Circuit Court for Prince George's County
Case No. C-16-CV-23-003626

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1489

September Term, 2024

KIAMBO WHITE

v.

MARTIN DIGGS, *et al.*

Ripken,
Kehoe, S.,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: March 30, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In this case, the Appellant, Kiambo White ("Mr. White"), presents a miasma of buzzwords and legal terms to assert that he was either wrongfully discharged from his employment or the victim of discrimination. This miasma of terms is an attempt to deflect attention from Mr. White's machinations to contrive claims against his employer and others. His efforts came to naught in the circuit court and, for reasons that we shall explain, we affirm the judgment of the circuit court.

On November 20, 2023, the Circuit Court for Prince George's County dismissed Mr. White's Complaint against the Association of Classified Employees, American Federation of State, County, and Municipal Employees,[1] Local 2250 ("Local 2250"),[2] Martin Diggs ("Mr. Diggs"), Deanna Strong, Derrick Reid, Priscilla Rather and Patricia Bobbit, for failing to state a cause of action upon which relief can be granted. Mr. White noted a timely appeal to this court.

I. Factual Background

Mr. White's Amended Complaint sets forth the following allegations. On or about April 25, 2021, Timothy Traylor ("Mr. Traylor"), Executive Director of Local 2250, hired Mr. White as a field representative. At the time of Mr. White's hiring, Mr. Diggs was the president of Local 2250. Mr. White was hired as a probationary employee for a period of six months.

[1] The Association of Classified Employees, American Federation of State, County, and Municipal Employees will be referred to as "ACE-AFSCME" or "the Union."

[2] Local 2250 is a labor union of public employees.

Mr. White was a salaried employee. On June 25, 2021, Mr. Traylor approved Mr. White's additional telework days per month to allow Mr. White to deal with a family emergency. During the months of May through July of 2021, Mr. White alleges that he worked a number of excess hours but was not compensated because he was not an hourly employee. Mr. Traylor authorized and promised Mr. White several paid days off to compensate him for his extra time.

Mr. Diggs accompanied Mr. White on several field visits. During these visits Mr. White observed that Mr. Diggs would hand out gift cards and flirt with female union members. Mr. White believed that Mr. Diggs would often take "an overly familiar and intrusive posture when interact[ing] with female Union workers." Mr. Traylor questioned Mr. White about Mr. Diggs's conduct on those site visits.

Mr. Diggs and Mr. Traylor had an adversarial relationship. On or about August 30, 2021, the International Union placed Mr. Traylor on administrative leave based on allegations that he had sexually harassed a female employee. Mr. White believed that the allegations against Mr. Traylor were false, and Mr. Diggs was using them to subvert and usurp Mr. Traylor's authority. Mr. White testified at Mr. Traylor's hearing before a judicial panel[3] appointed by Local 2250, that he believed that the allegations against Mr. Traylor were false. When Mr. Diggs learned that Mr. White intended to testify at the judicial panel, he began a campaign of harassment against Mr. White. This campaign included: canceling

[3] A judicial panel is an administrative review board conducted by the ACE-AFSCME Union. The record does not disclose any of its procedures.

Mr. White's telecommuting days; gaining access to personal information through his influence over personnel; causing Mr. White's paychecks to be delayed; refusing to honor Mr. Traylor's offer of paid time off; disparaging Mr. White to a new employer; placing Mr. White on probation and suspending him without authority; and disparaging Mr. White to ACE-AFSCME personnel.

On or about October 4, 2021, Mr. White sought a peace order against Mr. Diggs in the District Court of Maryland for Prince George's County (Case No. 0502SP041042021).[4]

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[4] A peace order is an action brought in the District Court pursuant to Md. Code Ann., Courts & Jud. Proc. § 3-1501 *et seq*. A District Court can grant relief if the respondent has committed or is likely to commit in the future one or more of the following acts:

> (i) An act that causes serious bodily harm;
>
> (ii) An act that places the petitioner or the petitioner's employee in fear of imminent serious bodily harm;
>
> (iii) Assault in any degree;
>
> (iv) False imprisonment;
>
> (v) Harassment under § 3-803 of the Criminal Law Article;
>
> (vi) Stalking under § 3-802 of the Criminal Law Article;
>
> (vii) Trespass under Title 6, Subtitle 4 of the Criminal Law Article;
>
> (viii) Malicious destruction of property under § 6-301 of the Criminal Law Article;
>
> (ix) Misuse of telephone facilities and equipment under § 3-804 of the Criminal Law Article;
>
> (x) Misuse of electronic communication or interactive computer service under § 3-805 of the Criminal Law Article;
>
> (xi) Revenge porn under § 3-809 of the Criminal Law Article; or
>
> (xii) Visual surveillance under § 3-901, § 3-902, or § 3-903 of the Criminal Law Article.

Md. Code Ann., Cts. & Jud. Proc. § 3-1503(a)(1).

On October 12, 2021, Mr. Diggs issued a letter to Mr. White, informing him that he was terminated effective immediately. After a temporary peace order had been issued, Mr. White stayed away from work to avoid interaction with Mr. Diggs. Mr. Diggs, through an intermediary Kory Blake, asked Mr. White to work remotely pending a hearing on the peace order. Mr. Diggs terminated Mr. White prior to the hearing on the final peace order. After a full hearing, the request for a peace order was denied because statutory relief could not be granted.

On August 4, 2023, Mr. White filed a *pro se* Complaint against ACE-AFSCME, Mr. Diggs, Priscilla Rather, Deanna Strong, Derrick Reid and Patricia Bobbitt, in the Circuit Court for Prince George's County. This Complaint alleged:

> The facts of this case are:
>
> 1. Bullying and Harassment
> 2. Wrongful Termination
> 3. Unauthorized access to personal data/files
> 4. Wage, hour, benefits loss or unpaid
> 5. Vacation/Sick Time
> 6. Hostile Work Environment
> 7. Discrimination
> 8. Emotional distress damages
> 9. Economic damages
> 10. Punitive damages
> 11. Retaliation

The complaint sought $1,500,000.00 in damages.

On November 13, 2023, Mr. White, through counsel, filed an Amended Complaint.[5] The Amended Complaint consisted of a count of wrongful discharge and a count of discrimination in violation of federal, state and local laws; retaliation. The case was removed to the United States District Court, District of Maryland (Case 8:23-CV-03161). The federal court dismissed all federal claims and remanded the case back to the Circuit Court for Prince George's County for consideration of all other claims.

On July 12, 2024, Local 2250 and Mr. Diggs filed separate motions to dismiss Mr. White's Amended Complaint. On September 4, 2024, the circuit court granted the motions to dismiss without a hearing.

II. Standard of Review

We review the grant of a motion to dismiss de novo. *Chavis v. Blibaum & Assocs. P.A.*, 476 Md. 534, 551 (2021). We assume the truth of the well-pleaded allegations set forth in the complaint. *Id.* We consider the allegations, as well as any inferences that may reasonably be drawn from them, in the light most favorable to the non-moving party. *Id.* Our review is without deference to a trial court to determine if it was legally correct. *Barclay v. Castruccio*, 469 Md. 368, 373 (2020). A motion to dismiss is based on the four corners of the complaint. We may dismiss if the allegations, and all permissible inferences, if true would not afford relief to the plaintiff. *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010).

[5] The Amended Complaint indicated that only ACE-AFSCME and Mr. Diggs ("Appellees") were defendants.

III. Motion to Dismiss

As a threshold matter, Appellees argue that Mr. White has not appealed the granting of the motion to dismiss in favor of Mr. Diggs. Appellees note that by not arguing the dismissal of the case against Mr. Diggs, Mr. White has waived that issue on appeal. *See Klauenberg v. State*, 355 Md. 528, 552 (1999).

Mr. White's arguments are convoluted. He contends that Mr. Diggs undertook to subvert the Union's constitution by causing Mr. Traylor to be dismissed, and that Mr. Diggs harassed and retaliated against him after he told the judicial panel that he believed that Mr. Diggs was guilty of sexual harassment and misappropriation of funds. In his brief, Mr. White argues:

> The motivations for the discharge contravened Maryland public policy in that it was part of [Mr.] Diggs'[s] usurpation of the authority of the appointed position of Executive Director, as defined in the Union's Constitution, as detailed herein below. [Mr.] Diggs'[s] usurpation contravened the public policy that labor unions operate according to the democratically agreed-to terms instated by elections of their members. The Union, in turn, is liable for [Mr.] Diggs'[s] actions, as [Mr.] Diggs acted in his capacity as Union President, and the Union's Executive Board at first allowed these events to happen, and then later ratified the abusive and wrongful discharge.

This argument weaves Mr. Diggs's alleged conduct into Local 2250's decision to terminate Mr. White. Although it does not address all of the grounds set forth in Mr. Diggs's Motion to Dismiss, this is a minimally sufficient argument that Mr. White is challenging the dismissal of the case against Mr. Diggs. Accordingly, we will deny the motion to dismiss and address the merits of the case.

IV. Discussion

A. Wrongful Discharge

Mr. White contends that his complaint stated a cause of action for wrongful, or abusive, discharge. This contention is based on two grounds. First, Mr. Diggs did not have the authority under the ACE-AFSCME constitution to discharge Mr. White. Accordingly, Mr. White's termination violated his due process rights. Second, Mr. Diggs discharged Mr. White because he had testified in favor of Mr. Traylor and against Mr. Diggs at the union judicial panel.

We first address whether Mr. Diggs had the authority to terminate Mr. White. Local 2250's constitution provides, in pertinent part:[6]

> Article VI Officers and Elections: Section 1. Officers. A. The elected officers of this Union shall be a president, vice-president, treasurer, and recording secretary and will be elected by all members of Local 2250. . . . Section 2. President. A. The president shall preside at all meetings of the Union and the executive board, and shall be the chief spokesperson of the union. B. The president shall have overall responsibility for the preparation of the agendas for the meetings of the Union with approval of the executive board, and shall have power to modify or change the agenda if in his/her judgment the best interest of the Union is served thereby, provided such changes do not conflict with the provisions of this constitution. C. The president shall appoint all standing and special committees, including a committee to oversee the ratification of all PGCPS/Local 2250 contracts, with the consent of the executive board, and will publicize the members of committees to membership. D. The president shall be a member of all committees except the election committee. E. The president shall approve all expenses incurred by the Union or by any officials of the Union before such claims for such obligations are paid and may sign all contracts approved by the executive

[6] See ACE-AFSCME Local 2250, Resources AFSCME Constitution, https://ace-afscme.org/resources-afscme-constitution [https://perma.cc/2R3L-V5SS] (last visited March 26, 2026) for Local 2250's constitution in its entirety.

> board and other official documents of the union and may also countersign all checks drawn[] against the funds of the local. F. The president shall be an automatic delegate to the AFSCME Convention, and NEA and MSEA conventions. G. The [p]resident shall report to the executive board and membership at meetings regarding the progress and standing of the local union and the president's official acts. H. Should there be a vacancy in the presidency, the position will be filled by the vice-president for the remainder of the term of office. . . .
>
> Article VII Executive Director: Section 1. This Union shall have an executive director who shall administer the day to day affairs of the Union, and be an advisor to the executive board. The executive director shall be appointed by the executive board and shall serve at the direction of the executive board. Section 2. Compensation and other conditions of employment of the executive director and other personnel shall be determined by the executive board in accordance with regular budgetary procedures. Section 3. All actions taken by the executive director or designee on behalf of the Union shall be subject to review by the executive board. The executive director shall assign and supervise staff employees of the local union in accordance with the staff contract and will lead any contract negotiations with staff union. The executive director is authorized to act as a co-signer of checks drawn on the local funds when officer is unavailable. Section 4. The [e]xecutive [d]irector will report on status of labor relations at executive board and membership meetings.

Mr. White contends that Local 2250 did not operate according to its democratically established rules. This argument fails. Although he was employed by Local 2250, Mr. White was not a member of that union. He was a member of the Office and Professional Employees International Union ("OPEIU"), Local 2. The democratic rules that govern unions are in place to protect the interests of the union members with respect to their contracts. *Mclaughlin v. American Postal Workers Union, Miami Area Local, AFL-CIO*, 680 F. Supp. 1519, 1520 (S.D. Fla. 1988). Mr. White, who was not a member of Local 2250, does not have standing to assert this claim. In addition, OPIEU Local 2 filed a grievance on behalf of Mr. White. This grievance was subject to arbitration. The arbitrator

specifically found, "[Mr. White] acknowledged that, following Mr. Traylor's placement on administrative leave, Mr. Diggs served as supervisor of [Local 2250's] employees." The arbitrator further found that Mr. Diggs was acting in the capacity of the Executive Director while Mr. Traylor had been placed on administrative leave. The arbitrator's determination of this factual issue binds the parties. *See Ewing v. Koppers Co., Inc.*, 312 Md. 45, 58 (1988).

In *Adler v. American Standard Corp.*, our Supreme Court recognized that an at-will employee could bring a cause of action for wrongful discharge. 291 Md. 31, 47 (1981) (*Adler I*). This cause of action depends on whether the motivation to discharge the employee violates a clear mandate of public policy. *Id.* In *Adler I*, our Supreme Court noted that the petitioner's amended complaint[7] did not set forth a sufficient factual predicate to determine whether any declared mandate of public policy was violated.

All of Mr. White's claims of wrongful termination stem from his appearance before the judicial panel that was investigating Mr. Traylor's termination. Mr. White appears to believe that his gratuitous remarks before that board—that Mr. Diggs was guilty of sexual

[7] *Adler I* came to our Supreme Court for certified questions from the United States District Court for the District of Maryland. 291 Md. at 32. After the case was returned to the federal court, the petitioner filed a second amended complaint. *See Adler v. American Standard Corp.*, 538 F. Supp. 572, 574 (D. Md. 1982) (*Adler II*). The federal district court found that the petitioner's second amended complaint stated with sufficient specificity a cause of action for wrongful discharge. *Id.* at 578. However, the Fourth Circuit held that the petitioner's claims were insufficient to support a claim for wrongful discharge because claims for abusive discharge should be limited to "situations involving the actual refusal to engage in illegal activity or the intention to fulfill a statutorily prescribed duty." 830 F. 2d 1303, 1303 (4th Cir. 1987) (*Adler III*).

harassment and misuse of funds—serve as a basis that any action against him by either Local 2250 or Mr. Diggs was wrongful. Appellees counter that Mr. White's appearance before an internal investigatory board does not rise to the level of filling an important mandate of public policy because it does not involve the refusal to engage in illegal activity or the exercise of a statutorily protected obligation.

Courts must look at the "line between claims that genuinely involve the mandates of public policy and are actionable, and ordinary disputes between an employee and employer that are not." *Thompson v. Memorial Hosp. at Easton, Md., Inc.*, 925 F. Supp. 400, 407 (D. Md. 1996). This distinction "preserves the right of the employer to terminate employees at will, subject only to the limited exceptions created by statute and to the relatively limited instances where a clear mandate of public policy has been violated." *Adler III*, 830 F. 2d. at 1307. In *Adler III*, the Fourth Circuit held that the petitioner's intention was to blow the whistle on alleged wrongdoing. *Id.* In *Thompson*, the court found that the plaintiff's report of misadministration of radiation treatment to the Maryland Department of the Environment ("MDE") did not violate a mandate of public policy because the duty to report such misadministration was with the hospital not the employee. 925 F. Supp. at 407–08. The plaintiff could not be said to have been terminated for exercising a legal duty because he had no duty to exercise. *Id.* at 408.

In *Insignia Residential Corp. v. Ashton*, our Supreme Court affirmed the verdict in the trial court and held that refusing to have sexual intercourse in order to keep one's job violated a clear mandate of public policy because it, in essence, would constitute

prostitution (exchange of sexual services for compensation).[8] 359 Md. 560, 573 (2000). In that case, the employee, who worked for a property management firm, had been told by a supervisor that she could move forward in her job if she slept with him. *Id.* at 564. The solicitation occurred when the employee was terminated for having yelled at a tenant. *Id.* at 565. When she began to cry, the on-site manager, indicated that she could keep her job, if she slept with him. *Id.* The Supreme Court held that the requirement of providing sexual services for continued employment amounted to prostitution and, therefore, would require participating in an illegal activity to maintain employment. *Id*. at 573.

In *Ewing*, our Supreme Court recognized that a contractual employee could have a cause of action for wrongful discharge. 312 Md. at 49. In that case, the petitioner, who had been employed through a collective bargaining agreement, sued for wrongful discharge alleging that he had been terminated for having made a claim for workers' compensation. Our Supreme Court held that a claim for wrongful discharge might lie for retaliation against the submission of a claim for workers' compensation. *Id.* at 48. However, the Supreme Court concluded that the plaintiff's claim had been precluded by a prior arbitration in which the arbitrator had concluded that the employer was justified in terminating the employee. *Id.* at 58.

In this case, Mr. White cannot point to any illegal activity that he refused to do. Nor can he point to a legal mandate to report alleged wrongdoing. He volunteered information

[8] Former Article 27, § 15 prohibited prostitution. Current Md. Code Ann., Crim. Law § 11-301 defines "prostitution" as "the performance of a sexual act, sexual contact, or vaginal intercourse for hire."

to the judicial board that he believed that Mr. Diggs was guilty of sexual misconduct and misuse of funds. In *Thompson*, the court found that the plaintiff's intention to blow the whistle on what he perceived to be a failure to comply with State and federal law, did not rise to the level of an affirmative obligation to report such problems. 925 F. Supp. at 407. The plaintiff reported to MDE the misadministration of radiation to patients with cancer. *Id.* at 403. The court noted that there was no legal obligation for an individual to make such a report. *Id.* at 407. The duty to report any misapplications belonged to the hospital. *Id.* The court concluded that the policy raised by the plaintiff was too general to be considered a clear mandate of public policy. *Id.*

Mr. White cites *De Bleecker v. Montgomery County* for the proposition that the rule against termination of an at-will employee is inapplicable when the termination arises out of the employee's proper exercise of First Amendment rights. 292 Md. 498, 506 (1982). In *De Bleecker*, our Supreme Court reversed a directed verdict against a priest who worked in the Montgomery County jail. *Id.* at 510. There had been a fight among prisoners and the priest tried to come to the aid of one of them. *Id.* at 501. The priest came to the aid of one of the prisoners, who, he perceived, had been beaten by a guard. *Id.* at 502. The priest addressed a group of prisoners and told them that officers can be "violent and brutal, and something should be done." *Id.* The priest was terminated. *Id.* at 504. Our Supreme Court held that it was a factual determination as to whether the priest's remarks were protected under the First Amendment. *Id.* at 510. This determination would be made in view of

competing considerations of citizens commenting on matters of public concern and the legitimate governmental interest in order. *Id.* at 510–11.

Mr. White cites *Romeka v. RadAmerica II, LLC* for the proposition that County code provisions specifying a democratic process for unions is a clear and unambiguous statement of public policy. 254 Md. App. 414, 455 (2022). His reliance on this case is misplaced. *Romeka* dealt with the Health Care Worker Whistleblower Protection Act (HCWWPA), Md. Code Ann., Health Occ. § 1-502 *et seq*. *Id.* at 419. We held that the circuit court did not err in granting the employer's motion for summary judgment because Ms. Romeka had failed to offer any evidence that the employer's stated reasons for termination were not its actual reasons. *Id.* at 464. Accordingly, there was no showing of a pretext for retaliation. *Id.*

In this case, Mr. White did not avail himself of a whistleblower statute. Thus, it cannot be said that he was engaging in an affirmative duty mandated by public policy. Nor does Mr. White point to any reason, other than the alleged hostility of Mr. Diggs towards him, to suggest that his termination was not for the actual reasons stated, that as a probationary employee he was not going to continue working. His entire basis for claiming wrongful discharge is that Mr. Diggs resented the statements that he volunteered to the judicial panel.

Mr. White claims that he had no significant performance issues when he was fired. This claim is belied by his own complaint. One aspect of Mr. White's complaint is that Mr. Diggs disparaged "White to a new employer of [Mr.] White's, causing that employer to

terminate employment and causing [Mr.] White to lose his salary and all the benefits that he was receiving at that time." Mr. White's problem appears to be that he had taken on new employment and was disgruntled that Mr. Diggs, on behalf of Local 2250, was trying to determine if he was working a second job. It should go without saying that an employer has the right to determine if an employee is actually working for another agency. This allegation gets to the heart of Mr. White's complaint. He had chosen to leave the Local 2250 but contrived to set up a suit against it. In other words, Mr. White's complaints are the result of his own machinations.

In this case, taking his allegations as true, Mr. White claimed that Mr. Diggs was misusing union funds and that he was treating women in an inappropriate manner. He reported this conduct by telling the judicial board, that was investigating allegations against Mr. Traylor, that Mr. Diggs was guilty of these violations. The record does not disclose whether the judicial board was the appropriate agency to which such allegations are made. Nor does the record point to a specific policy that would obligate Mr. White to make such allegations. Therefore, he cannot be said to have exercised an affirmative duty. For that reason, he fails to state a claim for wrongful discharge.

In *Goode v. American Veterans, Inc.*, the plaintiff reported the use of funds in violation of the employer's tax-exempt status. 874 F. Supp. 2d 430, 443–44 (D. Md. 2012). The plaintiff alleged that she had made this report in accordance with an employee handbook that provided that employees were required to make reports of wrongdoing, and guaranteed whistleblower protection. *Id.* at 443. The requisite Internal Revenue Code

provision[9] did not require any such reporting. *Id.* at 444. The court found that the handbook, in and of itself, was an insufficient public policy source for a claim of wrongful termination. *Id.* However, the court acknowledged that the handbook encouraged reporting but nonetheless allowed for termination. *Id.* Accordingly, the court did not grant the employer's pending motion for summary judgment in order to allow the plaintiff to pursue discovery on that issue. *Id.*

In *Porterfield v. Mascari II, Inc.*, our Supreme Court held that an employee's request to speak to an attorney before signing an acknowledgement that she had received a copy of an "Employee Warning" did not violate a clear mandate of public policy. 374 Md. 402, 434 (2003). Our Supreme Court conducted an extensive survey of where the right to counsel might exist in civil contexts and concluded that there was no such right to counsel to examine the document that the plaintiff had been provided. *Id.* at 433–34. Mr. White's voluntary statements to the judicial panel simply do not fall into an area where his conduct would be protected.

In *Wholey v. Sears Roebuck*, our Supreme Court held that there was no public policy mandate for reporting suspected criminal activity to a supervisor. 370 Md. 38, 67 (2002).

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[9] 26 U.S.C.A. § 501(a) provides that certain organizations shall be exempt from taxation. 26 U.S.C.A. § 501(c)(19)(C) provides:

> (c) the following organizations are referred to in subsection (a): ….
>
> (19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization-- . . .
>
> (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

This holding was grounded on the principle that there is a statutory protection for reporting criminal activity to law enforcement authorities. *Id.* That policy did not extend to reporting activity within the organization. *Id.* Mr. White did not report wrongdoing to the appropriate authority. He seems to believe that his remarks to the judicial panel clothe him in immunity from being discharged.

Mr. White cites *Manikhi v. Mass Transit Admin*. to support his contention that he was engaged in protected activity. 360 Md. 333 (2000). In *Manikhi*, our Supreme Court held that Ms. Manikhi had sufficiently pled a cause of action for a civil rights violation (42 U.S.C.A. § 1983) against certain officials because she had complained about having been sexually harassed by another employee and nothing was done to resolve the situation. *Id.* at 358–59. Mr. White has not alleged anything that would rise to this level of a clear mandate of public policy.

Mr. White's statements, which were critical of Mr. Diggs, were made on a purely voluntary basis, and they did not arise out of an affirmative duty. Accordingly, they do not fit the scope of clear mandate of public policy contemplated by *Adler I*.

B. Hostile Work Environment

Mr. White argues that he was the victim of racial discrimination based on the alleged harassment directed against him. In this regard, he alleges that Mr. Diggs imposed conditions on him that were deliberately intended to force his resignation.

The Fair Employment Practices Act ("FEPA"), Maryland's antidiscrimination statute, is found in Md. Code Ann., State Gov. § 20-601 *et seq.* FEPA defines an employer as follows:

> "Employer" means:
>
> (i) a person that:
>
> 1. is engaged in an industry or business; and
>
> 2. A. has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; or
>
> B. if an employee has filed a complaint alleging harassment, has one or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year

Md. Code Ann., State Gov. § 20-601(d)(1).

Mr. White conceded that Local 2250 had fewer than 15 employees for each working day in 20 or more calendar weeks. It is clearly not subject to this statute. Therefore, Mr. White has no cause of action under it.

In support of his argument, Mr. White also cites Section 2-222 of the Prince George's County Code, which provides:

> No employer in the County shall discharge or refuse to hire any person, or act against any person with respect to compensation or other terms and conditions of employment, or limit, segregate, classify, or assign employees because of discrimination.

Mr. White alleges that he was harassed and that it came in retaliation for his having exercised a protected action of speaking out against Mr. Diggs. As we have noted, Mr. White's statements about Mr. Diggs were voluntary statements made at an internal administrative hearing. They do not rise to the level of a First Amendment claim in which

he is speaking about a substantive problem with a governmental agency. *See De Bleecker*, 292 Md. at 506. The use of the term "harassment" indicates that Mr. White is claiming a hostile work environment. To establish a hostile work environment, a party must show that the harassment was based on a suspect class (e.g., race, sex, religion), that it was unwelcome and that it was sufficiently severe or pervasive as to create an abusive working environment. *Cuffee v. Verizon Communications, Inc.*, 755 F. Supp. 2d 672, 679 (D. Md. 2010). Although Mr. White tries to paint a picture of harassment using a broad brush, his specific allegations do not rise to the level of unwelcome conduct so pervasive that it created an abusive work environment. *Id.* Mr. White alleges that Mr. Diggs:

> a. Cancelled Mr. White's telecommuting days;
> b. Gained access to Mr. White's personally identifying information through his influence over Union payroll personnel;
> c. Caused [Mr.] White's paychecks to be delayed and shorted by directing Union payroll personnel to do so;
> d. Refused to honor [Mr. Traylor's] authorization of compensatory time off for [Mr.] White that was in exchange for unpaid overtime hours that [Mr.] White had worked;
> e. Disparaged or caused Union personnel to disparage [Mr.] White to a new employer of [Mr.] White[], causing [Mr.] White to lose his salary and all benefits that he was receiving at that time;
> f. Purported to put [Mr. White] on probation and then suspend him (albeit with the authority to do so) in response to a pair of grievances that [Mr.] White initiated with the AFSCME International in response to this harassment;
> g. Disparaged [Mr.] White to several Union personnel.

Mr. White's complaints about withheld wages and compensatory time fail because Md. Code Ann., Lab. & Emp. § 3-427 provides a statutory remedy to recover unpaid wages.

The complaint will not lie where there is a statutory remedy. *Makovi v. Sherwin-Williams Co.*, 316 Md. 603, 626 (1989). The remainder of Mr. White's complaints stem directly from his conduct as an employee and Local 2250's right to supervise him. Most notably, Local 2250 contacted a new employer to determine if Mr. White had taken on new employment. All of these complaints fail because he was a probationary employee, terminable at-will. Despite his use of the word "harassment" none of this alleged harassment adds up to an abusive workplace claim. The employer was trying to keep track of the conduct of a recalcitrant employee.

C. Retaliation

Mr. White alleges that Mr. Diggs retaliated against him because of the statements that he had made to the judicial panel. He also alleges that Mr. Diggs had an antagonistic relationship with Mr. Traylor and was envious of the apparent good relationship that Mr. White had with Union members in the field. To establish a *prima facie* claim of retaliation, a plaintiff must show 1) that the plaintiff engaged in a protected activity; 2) that the employer took adverse employment action against the plaintiff; and 3) that there is a causal connection between the protected activity and the adverse employment action. *Cuffee*, 755 F. Supp. 2d at 680.

Once again, we note that Mr. White's voluntary statements to the judicial panel were not a protected activity. *See De Bleecker*, 292 Md. at 506. In *De Bleecker*, after an incident in which there was a fight between inmates, the plaintiff, who had a job teaching in the jail, went into a classroom where there were several inmates and expressed to "the inmates his

disapproval of Sgt. Barricklow's violent conduct and that he advised them to tell the truth about the incident and not to be afraid." *Id.* at 502. He also stated that he thought that the inmate Thomas had fought back against the guards because he had not done anything wrong. *Id.* The plaintiff also filed a report based on an incident in which a jail prisoner was injured. *Id.* at 502–03. This incident was being investigated by the Montgomery County Detention Center. *Id.* In his report he expressed a concern that violence leads to violence. *Id.* at 502. His written report also stated:

> [T]hey had tied Thomas down on his bed but he seemed to be semi-unconscious. Sgt. Barricklow seemed all of a sudden scared and asked Thomas if he would get him some pills. Then he brought him out to bring him to the nurse and asked me if I had seen anything. I understood that he wanted to ask me if I had seen him hurting Thomas badly. I said "no" because I did not see him doing it, but I reiterate my statement, that they grabbed the wrong one and that Thomas had been unnecessarily irritated.

Id. at 502–03. The Detention Center terminated the plaintiff based on an opinion that his statements had been disproven and that he had "created an irreconcilable gape between himself and the correctional staff." *Id.* at 503.

Our Supreme Court noted that editorial comments might not have been protected speech. *Id.* at 510. However, statements made as part of the chain of command might be protected speech. *Id.*

The facts in *De Bleecker* are a sharp contrast to the facts in the instant case. In *De Bleecker*, there was a fight involving inmates that was the subject of an investigation. *Id.* The plaintiff made both factual statements and expressed opinions as part of this

investigation. The plaintiff's statements all arose because of an incident that was under investigation.

In the instant case, there was no investigation into Mr. Diggs. There was an investigation into Mr. Traylor, which was the subject of an administrative hearing before a judicial panel. Mr. White's statements about Mr. Diggs were purely voluntary and had nothing to do with the conduct of Mr. Traylor. These statements are at best a gratuitous attack on an officer who was not under investigation. At worst they are an ad hominem attack to distract the judicial panel from its investigation of Mr. Traylor. They do not amount to protected speech. They were not made in the chain of command. *Id.* They were not made to law enforcement. *See Wholey*, 370 Md. at 67. And there was no obligation to make these statements. *See Thompson*, 925 F. Supp. at 407. Since Mr. White cannot establish a prima facie case that his statements about Mr. Diggs were a protected activity his claim for retaliation fails.

V. Conclusion

Mr. White sued his former employer for wrongful discharge, hostile work environment and retaliation. The circuit court granted the Appellees' motions to dismiss for failure to state a cause of action. We discern no error and affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.