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

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| |) | |
| In the Matter of: |) | |
| |) | |
| Jerome Kennedy |) | |
| |) | |
| Complainant |) | PERB Case No. 18-U-27 |
| |) | |
| v. |) | Opinion No. 1664 |
| |) | |
| Department of Health of Behavioral Health |) | |
| |) | |
| Respondent |) | |
| |) | |

DECISION AND ORDER

Complainant Jerome Kennedy filed an unfair labor practice complaint (“Complaint”) against the Department of Behavioral Health (“DBH”). The Complaint was filed March 19, 2018, and amended April 3, 2018. For the reasons stated below, the Complaint is dismissed.

I. Facts

According to the Complaint the facts are as follows:

The Agency charges Mr. Kennedy with:

Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, specifically: Neglect of Duty: Failure to adhere to DBH’s Government and Personal Accountability Policy. . . .

On or about December 1, 2017, Mr. Kennedy had an accident in a government vehicle. He has over eleven (11) years of experience as a motor vehicle operator for the District of Columbia. Based on the materials included in the investigative report and his longevity as an employee, Mr. Kennedy does not have a history of improperly operating motor vehicles nor of causing accidents while operating a vehicle during the course of his employment.

Additionally, there were no injuries to any individuals including Mr. Kennedy, DBH consumers or pedestrians. According to the Table of Penalties in the District Personnel Manual, for a first offense, the DBH can impose a penalty ranging from a reprimand to a fifteen (15) day suspension. Although Mr. Kennedy did not follow District regulations and policy exactly, he did call his direct supervisor, Ms. Madden, to inform her of the accident the same day of the incident even though he did not leave a message. He also informed Mr. Hall, his colleague and motor vehicle operator, of the accident on the day of the incident.

Given Mr. Kennedy's work history and his understanding of the seriousness of his first infraction as a motor vehicle operator, AFGE Local 383 requests that the Agency issue a formal reprimand to be included in his personnel file for no longer than one (1) year. Alternatively, if the Agency decides that it must issue a suspension, it be for no longer than five (5) days.¹

The Complaint alleges a violation of section 1-617.04(a)(1) and (3) of the D.C. Official Code.²

On April 23, 2018, DBH filed its answer. DBH asserts that Kennedy failed to allege an unfair labor practice and that DBH legitimately exercised a management right by suspending Kennedy for fifteen days for neglect of duty by virtue of his failure to report the accident referred to in the Complaint. DBH submitted exhibits that included Kennedy's appeal of his suspension to the Office of Employee Appeals. DBH asks that the Complaint be dismissed for failure to state a claim upon which relief may be granted.

II. Discussion

A complaint must plead or assert allegations that, if proven, would establish the alleged statutory violations.³ The alleged statutory violations are “[i]nterfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter”⁴ and “[d]iscriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.”⁵

If proven, the allegations in the present Complaint would not establish either violation. The text of the Complaint is a reproduction of the February 12, 2018 response of AFGE, Local

¹ Complaint 4.

² Complaint 2.

³ *Karim v. D.C. Pub. Sch.*, 59 D.C. Reg. 12655, Slip Op. No. 1310 at 6, PERB Case No. 10-U-17 (2012).

⁴ D.C. Official Code § 1-617.04(a)(1). The subchapter referred to is Subchapter XVII, Labor-Management Relations. It includes a list of employee rights. D.C. Official Code § 1-617.06.

⁵ D.C. Official Code § 1-617.04(a)(3).

383's chief shop steward to the proposed suspension of Kennedy.⁶ It relates extenuating circumstances regarding the accident and recommends a penalty.

The Complaint contains no allegation that DBH interfered with the Complainant in exercise of rights under the CMPA or that the Agency took action against the Complainant because of union activity. Consequently, this case is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

April 26, 2018
Washington, D.C.

⁶ Answer Ex. 2 at 9-10.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Number 18-U-27 is being transmitted to the following parties on this the 7th day of May 2018.

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/s/ David S. McFadden
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