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

In the Matter of:)	
)	
American Federation of Government Employees, Local 2987,)	PERB Case No. 17-U-19
)	
Complainant,)	Opinion No. 1626
)	
v.)	
)	
District of Columbia Department of Health,)	
)	
Respondent.)	
)	

DECISION AND ORDER

Complainant American Federation of Government Employees, Local 2987 (“AFGE Local 2987” or “union”) filed an unfair labor practice complaint alleging that Respondent D.C. Department of Health (“DOH”) violated D.C. Official Code § 1-617.04(a)(1) and (3) by utilizing a Department realignment as a pretext to effectuate prohibited retaliatory and discriminatory personnel actions against four bargaining unit members because of their involvement and participation in the union. DOH denies the allegations and asserts that the complaint was untimely. For the reasons explained below, AFGE Local 2987’s complaint is dismissed.

I. Statement of the Case

In 2016, as part of a departmental realignment, DOH notified union Vice President Robert Mayfield¹ and union steward Clarence Stanback that they were being reassigned to positions outside of the bargaining unit.² DOH also announced that it would conduct a reduction-in-force (“RIF”) as part of the realignment. The RIF included Valerie Brown, a former union Secretary, and Tracy Overby, a former union steward.³

On January 30, 2017, AFGE Local 2987 filed an unfair labor practice complaint alleging that DOH utilized the realignment as a pretext to effectuate prohibited retaliatory and

¹ Mr. Mayfield also previously served as AFGE Local 2987’s President.

² Complaint at 1-3.

³ Complaint at 2-3.

discriminatory personnel actions against the four employees because of their involvement and participation in the union, in violation of D.C. Official Code § 1-617.04(a)(1) and (3).⁴

In its Answer, DOH denied the allegations.⁵ DOH also raised affirmative defenses asserting that AFGE Local 2987's complaint was untimely under PERB's Rules and should therefore be dismissed. Alternatively, DOH argued that even if the complaint was timely, AFGE Local 2987 failed to state a *prima facie* case for a retaliation claim.⁶

On May 16, 2017, AFGE Local 2987 filed a Response to DOH's Answer and affirmative defenses. AFGE Local 2987 contended that when the parties engaged in impact and effects bargaining over the realignment, DOH "notified the Union of changes to its initial realignment proposals as well as changed to the anticipated impact on individual employees."⁷ With regard to Mr. Mayfield, AFGE Local 2987 asserted that neither the union nor Mr. Mayfield knew "that Mr. Mayfield would not be in the bargaining unit until Mr. Mayfield received an "amended" letter on October 3, 2016," which the union posited was 119 days before the complaint was filed.⁸ Lastly, AFGE Local 2987 contended that it "was not put on notice of the fact that the ... realignment had a disproportionate impact on bargaining unit employees who engaged in protected Union activity until after receipt of final notification from [DOH] with regard to all bargaining unit employees," which the union asserted was "on or about October 3, 2016."⁹

II. Analysis

PERB Rule 520.4 states that: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." PERB does not have jurisdiction to consider unfair labor practice complaints filed outside of the 120 days prescribed by the Rule.¹⁰ The 120-day period for filing a complaint begins when the complainant first knew or should have known about the acts giving rise to the alleged violation.¹¹

In its complaint, AFGE Local 2987 asserted that the effective date of Mr. Mayfield's reassignment was October 11, 2016, and indicated in an attached exhibit that Mr. Mayfield was given notice of the reassignment on October 3, 2016.¹² AFGE Local 2987 reasserted that claim and date in its Response to DOH's Answer and affirmative defenses.¹³ AFGE Local 2987 further contended in its Response that Mr. Mayfield was not aware that the Public Affairs

⁴ Complaint at 1-2, 6.

⁵ Answer at 1-4.

⁶ Answer at 4-6.

⁷ Response at 2.

⁸ Response at 2-3.

⁹ Response at 3.

¹⁰ *Hoggard v. D.C. Pub. Emp. Relations Bd.*, 655 A.2d 320, 323 (D.C. 1995) ("[T]ime limits for filing appeals with administrative adjudicative agencies...are mandatory and jurisdictional").

¹¹ *Pitt v. D.C. Dep't of Corr.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009).

¹² Complaint at 4, Ex. 1.

¹³ Response at 2-3.

Specialist position he was being reassigned to was not in the bargaining unit until he received the October 3, 2016 letter.¹⁴ However, with its Answer, DOH attached copies of two earlier notices of the reassignment that it had sent to Mr. Mayfield and/or AFGE Local 2987.¹⁵ The first is a copy of a July 1, 2016 reassignment letter addressed to Mr. Mayfield.¹⁶ In that letter, it expressly states that the new position “is not covered under collective bargaining.”¹⁷ The Board notes that the Acknowledgment of Receipt in the copy of the July 1, 2016 letter that DOH provided is not signed because the letter was mailed to Mr. Mayfield’s home address of record.¹⁸ The second earlier notice of the reassignment that DOH provided is a July 26, 2016 email sent by DOH Lead Management Liaison Specialist, Donna M. Harrison-Scott, to AFGE Local 2987’s President, Carroll Ward, which included the July 1, 2016 reassignment letter as an attachment.¹⁹ The email states that the reassignment letter was being sent at Ms. Ward’s request, indicating that AFGE Local 2987 was aware of the reassignment at that time.²⁰ Even if the Board considers the later date of July 26, 2016 (the date the email was sent) as the date Mr. Mayfield and/or AFGE Local 2987 first became aware that Mr. Mayfield was being reassigned to a position outside of the bargaining unit (the act giving rise to the allegation), 188 days still elapsed between then and the filing of the complaint on January 30, 2017.²¹ The fact that Mr. Mayfield received an “amended”²² letter on October 3, 2016 is irrelevant since both the July 1, 2016 and October 3, 2016 letters provided notice of the salient information: that Mr. Mayfield was being reassigned to the position of Public Affairs Specialist, and that that position was “not covered under collective bargaining.”²³

With regard to Mr. Stanback, AFGE Local 2987 asserts in its complaint that the effective date of his reassignment was October 6, 2016, and indicates in an attached exhibit that he was given notice of the reassignment on September 29, 2016.²⁴ However, with its Answer, DOH attached a copy of an earlier July 7, 2016 reassignment letter addressed to Mr. Stanback.²⁵ Mr. Stanback signed and dated that letter’s Acknowledgement of Receipt on that same day, July 7,

¹⁴ Response at 2-3.

¹⁵ Answer at 5, Ex. 4.

¹⁶ Answer, Ex. 4.

¹⁷ Answer, Ex. 4.

¹⁸ Answer, Ex. 4.

¹⁹ Answer, Ex. 4.

²⁰ Answer, Ex. 4.

²¹ See *Hoggard*, 655 A.2d at 323; and *Pitt*, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06.

²² The Board notes that both the July 1, 2016 letter and the October 3, 2016 letter have “Amended” stamps. A notable difference between the two letters is that the October 3, 2016 letter stated that Mr. Mayfield’s immediate supervisor would be Jazmyn Gossett, whereas the July 1, 2016 letter said he would report to Jacqueline Watson. Another difference is that the July 1, 2016 letter stated that Mr. Mayfield’s annual salary in the new position would be \$87,374, whereas the October 3, 2016 letter listed an annual salary of \$90,254. The last notable difference is that the October 3, 2016 letter has more legal notices than the July 1, 2016 letter. None of these differences, however, changes the dispositive facts that both letters stated that Mr. Mayfield was being reassigned to the position of Public Affairs Specialist, and both letters stated that that position was outside of the bargaining unit. See Complaint, Ex. 1; and Answer, Ex. 4.

²³ Complaint, Ex. 1; Answer, Ex. 4.

²⁴ Complaint at 4-5, Ex. 4.

²⁵ Answer at 5, Ex. 3.

2016.²⁶ Accordingly, the Board finds that July 7, 2016, was the date Mr. Stanback first became aware that he was being reassigned to a position outside of the bargaining unit (the act giving rise to the allegation), which was 207 days before the complaint was filed on January 30, 2017.²⁷ Even if, *arguendo*, the Board considered September 29, 2016 (the date of the letter that AFGE Local 2987 provided with its complaint) as the date Mr. Stanback first became aware of the reassignment, that still would have been 123 days before the complaint was filed.²⁸ Furthermore, the Board notes that, similar to the Mayfield reassignment letters, there are no substantive differences between the July 7, 2016 reassignment letter and the September 29, 2016 letter. Both letters state that Mr. Stanback was being reassigned to the position of Public Health Analyst, and both letters state that that position “is not covered under collective bargaining.”²⁹

Concerning Ms. Brown and Ms. Overby, AFGE Local 2987 asserts in its complaint that the effective date of their separations was September 30, 2016, and that they were each given notice of the RIF in letters dated August 26, 2016.³⁰ Ms. Brown and Ms. Overby each signed and dated the notices’ respective Acknowledgements of Receipt on August 30, 2016.³¹ Therefore, the Board finds that August 30, 2016 was the date that both Ms. Brown and Ms. Overby first became aware of the RIF (the act giving rise to the allegations), which was 153 days before the complaint was filed on January 30, 2017.³² Even if, *arguendo*, the Board considered September 30, 2016 (the effective date of the RIF) as the date Ms. Brown and Ms. Overby each first became aware of the acts giving rise to the allegations in the complaint, that still would have been 122 days before the complaint was filed.³³

Lastly, the Board rejects the contention AFGE Local 2987 raised in its Response to DOH’s Answer and affirmative defenses that it “was not put on notice of the fact that the ... realignment had a disproportionate impact on bargaining unit employees who engaged in protected Union activity until ... on or about October 3, 2016.”³⁴ As the Board has found, *supra*, Mr. Mayfield and AFGE Local 2987 first became aware of his reassignment as early as July 26, 2016, and possibly as early as July 1, 2016; Mr. Stanback first became aware of his reassignment as early as July 7, 2016; and Ms. Brown and Ms. Overby each first became aware that they were being RIF’d as early as August 30, 2016. Since, as AFGE Local 2987 asserts, each of those individuals was a union officer, the Board finds that, at the very least, AFGE Local 2987 “should have known” about the alleged impact³⁵ the realignment would have on its officers and the rest of the bargaining unit long before October 3, 2016.³⁶

²⁶ Answer, Ex. 3.

²⁷ See *Hoggard*, 655 A.2d at 323; and *Pitt*, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06.

²⁸ Complaint, Ex. 4.

²⁹ Complaint, Ex. 4; Answer, Ex. 3.

³⁰ Complaint at 5, Ex. 6-7.

³¹ Complaint, Ex. 6-7; Answer, Ex. 1-2.

³² See *Hoggard*, 655 A.2d at 323; and *Pitt*, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06.

³³ Complaint, Ex. 6-7; Answer, Ex. 1-2.

³⁴ Response at 3.

³⁵ The Board notes that the allegation AFGE Local 2987 raised in its complaint was that DOH utilized the realignment as a pretext to retaliate and discriminate against Mr. Mayfield, Mr. Stanback, Ms. Brown, and Ms. Overby because of their union activity, not that the realignment had a “disproportionate impact” on the bargaining unit’s members as a whole. See Complaint at 1-2, 6. Since the Board cannot consider allegations that were not

Accordingly, because the complaint's subjects and/or AFGE Local 2987 each first knew or should have known about the acts giving rise to the alleged violations more than 120 days before the complaint was filed, the Board finds that, pursuant to PERB Rule 520.4, the complaint is untimely.³⁷ AFGE Local 2987's complaint is therefore dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFGE Local 2987's complaint is dismissed with prejudice: and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Ann Hoffman, and Douglas Warshof. Member Barbara Somson was not present.

May 18, 2017
Washington, D.C.

raised in the complaint, then even if the complaint had been timely filed, the Board still would not be able to consider AFGE Local 2987's new "disproportionate impact" allegation that it raised for the first time in its Response to DOH's Answer and affirmative defenses. *See Fraternal Order of Police/Metro. Police Dep't Labor Committee v. Metro. Police Dep't*, 62 D.C. Reg. 3544, Slip Op. No. 1506 at p. 8-12, PERB Case No. 11-U-50 (2015).

³⁶ *See Hoggard*, 655 A.2d at 323; *and Pitt*, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06.

³⁷ *See Hoggard*, 655 A.2d at 323; *and Pitt*, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-U-19, Op. No. 1626 was sent by File and ServeXpress to the following parties on this the 9th day of June, 2017.

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