Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Council of School Officers, Local 4 American Federation of School Administrators, AFL-CIO,	
Complainant,	PERB Case No. 10-U-45
v.	Opinion No. 1137
District of Columbia Public Schools,	
Respondent.	**CORRECTED COPY**

DECISION AND ORDER

I. Statement of the Case

Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO ("Complainant", "Union" or "CSO") filed the instant Unfair Labor Practice Complaint ("Complaint") against District of Columbia Public Schools ("Respondent", "DCPS" or "Agency"). The Complainant is alleging that the Respondent violated D.C. Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act ("CMPA") when it exchanged its original proposal for a less favorable proposal and, consequently, failed to bargain in good faith. (Complaint at p. 2).

DCPS filed an Answer to the Unfair Labor Practice Complaint ("Answer") denying any violation of the CMPA. (See Answer at p. 2). DCPS does not dispute any of the factual allegations. (See Answer at pgs. 1-3). However, as an affirmative defense, DCPS contends that "[t]he Complainant fails to state a claim for which relief can be granted, in that the Complaint does not allege any facts that constitute an unfair labor practice in violation of Sections 1-617.04(a)(1) and (5) of the CMPA." (Answer at p. 3). The Union's Complaint and DCPS' Answer are before the Board for disposition.

II. Discussion

CSO alleges the following facts in support of its Complaint:

> 5. Since on or about April 24, 2009, DCPS and the CSO have engaged in collective bargaining negotiations in an effort to reach an agreement on a successor labor contract.
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> 6. In connection with these ongoing collective bargaining negotiations, the parties presented bargaining proposals concerning the issue of compensation. Thereafter, the parties met to discuss their proposals but could not reach an agreement with respect to this issue and determined to proceed to bargain over non-compensation issues.
>
> 7. Thereafter, on or about June 28, 2010, DCPS withdrew its compensation proposal and provided the Union with a different compensation proposal, the terms of which were significantly less favorable than the previous compensation proposal.
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> 8. DCPS failed to provide any justification for this new proposal or its withdrawal of the previous compensation proposal.

(Complaint at p. 2).

Based upon the alleged facts in the Complaint, CSO claims that:

> 9. The above facts support a finding that DCPS has committed an unfair labor practice with respect to it [sic] duty to bargain in good faith with the Union.
>
> 10. Specifically, the withdrawal by DCPS of its previously offered compensation package and its substitution of a different, significantly less favorable compensation package amounts to regressive bargaining. Such bargaining conduct is unlawful and violates Sections 1-617.04 (a)(1) and (5) of the CMPA. See D.C. Code § 1-617.04 (a)(1), (5). The regressive bargaining tactics by DCPS demonstrate that DCPS is not negotiating in good faith with the Union.

As a remedy for DCPS' alleged violations, COS asks that the Board order DCPS to:

> a) cease and desist for regressive bargaining;
>
> b) require DCPS to post an appropriate notice advising the bargaining unit that Respondent violated D.C. law and will cease and desist from such violations in the future;
>
> c) award costs and fees pursuant to D.C. Code §1-617.13(d); and

> d) take such other action as PERB deems necessary and appropriate to remedy the unfair labor practice.

(Complaint at p. 3).

DCPS does not deny that it withdrew its initial compensation proposal, but contends that it did provide an explanation for the new proposal. (See Answer at pgs. 2-3). Specifically, DCPS argues that:

> 7. Respondent admits the allegations presented in paragraph seven of the Complaint insofar as Respondent admits that on or about June 28, 2010[,] DCPS withdrew its compensation proposal to the Union with respect to certain bargaining unit members and provided the Union with a different compensation proposal regarding those members. Respondent denies all other allegations presented in paragraph seven of the Complaint.
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> 8. Respondent denies the allegations presented in paragraph eight of the Complaint and, specifically, that it provided no explanation for withdrawing its initial compensation proposal and replacing it with another. Respondent also asserts that, prior to the presentation of its new compensation proposal on or about June 28, 2010, it had, at least by the end of May and the beginning of June 2010, communicated to the Union

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

In the present case, the Union's Complaint alleges violations of D.C. Code § 1-617.04(a)(1) and (5). D.C. Code §1-617.04(a)(1) (2001 ed.), provides that "[t]he District, its agents and representatives are prohibited from: . . . [i]nterfering, restraining or coercing any

employees in the exercise of the rights guaranteed by this subchapter[.]" [1] D.C. Code § 1-617.04(a)(5) provides that "[r]efusing to bargain collectively in good faith with the exclusive representative" is a violation of the CMPA.[2] Specifically, Complainant alleges that DCPS violated the CMPA by changing a compensation proposal during negotiations.

On the record before the Board, without citing any legal precedent, Complainants have merely asserted that Respondent's actions violated the CMPA by changing its proposals during negotiations. Moreover, the parties' pleadings present no issue of disputed facts. Whereas the Union 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.

As a result, the Board dismisses CSO's Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint filed by the Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO ("Complainant", "Union" or "CSO") 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.

August 19, 2011

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[1] "Employee rights under this subchapter are prescribed under D.C. Code [§1-617.06(a) and (b) (2001ed.)] 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. . .; [and] (4) [t]o 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).

[2] The Board notes that, 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. 339 at p. 3, PERB Case No. 92-U-08 (1992). Also, D.C. Code § 1-617.04(a)(5) (2001) provides that "[t]he District, its agents and representatives are prohibited from...[r]efusing to bargain collectively in good faith with the exclusive representative." Further, D.C. Code §1-617.04(a)(5) (2001ed.) protects and enforces, respectively, these employee rights and employer obligations by making their violation an unfair labor practice.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 10-U-45 are being transmitted via Fax and U.S. Mail to the following parties on this the 19th day of August, 2011.

Mark Murphy, Esq.
Mooney, Green, Baker & Saindon, P.C,
1920 L Street, N.W. Suite 400
Washington, DC 20036
Facsimile No.: (202) 783-6088

FAX & U.S. MAIL

Jonathan O'Neill, Esq.
Supervisory Attorney Advisor
D. C. Office of Labor Relations
& Collective Bargaining
441 Fourth Street, N.W.
Suite 820 North
Washington, D.C. 20001
Phone: (202) 724-4953

FAX & U.S. MAIL

Sheryl V. Harrington
Secretary