

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:)	
)	
District of Columbia Nurses Association,)	
)	
Complainant,)	
)	PERB Case No. 12-U-09
v.)	
)	Opinion No. 1314
)	
District of Columbia Department)	
of Mental Health,)	
)	
Respondents.)	
)	
)	

DECISION AND ORDER

I. Statement of the Case

This case involves an Unfair Labor Practice Complaint (“Complaint”) filed by the District of Columbia Nurses Association (“Complainant” or “DCNA”) against the District of Columbia Department of Mental Health (“Respondents” or “DMH”). DCNA alleges that DMH committed an unfair labor practice by refusing to provide information requested by the Union concerning DMH’s decision to implement a reduction in force involving the Union’s bargaining unit members. (Complaint at p. 2).

DMH did not file an answer in response to the Complaint.¹ Thus, the Union’s Complaint is before the Board for disposition.

¹ On December 8, 2001, DMH’s representative, the District of Columbia Office of Labor Relations and Collective Bargaining requested an extension to file an answer in the above captioned matter. The Board granted the request, providing the Respondent until December 16, 2011, to file an answer to the Complaint. No answer was submitted by the Respondent.

II. Discussion

DCNA asserts the following pertinent facts:

1. DCNA is a labor organization within the meaning of the D.C. Code § 1-[617.03]. DCNA is located at 5100 Wisconsin Avenue, NW, Suite 306, Washington, D.C. 20016 [telephone-(202) 244-2705]. The undersigned is the representative of DCNA for this matter.
2. The Respondent, DMH, is located at 609 H Street, NE, Washington, DC 20002. The Director of the DMH is Mr. Stephen Baron. The labor liaison contact for the DMH is Ms. Frankie Wheeler, Director of Labor Relations.
3. DCNA is the exclusive bargaining representative of all nonsupervisory, non-managerial registered nurses employed by the Agency.
4. On or about September 1 and September 6, 2011, DCNA requested information from the DMH regarding its decision to conduct a reduction in force. See Enclosures 1-2.
5. On or about September 9, 2011, DMH Director Stephen Baron advised DCNA that it was "preparing a response to this and your other requests." Enclosure 3.
6. To date, the DMH has failed to provide any document in response to DCNA's request for information.

(Complaint at pgs. 3-4).

Based on these factual allegations, DCNA contends that DMH has violated D.C. Code § 1-617.04(a)(1) and (5) by failing to provide the requested information. (Complaint at p. 2). As a remedy for the Respondent's alleged actions, DCNA requests that the Board issue an order directing that:

- (a) the Agency immediately provide the requested information described in the DCNA correspondence, dated September 1 and 6, 2011;
- (b) the Agency post appropriate notice of the violation of law in all areas where bargaining unit employees work; and

- (c) any and all other relief deemed appropriate by the PERB, including costs.

(Complaint at pgs. 2).

The Board has previously held that materials and information relevant and necessary to its duty as a bargaining unit representative must be provided upon request. (See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department, ___ DCR ___, Slip Op. No. 835, PERB Case No. 06-U-10 (2006)). The Board's precedent is that an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in: (1) processing of a grievance; (2) an arbitration proceeding; or (3) collective bargaining. See Id.; see also American Federation of Government Employees, Local 2741 v. District of Columbia Department of Parks and Recreation, 50 D.C.R. 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002); and see Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools, 54 D.C.R. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2002).

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. 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." 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, DCNA's assertion that it requested materials from DMH which it considered necessary and relevant to its duty as a bargaining unit representative is undisputed. On the record before the Board, DCNA has established that DMH's failure to provide the requested information constitutes an unfair labor practice in violation of the CMPA. Therefore, the Board grants DCNA's Complaint.

The Complainant has also requested that costs be awarded. D.C. Code § 1-617.13(d) provides that "[t]he Board shall have the authority to require the payment of reasonable costs incurred by a party to a dispute from the other party or parties as the Board may determine."

Further, the Board has articulated the “interest of justice” criteria in *AFSCME, D.C. Council 20, Local 2776 v. D.C. Department of Finance and Revenue*, 73 DCR 5658, Slip Op. No. 245 at pgs. 4-5, PERB Case No. 98-U-02 (1990), in which the Board addressed the criteria for determining whether, under certain circumstances, a party can be awarded costs.

First, any such award of costs necessarily assumes that the party to whom the payment is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part. Second, it is clear on the face of the statute that it is only those costs that are “reasonable” that may be ordered reimbursed. . . . Last, and this is the nub of the matter, we believe such an award must be shown to be in the interest of justice.

Just what characteristics of a case will warrant the finding that an award of costs will be in the interest of justice cannot be exhaustively catalogued. . . . What we can say here is that among the situations in which such an award *is* appropriate are those in which the losing party’s claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith and those in which a reasonably foreseeable result of the successfully challenged conduct is the undermining of the union amongst the employees for whom it is the exclusive representative.

(emphasis in the original).

In the present case, it is clear that the Agency failed to supply the information requested. Although the Union prevailed in this matter, there is insufficient evidence to establish that the Respondent’s actions were taken in bad faith. Consequently, the Board finds that an award of costs would not be in the interest of justice under the circumstances presented in this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Nurses Association Unfair Labor Practice Complaint is granted.
2. The District of Columbia Department of Mental Health is directed to provide the information requested and specified in the Complaint.
3. The District of Columbia Department of Mental Health shall cease and desist from interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by D.C. § 1-617, *et seq.*;

4. The District of Columbia Department of Mental Health shall cease and desist from Refusing to bargain collectively in good faith with the exclusive representative.
5. 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.

April 24, 2012

NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF MENTAL HEALTH ("DMH"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1314, PERB CASE NOS. 12-U-09 (JULY 26, 2012)

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered DMH to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 1314.

WE WILL cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA").

WE WILL cease and desist from refusing to bargain in good faith with the District of Columbia Nurses Association.

District of Columbia
Department of Mental Health

Date: _____ By: _____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

August 22, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-U-09, Slip Opinion No. 1314 was transmitted via U.S. Mail and e-mail to the following parties on this the 22nd day of August, 2012.

Deon C. Merene, Esq.
District of Columbia
Department of Health
609 H Street, N.E.
Washington, D.C. 20002

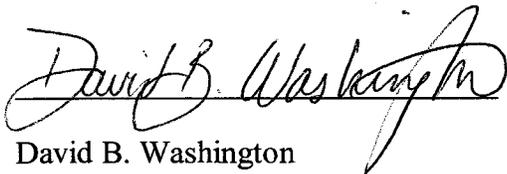
U.S. MAIL and E-MAIL

Deon.Merene@dc.gov

Edward J. Smith, Esq.
District of Columbia Nurses Association
5100 Wisconsin Ave. N.W.
Suite 306
Washington, D.C. 20016

U.S. MAIL and E-MAIL

esmith@dcna.org



David B. Washington
Attorney-Advisor