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

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| In the Matter of: | ) | |
| District of Columbia Nurses Association, | ) | |
| Complainant, | ) | PERB Case No. 04-U-10 |
| v. | ) | Opinion No. 1248 |
| District of Columbia, Department of Mental Health, | ) | Unfair Labor Practice Complaint |
| Respondent. | ) | |

## DECISION AND ORDER

### I. Statement of the Case

The District of Columbia Nurses Association ("Complainant," "DCNA" or "Union") filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Department of Mental Health ("Respondent," "DMH," "Employer" or "Agency"). The Complaint alleges that the Respondent violated D.C. Code § 1-617.04(a)(1) and (5) by refusing to provide relevant information and failing to bargain in good faith. (See, Complaint at pgs. 1-2.)

The Respondent filed an Answer to the Unfair Labor Practice Complaint ("Answer"), denying that it failed to bargain in good faith or provide relevant information and asserting affirmative defenses. (See, Answer at pgs. 1-5). In addition, DMH filed a Motion to Dismiss the Complaint.

DCNA's Complaint, DMH's Answer and DMH's Motion are before the Board for consideration.

## II. Discussion

Complainant alleges that it is the exclusive bargaining representative for all "nonsupervisory, nonmanagerial resident nurses employed by the DMH." (Complaint at pg. 1). Complainant further alleges that on or about December 1, 2003, Mr. Elphick, Director, Access Crisis & Emergency Services, Community Services Agency, DMH, informed DCNA that management intended to change the performance responsibilities within the Comprehensive Psychiatric Emergency Program and that the changes would be implemented on January 19, 2004. (See, Complaint at pg. 2). Respondent admits this allegations. (See, Answer at pg. 2).

DCNA alleges that on or about December 4, 2003, DCNA formally demanded to bargain over the changes in performance responsibilities for bargaining unit employees and requested information relevant to the intended changes. (See, Complaint at pg. 2). DMH admits this allegations. (See, Answer at pg. 3).

Complainant asserts that on or about December 15, 2003, DMH informed DCNA that, due to scheduled leave, Mr. Elphick would address the Union's request for information and demand to bargain when he returned on or about December 18, 2003. (See, Complaint at pg. 2). Respondent admits that DMH notified DCNA on December 15, 2003, and that Mr. Elphick was on leave; notwithstanding, Respondent contends that DCNA was informed that Mr. Elphick and only that he would return from leave on December 15, 2003. (See, Answer at pg. 3).

The Union further alleged that as of January 7, 2004, DMH had failed to respond to DCNA's demands, in violation of D.C. Code § 1-617.4(a)(1) and (5). (See, Complaint at pg. 2). DCNA requested that PERB order DMH to: (1) "immediately rescind its decision to change position responsibilities within the Comprehensive Psychiatric Emergency Program;" (2) "provide a complete and full response to the DCNA's request for information, dated December 4, 2003;" (3) "bargain with DCNA, to the extent required by law, over its decision (or its impact and effects) to implement changes in position responsibilities affecting the working conditions of bargaining unit employees;" and (4)"post appropriate notice of the violation of law in areas where bargaining unit employees work." (Complaint at pg. 3).

DMH admits that as of January 7, 2004, the Agency had yet to respond to the Union's demand for bargaining or request for information. (See, Answer at pg. 3). Nonetheless, the Agency states:

> [O]n or about January 14, 2004, when Respondent actually received Complainant's complaint, Respondent had responded to Complainant's demand to bargain...Kevin Elphick, Director of Access, Crisis & Emergency Services, in a letter dated January 14, 2004, stated that, "I am given the understanding that upon receipt of the information, DCNA will attempt to schedule mutually agreeable dates for commencement of bargaining. Please forward (prior to the first meeting) a written explanation of your perception of the impact CPEP's move to become more self-sufficient will have on your bargaining unit members. Feel free to contact me at your earliest convenience.

(Answer at pgs. 3-4).

In addition, DMH asserts that the Complainant failed to allege facts which, if true would constitute refusing to bargain in good faith or interfering with, restraining, or coercing any employee in the exercise of their rights. (See, Answer at pgs. 4-5; see also, Motion at pgs. 1-4). The Respondent further maintains that it sufficiently notified all union officials of the changes in performance responsibilities and acknowledged Complainant's demand to bargain. (See, Answer at pg. 5; see also, Motion at pg. 4). The Agency asserts that it requested that DCNA submit a written explanation of the perceived affect or effect the changes will have on bargaining unit members and that Complainant has failed to provide Respondent with that information. (See, Answer at pg. 5). Moreover, DMH alleges that it is waiting for Complainant to apprise the Agency of their available dates and times so that bargaining may begin. (See, Answer at pg. 5).

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 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 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 63, 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). In addition, 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 of Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 24*, 40 DCR 1751, Slip Op. No. 303, PERB Case No.91-U-17 (1992). "Without the existence of such evidence, 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." *Goodline v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

The alleged facts of this case fail to demonstrate that DMH's conduct constituted an unfair labor practice and a violation of D.C. Code § 1-617.04(a)(1) and (5). In its Answer, the Agency asserts that by the time the Union submitted its Complaint to PERB, DMH had already responded to DCNA's request for information and demand for bargaining. Even if the Board disregards Respondent's assertion that it responded to DCNA's demand for bargaining and request for information, the allegations are still insufficient to maintain an unfair labor practice action. The Union filed its Complaint on January 7, 2004, twelve (12) days before the discussed changes were supposed to be implemented. The Respondent therefore had reasonable time to engage DCNA in bargaining, prior to the January 19, 2004 implementation date. The Board finds that the Union's filing of its Complaint was premature.[1]

[1] Although the Board finds that DMH did not commit an unfair labor practice in the instant case, it appears Respondent's effort in supplying the Union with the requested documents was wanting. Simply put, pursuant to D.C. Code § 1-617.04(a)(1) and (5), a party must bargain in good faith and provide documents relevant and necessary for conducting union business in a timely fashion. The Board holds all agencies to the D.C. Code § 1-617.04(a)(1) and (5) standard.

Therefore, the District of Columbia Nurses Association's Complaint is dismissed.

## ORDER

**IT IS HEREBY ORDERED THAT:**

1. The Complaint filed by the District of Columbia Nurses Association is dismissed.

2. 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.

February 9, 2011

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 04-U-10 was transmitted via Fax and U.S. Mail to the following parties on this the 9th day of February 2012.

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