Notice: This decision may by formally revised before it is published in 'District of Columbia Register. Parties should promptly notify its office of any formal errors so that they be corrected before publishing the decision. This notice was not intended to provide an opportunity for a substantive challenge to the decision.

COVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

)

In the Matter of:

Willie E. Elliot,

Complainant,

v.

District of Columbia
Department of Corrections,

Respondent.

PERB Case No. 95-U-09 Opinion No. 455

DECISION AND ORDER

The facts and issues that gave rise to this case are set out by the Hearing Examiner in her Report and Recommendation. 1/ The Hearing Examiner found that Complainant Willie E. Elliot, a senior correctional officer for the District of Columbia Department of Corrections (DOC), failed to meet his burden of proof that DOC committed unfair labor practices in violation of the Comprehensive Merit Personnel Act (CMPA) as codified under D.C. Code § 1-618.4(a)(4). 2/ Specifically, the Hearing Examiner found that the Complainant did not establish that DOC, in retaliation for a grievance filed by the Complainant, threatened the Complainant and refused to respond to two subsequent grievances. (R&R at 13.) Based on her findings and conclusion, the Hearing Examiner recommended that the Complaint be dismissed in its entirety.

The Complainant has filed objections generally to the Hearing

^{1/} The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion.

D.C. Code § 1-618.4(a)(4) provides that the "District, its agents, and representatives are prohibited from [d]ischarging 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 chapter [, i.e., the CMPA.]" (emphasis added.) The CMPA provides all employees with a procedure for handling grievances, i.e., a complaint, and a right to present them. See D.C. Code § 1-617.2 and D.C. Code § 1-618.6(b), respectively. (Emphasis added.)

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Examiner's Report and Recommendation.³/ However, the Complainant does not make specific objections to the Hearing Examiner's findings and conclusions based on the record evidence, but states that there are errors in his own testimony Complainant made before the Hearing Examiner. (Obj. at para. 2.) The Complainant requests that the Board reconsider the findings and conclusion of the Hearing Examiner based on submitted written testimony contained in his objections.

The Board has held that once closed we will deny any request to reopen a hearing absent compelling reasons. See, e.g. <u>IBPO and DCDGS and AFSCME</u>, D.C. Council 20, Local 2087, 29 DCR 4605, Slip Op. 48, PERB Case No. 82-R-04 (1982). Permitting the submission of post-hearing evidence by the Complainant would unfairly prejudice the Respondent by denying it an opportunity to cross-examine the evidence. The Complainant does not contend that he was denied a full opportunity to meet his burden of proof and establish his case before the record was closed. Therefore, Complainant has not presented nor do we find any compelling reason for reopening the record.

The remainder of the Complainant's objections consist of his general disagreement with the findings of the Hearing Examiner and his request that the Board reconsider the record evidence and arguments made in his previously filed pleadings. Pursuant to D.C. Code Sec. 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings and conclusion of the Hearing Examiner and find them to be reasonable and supported by the record. We further note that the conclusion that no violation was established did not turn solely on the testimony Complainant now asserts was in error but rather on the record as a whole. (R&R at 13.)

Therefore, we find no merit to Complainant's objections and adopt the Hearing Examiner's findings, conclusions and recommendation that the Complaint be dismissed.

^{3/} Board Rule 556.3 provides that a "party may file precise, specific, written exceptions with the Board." Most of Complainant's "objections" are neither precise nor specific. However, Complainant has represented himself in these proceedings and we have held that we will not impose upon the pleadings of pro se complainants strict compliance with the clarity and completeness requirements otherwise prescribed by our Rules. See, e.g., Clarence Mack, et al. v. FOP/DOC Labor Committee, Slip Op. No. 386, PERB Case No. 94-U-24 (1994) (pro se litigant was not required to strictly comply with Board Rule 520.3(d)).

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ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

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

December 20, 1995