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

In the Matter of:)	
)	
National Association of Government Employees)	
)	PERB Case No. 20-U-08
Petitioner)	
)	Opinion No. 1782
v.)	
)	
District of Columbia Department of)	
Forensic Sciences)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Statement of the Case

On January 1, 2020, the National Association of Government Employees (Union) filed an Unfair Labor Practice Complaint (Complaint) against the Respondent, District of Columbia Department of Forensic Sciences (DFS). The Union alleged that DFS violated the Comprehensive Merit Personnel Act (CMPA), D.C. Official Code §1-617.04(a)(2) and (3) by discriminating and retaliating against employees for their activities as representatives of the Union.¹ On January 20, 2020, DFS filed an Answer and then an Amended Answer on September 22, 2020.

PERB ordered a virtual hearing that was held on October 21, 2020, and November 6, 2020. On February 26, 2021, the Hearing Examiner issued a Report and Recommendations. The parties did not file Exceptions.

As discussed herein, the Board finds that the Hearing Examiner’s conclusions are reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board adopts the recommendations of the Hearing Examiner that DFS did not violate D.C. Official Code § 1-617.04(a)(2) and (3) and dismisses the Complaint in its entirety.

II. Hearing Examiner’s Report and Recommendations

A. Factual Findings

The Hearing Examiner made the following factual findings. DFS has two divisions focused on the collection and processing of evidence. DFS also has a public health division, which supports epidemiologists and requests from the Department of Health.² The Union’s president is assigned to the central evidence unit and the Union’s vice-president is assigned to the crime scene division and both are part of the collection and processing of evidence divisions.³ In or around 2010, the District implemented a moratorium on desk audits, reclassifications, and career ladder promotions.⁴ In late

¹ Complaint at 3.
² Report at 2.
³ Report at 2.
⁴ Report at 2.

2017 or early 2018, the moratorium was lifted. In February 2018, DFS implemented career ladder promotions, but did not implement all outstanding career ladder promotions.⁵ Specifically, DFS implemented career ladder promotions for the crime scene division, but not the central evidence unit.⁶ Union officials attempted to persuade DFS to implement the outstanding career ladder promotions for the crime scene division without success.⁷ In September 2018, the Union met with DFS and the Deputy Mayor. Thereafter, DFS processed the remaining career ladder promotions.⁸

Following the September 2018 meeting, DFS requested that the Department of Human Resources (DCHR) reexamine classifications and the career ladders at the agency. Based on that review, in August 2019 DCHR capped the career ladder progression of the crime scene analyst at grade 12, eliminating the promotion potential to grade 13.⁹ Further, DCHR capped the career ladder progression of the central evidence unit at grade 11, eliminating the promotion potential to grade 12.¹⁰ The promotion potential for the Union president and vice-president were impacted by these changes.¹¹

Also, in August 2019, the Director of DFS sent an email to management staff asking words to the effect of “is it polite to mention to them that they don’t have very good representation ... no men.”¹² The Union’s authorized representatives at DFS were all women.¹³ The Union was provided a copy of the email by a DFS management representative.¹⁴

B. Issues and Recommendations

The Hearing Examiner considered the Union’s allegations that DFS engaged in discriminatory conduct, including gender discrimination, race discrimination, and discrimination based on anti-union animus by (1) capping promotional opportunities to disproportionately impact union officers in retaliation for the Union’s participation in the September 2018 meeting with the Deputy Mayor¹⁵ and (2) making disparaging remarks about the Union causing interference with Union activities, making it less likely that managers and DFS leadership would work with Union officials.¹⁶

The Hearing Examiner found that the Union president and vice-president engaged in protected union activity by participating in the meeting with the Deputy Mayor concerning career ladder promotions.¹⁷ The Hearing Examiner also found that DCHR, not DFS, was “vested with the authority to make classification determinations.” The Hearing Examiner concluded that “the classification determinations made by DCHR concerning the career ladder promotional opportunities did not [*sic*] affect [only] the Union president and vice-president, and [that] there [was] nothing in the record to suggest DCHR harbored any anti-union animus in making these classification determinations.”¹⁸ The Hearing Examiner relied on *Jones v. D.C. Department of*

⁵ Report at 2-3.

⁶ Report at 3.

⁷ Report at 3.

⁸ Report at 3.

⁹ Report at 3.

¹⁰ Report at 3.

¹¹ Report at 3.

¹² Report at 3.

¹³ Report at 3.

¹⁴ Report at 3.

¹⁵ Report at 4.

¹⁶ Report at 4-5.

¹⁷ Report at 5.

¹⁸ Report at 6.

*Corrections*¹⁹ and found that there was no causal link between the Union's participation in the September 2018 meeting and the classification determinations made by DCHR the following year.²⁰

In addressing the DFS Director's comments to DFS managers, the Hearing Examiner posited that "commenting on the gender composition of the Union leadership may best be characterized as both misguided and ill advised, in that the composition of Union leadership is not within the purview of management."²¹ Nonetheless, the Hearing Examiner found no evidence in the record to support the Union's assertion that "the comments the Director made could make Agency managers and leadership less likely to work with union officials due to their perception that [the] Director [*sic*] is not fond of Union leadership."²²

The Hearing Examiner concluded that the record did not establish any violation of D.C. Official Code § 1-617.04(a)(2) and (3), and , recommended that the Complaint be dismissed.

III. Discussion

The Board will affirm a hearing examiner's findings and recommendations if they are reasonable, supported by the record, and consistent with Board precedent.²³

The Board adopts the Hearing Examiner's findings and conclusions that the Union did not prove the allegation that DFS capped career ladder grades in violation of D.C. Official Code § 1-617.04(a)(3). Pursuant to Board Rule 550.1, the Complainant is required to prove, by a preponderance of evidence, that DFS committed unfair labor practices in violation of the CMPA. The Board has adopted the analysis set forth by the National Labor Relations Board in *Wright Line*,²⁴ 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.²⁵ Under *Wright Line*, a prima facie case may be established by a showing that the complainant (1) engaged in protected union activity; (2) the employer knew about the employee's 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.²⁶

The Hearing Examiner found that the Union's president and vice-president engaged in protected activity.²⁷ However, the Hearing Examiner found no causal link between the protected activity and the alteration of the career ladder. The Hearing Examiner found that DFS did not make the classification and career ladder determinations, because those determinations are vested in DCHR. Consequently, even if DFS met the first three elements of the *Wright Line* test, DFS did not have the authority to change the employees' career ladder promotions. Additionally, the Hearing Examiner noted that nothing in the record showed that DCHR harbored anti-union animus in altering the career ladder nor were the Union representatives the only employees affected by DCHR's career ladder decisions.²⁸

Similarly, the Union's allegation that DFS violated D.C. Official Code § 1-617.04(a)(2) is unsupported by the record. The Board has held that an agency violates D.C. Official Code §1-

¹⁹ 32 DCR 3254, Slip Op. No. 81, PERB Case No. 84-U-04 (1984).

²⁰ Report at 5.

²¹ Report at 5.

²² Report at 5.

²³ *AFGE, Local 872 v. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

²⁴ *Wright Line*, 251 NLRB 1083 (1980).

²⁵ *Bagenstose v. DCPS*, 38 D.C. Reg. 4155, Slip Op. No. 270, PERB Case No. 88-U-33 and 88-U-34 (1991).

²⁶ *Doctors Council of D.C. v. D.C. Commission on Mental Health Services*, 47 D.C. Reg. 7568, Slip Op. No. 636 at 3, PERB Case No. 99-U-06 (2000).

²⁷ Report at 4.

²⁸ Report at 5.

617.04(a)(2) by dominating or interfering with a union when the agency's actions have a reasonably foreseeable result of undermining the union.²⁹

Here, the Union alleges that the Director's comments interfered with the Union because it could make "Agency managers and leadership less likely to work with union officials due to their perception that [the] Director [*sic*]is not fond of Union leadership."³⁰ In this case, the Hearing Examiner did not find evidence in the record to support the allegation that agency managers are less likely to work with union officials because of perceptions of the agency Director. Therefore, the Hearing Examiner recommended dismissing the Complaint.

The Board finds that the Hearing Examiner's conclusions that the Union did not prove the allegations that DFS (1) capped career ladder progression, or (2) interfered with Union activity in violation of the CMPA are reasonable, supported by the record, and consistent with Board precedent.

IV. Conclusion

The Board has reviewed and adopted the findings, conclusions, and recommendations of the Hearing Examiner, and finds that DFS did not violate D.C. Official Code § 1-617.04(a)(2)and (3). 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 unanimous vote of Board Chairperson Douglas Warshof, and members Barbara Somson, Mary Anne Gibbons, and Peter Winkler

April 15, 2021
Washington, D.C.

²⁹ *Doctors' Council of D.C. Gen. Hosp. v. D.C. Gen. Hosp. et. al*, 47 D.C. Reg. 1443, Slip Op. No. 606 at 5, PERB Case Nos. 98-U-24 and 98-U-28 (2000).

³⁰ Report at 4.

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order, Slip Op. 1782 in PERB Case No. 20-U-08 was served electronically via File & ServeXpress to the following parties on this the 22nd day of April 2021:

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