

Amended Complaint failed to state a cause of action under the Comprehensive Merit Personnel Act (CMPA). As a result, the Complaint and Amended Complaint were administratively dismissed.³

The Complainant filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's decision. DOC filed a response to the Motion. The Motion for Reconsideration is now before the Board for disposition.

We believe that the arguments raised in the Complainant's Motion were previously considered and addressed by the Executive Director. Therefore, the Board must determine whether the Executive Director erred in dismissing the Complaint and Amended Complaint.

The Complainant claims that DOC violated the CMPA by failing to bargain in good faith prior to implementing a change in conditions of employment. Pursuant to the CMPA, management has an obligation to "bargain collectively in good faith" and employees have the right "[t]o engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative[.]" American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921 v. District of Columbia Public Schools, 42 DCR 5685, Slip Op. No. 339 at p.3, PERB Case No. 92-U-08 (1992). D.C. Code §1-617.04(a)(5) (2001 ed.)⁴ protects and enforces, respectively, these employee rights and employer obligations by making their violation an unfair labor practice. Specifically, D.C. Code §1-617.04(a)(5) (2001 ed.)⁵ provides that "[t]he District, its agents and representatives are prohibited from...[r]efusing to bargain collectively in good faith with the exclusive representative." However, "[t]he Board has held that the right to demand that the District, its agents and representatives bargain in good faith, belongs to the exclusive representative." Forrester v. AFGE, Local 2725 and D.C. Housing Authority, 46 DCR 4048, Slip Op. No. 577 at p. 5, PERB Case No. 98-U-01 (1998). Therefore, in the present case, only FOP can require that DOC bargain in good faith. As a result, the Complainant lacks standing to assert that DOC has violated D.C. Code §1-617.04(a)(5) (2001 ed.).

In addition, the Complainant fails to state a statutory cause of action under D.C. Code §1-617.04(a)(3) and (4) (2001 ed.).⁶ Under D.C. Code §1-617.04(a)(3), "[a] discriminatory act by a District government agency with respect to an employee's term or condition of employment must be

³Both DOC and FOP filed a Motion to Dismiss. However, in light of the administrative dismissal, the Executive Director determined that it was not necessary to consider Respondents' Motions.

⁴Prior codification at D.C. Code § 1-618.4(a)(5) (1981 ed.).

⁵Prior codification at D.C. Code §1-618.4(a)(5) (1981 ed.).

⁶Prior codification at D.C. Code §1-618.4(a)(3) and (4) (1981 ed.).

motivated by an intent 'to encourage or discourage membership in any labor organization'." Teamsters, Local Union 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. D.C. Public Schools, 43 DCR 5585, Slip Op. No. 375 at p.3, PERB Case No. 93-U-11 (1994). Also, the Board has held that in order to sustain a claim of retaliation for union activity a party must demonstrate a link between the employee's union activity and the action taken against the employee. See, Jones v. D.C. Department of Corrections, 31 DCR 3254, Slip Op. No. 81, PERB Case No. 84-U-04 (1984). In his submissions, the Complainant does not allege that he was prohibited from engaging in union activity. In addition, he does not assert that DOC's decision to suspend him for 45 days, was motivated by an intent to encourage/discourage his membership in the FOP.⁷ Instead, the Complainant contends that he was discriminated against on the "basis of sex (male)." (Compl. at p.3). However, the Board does not have authority to investigate allegations concerning sex discrimination. Such allegations must be filed with the District of Columbia Office of Human Rights. See, D.C. Code § 2-1403.04 (2001 ed.). In view of the above, the allegations asserted in the Complaint and Amended Complaint do not satisfy the requirements of D.C. Code §1-617.04(a)(3) (2001 ed.).⁸

Also, the Complainant claims that DOC retaliated against him because he "opposed an employment practice." (Amended Compl. at p. 1). D.C. Code §1-617.04(a)(4) (2001 ed.)⁹, provides that "[t]he District, its agents and representatives are prohibited from [d]ischarging or otherwise taking reprisals against an employee because he or she has signed or filed an affidavit, petition or complaint or given any information or testimony. . .". In the present case, the Complainant received notice of a proposed 45-day suspension prior to filing his Complaint and Amended Complaint. Therefore, the Complainant failed to assert a nexus between DOC's decision to suspend him and any protected activity under D.C. Code §1-617.04(a)(4) (2001 ed.). As a result, the Complaint and Amended Complaint do not present allegations which are sufficient to support a cause of action.

Finally, the Complainant contends that DOC violated Section 1-617.04(a)(1) of the CMPA. D.C. Code §1-617.04(a)(1) (2001 ed.)¹⁰, provides that "[t]he District, its agents and representatives are prohibited from [i]nterfering, restraining, or coercing any employee in the exercise of the rights

⁷In their Answer, the Respondents assert that the Complainant was a supervisor. As a result, they claim that he was not a member of the FOP bargaining unit. However, in light of the dismissal of the Complaint and Amended Complaint, the Executive Director indicated that it was not necessary to decide this issue.

⁸Prior codification at D.C. Code §1-618.4(a)(3) (1981 ed.).

⁹Prior codification at D.C. Code §1-618.4(a)(4) (1981 ed.).

¹⁰Prior codification at D.C. Code §1-618.4 (a)(1) (1981 ed.).

guaranteed by this subchapter [.]” “Employee rights under this subchapter are prescribed under D.C. Code. [§1-617.06(a) and (b) (2001 ed.)]¹¹ and consist of the following: (1) [t]o organize a labor organization free from interference, restraint or coercion; (2) [t]o form, join or assist any labor organization; (3) [t]o bargain collectively through a representative of their own choosing. . .; (4) [to] present a grievance at any time to his or her employer without the intervention of a labor organization [.]” American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks, 45 DCR 5078, Slip Op. No. 553 at p.2, PERB Case No. 98-U-03 (1998). In the present case, the Complainant does not claim that any of his employee rights as prescribed under D.C. Code §1-617.06(a) and (b) (2001 ed.),¹² have been violated in any manner by DOC. Moreover, the Complaint allegations concerning violations of D.C. Code §1-617.04(a)(1) (2001 ed.),¹³ consists largely of Mr. White arguing the merits of the underlying dispute which exists between Mr. White and DOC. Also, the asserted statutory violation appears to be nothing more than Mr. White’s opinion. In addition, Mr. White’s Complaint and Amended Complaint are devoid of allegations supporting any basis for this cause of action. Therefore, the allegations asserted in the Complaint and Amended Complaint do not satisfy the statutory requirements of D.C. Code § 1-617.04(a)(1) (2001ed.). In view of the above, the Complainant’s claims against DOC fail to state a statutory cause of action.

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).

The Board has determined that “[to maintain a cause of action, [a] Complainant must [allege] the existence of some evidence that, if proven, would tie the Respondent’s actions to the asserted [statutory violation]. Without the existence of such evidence, Respondent’s actions [can not] 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.” Goodie v. FOP/DOC Labor Committee, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996). For the reasons stated above, the Executive Director determined that Mr. White’s Complaint and Amended Complaint did not contain allegations which were sufficient to support a cause of action. As a result, the Complaint and Amended Complaint were dismissed.

¹¹Prior codification at D.C. Code §1-618.6(a) and (b) (1981 ed.).

¹²Prior codification at D.C. Code §1-618.6(a) and (b) (1981 ed.).

¹³Prior codification at D.C. Code §1-618.4(a)(1) (1981 ed.).

In his motion, the Complainant asserts that the Executive Director erred in finding that the Complainant failed to state a cause of action under the CMPA. As a result, the Complainant requests that the Board reverse the Executive Director's decision.

After reviewing the present motion, we believe that the Complainant's claims concerning DOC amount to nothing more than a disagreement with the Executive Director's determination. Specifically, the Complainant does not identify any legal precedent which the Executive Director's decision contravenes. Instead, the Complainant contends that the facts in this case present "an issue of exceptional importance to a conspiracy." (Motion at p. 2). However, we find that this argument is just a repetition of the allegations contained in the Complaint and Amended Complaint and is not a sufficient basis for reversing the Executive Director's decision.

Finally, the Complainant asserts that FOP violated D.C. Code §1-617.04(a)(1) and (5) (2001 ed.).¹⁴ However, this subsection of the CMPA, concerns the conduct of District agencies and not labor organizations. As a result, the Executive Director concluded that the allegations concerning FOP, did not meet the statutory requirements of D.C. Code §1-617.04(a)(1) and (5) (2001 ed.).¹⁵ The Executive Director found that since no statutory basis exists for the Board to consider Mr. White's claims against FOP, his Complaint and Amended Complaint should be dismissed. In his motion, the Complainant asserts that the Executive Director erred in finding that he failed to state a cause of action concerning FOP.

After reviewing the Complainant's motion, the Board opines that the Complainant's arguments concerning FOP, amount to nothing more than a disagreement with Executive Director's findings. Moreover, we find that a mere disagreement with the Executive Director's decision is not a sufficient basis for reversing that decision. Also, the motion does not raise any new issues. Furthermore, it is clear from the language contained in D.C. Code § 1-617.04(a)(1) and (5) (2001 ed.), that this provision of the CMPA concerns the conduct of District agencies and not labor organizations. As a result, we conclude that the Complainant has failed to assert any grounds for the Board to reverse the Executive Director's decision with respect to FOP.

In view of the above, we find that the Executive Director's decision was reasonable and supported by Board precedent. Therefore, we deny the Complainant's Motion for Reconsideration and affirm the Executive Director's administrative dismissal.

¹⁴Prior codification at D.C. Code §1-618.4(a)(1) and (5) (1981 ed.).

¹⁵Prior codification at D.C. Code §1-618.4(a)(1) and (5) (1981 ed.).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's Motion for Reconsideration is denied.
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.**

August 29, 2002

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 02-U-15 was transmitted via U.S. Mail to the following parties on this 29th day of August 2002.

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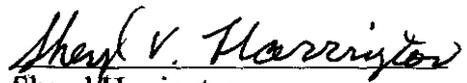
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