Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20 and Local 2091,	
Complainant,	PERB Case No. 14-U-03
v.	Opinion No. 1450
District of Columbia Department of Public Works,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant American Federation of State, County and Municipal Employees, District Council 20 and Local 2091 ("Union," "AFSCME," or "Complainant") filed the above-captioned Unfair Labor Practice Complaint ("Complaint"), against Respondent District of Columbia Department of Public Works ("Agency," "DPW," or "Respondent") for alleged violations of sections 1-617.04(a)(1) and (5) of the Comprehensive Merit Protection Act ("CMPA"). Specifically, the Union asserts that the Agency unilaterally implemented a production quota for Solid Waste Inspectors. (Complaint at 3). Respondent filed an Answer ("Answer") in which it denied the alleged violations and raised the following affirmative defenses:

(1) AFSCME failed to serve the Agency;
(2) There is an insufficiency of service of process;
(3) AFSCME fails to state a claim upon which relief can be granted; and
(4) Some of the Union's allegations are untimely.

(Answer at 1-2)[1].

II. Discussion

A. Background

AFSCME is the exclusive bargaining representative of a unit of DPW employees including Solid Waste Inspectors within the Agency's Solid Waste Education and Enforcement Program ("SWEEP"). (Complaint at 1; Answer at 2). Solid Waste Inspectors in the SWEEP are assigned the duty to issue notices of violations ("NOV") to the responsible individual or entity when a Solid Waste Inspector finds a violation of the District of Columbia's sanitation regulations. (Complaint at 2; Answer at 2). Abating conditions are not grounds for the dismissal of the NOV. *Id.*

AFSCME asserts that in December 2013, DPW began issuing performance evaluations to Solid Waste Inspectors in which employees were held to a production quota of daily or monthly NOV issuances, and that the Solid Waste Inspectors' performance ratings were tied in part to the number of NOVs issued during the measurement period. (Complaint at 2). The Union further alleges that certain Solid Waste Inspectors' performance ratings were adversely affected if they did not meet the production quota established by DPW with respect to NOV issuances, and that in certain instances, Solid Waste Inspectors were faulted for failing to issue at least five NOVs per day or 105 NOVs per month. (Complaint at 2). AFSCME states that the Agency did not engage in bargaining before implementing a production quota on the issuance of NOVs, nor does the parties' working conditions agreement provide for such a quota. *Id.* AFSCME contends that in the past, DPW has publicly denied imposing a production quota for NOVs. Further, the Union asserts that prior to the imposition of the production quota, the Agency held a longstanding past practice of emphasizing community education over fines, and issuing warnings rather than NOVs. (Complaint at 3). AFSCME contends that when evaluating Solid Waste Inspectors, DPW does not consider the issuance of a warning as sufficient to fulfill the NOV production quota. *Id.* Additionally, the Union states that SWEEP is not officially designated as a revenue generating program, but that Solid Waste Instructors have been told by Agency officials that they must "pay for themselves" by issuing NOVs. (Complaint at 3). AFSCME asserts that the implementation of a production quota is a mandatory subject of bargaining. *Id.*

The Agency denies each of the Union's allegations in the preceding paragraph, and asserts that DPW does not maintain a production quota for issuance of NOVs by Solid Waste Inspectors in the SWEEP. (Answer at 2-3).

B. Agency's Affirmative Defenses

In its first two affirmative defenses, the Agency states that the Union "completely failed to serve the Respondent," and that the Agency became aware of the instant case through a letter from the Board received on December 27, 2013. (Answer at 1). Additionally, "[t]he letter from

[1] The Answer does not contain page numbers, and repeats paragraph numbers. Citations to the Answer will include page numbers as if the document were consecutively paginated.

[the Board] occurred some eight or nine days after the Union filed the case and wrongfully stated it had served Director William O. Howland." *Id.*

The certificate of service attached to the Complaint states that Director William O. Howland of DPW was served "electronically and by mail" with the Complaint and its attachments on December 18, 2013, at:

2000 14th Street, NW
Washington, DC 20009

(Complaint at 5). It is unclear how Director Howland was served "electronically"; the transaction report from File & ServeXpress, the Board's e-filing and service program, indicates that the Complaint and attachments were electronically filed with the Board but not served on other parties via File & ServeXpress[2]. However, the Board permits an initial pleading to be served via U.S. Mail, and the address indicated on the Complaint's certificate of service is the address publicly listed for the Agency. (www.dpw.dc.gov; accessed January 14, 2014). Additionally, this is the address used by the Board for its December 23, 2013, letter, which was received by the Agency on December 27, 2013. (Answer at 1). Thus, under these specific circumstances, the Board cannot conclude that service of the Complaint was insufficient.

Next, the Agency asserts that the Union has failed to state a claim upon which relief can be granted. (Answer at 1). While a complainant need not prove his or her case on the pleadings, he or she must plead or assert allegations that, if proven, would establish the alleged violations of the CMPA. *See Dade v. Nat'l Association of Government Employees, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996). If the record indicates that the allegations do concern violations of the CMPA, then the Board has jurisdiction over those allegations and can grant relief accordingly if they are proven. *See Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, 60 D.C. Reg. 9212, Slip Op. No. 1391 at p. 22, PERB Case Nos. 09-U-52 and 09-U-53 (2013). In the instant case, the Union has alleged the unilateral imposition of a production quota system impacting terms and conditions of employment which, if proven, may establish a violation of D.C. Code § 1-617.04(a)(1) and (5). Therefore, the Board cannot conclude that the Union has failed to state a claim upon which relief can be granted.

Finally, the Agency contends that some of AFSCME's allegations, if valid, would be time-barred. (Answer at 2). Board Rule 520.4 states that unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred. The 120-day time period for filing a complaint begins when a complainant knew or should have known of the acts giving rise to the violation. *Pitt v. D.C. Dep't of Corrections, et al.*, 59 D.C. Reg. 5554, Slip Op. No. 998, PERB Case No. 09-U-06 (2009). In the instant case, the earliest date included in the Union's allegations is "December of 2013," at which time the Union contends the Agency

[2] The File & ServeXpress system does not permit e-service until a respondent has entered an appearance in a particular case. For initial pleadings, the respondent or respondent's representative has not yet entered an appearance, and thus can generally not be served via File & ServeXpress. For this reason, the Board permits alternate methods of service of the initial pleading only, including via U.S. Mail.

began issuing performance evaluations holding bargaining unit employees to a production quota for NOV issuances. (Complaint at 2). The Complaint was filed on December 19, 2013, which is within the 120-day time period required by Board Rule 520.4. Therefore, this affirmative defense is dismissed.

C. Analysis

In the instant case, the Agency disputes almost all of the material facts alleged by the Union. (Answer at 1-3). Notably, the parties disagree on whether a performance quota for NOV issuances exists, whether certain Solid Waste Inspectors were adversely affected in their performance evaluations for failing to meet the production quota, whether the Agency has previously denied imposing a production quota, and whether Agency officials informed Solid Waste Inspectors that they must "pay for themselves in NOVs issued." (Complaint at 2-3; Answer at 2-3). Where the parties dispute material issues of fact which cannot be reconciled by a review of the pleadings alone, the Board must refer the matter to an unfair labor practice hearing to develop a factual record and make appropriate recommendations. *See Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, 59 D.C. Reg. 5957, Slip Op. No. 999 at p. 9-10, PERB Case No. 09-U-52 (2009); *see also* Board Rule 520.9, 520.10. Therefore, this matter will continue to be processed through an unfair labor practice hearing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Executive Director shall refer the Unfair Labor Practice Complaint to a Hearing Examiner to develop a factual record and present recommendations in accordance with said record.

2. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.

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.

January 24, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-U-03 was transmitted via File & ServeXpress to the following parties on this the 24th day of January, 2014.

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