



agency level. The Union became aware of the announcements on November 26, 2003.

4. Violation of DC Law 2-139, 1-617.4a(5) [sic]
  - a. The District, its agents and representatives are prohibited from:
    - (5) refusing to bargain collectively in good faith with the exclusive representative
5. The American Federation of Government Employees, Local 2741 is the exclusive representative of the bargaining unit.
6. The Agency's failure to post vacant bargaining unit positions within the bargaining unit or send copies to the Union prevented eligible bargaining unit employees from being aware of the vacancy openings and from applying for the positions.

Posting the vacancy announcements on the website rather than throughout the agency was a change in the working conditions of the bargaining unit employees without prior consultation or negotiations with the exclusive representative, AFGE Local 2741.

The failure of the Agency to consult or negotiate with the Union in regards to changing the manner of posting vacancies in the bargaining unit constituted a refusal to bargain collectively in good faith with exclusive representative, AFGE Local 2741 and therefore a violation of DC Law 2-139, 1-617.4 a(5).

(Complaint at pgs. 2, 3, 4)

Respondent states in Answer:

3. (a) The Respondent admits that certain vacancy announcements were posted on the D.C. Office of Personnel official website at <http://app.dcop.dc.gov/> on various dates, consistent with the DPM. Additionally, to inform agency employees, the Agency also included summaries of some positions on the agency's intranet site (available to agency employees only) and referred its agency employees to the agency's human resources administrator for questions. However, this did not consist of the official posting, rather the posting was on the official DCOP website consistent with the language in the expired collective bargaining agreement between the parties.
  - (b) The respondent denies the allegations that the vacancy announcements were not posted at the agency level. As stated in the Complaint, the announcements were posted on the Agency

website. This website is open to the bargaining unit employees and all members of the Agency. Additionally, the official positing was on the DCOP website, consistent with the language in the expired collective bargaining agreement.

...

- 6(a). The Respondent denies all allegations in paragraph 6(a).
- 6(b). The Respondent denies all allegations in paragraph 6(b).
- 6(c). The Respondent denies all allegations and interpretations of law in paragraph 6(c).

(Answer at pg. 2, 3, 4).

The Board finds that the Complainant has pled allegations that, if proven, would constitute a violation of the CMPA. However, as stated above, it is clear that the parties disagree with respect to a number of facts in this case. Specifically, the question remains of whether the Respondent posted vacancies at the agency level in a manner consistent with the collective bargaining agreement ("CBA"). 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 2741 v. District of Columbia Department of Recreation and Parks*, 50 DCR 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002) (citing *American Federation of State, County and Municipal Employees, Local 2921*, Slip Op. No. 339). In addition, 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.<sup>1</sup> Moreover, the Board has consistently held that if the allegations made in an unfair labor practice complaint *do*, in fact, concern statutory violations, as in the instant case, then "th[e] Board is empowered to decide whether [the agency] committed an unfair labor practice . . . , even though the [agency's] obligation is pursuant to a contract's resolution provisions." *Id.* at p. 6. It should be noted that the CBA states:

"The Union president or designee shall be furnished a copy of all vacancy announcements, cancellations, corrections or amendments, when issued."

(CBA at pg. 10, Section 3)

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<sup>1</sup> The Board looks to whether the record supports a finding that the alleged violation is: (1) restricted to facts involving a dispute over whether a party complied with a contractual obligation; (2) resolution of the dispute requires an interpretation of those contractual obligations; and (3) no dispute can resolved under the CMPA. See *American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department*, 39 DCR 8599, Slip Op. No. 287 at n. 5, PERB Case No. 90-U-11 (1991).

Complainant stated in paragraph 6 of the Complaint that Respondent failed to send any copies of vacancy announcements to the Union. Respondent denied this factual allegation.

On the record before the Board, establishing the existence of the alleged unfair labor practice violations requires credibility determinations about conflicting allegations. "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).

The allegations made by Complainant are in dispute, and are necessary to determine whether an Unfair Labor Practice has occurred, and PERB currently has insufficient information to make a determination based on the pleadings. Therefore, this matter shall be referred to a hearing examiner.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. This matter is to be referred to a hearing examiner.
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.

Jan. 4, 2012

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 04-U-12 was transmitted via Fax and U.S. Mail to the following parties on this the 4<sup>th</sup> day of January 2012.

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