Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Blanche Moore,	
Petitioner,	
and	**PERB Case No. 04-U-11**
American Federation of State County And Municipal Employees AFL-CIO; Local 1959,	**Slip Opinion No. 1235**
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On June 23, 2004, Ms. Blanche Moore ("Complainant") filed an Unfair Labor Practice Complaint ("Complaint") in the above-captioned matter against The American Federation of State County and Municipal Employees, AFL-CIO; Local 1959 ("Union" or "Respondent") pursuant to the Comprehensive Merit Personnel Act ("CPMA"), D.C. Code §1-617.06.[1]

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[1] a) All employees shall have the right:

(1) To organize a labor organization free from interference, restraint, or coercion;
(2) To form, join, or assist any labor organization or to refrain from such activity;
(3) To bargain collectively through representatives of their own choosing as provided in this subchapter; and
(4) To refrain from any or all such activities under paragraphs (1), (2), and (3) of this subsection, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in § 1-617.11.

Respondent filed an Answer ("Answer") on March 26, 2004, asking the Public Employee Relations Board ("PERB" or "Board") to dismiss the complaint for failure to state a claim and untimely filing. (See Answer at p. 1-2).

The Complaint and Answer are before the Board for disposition.

II. Discussion

By letter dated November 29, 2001, The District of Columbia Public Schools (DCPS) notified Ms. Moore that, effective December 12, 2001, she would be terminated from her position as a Motor Vehicle Operator for the District of Columbia Public Schools. The Grounds and Reasons cited for her termination were the following:

> Ground(s): 5 DCMR § 1401.2 (a) "Inefficiency;" (c) "Incompetence, including either inability or failure to perform satisfactorily the duties of the position of employment;" and (d) "Willful nonperformance, or inexcusable neglect;" and "Lack of dependability."
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> Reason(s): On June 6, 2001, you failed to assist in the transporting [of] the students on your bus; to their respective homes. Subsequently, you placed and transported students in your personal vehicle without authorization.
>
> See Notice of Termination Letter from DCPS, Nov.29, 2001

While a Complainant need not prove his/her 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.

(b) Notwithstanding any other provision in this chapter, an individual employee may present a grievance at any time to his or her employer without the intervention of a labor organization: Provided, however, that the exclusive representative is afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the complaint. Any employee or employees who utilize this avenue of presenting personal complaints to the employer may not do so under the name, or by representation, of a labor organization. Adjustments of grievances must be consistent with the terms of the applicable collective bargaining agreement. Where the employee is not represented by the union with exclusive recognition for the unit, no adjustment of a grievance shall be considered as a precedent or as relevant either to the interpretation of the collective bargaining agreement or to the adjustment of other grievances.

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 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. 9l-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." (See *Goodine v. FOP/DOC Labor Committee, 43 DCR 5163*, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996)).

The Complaint in the instant case alleges that the Union "cause[ed] or attempted to the District of Columbia to discriminate against [her] in violation of code 1-617-06." (See Complaint at p. 1). The Complainant has asserted that Respondent's actions violate the CMPA but has no factual allegations to support her claims that she was dismissed from her employment as a result of discrimination, or in any way discriminated against by the Union because of any union or non-union activities.[2] Moreover, the parties' pleadings present no issue of disputed facts. Whereas the Complainant has not provided any allegations that, if proven, establish a violation of the CMPA and finding no disputed issue of fact, the Board finds that the circumstances presented warrant a decision on the pleadings. As presented, we find that the Complaint has failed to plead facts which, if proven, establish a statutory cause of action under the CMPA.

Similarly, the Complainant implies that the Union violated its duty of fair representation (See D.C Code 1-617.03) by not responding to her letters regarding her dismissal from the DCPS. (See Complaint at p.1; Complainant does not specifically cite the statute but the Board attempts to give wide latitude to *pro-se* complainants). A Union breaches its duty of fair representation only if "the union's conduct is arbitrary, discriminatory or in bad faith...or based on considerations that are irrelevant, invidious, or unfair." (See *Roberts v. American Federation of Government Employees, Local 2725*, 36 D.C. Register 1590, Slip Op. No. 203,

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[2] Complainant bases her unfair labor practice complaint upon D.C. Code § 1-617.06 – Employee Rights. Unfair labor practice complaints are, however, defined in D.C. Code § 1-617.04. For purposes of the Complainant's allegations, the appropriate provisions are:

> (b)(1) and (2)b) Employees, labor organizations, their agents, or representatives are prohibited from:
>
> (1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter;
>
> (2) Causing or attempting to cause the District to discriminate against an employee in violation of § 1-617.06

PERB Case No. 88-S-01 (1989).) Nothing in the factual record demonstrates that the Complainant suffered "arbitrary" or "discriminatory" treatment or that the Union acted in "bad faith." Mere failure to respond to a request that the Union bargain on her behalf cannot be construed as a breach of the Union's duty. Indeed, according to PERB precedent, even when a complainant has filed a proper grievance (and there is nothing in the factual record offering evidence that she did) mere disagreement with a Union's decision not to pursue a grievance on a complainant's behalf does not constitute a breach of duty. As noted in *Rebecca Owens v. American Federation of State, County, and Municipal Employees, Local 2095 and National Union of Hospital and Healthcare Employees, District 1199*, 52 DCR 1645, Slip Opinion No. 750, PERB Case No. 02-U-27 (2005). "Furthermore we find that [the Complainant] merely disagreed with the union's judgment in the handling of her grievance. The Board's precedent is clear that a disagreement with a union's judgment in handling a grievance or its decision not to pursue arbitration does not breach the duty of fair representation." Id. at p.

Finally, the Board notes that the Complainant did not timely file. Pursuant to PERB Rule 520.4: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." DCPS notified the Complainant on November 29, 2001, of her pending termination; she did not file her complaint until January 23, 2004—more than three years later and well past the 120-day deadline for filing. The Complainant either was, or should have been aware of, the Union's decision not to pursue her grievance before the expiration of the 120 day filing period.

In this case, the allegations presented are not sufficient, if proven, to establish any statutory violation under the CMPA. The Complainant has merely alleged that the Union failed to respond to her letters regarding her dismissal from the DCPS. The Complainant has offered no factual allegations record to support her claim, thus even if the Board construed the Complainants claims very liberally to determine whether a proper cause of action has been alleged, the Complainant has presented no evidence that the Union violated the CMPA. Further, she did not timely file.

AFSCME did not violate the CMPA when it failed to respond to the Complainant and the Complaint was untimely. Since no statutory basis exists for the Board to consider the Complainants' claim, the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1) Complainant's 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.

December 19, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 04-U-11 are being transmitted via U.S. Mail to the following parties on this the 21st day of December, 2011.

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