

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:)	
)	
Fraternal Order of Police (on behalf of David Crawley),)	
)	
Complainant,)	PERB Case No. 11-U-31
)	
v.)	Opinion No. 1127
)	
District of Columbia Department of Youth Rehabilitation Services Agency,)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

On May 6, 2011, the Fraternal Order of Police/DYRS Labor Committee ("Complainant", "FOP" or "Union") filed an Unfair Labor Practice Complaint ("Complaint") alleging that the Department of Youth Rehabilitation Services ("Respondent", "DYRS" or "Agency"), committed an unfair labor practice when it "entered into a [settlement agreement] in bad faith" knowing that "it could never fulfill the terms of the agreement." (Complaint at pgs. 2-3).¹

DYRS provides security, supervision, and residential support services for committed and detained juvenile offenders. FOP represents Youth Correctional Officers employed by DYRS. On February 25, 2011, FOP and DYRS entered into a Settlement Agreement ("Agreement") that

¹ The Respondent did not receive a copy of the Complaint. Furthermore, the service sheet filed with the Board did not contain the date of service to the Respondent. By letter dated June 30, 2011, the Executive Director advised the Complainant of a "deficiency regarding [the date of] service" and granted the Complainant ten (10) days to cure the defective service. The Complainant provided receipts showing that service was made by certified mail on June 30, 2011. The Respondent filed a timely Answer.

would provide financial compensation to David Crawley ("Officer Crawley") and return him to his former position as a Correctional Officer at DYRS. More than two months later on April 6, 2011, before Officer Crawley was reinstated, the D.C. Department of Human Resources notified Officer Crawley that he was ineligible to return to DYRS.

The Complainant asserts that at the time that DYRS entered into the settlement agreement, DYRS knew or should have known that Officer Crawley would not be returned to work. Therefore, FOP alleges that DYRS entered into the settlement agreement in bad faith because DYRS knew that it could never fulfill the terms of the agreement. (Complaint at p. 3).

Accordingly, FOP respectfully requests that PERB issue an order requiring DYRS to do the following: 1) reinstate Officer Crawley to his position or a substantially similar position no later than 30 calendar days from the date of the order; 2) award Officer Crawley back pay from the date he was finally removed from his position to the date he is reinstated no later than 30 calendar days from the date of the order; 3) award Officer Crawley any promotions to which he would have been entitled from the date of his removal to the date of his reinstatement no later than 30 calendar days of this decision; 4) expunge all evidence relating to the charges against Officer Crawley from his personnel file no later than 30 calendar days of the order; or 5) In the alternative, order DYRS to immediately report to arbitration. (Complaint at pgs. 3-4).

The Respondent filed an Answer denying that it negotiated a settlement agreement in bad faith. On August 31, 2009, Officer David Crawley was selected for random drug testing. DYRS gave him advance notice of removal from his position for failure to submit to drug testing. DYRS admits that on February 25, 2011, FOP and DYRS entered into a settlement agreement to reinstate Officer Crawley to the position of Youth Development Representative with back pay. However, on April 6, 2011, the D.C. Department of Human Resources (DCHR) determined the Grievant was ineligible to serve in this position. (See Answer at p. 3). D.C. Code Sec. 4-1501-01 (2001 ed.) requires persons in positions covered by the Child and Youth, Safety and Health Omnibus Act of 2004, to undergo criminal background checks as a condition of employment. After conducting a criminal background check, DCHR determined that the Officer Crawley was ineligible to provide services for a position covered under provisions of the Act. (See Answer at p. 3).

II. Discussion

The Board has 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, the 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). Here, the Complainant has not specified any provision of the CMPA that has been violated.

Assuming *arguendo*, that the Complainant's allegation of failure to bargain in good faith falls under D.C. Code Sec. 1-617.04(a)(1) and (5), the Board will analyze this matter in light of the CMPA. The facts presented are undisputed.² DYRS acknowledges that the parties signed a settlement agreement on February 25, 2011, and agreed to reinstatement and retroactive pay for Officer Crawley. However, DYRS has learned that hiring Officer Crawley is illegal and thus refuses to implement the reinstatement or back pay provisions of the settlement agreement. Here, D.C. Code Sec. 4-1501.01 (2001 ed.), requires persons in positions covered by the Child and Youth, Safety and Health Omnibus Act of 2004, to undergo criminal background checks as a condition of employment. After investigation, it was determined that hiring Officer Crawley would violate local law.

The Board has previously considered the question of whether the failure to implement an arbitrator's award or settlement agreement constitutes an unfair labor practice. In *American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority*, 46 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1996), the Board held for the first time that "when a party simply refuses or fails to implement an award or negotiated agreement where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith and, thereby, an unfair labor practice under the CMPA." (emphasis added) (*Id.*, at p. 3). In the present case, DYRS has learned that hiring Officer Crawley is illegal and thus refuses to implement the reinstatement or back pay provisions of the settlement agreement. DYRS' failure to comply with the terms of the negotiated settlement agreement is based on an undisputed determination that this action would be in violation of local law. The Board finds that DYRS has a legitimate reason for its ongoing failure to comply with the terms of the settlement and that this constitutes a genuine dispute over the terms of the settlement agreement. Thus, there is no basis upon which we can find that DYRS is bargaining in bad faith, nor that its actions violate the CMPA.³

² After reviewing the pleadings, we note that the material issues of fact and supporting documentary evidence are undisputed by the parties. As a result, the alleged violation does not turn on disputed material issues of fact, but rather on a question of law. Pursuant to Board Rule 520.10, this case can appropriately be decided on the pleadings. See *Ulysses S. Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476, PERB Case No. 96-U-16 (1996).

³ By reaching this conclusion, the Board does not reach the issue of whether the parties have legal recourse in any other forum concerning the terms of the contract they have entered.

Thus, we conclude that DYRS' actions do not constitute a violation of its duty to bargain in good faith under D.C. Code § 1-617.04(a)(5) (2001 ed.). The unfair labor practice complaint in this matter is hereby **DISMISSED**.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint filed by the Fraternal Order of Police on behalf of David Crawley against the Department of Youth and Rehabilitation Services is **DISMISSED**.
2. This Decision and Order is final pursuant to Board Rule 559.1.

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

September 14, 2011

CERTIFICATE OF SERVICE


This is to certify that the attached Decision and Order in PERB Case No.11-U-31 was transmitted via Fax and U.S. Mail to the following parties on this 14th day of September 2011.

Jonathan O'Neill, Esq..
Supervisory Attorney Advisor
Office of Labor Relations and
Collective Bargaining
441 4th Street, N.W., Suite 820 North
Washington, D.C. 20001

FAX AND U.S. MAIL

Alan Mitchell, Esq.
Ardra M. O'Neal, Esq.
The O'Neal Firm, LLP
700 12th Street, N.W., Suite 700
Washington, D.C. 20005

FAX AND U.S. MAIL


Sheryl V. Harrington
Secretary
