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Government of the District of Columbia

Public Employee Relations Board

_____)	
In the Matter of:)	
)	
American Federation of Government)	
Employees, AFL-CIO, Local 631,)	PERB Case No. 10-U-51
)	
Complainants,)	Opinion No. 1110
)	
v.)	
)	Motion to Dismiss
District of Columbia Water and Sewer)	
Authority,)	
Respondent.)	
)	
_____)	

DECISION AND ORDER

I. Statement of the Case

American Federation of Government Employees, AFL-CIO, Local 631 ("Complainant", "Union" or "Local 631") filed an "Unfair Labor Practice Charge" ("Complaint") against the District of Columbia Water and Sewer Authority ("Respondent", "WASA" or "Agency"). The Complainants are alleging that the Respondent has violated D.C. Code § 1-617.04(a)(1) through (5) and § 1-617.11(a) of the Comprehensive Merit Personnel Act ("CMPA"). (See Complaint at p. 1).

WASA filed an Answer to the Unfair Labor Practice Complaint and Motion to Dismiss ("Answer" and "Motion") asserting affirmative defenses against, and denying any violation of, the alleged violations of the CMPA set forth in the Complaint, and requests that the Board dismiss the Complaint. (See Answer at pgs. 1-8). In addition, the Union filed a Response to [Respondent's] Motion to Dismiss ("Opposition"). The Union's Complaint, WASA's Answer and Motion, and the Union's Opposition are before the Board for disposition.

II. Discussion

In support of its Complaint, the Union alleges the following facts:

4. On October 2, 2008, Local 631 and DC Water entered into a Collective Bargaining Agreement for Working Conditions. Article 12, Section (H)(1)-(3) required the establishment of a Safety Committee to identify and resolve any and all safety issues, with one representative from each of the DC Water Unions and an equal number of DC Water managers. Safety Committee members may only be changed by agreement of both parties. Excerpt of the Working Conditions Agreement between American Federation of Government Employees, AFL-CIO Local 63 and the D.C. Water and Sewer Authority, Articles 11 and 12, Exhibit 2 hereto.
5. On or about July 15, 2010, the Union was notified [that] a "new Union Management Safety Committee organizational structure," was being reviewed and approved, July 14, 2010 e-mail, 6:06 p.m. Subject: BlueStat Follow-up Safety Operations, Exhibit 3 hereto. Prior to the July 14, 2010 e-mail, Local 631 received no notice from DC Water of any changes to be made to the Safety Committee.
6. On August 6, 2010, in accordance with Article 11, Sec. A and Article 12 of the parties' Collective Bargaining Agreement, Ex. 2, Local 631 requested a meeting with George Hawkins, the General Manager to discuss the reorganization of the Safety Committee, August 19, 2010 e-mail, 8:44 a.m., Subject: Request for meeting regarding Union Concerns about the Safety Committee, Exhibit 4 hereto.
7. On August 23, 2010, in violation of D.C. Code §§ 1-617.04(a) (1), (2) and (5) and 1-617.11, DCWater repudiated the parties' Collective Bargaining Agreement and refused to meet with Local 631, stating the Safety Committee was "a function of management outside the collective bargaining agreement" and asserted the Safety Committee was a "creation and function of management," August 23, 2010 e-mail, 9:10 a.m., Re: Request for meeting regarding Union Concerns about the Safety Committee, Exhibit 5 hereto.
8. On August 23, 2010, Local 631 renewed its request to meet with the DC Water General Manager and informed DC Water its refusal to meet was a unilateral breach of the parties, Collective Bargaining Agreement and a violation of Local 631's rights as the exclusive representative, August 23, 2010 e-mail, 1:40p.m., Re: Request for

meeting regarding Union concerns about the Safety Committee, Exhibit 6 hereto.

9. On August 23, 2010, Christopher Carew, Chief of Staff of DC Water, in violation of D.C. Code § 1-617.11(a), refused to schedule a meeting for Local 631 with the General Manager, August 23, 2010 e-mail, 2:46 p.m., Re: Request for meeting regarding Union Concerns about the Safety Committee, Exhibit 7 hereto.

10. On August 25, 2010, Local 631 requested a meeting with the General Manager, to discuss the status of a methanol spill. Local 631 had not been notified about the spill; was not provided with an incident report; and had learned no hazmat team was contacted to respond to the spill. DC Water declined to meet to discuss the methanol spill.

11. On February 3, 2010, Local 631 and all other Unions were notified the Quarterly Labor Management meetings would be scheduled for April 21, 2010, July 20, 2010, and October 14, 2010, as required by Article 11 of the Collective Bargaining Agreement, Ex. 2.

12. On May 4, 2010, DC Water through Christopher Carew, Chief of Staff, announced a new "Open Door" policy. No copy was provided to Local 631, May 4-5 Series of e-mails, RE: Quarterly Labor Management Meeting with Union Presidents, Exhibit 8 hereto.

13. From April 21, 2010, the Quarterly Labor Management Meeting with Union Presidents has been canceled or rescheduled by DC Water. No Labor Management meeting has been held with Union Presidents and requests for meetings with the General Manager have been denied. Series of e-mails July 29, 2010 to August 23, 2010, RE: Quarterly Labor Management Meeting, Exhibit 9 attached hereto and Ex. 7.

(Complaint at pgs. 2-4).

Based on these allegations, the Union contends that:

DC Water's actions, set forth in paragraphs four through thirteen, have prevented Local 631 from assuring that its bargaining unit members are protected from hazardous and dangerous substances and work environments and has interfered with and restrained the Union in bringing issues of concern on the implementation and administration of the Collective Bargaining Agreement and working conditions to the attention of the General Manager, in violation of D.C. Code §§ 1-617.04(a)(1), (2) and (5) and 1-617.11(a).

(Complaint at p. 4).

By way of relief, the Union requests that the Board:

- a. Issue an Order requiring DC Water to cease and desist any and all conduct and actions to make changes to the Safety Committee, without the agreement of AFGE Local 631 and to meet with AFGE Local 631 to resolve the parties' differences concerning the Safety Committee and denying the Union access to and meetings with the General Manager to address the implementation of the Collective Bargaining Agreement and other issues affecting the terms and conditions of employment;
- b. Require DC Water to post a notice, for ninety (90) days, at all work locations of bargaining unit members of Local 631, notifying employees that DC Water repudiated the parties' Collective Bargaining Agreement by unilaterally reorganizing and restructuring the Safety Committee; by failing to meet with Local 631, as the exclusive representative; and by engaging in acts of interference and restraint against Local 631, as the exclusive representative of the bargaining unit.
- c. Issue an Order requiring DC Water to pay all Local 631's attorney fees and costs for the processing of this Unfair Labor Practice Complaint.

(Complaint at pgs. 4-5).

Respondent denies the allegations set forth in the Complaint and, as a first defense, moves that the Board dismiss the Complaint, arguing that "[t]he Union's Charge fails to properly allege that any unfair labor practice has been committed or that any violation of the CMPA has occurred. For this reason the PERB lacks jurisdiction and the [Complaint] should be dismissed." (Answer at p. 2).

The Union's Opposition reiterates its position that WASA's actions constituted a repudiation of the parties' CBA. (See Opposition at pgs. 2-4).

Motion to Dismiss

While a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged statutory violations. 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 *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). Also, 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). Furthermore, when considering a motion to dismiss for failure to state a cause of action, the Board considers whether the alleged conduct may result in a violation of the CMPA. See *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).

"The validation, i.e. proof, of the alleged statutory violation is what proceedings before the Board are intended to determine." *Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO*, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

In the present case, the Complainant has pled allegations that WASA violated the CMPA by refusing to bargain in good faith and attempting to interfere, coerce and restrain officers and members of the Unions. In support of these allegations, the Union asserts that WASA failed to bargain on August 23 and August 25, 2010, and that "[f]rom April 21, 2010 the Quarterly Labor Management Meeting with Union Presidents has been canceled or rescheduled by DC Water. No Labor Management meeting has been held with Union Presidents and requests for meetings with the General Manager have been denied." (Complaint at p. 4). Furthermore, the Union alleges that these actions were in violation of D.C. Code §§ 1-617.04(a)(1)¹ and (5).² Specifically, the Union asserts that D.C. Code § 1-617.04(a)(5) provides that "[r]efusing to bargain collectively in good faith with the exclusive representative" is a violation of the CMPA. The Union also asserts that under D.C.

¹The Board notes that pursuant to the CMPA, management has an obligation to bargain collectively in good faith and employees have the right "[t]o engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative[.]" *American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921 v. District of Columbia Public Schools*, 42 DCR 5685, Slip Op. 339 at p. 3, PERB Case No. 92-U-08 (1992). Also, D.C. Code § 1-617.04(a)(5) (2001) provides that "[t]he District, its agents and representatives are prohibited from...[r]efusing to bargain collectively in good faith with the exclusive representative." Further, D.C. Code § 1-617.04(a)(5) (2001ed.) protects and enforces, respectively, these employee rights and employer obligations by making their violation an unfair labor practice.

²The Board notes that pursuant to the CMPA, management has an obligation to bargain collectively in good faith and employees have the right "[t]o engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative[.]" *American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921 v. District of Columbia Public Schools*, 42 DCR 5685, Slip Op. 339 at p. 3, PERB Case No. 92-U-08 (1992). Also, D.C. Code § 1-617.04(a)(5) (2001) provides that "[t]he District, its agents and representatives are prohibited from...[r]efusing to bargain collectively in good faith with the exclusive representative." Further, D.C. Code § 1-617.04(a)(5) (2001 ed.) protects and enforces, respectively, these employee rights and employer obligations by making their violation an unfair labor practice.

Code §1-617.04(a)(1) (2001 ed.), “[t]he District, its agents and representatives are prohibited from: . . . [i]nterfering, restraining or coercing any employees in the exercise of the rights guaranteed by this subchapter[.]”³

WASA has denied any violation of the CMPA set forth in the Complaint, stating that the Union incorrectly alleges that WASA refused to meet with the Union. WASA also argues that the Board has no jurisdiction over an alleged contractual violation. Therefore, WASA requests that the Board dismiss the Complaint.

In the present case, there are factual disputes concerning whether WASA refused to meet with the Union upon request. Whereas the Board cannot make a decision in this case on the pleadings alone, and in order to fully develop the record in this matter, the Board denies WASA’s Motion to Dismiss. Instead, this matter shall proceed to a Hearing Examiner to fully develop the record.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Water and Sewer Authority’s motion to dismiss is denied.
2. The Board’s Executive Director shall refer American Federation of Government Employees, AFL-CIO, Local 631’s Unfair Labor Practice Complaint to a Hearing Examiner utilizing an expedited hearing schedule. Thus, the Hearing Examiner will issue the report and recommendation within twenty-one (21) days after the closing arguments or the submission of briefs. Exceptions are due within ten (10) days after service of the report and recommendation and oppositions to the exceptions are due within five (5) days after service of the exceptions.
3. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
4. 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.

August 12, 2011

³“Employee rights under this subchapter are prescribed under D.C. Code [§1-617.06(a) and (b) (2001ed.)] and consist of the following: (1) [t]o organize a labor organization free from interference, restraint or coercion; (2) [t]o form, join or assist any labor organization; (3) [t]o bargain collectively through a representative of their own choosing . . . ; [and] (4) [t]o present a grievance at any time to his or her employer without the intervention of a labor organization[.]” *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks*, 45 DCR 5078, Slip Op. No. 553 at p. 2, PERB Case No. 98-U-03 (1998).

CERTIFICATE OF SERVICE

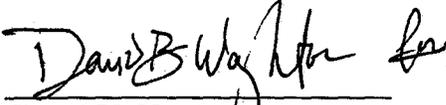
This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 10-U-51 are being transmitted via Fax and U.S. Mail to the following parties on this the 12th day of August, 2011.

Barbara D. Hutchinson, Esq.
7907 Powhatan Street
New Carrollton, MD 20784

FAX & U.S. MAIL

Kenneth S. Slaughter, Esq.
Brian M. Hudson, Esq.
Venable LLP
575 7th Street, NW
Washington, DC 20004-1601
Fax (202) 344-8300

FAX & U.S. MAIL



Sheryl V. Harrington
Secretary