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

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In the Matter of:	)	
	)	
Monica Brokenborough	)	
	)	
Complainant	)	PERB Case No. 18-U-10
	)	
v.	)	Opinion No. 1666
	)	
District of Columbia Public Schools	)	
	)	
Respondent	)	

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**DECISION AND ORDER**

**I. Introduction**

On December 26, 2017, the Complainant, Monica Brokenborough, *pro se*, filed this unfair labor practice complaint (“Complaint”). The Complaint alleges that District of Columbia Public Schools (“Respondent”) violated section 1-617.04(a)(1), (3), and (4) of the D.C. Official Code by delaying its response to the grievance filed on her behalf by the Washington Teachers’ Union (“WTU”). The Complaint also alleges that the Respondent violated the parties’ collective bargaining agreement, the District of Columbia Municipal Regulations, and the District of Columbia Whistleblower Protections Act by terminating the Complainant in retaliation for her union activity. In an answer filed on January 31, 2018, the Respondent denies that it violated section 1-617.04(a)(1), (3), and (4) of the D.C. Official Code and moves to dismiss the Complaint. The Respondent further asserts that the Complaint does not allege violations of the Comprehensive Merit Personnel Act (“CMPA”) and that the allegations should be addressed through the parties’ grievance and arbitration process.

## II. Facts

The material facts are undisputed by the parties. From August 2015, until her termination in June 2017, the Complainant was employed by the Respondent as a teacher.<sup>1</sup> On August 28, 2017, WTU filed a Step 1, Stage 3 grievance on the Complainant's behalf.<sup>2</sup> The collective bargaining agreement between WTU and the Respondent provides that the Respondent shall meet with a teacher and/or a WTU representative within 10 school days after a grievance reaches Step 1, Stage 3.<sup>3</sup> The Respondent failed to meet with a WTU representative to resolve the Complainant's Step 1, Stage 3 grievance within this time frame.<sup>4</sup> The Respondent also failed to respond to WTU's emails of October 11, 2017 and October 31, 2017, requesting a response to its Step 1, Stage 3 grievance.<sup>5</sup> Based on the aforementioned facts, the Board finds that only legal issues remain, and the alleged violations can be appropriately decided on the pleadings pursuant to Board Rule 520.10.

For the reasons explained herein, the Board finds that the Complainant has not alleged timely violations of the CMPA and has failed to state a claim under section 1-617.04(a)(1), (3), and (4) of the D.C. Official Code. Therefore, the Complaint is dismissed.

## III. Analysis

Generally, a complainant must assert allegations that, if proven, would establish the alleged statutory violations made in the complaint.<sup>6</sup> Under Board Rule 520.11, "the party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence."<sup>7</sup> Section 1-617.04(a)(1), (3), and (4) of the D.C. Official Code prohibits the District, its agents, and representatives from:

- (1) Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;
- (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; and
- (4) Discharging or otherwise taking reprisal against an employee because she has signed an affidavit, petition, or complaint or give any information or testimony under this subchapter.<sup>8</sup>

The Board finds, with respect to the Respondent's alleged refusal to respond to the Step 1, Stage 3 grievance filed by WTU, that the Complainant does not allege a violation of any of the

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<sup>1</sup> Complaint at 2, 5; Answer at 2; Answer Exhibit 4.

<sup>2</sup> Complaint at 3; Complaint Exhibit 2.

<sup>3</sup> Complaint at 3; Complaint Exhibit 3 at 38.

<sup>4</sup> Complaint at 4; Complaint Exhibits 4 and 5.

<sup>5</sup> Complainant's Exhibits 4 and 5.

<sup>6</sup> *Washington Teachers' Union, Local 6, Am. Fed'n of Teachers v. D.C. Pub. Sch.*, 64 D.C. Reg. 4885, Slip Op. 1611 at 1, PERB Case No. 16-U-32 (2017).

<sup>7</sup> *Id.*

<sup>8</sup> D.C. Official Code § 1-617.04(a)(1), (3), and (4).

rights proscribed under section 1-617.04(a) of the D.C. Official Code. The Respondent's obligation to meet with a WTU representative during various stages of the grievance procedure is dictated by the parties' collective bargaining agreement and not by the CMPA.

The Board has long held that it lacks the authority to interpret the terms of collective bargaining agreements to determine the merits of a cause of action.<sup>9</sup> Therefore, the Board lacks jurisdiction to resolve the Respondent's alleged refusal to respond to the Complainant's grievance.

The Board further finds that the remaining allegations in the Complaint are untimely. Board Rule 520.4 requires that an unfair labor practice complaint be filed no later than 120 days after the date on which the alleged violation occurred.<sup>10</sup> Accordingly, the Complainant's allegations that the Respondent: (1) terminated the Complainant in June 2017 due to her union activity;<sup>11</sup> (2) did not provide the Complainant with a copy of her excess justification in June 2017;<sup>12</sup> (3) unlawfully deducted the Complainant's paycheck in September 2016;<sup>13</sup> (4) humiliated the Complainant in front of the Ballou High School staff in March 2017;<sup>14</sup> (5) "communicated to the Complainant via a raised voice tone in the presence of students, alumni, parents, and colleagues" in May 2017;<sup>15</sup> terminated the Complainant for reporting various "abuse[s] of authority" to DCPS and state officials during the 2016-2016 school year;<sup>16</sup> and terminated the Complainant for being quoted in the Washington Post in December 2016 and May 2017 are untimely.<sup>17</sup> The complaint in this case was filed on December 26, 2017; more than 120 days after the Complainant knew or should have known of the acts giving rise to the Complaint. Therefore, the foregoing allegations are untimely under Board Rule 520.4.

#### **IV. Conclusion**

In view of the fact that the Complainant has not alleged timely violations of the CMPA and has failed to state a claim under section 1-617.04(a)(1), (3), and (4) of the D.C. Official Code, the Complaint is dismissed.

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<sup>9</sup> See *Am. Fed'n of Gov't Emp., Local 3721 v. D.C. Fire Dep't*, 39 D.C. Reg. 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1991).

<sup>10</sup> Pub. Emp. Relations Bd. Rule 520.4

<sup>11</sup> Complaint at 6-7.

<sup>12</sup> Complaint at 7.

<sup>13</sup> Complaint at 8.

<sup>14</sup> Complaint at 8.

<sup>15</sup> Complaint at 9.

<sup>16</sup> Complaint at 9.

<sup>17</sup> Complaint at 9.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. Monica Brokenborough's Complaint is dismissed with prejudice; 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 unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

April 26, 2018

Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 18-U-10, Op. No. 1666 was sent by File and ServeXpress to the following parties on this the 8th day of May, 2018.

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/s/ Alexis Anderson  
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PERB Staff Attorney