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

In the Matter of:)	
)	
)	
Arthur Slade, Vice President)	
American Federation of State, County and)	
Municipal Employees, Local 2743)	
Complainant)	PERB Case No. 21-U-17
)	Opinion No. 1828
v.)	
)	
District of Columbia, Department of Insurance,)	
Securities and Banking)	
)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

On March 15, 2022, Arthur Slade (Complainant) filed an unfair labor practice complaint (Complaint) against the District of Columbia Department of Insurance, Securities and Banking (DISB).¹ The Complaint alleged that DISB retaliated against the Complainant for conducting union business, in violation of section 1-617.04(a)(4) of the D.C. Official Code, by improperly investigating a workplace harassment/bullying complaint made by another DISB employee.² Respondent DISB timely filed an answer denying any unlawful actions under the CMPA and further asserted affirmative defenses.

A hearing was held on the matter. Both parties submitted post hearing briefs. On November 3, 2022, the Hearing Examiner issued a Report and Recommendations (Report). The Complainant filed exceptions. DISB filed an opposition to the Complainant's exceptions.

For the reasons stated herein, the Board adopts the Hearing Examiner's Report recommending that the Complaint be dismissed in its entirety.

¹ The Complainant first filed a complaint on April 23, 2021. The Complainant filed an amended complaint on March 15, 2022.

² Complainant's Post Hearing Brief at 5; *see also* Initial Complaint at 4 (the amended complaint did not specify a legal cause of action).

II. Hearing Examiner's Report and Recommendations

The Hearing Examiner made the following factual findings. On October 2, 2020, DISB management verbally advised the Complainant that an allegation of workplace harassment and bullying had been made against him by a coworker.³ On November 17, 2020, DISB management informed the Complainant via email that the workplace complaint against him had been formalized and that interviews would be scheduled.⁴

On December 14, 2020, the Complainant sent an email request to three DISB management employees requesting a written copy of the workplace complaint.⁵ In response, a DISB management employee informed the Complainant that DISB could not provide a copy of the workplace complaint because it was a confidential Human Resources document.⁶ The management employee testified before the Hearing Examiner that she contacted D.C. Human Resources (DCHR) to inquire whether DISB could share the workplace complaint with the Complainant, whereupon she was advised that DISB could not.⁷

DISB referred the workplace complaint against the Complainant to an Independent Hearing Officer for resolution.⁸ On January 14, 2021, the Independent Hearing Officer corresponded with the Complainant and detailed the workplace complaint made against him.⁹ The Independent Hearing Officer conducted interviews with the Complainant and at least six other DISB employees during the course of the investigation.¹⁰ On May 4, 2021, the Independent Hearing Officer rendered a comprehensive decision and report that exonerated the Complainant with respect to the workplace harassment and bullying claim his coworker had lodged against him.¹¹ The Independent Hearing Officer recommended that no formal or informal action be taken against the Complainant, and that the workplace complaint be removed from the Complainant's personnel file.¹²

On May 27, 2021, DISB advised the Complainant that the allegations made against him had not been substantiated, that no disciplinary actions would be taken against the Complainant, and that DISB considered the matter closed.¹³ On July 7, 2022, DISB counsel emailed the Complainant and the Complainant's attorney a statement affirming that no record of the workplace

³ Report at 2.

⁴ Report at 3.

⁵ Report at 3.

⁶ Report at 3.

⁷ Report at 3.

⁸ Report at 3. DISB asserts that the Complainant filed a grievance with his union on DISB's handling of the workplace claim on December 30, 2020. DISB contends that the management employees initially investigating the workplace complaint against the Complainant recused themselves from the matter on or about January 14, 2021, because the Complainant's grievance included a retaliation claim against them. DISB states that the agency then appointed a DISB neutral attorney as Independent Hearing Officer to investigate the workplace complaint. *See* Respondent's Post Hearing Brief at 6, 15.

⁹ Report at 3.

¹⁰ Report at 4.

¹¹ Report at 4.

¹² Report at 4.

¹³ Report at 4.

complaint and resulting investigation would be reflected in the Complainant's personnel record.¹⁴ DISB further affirmed to the Complainant that posted job vacancies and subsequent job offers were strictly tied to qualifications and would not be related to the workplace complaint at issue.¹⁵ DISB also provided the Complainant with a redacted copy of the Independent Hearing Officer's investigative report.¹⁶

Based on the record, the Hearing Examiner determined that there was no factual or legal basis for the Complainant's unfair labor practice claim against DISB.¹⁷ The Hearing Examiner found that the Complainant's request for disciplinary action against DISB management employees was unsupported by credible evidence, applicable D.C. Code or PERB rules.¹⁸ For these reasons, the Hearing Examiner recommended that the Complaint be dismissed.¹⁹

III. Discussion

Pursuant to Board Rule 550.1, the Complainant has the burden of proving by a preponderance of evidence that DISB committed an unfair labor practice in violation of the CMPA.²⁰ The Board will affirm a hearing examiner's findings and recommendations if they are reasonable, supported by the record, and consistent with Board precedent.²¹

A. Complainant has not pleaded facts sufficient to support the claims of adverse action by DISB

Based on the record, the Complainant asserts three claims against DISB, each of which the Complainant argues is a violation of the CMPA²²—(1) DISB failed to timely supply the Complainant with a copy of the workplace complaint made against him; (2) DISB did not treat the Complainant with the same standard of conduct as the employee who filed the workplace complaint; and (3) DISB management employees engaged in reckless behavior and unethical conduct to defame the Complainant.²³

¹⁴ Report at 4-5.

¹⁵ Report at 4-5.

¹⁶ Report at 4-5.

¹⁷ Report at 5.

¹⁸ Report at 5.

¹⁹ Report at 5.

²⁰ See Board Rule 550.1. See also *District of Columbia Public Schools v. Washington Teachers' Union Local 6, American Federation of Teachers*, 68 D.C. Reg. 6745, Slip Op. No. 1792, PERB Case No. 20-U-29 (2021); *National Association of Government Employees v. District of Columbia Department of Forensic Sciences*, 68 D.C. Reg. 5067, Slip Op. No. 1782, PERB Case No. 20-U-08 (2021).

²¹ *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. No. 1668 at 6, PERB Case No. 15-U-28 (2018). See *AFGE, Local 1403 v. D.C. Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012).

²² The Complainant additionally challenged the timeliness of DISB's investigation of the workplace complaint against the Complainant as a CMPA violation in the Complaint and the Complainant's Post Hearing Brief. However, the Complainant did not dispute the Hearing Examiner's determination of the Complainant's full contentions, which does not include this claim, or re-assert this contention in the Complainant's Exceptions Brief. As such, the Board takes the claim as conceded and will not address it further.

²³ Report at 1-2.

The Complainant alleges that DISB failed to provide him with a written copy of the workplace complaint against him after it was formalized in writing.²⁴ However, the Hearing Examiner determined that DISB did not share the workplace complaint because DCHR informed DISB that it was a confidential HR document that could not be shared with the Complainant.²⁵

The Complainant also alleges that DISB “willfully and carelessly abandoned the responsibility to act equitably and act on the fact(s) of [the] investigation” in its response to the workplace complaint.²⁶ The Complainant alleges that there was an “assumption of liability on the Complainant” during DISB’s investigation of the workplace complaint.²⁷ However, the record reflects that the Complainant does not offer any evidence in support of this assertion.

Finally, the Complainant alleges that DISB management employees further retaliated against him and “continued and expanded the passive aggressive bullying,” and that “the system was used to bully [the Complainant].”²⁸ The Complainant argues that there is probable cause of reckless and unethical behavior by management employees, supported by “written electronic mail document(s)” and “witness testimony” during the PERB hearing.²⁹ However, the only specific support the Complainant cites to is witness testimony that a DISB management employee allegedly stated the Complainant “is arrogant or he’s obnoxious.”³⁰

Based on the Hearing Examiner’s Report and the record, the Board finds that the Complainant has not shown support for his claims against DISB by a preponderance of the evidence.

B. Complainant has not pleaded facts sufficient to show that DISB committed an Unfair Labor Practice

Even if the Complainant’s claims against DISB were established as true, the allegations against DISB do not constitute an unfair labor practice under section 1-617.04(a)(4). Section 1-617.04(a) of the D.C. Code prohibits the “District, its agents, and representatives” from engaging in unfair labor practices, including, in relevant part, taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony related to protected union activity.³¹

The Board has adopted the analysis set forth by the National Labor Relations Board in *Wright Line v. Lamoureux*,³² that a complaint must establish a prima facie case by showing that the complainant’s exercise of a protected right was a “motivating factor” in the employer’s disputed action.³³ To establish a prima facie case of retaliation, a complainant must establish that (1) the employee engaged in protected union activity; (2) the employer knew about the employee’s

²⁴ Complainant’s Post Hearing Brief at 2, 3.

²⁵ Report at 3.

²⁶ Complainant’s Post Hearing Brief at 4.

²⁷ Complainant’s Post Hearing Brief at 6.

²⁸ Exceptions at 2; Complaint at 1.

²⁹ Complainant’s Post Hearing Brief at 5.

³⁰ Complainant’s Post Hearing Brief at 5.

³¹ See D.C. Official Code § 1-617.04(a).

³² See *Wright Line*, 251 N.L.R.B. 1083 (1980).

³³ *Bagenstose v. D.C. Pub. Sch.*, 38 D.C. Reg. 4155, Slip Op. No. 270, PERB Case No. 88-U-33 and 88-U-34 (1991).

protected union activity; (3) there was anti-union animus or retaliatory animus by the employer; and (4) as a result, the employer took an adverse employment action against the employee.³⁴

The record fails to show that the Complainant alleges engaging in any protected union activity that would result in retaliation.³⁵ The record further shows that Complainant does not offer any nexus between DISB's handling of the workplace complaint and union activity, the protection of which would fall under section 1-617.04(a). Therefore, the Board finds that the Complainant did not produce evidence sufficient to establish a prima facie case.

Upon review of the record and the Hearing Examiner's findings and recommendations, the Board finds the Hearing Examiner's conclusion that there is no factual or legal basis for the Complainant's unfair labor practice claim against DISB to be reasonable, supported by the record, and consistent with Board precedent.

IV. Conclusion

The Board adopts the Hearing Examiner's findings, conclusions and recommendation, and finds that DISB did not commit an unfair labor practice in violation of D.C. Official Code § 1-617.04. Therefore, the Complaint is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed; 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 vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

January 19, 2023

Washington, D.C.

³⁴ *American Federation of Government Employees, Local 2978 v. District of Columbia Office of the Chief Medical Examiner*, 60 D.C. Reg. 5801, Slip Op. No. 1348 (Amended) at p. 4, PERB Case No. 09-U-62 (2013) (citing *Doctors Council of the District of Columbia v. District of Columbia Commission on Mental Health Services*, 47 D.C. Reg. 7568, Slip Op. No. 636 at p. 3, PERB Case No. 99-U-06 (2000); and *District of Columbia Nurses Association v. District of Columbia Health and Hospitals Public Benefit Corporation*, 46 D.C. Reg. 6271, Slip Op. No. 583, PERB Case No. 98-U-07 (1999)).

³⁵ It is unclear from the record what act(s) the Complainant engaged in that the Complainant alleges resulted in retaliation by DISB. The Complainant's response to the workplace complaint as a DISB employee would not fall under protected union activity. Any allegation of retaliation for the Complainant's acts related to the workplace complaint would be insufficient to establish a prima facie case.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration within fourteen (14) days, requesting the Board to reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provide thirty (30) days after a Board decision is issued to file an appeal.