

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: )	
)	
Council of School Officers, Local 4 )	
American Federation of School )	
Administrators, AFL-CIO, )	
)	
Complainant, )	PERB Case No. 10-U-44
)	
v. )	Opinion No. 1117
)	
District of Columbia Public Schools, )	
)	
Respondent. )	
)	
_____ )	

**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") because DCPS "has not provided any of the information sought by the Union. (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. On or about June 28, 2010, the Union requested certain information concerning the hiring process for principals pursuant to the procedures set forth in the District of Columbia Municipal Regulations. See June 28, 2010 letter from Aona Jefferson to Regina Youngblood.

6. DCPS failed to respond to the Union's request and has not provided any of the information sought by the Union.

(Complaint at p. 2).

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

7. The above facts support a finding that DCPS has committed an unfair labor practice with respect to its duty to bargain in good faith with the Union.

8. Specifically, the failure by DCPS to respond to the Union's request for information 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).

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

- a) respond to the Union's June 28, 2010 request for information;
- 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 practices.

(Complaint at p. 3).

DCPS does not deny any of the factual allegations in the Complaint. (See Answer at p. 2). However, Respondent asserts that "that it is under no legal obligation to produce the requested document as it is not relevant to the collective bargaining process and this fact has been communicated by Respondent to counsel for the Union. Respondent denies all the remaining allegations presented in paragraph six of the Complaint." (Answer at p. 2).

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. 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).

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[.]"<sup>1</sup> 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.<sup>2</sup> Specifically, Complainant alleges that DCPS violated the CMPA by failing to respond to the Union's request for information concerning the hiring process for principals pursuant to the procedures set forth in the District of Columbia Municipal Regulations.

The Board has previously held that materials and information relevant and necessary to its duty as a bargaining unit representative must be provided upon request. (See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, \_\_\_ DCR \_\_\_, Slip Op. No. 835, PERB Case No. 06-U-10 (2006). The Board's precedent is that

<sup>1</sup> "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).

<sup>2</sup> 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.

an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in: (1) processing of a grievance; (2) an arbitration proceeding; or (3) collective bargaining. *See Id.*; *see also American Federation of Government Employees, Local 2741 v. District of Columbia Department of Parks and Recreation*, 50 D.C.R. 5049, Slip Op. No. 697, PERP Case No. 00-U-22 (2002); *and see Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools*, 54 D.C.R. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2002).

The Board has no intention of deviating from the longstanding precedent of viewing contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. However, the Board finds that the Union's Complaint, as drafted, fails to indicate the purpose of the requested information. On the record before the Board, the Complaint merely asserts that Respondent's actions violate the CMPA by asserting that Respondent failed to provide the requested information. CSO has not alleged facts that it sought information relevant and necessary to the union's collective bargaining duties. Moreover, the parties' pleadings present no issue of fact. 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 because the Complaint has failed to plead facts which, if proven, establish a statutory cause of action under the CMPA.

As a result, CSO's Complaint is dismissed.

### 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 without prejudice.
2. In the event that CSO chooses to re-file this Complaint, the Board will accept a re-filing within thirty (30) days of the issuance of this Decision and Order.
3. 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

**CERTIFICATE OF SERVICE**

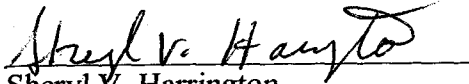
This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 10-U-44 are being transmitted via Fax and U.S. Mail to the following parties on this the 19<sup>th</sup> day of August, 2011.

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