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

In the Matter of:)	
)	
Wendell Allen,)	
)	PERB Case No. 11-U-45
Complainant,)	
)	Slip Op. No. 1416
v.)	
)	
Board of Trustees of the)	
University of the District of Columbia,)	
)	
Respondent.)	

Decision and Order

I. Statement of the Case

On July 14, 2011, Wendell Allen (“Complainant”), *pro se*, filed an Unfair Labor Practice Complaint (“Complaint”) against the Board of Trustees of the University of the District of Columbia (“UDC” or “Respondent”). On August 3, 2011, UDC filed an Answer (“Answer”).

II. Background

It is undisputed by the Parties that, on April 1, 2011, Respondent issued a “Leave Restriction” memorandum (“Leave Restriction”) to the Complainant. (Complaint at 2, Answer at 1). Complainant filed a grievance (“Grievance”), asserting that the Leave Restriction’s protocol violated the collective bargaining agreement (“CBA”) between UDC and the American Federation of State, County and Municipal Employees, Local 2087 (“Union”) and federal law. (Complaint at 2). Complainant asserts that UDC did not respond to the 1st Step Grievance. *Id.* UDC denies that it did not respond to the 1st Step Grievance, and asserts that “Respondent timely respondent (sic) to the grievance at all appropriate levels.” (Answer at 1). On June 20, 2011, Complainant alleges he submitted a letter to the Union concerning arbitration, and that the Union agreed to proceed to arbitration on the Grievance. (Complaint at 3)

Complainant alleges that as a result of engaging in the grievance process, UDC retaliated against Complainant by serving him with two (2) letters proposing suspensions of five (5) and twenty (20) days without pay and eighty-one (81) hours of Absence without Leave (“AWOL”). (Complaint at 3). Complainant asserts that UDC “is attempting to use the D.C. Personnel

Regulations on 'Leave Restriction,'" which the Complainant asserts is inapplicable to his employment. *Id.* Complainant asserts that the CBA controlled the protocol for his leave use. *Id.*

Respondent denies the allegations that it retaliated against the Complainant for engaging in the grievance process. (Answer at 1). In addition, Respondent asserts the following affirmative defenses: "Complainant fails to state a claim upon which relief can be granted"; Respondent categorically denies a failure to bargain in good faith pursuant to D.C. Code 1-617.04"; "Complainant failed to exhaust the administrative remedies"; "Complainant does not have jurisdiction to bring an Unfair Labor Practice Complaint"; and "UDC Respondents' action at all relevant time was in accordance with all applicable requirements of the Constitution of the United States, of federal law and the law of the District of Columbia".

III. Discussion

In order to determine the Board's jurisdiction, it is necessary to determine whether the allegations, if proven, would violate D.C. Code § 1-617.04(a). While a Complainant need not prove his case on the pleadings, allegations must be pled or asserted that, if proven, would establish the alleged statutory violations. See *Virginia Dade v. National 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); *Gregory Miller v. American Federation of Government Employees Local 631 v. D.C. Dep't of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); *Goodine v. FOP/DOC Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476 at p.3, PERB Case No. 96-U-16 (1996). 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 D.C. Reg. 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." *Goodine v. FOP/DOC Labor Committee*, 42 D.C. Reg. 5163; Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

When considering the pleading of a *pro se* complainant, the Board construes the claims liberally to determine whether a proper cause of action has been alleged and whether the complainant has requested proper relief. See *Osekre v. American Federation of State, County, and Municipal Employees Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (1998).

In the present case, the Complainant has asserted that the Respondent's actions violate the CBA and constituted retaliation in violation of the Comprehensive Merit Personnel Act ("CMPA"). (Complaint at 2-3). The Board "distinguishes between those obligations that are statutorily imposed under the CMPA and those that are contractually agreed upon between the parties." *American Federation of Government Employees, Local 872, NAGE R3-06 v. D.C. Water and Sewer Authority*, Slip Op. No. 1102 at p. 4, PERB Case No. 08-U-49 (2011); *American Federation of Government Employees, Local 2741 v. District of Columbia Department*

of Recreation and Parks, 50 D.C. Reg. 5049, Slip Op. No. 697 at p. 4, PERB Case No. 00-U-22 (2002). It is well established that the Board's "authority only extends to resolving statutorily based obligations under the CMPA." *Id.* Therefore, the Board examines the particular record of a matter to determine if the facts concern a violation of the CMPA, notwithstanding the characterization of the dispute in the complaint or the parties' disagreement over the application of the collective bargaining agreement. *Id.*

Whether or not Respondent's actions violated the CBA presents an issue for contract interpretation. "The Board lacks the authority to interpret the terms of contractual agreements to determine the merits of a cause of action that may properly be within our jurisdiction." See *American Federation of Government Employees, Local 2725 v. D.C. Housing Authority*, 46 D.C. Reg. 672, Slip Op. No. 488 at p. 2, PERB Case No. 96-U-19 (1996). Disputes concerning contract interpretation and alleged contract violations should be properly resolved through negotiated grievance procedures. See *American Federation of Government Employees v. D.C. Dep't of Corrections*, 48 D.C. Reg. 6549, Slip Op. No. 59 at p. 4, PERB Case No. 83-U-03 (1983).

Notwithstanding the Complainant's asserted contractual violations, an issue remains as to whether UDC's proposed five (5) and twenty (20) day suspensions and eighty-one (81) hours of Absence without Leave ("AWOL") were retaliation for Complainant filing the Grievance. The Board has found that the filing of a grievance is protected activity under the CMPA. *Rodriguez v. D.C. Metropolitan Police Department*, Slip Op. No. 906, PERB Case No. 06-U-38 (2008); *Teamsters Local Union No. 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO/CLC v. District of Columbia Public Schools*, 43 D.C. Reg. 5585, Slip Op. No. 375 at pgs. 3-4, PERB Case No. 93-U-11 (1996). The Board finds that the Complainant's claim of retaliation involves an alleged statutory violation and not a contractual violation. Therefore, the Board has jurisdiction over the Complainant's allegations concerning UDC's retaliation against Complainant for filing the Grievance.

As issues of fact exist concerning whether UDC violated the CMPA for the proposed suspensions and eighty-one (81) hours of AWOL as retaliation against the Complainant for filing the Grievance, the matter is best determined after the establishment of a factual record through an unfair labor practice hearing.

IV. Conclusion

In accordance with the Board's finding that the Parties' pleadings regarding retaliation present material disputes of fact, and pursuant to PERB Rule 520.9, the Board refers this matter to an unfair labor practice hearing to develop a factual record and make appropriate recommendations. Prior to hearing, the Complainant and the Agency are ordered to attend mandatory mediation, pursuant to Board Rule 558.4.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint will be referred to a hearing examiner for an unfair labor practice hearing. The dispute will be first submitted to the Board's mediation program to allow the Parties the opportunity to reach a settlement by negotiating with one another with the assistance of a Board appointed mediator.
2. The Parties will be contacted to schedule the mandatory mediation within seven (7) days of the issuance of this Decision and Order.
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.

September 3, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-45 was transmitted to the following Parties on this the 4th day of September, 2013:

Wendell Allen
23136 Basswood Hill Drive
Clarksburg, MD 20871

U.S. Mail

Andrea M. Bagwell
Deputy General Counsel
Office of the General Counsel
University of the District of Columbia
4200 Connecticut Ave., N.W.
Washington, D.C. 20008

U.S. Mail



Erica J. Balkum
Attorney-Advisor
Public Employee Relations Board
1100 4th Street, S.W.
Suite E630
Washington, D.C. 20024