Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
HELEN FRAZER	
and	
HAN OUYANG	CORRECTED COPY
Complainants,	PERB Case No. 11-U-46
v.	Opinion No. 1212
THE BOARD OF TRUSTEES FOR THE UNIVERSITY OF THE DISTRICT OF COLUMBIA	Unfair Labor Practice Complaint
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Ms. Helen Frazer and Ms. Han Ouyang ("Ms. Frazer" and "Ms. Ouyang", or "Complainants") filed an Unfair Labor Practice Complaint ("Complaint") against The Board of Trustees for the University of the District of Columbia ("Respondent" or "Employer"). The Complaint alleges this complaint against the Respondent "on the basis of gross compensation inequity." (Complaint at p. 1).

Respondent states that the Complainant has failed to state a cause of action that is actionable as an unfair labor practice.

Complainant responds to Respondent's answer by stating that Respondent has violated the D.C. code, and therefore has a cause of action of which PERB has jurisdiction over.

II. Discussion

In the Complaint, Complainants makes the following factual allegations:

> 1. Petitioners are Grade 6 administrative employees who bring this complaint to enforce their statutory rights as educational employees of the University of the District of Columbia for compensation competitive with that provided to other public sector employees having comparable duties in the geographical area.
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> . . . .
>
> 3. Petitioner Helen Frazer, Associate Director & Head of Public Services of the UDC-DCSL Mason Law Library, is currently and, at all times relevant herein has been an educational employee of the of the [*sic*] Respondent Board of Trustees.
>
> 4. Petitioner Han Ouyang, Assistant Director & Head of Technical Services of the UDC-DSCL Mason Law Library, is currently and, at all times relevant herein, has been an educational employee of the Respondent Board of Trustees.
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> . . . .
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> 6. The Comprehensive Merit Personnel Act, D.C. Code § 1-601.1 *et seq.* (hereinafter "CMPA"), mandates that the compensation paid by Respondents to Petitioners and other Law Faculty "shall be competitive with that provided to other public sector employees having comparable duties, responsibilities, qualifications, and working conditions...." See D.C. Code § 1-611.03 (a)(1).

(Complaint at pgs. 1-2)

In its Answer, the Respondent responds to those allegations as follows:

> 1. The University admits that Petitioners are grade 6 employees of the University and that they have filed this complaint. The university denies all other allegations in Paragraph 1.
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> . . . .
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> 3. The University admits the allegations contained in Paragraph 3.
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> 4. The University admits the allegations contained in Paragraph 4.
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> . . . .

> 6. The University admits that in Paragraph 6 of the Complaint, Petitioners have accurately quoted excerpts of the Comprehensive Merit Personnel Act.

(Answer at pgs. 1-2).

Furthermore, the Respondent raises the following affirmative defenses:

> 1. The District of Columbia Public Employee Relations Board lacks jurisdiction over this matter since it does not raise any legal issues pursuant to the D.C. Code, Title 1-617.04
>
> 2. The Complaint is filed under D.C. Code §1-617.04 yet the allegations of the Complaint as set forth in Paragraph 5 through 23 [Complaint pgs. 2-5] do not directly or indirectly assert that the university is engaged in conduct that is prohibited by any provision of that section of the District of Columbia Code including all of the subsections thereof.
>
> 3. The Complaint should be dismissed since it fails to assert claims for which relief may be granted under any of the statutory bases set forth in the Complaint.

(Answer at p. 5)

Complainant responds to Respondent's answer with the following:

> "Petitioner's Complaint for Unfair Labor Practices asserts, with supporting documentation, that Respondent is in violation of D.C. Code § 1-611.03(a)(1), as to Petitioners. Therefore PERB has jurisdiction over this matter."

(Reply to Answer at p. 2)

The D. C Code § 1-617.04(a) lists the following as the only bases in which an Unfair Labor Practice complaint may be raised against The District, its agents, and its representatives:

> (1) Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;
>
> (2) Dominating, interfering, or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to it, except that the District may permit employees to negotiate or confer with it during working hours without loss of time or pay;

> (3) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, except as otherwise provided in this chapter;
>
> (4) Discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony under this subchapter; or
>
> (5) Refusing to bargain collectively in good faith with the exclusive representative.

As this is an exhaustive list of Unfair Labor Practices that PERB has jurisdiction over, D.C. Code § 1-611.03(a)(1) is not a valid basis for an Unfair Labor Practice cause of action, unless it either directly or indirectly gives rise to one of the bases listed in D.C. Code § 1-617.04(a).

We therefore determine whether the allegations, if proven, would constructively violate D.C. Code § 1-617.04(a). 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 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 63, 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). Also, 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 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." *Goodline v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

The alleged facts, viewed in the light most favorable to Complainants of this case, do not raise any question as to whether the Board of Trustees of the University of the District of Columbia, either directly or indirectly: 1) Interfered with, restrained, or coerced any employee in the exercise of the rights guaranteed by §1-617; 2) Dominated, interfered, or assisted in the formation, existence or administration of any labor organizations, or contributed financial or other support to one; 3) Discriminated in regard to the hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; 4) discharged or otherwise took reprisal against any employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony under §1-617; or 5) refused to bargain collectively in good faith with the exclusive

representative. [1] As respondent correctly states: "A claim asserting that a non-bargaining unit person is not being properly paid is simply not actionable [by itself] as an unfair labor practice." Letter to Ondray T. Harris from Gary L. Lieber (Aug. 22, 2011).

As a result, Ms. Frazer's and Ms. Ouyang's Complaint is dismissed on the basis of failure to state a cause of action.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint filed by Ms. Helen Frazer and Ms. Han Ouyang ("Ms. Frazer" and "Ms. Ouyang", or "Complainants") is dismissed with prejudice.

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.

November 30, 2011

[1] Furthermore, it is clear from the language in D.C. Code § 1-617.04(a)(5) (2001 ed.), that the right to require a District agency to bargaining collectively in good faith, belongs exclusively to the labor organization. Therefore, in the present case, only the Complainant's labor organization can require that UDC bargain in good faith. As a result, Complainants lack standing to assert that UDC has violated D.C. Code § 1-617.04(a)(5) (2001 ed.).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-46 was transmitted via Fax and U.S. Mail to the following parties on this the 30th day of November 2011.

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