Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 872, NAGE R3-06, Complainants,	PERB Case No. 08-U-49
v.	Opinion No. 1102
District of Columbia Water and Sewer Authority, Respondent.	Motion to Dismiss

DECISION AND ORDER

I. Statement of the Case

American Federation of Government Employees Local 872 and NAGE Local R3-06 ("Complainants", "Unions" or "Locals") filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Water and Sewer Authority ("Respondent", "WASA" or "Agency"). The Complainants are alleging that the Respondent has violated D.C. Code § 1-617.04(a)(1), (3) and (5) of the Comprehensive Merit Personnel Act ("CMPA"). (See Complaint at p. 1).

WASA filed an Answer to the Unfair Labor Practice Complaint ("Answer") asserting affirmative defenses against, and denying any violation of, the alleged violations of the CMPA set forth in the Complaint, and requests that the Board dismiss the Complaint (See Answer at pgs. 2-4). In addition, the Unions filed an Opposition to Respondent's Motion to Dismiss ("Opposition"). The Unions' Complaint, WASA's Answer and the Unions' Opposition are before the Board for disposition.

II. Discussion

The Unions and Respondent are parties to a collective bargaining Agreement ("Agreement"). (See Complaint at p. 2).

> On or abo. une 5, 2008, [Respondent], through Mr. Bernard Blanchart (Mr. Shanks's supervisor) and Ms. Michelle Hunter's supervisor, Timothy Abosede, orally ordered the above individuals to appear at a meeting on June 6, 2008, in their capacities as Union Presidents for purposes of discussing a Labor-Management matter, specifically the [Respondent's] efforts to institute a skills assessment survey. In addition, Mr. Blanchart called manager Clemons to witness the order to Mr. Shanks. At the time of this meeting, Mr. Shanks told Mr. Blanchart that he needed Union representation to continue the meeting. Mr. Blanchart refused to stop the meeting and Mr. Shanks was denied Union representation.

(Complaint at p. 2).

Both Mr. Shanks and Ms. Hunter attended a meeting on June 6, 2008. The Unions allege that they attended the meeting "out of fear for their jobs, due to intimidation, coercion, and to avoid further retaliation." In support of these allegations, the Unions assert that:

> Article 6 of the working conditions, Collective Bargaining Agreement [("CBA")], prohibits supervisors from imposing any restraint, interference, or coercion in the right to organize and designate representatives of their own choosing for the purpose of collective bargaining.
>
> Article 5 of the working conditions requires supervisors to allow employees to have Union representation when they request such representation and to discontinue the meeting until the employee can get such representation. This did not happen regarding Mr. Shanks meeting with Mr. Blanchart. Clearly, Respondent is reneging on its negotiated language, which is a refusal to bargain in good faith.

(Complaint at p. 2).

The Unions contend that the Respondent's actions constitute a failure to bargain in good faith as required by D.C. Code § 1-617.04(a)(5). (See Complaint at p. 2).

Moreover, the Unions argue that the alleged actions of June 5th and 6th of 2008 "violate CMPA §1-617.06, in that WASA interfered with, restrained and coerced Mr. Shanks and Ms. Hunter in their capacities as Union Presidents. . . . Further, the Respondent attempted to interfere with, restrain and coerce officers and members in violation of D.C. Code § 1-617.04(a)(1). . . . Furthermore, the Respondent's actions against union officers for performing their lawful representational duties constitutes discrimination and retaliation against them in violation of D.C. Code § 1-617.04(a)(1) and (3)." (Complaint at p. 3).

The Respondent argues that the Unions' allegations do not establish a violation of the CMPA and that the allegations presented concern contractual, not statutory, violations. (See

Answer at pgs. 2-4). In addition, Respondent's Answer requests that the Board dismiss the Complaint. (See Answer at p. 5). Additionally, the Respondent moves to dismiss the Complaint due to inaccuracies regarding the address provided for Ms. Hunter in the Complaint. (See Motion at p. 1).

Motions to Dismiss

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 20*, 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." *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996). Furthermore, when considering a motion to dismiss for failure to state a cause of action, the Board considers whether the alleged conduct may result in a violation of the CMPA. See *Doctors' Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 DCR 1137, Slip Op. No. 437, PERB Case No. 95-U-10 (1995).

"The validation, i.e. proof, of the alleged statutory violation is what proceedings before the Board are intended to determine." *Jackson and Brown v. American Federation of Government Employees*, Local 2741, AFL-CIO, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

In the present case, Complainant has pled allegations that WASA violated the CMPA by refusing to bargain in good faith and attempting to interfere, coerce and restrain officers and members of the Unions. In support of these allegations, the Unions assert that its officers' rights were violated when WASA allegedly ordered the Mr. Shanks and Ms. Hunter to appear at meetings on June 5 and 6, 2008, for the purposes of discussing a labor-management matter.

The Unions also allege that these actions were in violation of D.C. Code §§ 1-617.04(a)(1) and (5), and that specifically, under D.C. Code §1-617.04(a)(1) (2001 ed.), "[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]

[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

Furthermore, 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]

On the record before the Board, Complainants have merely asserted that Respondent's actions violate the CMPA by asserting that Respondent failed to adhere to provisions of the parties' CBA. The Unions' allegations only assert the officers' subjective belief that they attended the meeting "out of fear for their jobs, due to intimidation, coercion, and to avoid further retaliation." (Complaint at p. 2). Moreover, the parties' pleadings present no issue of fact and the Unions have not provided any allegations, that if proven, establish a violation of the CMPA.[3] Finding no disputed issue of fact, the Board finds that the circumstances presented warrant a decision on the pleadings because the Complaint has failed to plead facts which if proven establish a statutory cause of action under the CMPA. Therefore, the Board grants Respondent's Motion to Dismiss.

In addition, the Unions claim violations of the CMPA because the parties' CBA at Articles 5 and 6 provide union members representation at meetings called by WASA. (See Complaint at p. 2).

The Board "distinguishes between those obligations that are statutorily imposed under the CMPA and those that are contractually agreed upon between the parties." *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks*, 50 DCR 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002) (citing *American Federation of State, County and Municipal Employees, Local 2921*, Slip Op. No. 339). In addition, it is well established that the Board's "authority only extends to resolving statutorily based obligations under the CMPA." *Id.* Therefore, the Board examines the particular record of a matter to determine if the facts concern a violation of the CMPA, notwithstanding the characterization of the dispute in the complaint or the parties' disagreement over the application of the collective bargaining agreement.

The Unions' pleadings merely express a disagreement over Respondent's application of Articles 5 and 6 of parties' CBA. Specifically, the Unions contend that the Respondent violated the CBA by allegedly refusing Mr. Shanks' request for union representation or to discontinue the

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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.

[3] Board Rule 520.10 - Board Decision on the Pleadings, provides that: "[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument."

meeting after Mr. Shanks' alleged request for union representation was denied. (See Complaint at p. 2). Whether or not Respondent's actions violated the parties' CBA presents an issue for contract interpretation. Accordingly, the Board declines to exercise its statutory authority to seek or enforce compliance with decisions rendered pursuant to the parties' contractual agreement. *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 39 DCR 9617, Slip Op. No. 295, PERB Case No. 09-U-18 (1992). Thus, with no issue remaining, we dismiss the Complaint.[4]

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint filed by the American Federation of Government Employees Local 872 and NAGE Local R3-06 is dismissed.

2. The District of Columbia Water and Sewer Authority's motion to dismiss the Complaint for failing to state a cause of action is granted.

3. District of Columbia Water and Sewer Authority's motion to dismiss the Complaint as inaccurate is denied as moot.

4. 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.

March 4, 2011

[4] Furthermore, the Board denies the Respondent's Motion based upon the alleged inaccuracies contained in the Complaint, as the issue is moot.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-U-49 was transmitted via Fax and U.S. Mail to the following parties on this the 4th day of March 2011.

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