), (3), and (5).

(Complaint at pgs. 2-4) (Citations and emphasis omitted).

As a remedy, the Union requests that the Board order as follows:

1. PERB issues a posting that the agency will bargain in good faith in the future.

2. That Complainant and Respondent meet and form a Joint Labor-Management Committee for the purpose of converting those employees who fall within the guidelines of the Compensation Collective Bargaining Agreement is converted to permanent status.

3. The Respondent reimburses the union for all attorney fees involving this case.

4. The Respondent comply with the terms outlined in the Compensation Collective Bargaining Agreement between the District of Columbia Government and Compensations Unit 1 and 2.

(Complaint at pgs. 4-5).

In response to the Complainant's allegations, the Respondent provided the following answers:

1. The Respondent admits, in part, the allegations contained in paragraph one of the Complaint as follows: The American Federation of Government Employees, Local 1000 (the Union) is a labor organization within the meaning of the District of Columbia Merit Personnel Act (CMPA). The address and telephone number of the Union is as indicated in paragraph one of the Complaint. The Respondent admits that Richard Campbell currently serves as the President of the Union. The Respondent is without information as to the meaning of "principal officer" within the Union and whether Mr. Campbell serves in that capacity.

2. The Respondent admits, in part, the allegations contained in paragraph two of the Complaint. The Respondent admits that DOES is an employer within the scope and meaning of the CMPA but denies that DOES has authority to negotiate and execute collective bargaining agreements with labor organizations concerning wages and other terms and conditions of employment. The principal office of DOES is as indicated in paragraph two of the Complaint. Joseph

Walsh currently serves as the Director of the Agency and his telephone number is as indicated in paragraph two of the Complaint.

3. The Respondent admits, in part, the allegations presented in paragraph three of the Complaint. The Respondent admits that the Complainant requested the establishment of a Joint Labor Management Committee to identify temporary and term employees within the DEOS who performed permanent services. The Respondents denies the allegation that Respondent refused to bargain collectively in good faith. Respondent denies that the Union's request to establish a Joint Labor Management Committee was ignored. The remaining allegations are legal conclusions for which no reply is necessary. To the extent a response is required, they are denied in their entirety.

4. The Respondent admits the allegations contained in paragraph four of the Complaint.

5. The Respondent admits the allegations contained in paragraph five of the Complaint.

6. The Respondent admits the allegations presented in paragraph six of the Complaint.

7. The Respondent admits the allegation presented in paragraph seven of the Complaint.

8. The Respondent admits the allegation presented in paragraph eight of the Complaint.

9. The Respondent admits in part the allegations presented in paragraph nine of the Complaint. Respondent admits that by email dated April 1, 2010, it requested that Ms. Campbell contact Mr. Walsh regarding Article 20 of the Compensation Agreement. All remaining allegations in paragraph nine are denied in [their] entirety.

10. The Respondent admits the allegation presented in the first paragraph ten of the Complaint.

11. The Respondent admits the allegation presented in the second numbered paragraph ten of the Complaint.

12. The Respondent admits the allegation presented in paragraph eleven of the Complaint.

13. The Respondent admits in part the allegations presented in paragraph thirteen of the Complaint. Respondent admits that, on May 24, 2010, Respondent acknowledged receipt of the Complainant's memorandum of May 11, 2010. Respondent denies requesting clarification from Complainant on temporary and term personnel.

14. The Respondent admits in part the allegations presented in paragraph fourteen of the Complaint. Respondent admits that on June 10, 2010, Complainant responded to Respondent's May 24, 2010, memorandum. The remaining allegations contained in paragraph fourteen of the Complaint are denied in their entirety.

15. The balance of the Complaint contains prayers for relief for which no reply is necessary. To the extent a response is required, the remaining allegations are denied in their entirety.

(Answer at pgs. 1-4).

Board Analysis

Complainant contends that the Respondent's actions in this matter are in violation of the CMPA, specifically D.C. Code § 1-617.04(a)(1), (3) and (5).[1] The Complaint alleges that

[1] D.C. Code § 1-617.04 provides, in pertinent part, that:

(a) The District, its agents, and representatives are prohibited from:

(1) Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;

(2) Dominating, interfering, or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to it, except that the District may permit employees to negotiate or confer with it during working hours without loss of time or pay;

(3) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, except as otherwise provided in this chapter;

Respondent has failed to respond to Complainant's requests to establish a joint committee to identify term and temporary employees at DOES. The allegations provide a litany of correspondences between the parties on the subject. Complainant's allegations do not, however, assert that the Respondent's communications amount to any refusal to participate in the establishment of a joint committee or that any of Respondent's responses evidenced bad faith.

The Board has also held that while a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged violations of the CMPA. 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 see *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); See also *Doctors' Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 DCR 1137, Slip Op. No. 437, PERB Case No. 95-U-10 (1995). Furthermore, 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 20*, 40 DCR 1751, Slip Op. No. 303, PERB Case No. 9l-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." *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 instant case, Complainant has failed to allege any facts that, if taken as true, amount to an unfair labor practice. The Board, therefore, finds that the Complainant has failed establish their case on the pleadings. Moreover, there are no disputed facts between the parties which would warrant processing this matter through a hearing.

In addition, the last communication from Respondent in the numbered allegations was dated May 24, 2010. (See Complaint Paragraph 13). A response from Complainant was alleged to have been transmitted on June 10, 2010. There is no indication that following the Complainant's June 10, 2010 response that the Respondents failed or refused to continue to participate in the parties' establishment of a joint committee. As a result, the Board finds that the Complainant has not established an ongoing and continuing violation of the CMPA. Even if Complainant alleged Respondents' May 24, 2010 communication to have evidenced a refusal to

---

(4) Discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony under this subchapter; or

(5) Refusing to bargain collectively in good faith with the exclusive representative.

bargain, the incident had occurred more than 120 from the date the Complaint was filed.[2] Pursuant to Board Rule 520.4, a complaint must be filed within 120 days after the date the incident was alleged to have occurred. As a result, the Board finds the Complaint to be untimely.

Therefore, in light of the reasons stated above, the Board:

(1) Dismisses the Complainant's Complaint for failure to allege facts, which if true, constitute a violation of the CMPA; and

(2) Dismisses the Complaint as untimely pursuant to Board Rules 520.4.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 1000s' Complaint is dismissed.

2. The Complaint is dismissed as untimely.

3. 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.

December 19, 2011

[2] Board Rule 520.4 - Timeliness Requirements

> Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order and Notice in PERB Case No. 10-U-54, Slip Opinion No. 1323 is being transmitted electronically and *via* U.S. Mail to the following parties on this the 27th day of August, 2012.

Richard Campbell
President
AFGE 1000
809 H Street, N.E. Room 400
Washington, D.C. 20002

richard2.campbell@dc.gov
afge1000@yahoo.com

EMAIL & U.S. MAIL

Nina McIntosh, Esq.
Attorney Advisor
D.C. Office of Labor Relations
and Collective Bargaining
441 4th Street, N.W.
Suite 820 North
Washington. D.C. 20001

nina.mcintosh@dc.gov
phyllis.kaiser-dark@dc.gov

EMAIL & U.S. MAIL

David B. Washington
Attorney Advisor