

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:)	
)	
American Federation of State, County and Municipal Employees, Local 2743)	
)	PERB Case Nos. 24-U-12 & 24-U-15
Complainant)	
)	
v.)	Opinion No. 1903
)	
District of Columbia Department of Insurance, Securities and Banking)	
)	
Respondent)	

REMAND ORDER AND INSTRUCTIONS

On January 10, 2024, the American Federation of State, County and Municipal Employees, Local 2743 (AFSCME) filed an unfair labor practice complaint (24-U-12 Complaint) against the District of Columbia Department of Insurance, Securities and Banking (DISB) asserting that DISB violated §§ 1-617.04(a)(1-5) of the Comprehensive Merit Personnel Act (CMPA) by investigating and disciplining an employee (Complainant), the AFSCME Vice-President, in violation of his right to union representation and in retaliation for protected union activity.¹ On February 1, 2024, AFSCME filed an unfair labor practice complaint (24-U-15 Complaint) against DISB asserting that DISB violated D.C. Official Code § 1-617.04(a)(4) by suspending the Complainant for nine (9) days without pay in retaliation for protected union activity.² On July 22, 2024, PERB held a hearing on the matter. On September 20, 2024, the Hearing Examiner issued a report and recommendations (Report) finding that DISB had not committed any unfair labor practices which merited relief under the CMPA.³

¹ 24-U-12 Complaint at 2-5 (citing D.C. Official Code § 1-617.04(a)(1-5)).
² 24-U-15 Complaint at 4 (citing D.C. Official Code § 1-617.04(a)(4)). On January 24, 2024 and February 20, 2024, DISB filed answers to each Complaint respectively (24-U-12 Answer and 24-U-15 Answer). On April 19, 2024, PERB consolidated the two Complaints.
³ Report at 17. On October 7, 2024, AFSCME filed exceptions to the Report (Exceptions). On October 21, 2024, DISB filed an opposition to AFSCME's Exceptions (Opposition to Exceptions). The Exceptions included a request for oral argument before the Board. Exceptions at 1, 19. The Board has determined that it requires no further information from the parties in order to render a decision to remand; therefore, AFSCME's request for oral argument is denied.

The Board hereby orders this matter remanded to the Hearing Examiner for re-application of the *Wright Line* test under the proper burden-shifting framework. The Board requests that the Hearing Examiner review the application of the requirements for a complainant to establish a *prima facie* case of retaliation and the burden-shifting standard in *Wright Line* to the facts of the instant matter.

The Board notes that it has adopted the framework set forth by the National Labor Relations Board (NLRB) in *Wright Line*,⁴ that a complainant must establish a *prima facie* case by showing that the complainant's exercise of a protected right was a "motivating factor" in the employer's disputed action.⁵ To establish a *prima facie* case of retaliation, a complainant must establish that: (1) the employee engaged in protected union activity; (2) the employer knew about the employee's protected union activity; (3) there was anti-union animus or retaliatory animus by the employer; and (4) as a result, the employer took an adverse employment action against the employee.⁶ The NLRB recently reiterated that requiring the "identification of a causal nexus as a separate element ... is superfluous."⁷

The Board requests that the Hearing Examiner review and provide an updated analysis in a Report and Recommendations no later than February 22, 2025.

ORDER

IT IS HEREBY ORDERED THAT:

1. This matter is remanded to the Hearing Examiner for the proper application of the *Wright Line* burden-shifting test; and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons and Peter Winkler.

January 16, 2025

Washington, D.C.

⁴ *Wright Line*, 251 NLRB 1083 (1980).

⁵ *Bagenstose v. DCPS*, 38 D.C. Reg. 4155, Slip Op. No. 270, PERB Case Nos. 88-U-33 and 88-U-34 (1991).

⁶ *AFGE, Local 2978 v. District of Columbia Office of the Chief Medical Examiner*, 60 D.C. Reg. 5801, Slip Op. No. 1348 (Amended) at 4, PERB Case No. 09-U-62 (2013) (citing *Doctors Council of the District of Columbia v. District of Columbia Comm'n on Mental Health Services*, 47 D.C. Reg. 7568, Slip Op. No. 636 at 3, PERB Case No. 99-U-06 (2000); and *DCNA v. District of Columbia Health and Hospitals Pub. Benefit Corp.*, 46 D.C. Reg. 6271, Slip Op. No. 583, PERB Case No. 98-U-07 (1999)).

⁷ *Intertape Polymer Corp.*, 372 NLRB No. 133 at 9 (2023) (citing *Tschiggfrie Properties*, 368 NLRB No. 120 at 7 (2019)).