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

In the Matter of: )

American Federation of )  
Government Employees, AFL-CIO )  
Local 2978, )

Petitioner, )

and )

District of Columbia )  
Department of Health, )

Respondent. )

PERB Case No. 10-U-42

Slip Opinion No. 1345

**DECISION AND ORDER**

**I. Statement of the Case**

On July 19, 2010, the American Federation of Government Employees, AFL-CIO, Local 29 (“AFGE”, “Complainant” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Department of Health (“DOH,” “Respondent” or “Agency”). On August 6, 2010, Respondent filed an Answer (“Answer”).

The Union alleges a violation of the Comprehensive Merit Personnel Act (the “CMPA”), D.C. Code §1-617.04(a)(5)<sup>1</sup> when the Agency decided to terminate the worker’s Alternative Work Schedules (“AWS”) on March 29, 2010. (See Complaint at p. 3). The Agency denies violating the CMPA.

The Union’s Complaint and the Agency’s Answer are before the Board for disposition.

**II. Discussion**

The Department of Health is an agency of the District of Columbia. Karen P. Watts is Bureau Chief, Perinatal and Infant Health (PIHB), Department of Health, Community Health Administration (“CHA”). (See email, February 22, 2010). The Union alleges that on January

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<sup>1</sup> The District, its agents, and representatives are prohibited from: (5) refusing to bargain collectively in good faith with the exclusive representative.

26, 2010, Ms. Watts held her regularly scheduled staff meeting without mentioning an alternative work schedule change. Later that afternoon, she allegedly held a 2:00 p.m. meeting with the nurses and family support workers' units and told them if their work didn't improve, the AWS would be revoked. Then, according to the Union, on February 24, 2010, Ms. Watts held a regularly scheduled staff meeting with all units and told them that the AWS was being revoked. The revocation went into effect on March 29, 2010. (See Complaint at p.3).

The Union alleges that the revocation was a "change in conditions of employment." (See email from Ms. Sabrina Lewis, March 5, 2010). The Union further stated that: "Upon notification the Union intends to demand to bargain on the impact of this decision on bargaining unit employees." (See id.).

The Agency alleges that "impact and effect" bargaining is not required. (See March 9, 2010 letter from Dean AQUI, of the District of Columbia Office of Labor Relations). The Agency also alleges that management discussed the AWS Guidelines with the Union before they were implemented in April, 2008. According to the Respondent, discussions were held at monthly meetings between the Union and Sandra Robinson of the CHA. Respondent maintains that such meetings "satisfy the contractual requirements of Section 3[of the collective bargaining agreement]." (See id. at p.1). The Respondent further notes that the Agency exceeded the one-week notice requirement of Section 5 of the collective bargaining agreement and provided more than 4 weeks' notice of the revocation. (See id. at p.2).

Finally, the Agency concluded: "Based on the above, I concluded that there is no need for impact and effect bargaining. As you are aware, under the Public Employee Relations Board case precedent, once a matter has been the subject of bargaining, there is no obligation to reopen that matter during the term of the contract. However, in an effort to develop good labor management relations, the Office of Labor Relations and Collective Bargaining will meet with union representatives to hear any specific concerns that the union has regarding the termination of the AWS within PIHB." (See id. at p.2). The Agency requested that the Union contact them. (See id.).

The Union asks that PERB find that the Agency committed an unfair labor practice and order that the Agency reinstate AWS, pay the Union's costs in the matter and post an appropriate notice to employees. (See Complaint at p.8).

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 p. 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 631, 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). Furthermore, 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 for 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. *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

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).

In the present case, Complainant alleges an unfair labor practice on the part of Respondent by its failure to bargain the "impacts and effects" of a change in working conditions for staff members of DOH, specifically the revocation of the AWS program. Complainant alleges a violation of D.C. Code §1-617.4 (a) (5), which provides that an agent of the District of Columbia cannot refuse to bargain in good faith with the exclusive representative of a union. Without addressing the underlying merits of whether the Respondent was correct in its assertion regarding the obligation of the Agency to negotiate "impacts and effects," the Board finds that Respondent did agree to meet with the Union. (See Dean Aqui's letter at p. 2). Further, nothing in the record indicates that the Union did, in fact, attempt to follow-up with or contact the Agency for such a meeting. Thus, the Board finds that the Complainant has failed to provide the requisite proof of an alleged statutory violation.

In light of this, the Board directs that the Complaint be dismissed for failure to state a cause of action.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. Complainants' Unfair Labor Practice Complaint 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 23, 2012

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 10-U-42 is being transmitted via U.S. Mail to the following parties on this the 14 day of November, 2012.

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