

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOHN A. PARKINS, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801-3733
TELEPHONE: (302) 255-2584

Krystal Owens
1806 Mandarin Court
New Castle, Delaware 19720

Perry F. Goldlust, Esquire
1426 North Clayton Street
Wilmington, Delaware 19806

**Re: Krystal Owens v. Kenneth Anderson and AFSCME/DE
Public Employees Council 81
C.A. No. 09C-04-274 JAP**

Submitted: October 20, 2009
Decided: October 26, 2009

On AFSCME/ DE Public Employees Council 81's
Motion to Dismiss
DENIED.

Dear Ms. Owens and Mr. Goldlust:

Defendant AFSCME/DE Public Employees Council 81 has moved to dismiss this *pro se* complaint. For the reasons which follow that motion is denied.

Factual and Procedural History

Krystal Owens was employed at DPC from May 2005 through November 2008. In September 2007, Kenneth Anderson, a co-employee at DPC, sent an email to other DPC employees regarding an incident that occurred between him and Ms. Owens.¹ In April 2009, Ms. Owens filed a complaint in this Court against Mr. Anderson alleging that the email “exposed [Ms. Owens] personally and professionally to the myths, stereotypes and attitudinal barriers about certain disabilities.”² The complaint further alleges that Mr. Anderson’s email tried “to convince the recipients of the email that I was a danger due to my mental capacity.”³

The complaint also names Council 81 as a defendant, alleging that when Ms. Owens complained to the union about this alleged discrimination, the union “refused to file charges against management . . . because of preexisting racial bias against [Ms. Owens].”⁴ According to the complaint, Ms. Owens also contacted someone at AFSCME International Union, who “unfortunately did not tell me until months later that I could have contacted

¹ It is not clear from the complaint what exactly the alleged discriminatory email stated, however, the contents of the email are not relevant to this motion.

² Complaint, at 3. According to the complaint, Mrs. Owens suffers from “depressive disorder, post traumatic stress disorder, insomnia, and stress-induced hypertension.” *Id.*

³ *Id.* at 4.

⁴ *Id.* at 1. Ms. Owens also filed a complaint against Council 81 with the Delaware Department of Labor (“DDOL”) alleging she was harassed and denied union representation based on her race. The DDOL found that the evidence did not support Ms. Owens’ claim of illegal discrimination.

the PERB [Public Employee Relations Board] to complain and by then the statute of limitations had expired.”⁵ As a remedy, Ms. Owens seeks lost wages and benefits in the amount of \$250,000.

Mr. Anderson and Council 81 both filed motions to dismiss. Ms. Owens did not oppose Mr. Anderson’s motion, and therefore, the Court granted his motion. Accordingly, the only remaining claims that require resolution are those against Council 81.

Standard of Review

A motion to dismiss requires the Court to determine “whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”⁶ When deciding a motion to dismiss, the Court accepts as true all well-pleaded allegations in the complaint, and draws all reasonable inferences in favor of the plaintiff.⁷ “Where allegations are merely conclusory, however, (*i.e.*, without specific allegations of fact to support them) they may be deemed insufficient to withstand a motion to dismiss.”⁸

⁵ *Id.* at 2.

⁶ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁷ *Ramunno v. Crawley*, 705 A.2d 1029 (Del. 1998).

⁸ *Lord v. Souder*, 748 A.2d 393, 398 (Del. 2000).

Discussion

The Union first contends that the Complaint should be dismissed because Plaintiff does not allege she has any relationship with the Union. It also argues that the Plaintiff does not allege that the Union did anything wrong. These contentions are incorrect. The Complaint can be fairly read to allege, at a minimum, that Plaintiff is a member of the Union, that she sought to have the Union file and prosecute a grievance on her behalf and that the Union refused to do so because of her race. Plaintiff has therefore alleged facts which, if proven, constitute a violation of both state and federal law.

The Union next contends that this Court lacks jurisdiction because Plaintiff has alleged an unfair labor practice under the Public Employer Relations Act (“PERA”); such claims must be brought within 180 days of the precipitating event to the Public Employee Relations Board and any appeal from that board is to the Court of Chancery. However the Union does not explain why the alleged conduct constitutes an “unfair labor practice” as that term is defined by PERA. Indeed, aside from a general citation to PERA, the Union provides no citation to, or analysis of, the pertinent statutes found within PERA. Thus the Court is left to guess at what the Union’s argument might be.

In *Gonzalez v. Caraballo*⁹ this Court held that:

Courts throughout the country hold that they are not obligated to do “counsel’s work for him or her.” The Court is not asking counsel to routinely submit arguments worthy of publication in a law review; indeed, in some instances (such as a party’s failure to provide discovery) it is often unnecessary to cite any authorities. Nonetheless, in all but the simplest motions, counsel is required to develop a reasoned argument supported by pertinent authorities. Counsels’ performance in this matter fell well short of that standard. Counsel are on notice that henceforth this Judge will summarily deny any motion filed by a represented party involving a question of law or the application of law to fact in which the party does not meet this standard.¹⁰

The Union’s motion is no better than that before the Court in *Gonzalez*, and therefore its motion is **DENIED**.

IT IS SO ORDERED.

John A. Parkins, Jr.

cc: Prothonotary

⁹ 2008 WL 4902686 (Del. Super., Nov. 12, 2008).

¹⁰ *Id* at *3 (internal footnote omitted).