Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Bessie Newell	)	
Complainant,	)	PERB Case No. 12-U-24
v.	)	Opinion No. 1297
District of Columbia Housing Authority,	)	
Respondent.	)	

DECISION AND ORDER

I. Statement of the Case:

Bessie Newell ("Ms. Newell" or "Complainant") filed an Unfair Labor Practice Complaint ("Complaint") and a Motion for Preliminary and Injunctive Relief ("Motion") against the District of Columbia Housing Authority ("DCHA" or "Respondents"). (Complaint at 1). The Complainant alleges that the DCHA violated D.C. Code §1-617.04(a)(1), (2), (3), and (4)[1]

[1] D.C. Code §1-617.04 provides in relevant part as follows:

(a) The District, its agents, and representatives are prohibited from:

(1) Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;

(2) Dominating, interfering, or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to it, except that the District may permit employees to negotiate or confer with it during working hours without loss of time or pay;

(3) Discriminating in regard to hiring or tenure of employment or any term or

by "failing to comply with an arbitration award issued on December 16, 2008." (Complaint at 1). Ms. Newell requests that the Board order DCHA to comply with the arbitrator's award immediately with interest. (Complaint at 2). DCHA filed an Opposition to the Motion for Preliminary Injunctive Relief ("Opposition") and the Motion to Dismiss or, in the alternative, Motion for Summary Judgment ("Motion to Dismiss"). In DCHA's Motion to Dismiss, they state that "Complainant fails to state a claim for which relief can be granted; and [t]he issues raised in Complainant's Complaint are moot." (Motion to Dismiss at 1).

DCHA contends that "[c]ontrary to Complainant's assertions no such District of Columbia Statute cited in Complainant's Complain exists"[2] and that "Respondents did not fail to comply with an arbitration award issued on December 16, 2008." *Id.* Respondents request that the Board "[d]eny Complainant's Motion . . . [and] [g]rant such other and further relief that [the Board] deems is just and proper." (Opposition at 5). In their Motion to Dismiss, the Respondents ask that the Board "grant Respondent District of Columbia Housing Authority's motion to dismiss, or in the alternative for summary judgment. Assuming *arguendo*, [the Board] determines that Complainant did state a claim, Respondent respectfully request[s] an Order directing Complainant to submit a more definite statement." (Motion to Dismiss at 6).

The issues before the Board are 1) whether Ms. Newell adequately stated a claim upon which relief can be granted; and 2) if so, did the DCHA violate D.C. Code §1-617.04(a)(1), (3), and (4) by failing to comply with an arbitration award issued on December 16, 2008.

II. Discussion:

A. Background

Ms. Newell worked for the DCHA as a Compliance Coordinator. (Opposition at 2). DCHA terminated her employment effective June 30, 2008. *Id.* Ms. Newell was a grade DS-13 Step 7 employee at the time of her termination. *Id.* Effective March 15, 2008, the position of Compliance Coordinator was placed into the collective bargaining unit. *Id.*

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condition of employment to encourage or discourage membership in any labor organization, except as otherwise provided in this chapter;

(4) Discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony under this subchapter.

[2] Complainant cites "DC Code 61704 (a) (1) (2) (3) (4) (2001)." (Complaint at 1). As written this statute does not exist. The Board has inferred that Complainant was citing to D.C. Code §1-617.04(a)(1), (2), (3), and (4).

When DCHA terminated her employment, Complainant "invoked arbitration against the Agency," claiming that "the Agency violated the Collective Bargaining Agreement by issuing notice of termination to [Complainant] in an untimely manner." (Complaint Ex. 2 at 1). On December 16, 2008, Arbitrator David P. Clark ruled that DCHA violated the Collective Bargaining Agreement by issuing Ms. Newell's notice of termination in an untimely manner. (Complaint Ex. 2 at 6). Arbitrator Clark ordered that DCHA "reinstate [Ms. Newell] to her position with all rights, benefits, and privileges restored, including back pay." *Id.*

Following Arbitrator Clark's order, DCHA reinstated Ms. Newell with back pay. (Complaint at 1). Ms. Newell was "given back pay from the pay period ending July 5, 2008 through the pay period ending January 31, 2009. Complainant's back pay calculation totaled $51,725.60 in gross pay." (Opposition at 2). DCHA calculated Ms. Newell's back pay based on the Grade 13, Step 5 level. (Opposition at 2). Respondent admits that they erred in using the Grade 13, Step 5 level for the back pay calculation because "as a result of the Compliance Coordinator position being placed in the collective bargaining unit, Complainant's annual salary increased." *Id.* Respondent's miscalculation affected roughly forty employees. (Complaint at 1). To resolve the pay disparity, the American Federation of Government Employees Local 2725 ("AFGE") filed a grievance. *Id.* AFGE and DCHA settled the matter in December 2011. (Complaint at 1; Opposition at 2).

Pursuant to the December 2011 settlement, Complainant was "compensated in the amount of $6,424.25, minus withholdings, which constituted the difference between her original back compensation (DS-13/Step 5) and the compensation level grieved by the AFGE Local 2725 (DS-13/Step 7)." (Opposition at 2). This calculation "covered the pay period ending March 15, 2008 through the pay period ending May 9, 2009." *Id.*

In the settlement agreement, Ms. Newell is listed as a "grievant." (Motion to Dismiss Ex. A at 1). Ms. Newell's signature is on the settlement agreement. *Id.* What is more, by signing the settlement agreement, Ms. Newell agreed to "voluntarily withdraw her grievance with prejudice. Grievant agrees that [s]he has had an opportunity to read this Agreement, and understands that this Agreement represents the entire agreement and understanding between the parties." *Id.*

Ms. Newell claims that she is owed more money because the initial arbitration and the settlement are separate cases. (Complaint at 1). The Respondents argue the $6,424.25 made Ms. Newell whole, and DCHA complied with the terms of the settlement agreement, resolving and the matter. (Opposition at 3).

B. Complainant's Failure to State a Claim

The Board concludes that the Complainant fails to state a claim upon which relief can be granted. In her Complaint, Ms. Newell does not allege facts that support a claim pursuant to D.C. Code §1-617.04(a)(1), (2), (3), and (4). Complainant alleges that DCHA owes her more money under the arbitrator's award, but she does not allege facts to substantiate her claim. (Complaint at 1). Ms. Newell's unfair labor practice complaint requests "that the Board order DC Housing Authority to comply with the arbitrator's award immediately with interest." (Complaint at 2). The Board finds that DCHA already complied with the arbitrator's December 2008, award by reinstating Ms. Newell and compensating her $51,725.60 in gross pay. *Id.* DCHA did miscalculate the amount of back pay they owed Ms. Newell. (Opposition at 1). This matter was settled on December 22, 2011, and DCHA paid Ms. Newell the difference they owed her due to the miscalculation. *Id.*

The Board has held that though 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. *Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO v. District of Columbia Public Schools*, 2010 WL 7891663, Slip Op. No. 1016 at 5, PERB Case No. 09-U-08 (July 16, 2010), citing *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06,* 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (September 27, 1996). In the present case, Ms. Newell does not present any evidence to show why she is owed more money beyond the two payments she already received from DCHA. Ms. Newell's reinstatement and receipt of back pay totaling $51,725.60 shows that DCHA did comply with the arbitrator's award. Moreover, Ms. Newell's signature on the settlement agreement and acceptance of the $6,424.25 indicates that she agreed to settle the matter with DCHA. Therefore, when they reinstated Ms. Newell and paid her back pay, DCHA granted the remedy Ms. Newell now requests of the Board. (Complaint at 2). The Board will not grant Ms. Newell a remedy she has already received, and the Complainant's allegations are not sufficient because they fail to state a claim for which relief can be granted.

THEREFORE, the Board denies the Complainant's Motion for Preliminary Injunctive Relief, and the Board dismisses the Complaint for failure to state a claim upon which relief can be granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's Motion for Preliminary Injunctive Relief is denied.

2. The Complaint is dismissed in its entirety for failure to state a claim.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEES RELATIONS BOARD
Washington, D.C.

July 26, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-U-24 was transmitted via U.S. Mail to the following parties on this the 26th day of July, 2012.

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