

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 formal 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:)	
)	
Brenda L. Beeton,)	
)	
Complainant,)	
)	
v.)	PERB Case Nos. 97-U-26
)	Opinion No. 538
D.C. Department of Corrections)	
)	
and)	
)	
Fraternal Order of Police/ Department of Corrections Labor Committee,)	
)	
Respondents.)	
)	

DECISION AND ORDER

On July 2, 1997, an Unfair Labor Practice Complaint was filed in the above-captioned case by Brenda L. Beeton (Complainant). Complainant was employed by the Respondent District of Columbia Department of Corrections (DOC) and was a member of the collective bargaining unit exclusively represented by the Co-Respondent, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP). The Complaint alleged that certain conduct by DOC and FOP constituted unfair labor practices, as proscribed by the Comprehensive Merit Personnel Act (CMPA), at D.C. Code § 1-618.4(a)(1) and (4).

By letter dated November 25, 1997, the Executive Director dismissed the Complaint for failing to state a basis for a claim under the CMPA. In pertinent, part the Executive Director's letter to Complainant stated the following:

You assert in the Complaint and Amended Complaint that the D.C. Department of Corrections (DOC) and the FOP/DOC Labor Committee violated D.C. Code Sec. 1-618.4(a)(1) and (4). Specifically, you allege that Margaret Moore, Director of the Department of Corrections, violated the Comprehensive Merit Personnel Act (CMPA) by "violating the provisions of the Corrective

Decision and Order
PERB Case No. 97-U-26
Page 2

Action Amendment Act of 1990 which states no corrective or adverse action shall be commenced pursuant to this section more than 45 days, not including Saturdays, Sundays or legal holidays, after the date the agency knew or should have known of the act or occurrence allegedly constituting cause.” Also, you allege that Clarence Mack, Chairman of the FOP/DOC Labor Committee, violated the CMPA by failing to respond to your request for assistance.

After reviewing your submissions, I have determined that your allegations against the DOC and the FOP/DOC Labor Committee, fail to state a basis for a claim under the CMPA. Therefore, I am administratively dismissing your Complaint and Amended Complaint.

Pursuant to D.C. Code Sec. 1-618.4(a)(1) and (4), “[t]he District, its agents and representatives are prohibited from: (1) [i]nterfering, restraining or coercing any employee in the exercise of the rights guaranteed by this subchapter; or (4) [d]ischarging or otherwise taking reprisals against an employee because he or she has signed or filed an affidavit, petition or complaint or given any information or testimony” “Section 1-618.4(a)(4) expressly and specifically protects employees who engage in any of the listed activities therein when it is pursuant to matters under the CMPA.” Charles Bagenstose and Dr. Joseph Borowski v. D.C. Public Schools, Slip Op. No. 270, at page 11, PERB Case No. 88-U-33 and 88-U-34 (1991). In your submissions, you do not assert that your termination by the DOC was motivated by the fact that you participated/engaged in activity that was protected under Section 1-618.4(a)(4). Instead, you allege that the adverse action taken against you by the DOC was more than 45 days after the occurrence constituting the cause. Therefore, you have failed to assert a nexus between DOC’s decision to terminate your employment and any protected activity under D.C. Code Sec. 1-618.4(a)(4). This same nexus is lacking with respect to DOC’s alleged violation of D.C. Code Sec. 1-618.4(a)(1). In summation, the allegations asserted in your submissions do not satisfy the requirements of D.C. Code Sec. 1-618.4(a)(1) and (4).

With respect to the allegations concerning the FOP/DOC Labor Committee, the code sections referenced in your submissions refer to the “District, its agents and representatives” and not to a union. Thus, your allegations concerning the FOP/DOC Labor Committee do not satisfy the requirements of the code sections you relied upon.

Also, the Board has held that “[t]o maintain a cause of action, the Complainant must [allege] the existence of some evidence that, if proven, would tie Respondent’s actions to the asserted violative basis for it. Without the

Decision and Order
PERB Case No. 97-U-26
Page 3

existence of such evidence, Respondent's actions [can not] 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, Slip Op. No. 476, at page 3, PERB Case No. 96-U-16 (1996). For the reasons stated above, the instant Complaint and Amended Complaint do not contain allegations which are sufficient to support a cause of action.

Since no statutory basis exists for the Board to consider your claims, your Complaint and Amended Complaint are dismissed. If you disagree, you may formally request that the Board review my determination. However, pursuant to Board Rule 500.4, this decision shall become final unless a motion for reconsideration is filed within thirty (30) days of this decision.

On December 18, 1997, Complainant filed a document styled "Motion for Reconsideration of Dismissal of Complaint and Amended Complaint of Unfair Labor Practice." DOC and FOP filed no response to Complainant's request. Upon review of the pleadings in a light most favorable to the Complainant and taking all the allegations as true, we find for the reasons stated in the Executive Director's November 25th letter that the Complaint, as amended, does not give rise to any unfair labor practices against the Respondent DOC and fails to state a cause of action against the Respondent FOP.^{1/} Therefore, no basis exists for disturbing

^{1/} When considering the pleadings of a pro se Complainant, we construe the claims liberally to determine whether a proper cause of action has been alleged. While the Complaint fails to allege that FOP violated any of the statutory provisions that delineate unfair labor practices by a labor organization, we believe that the Complainant attempted to assert that FOP failed to fairly represent her by the manner FOP is handling the processing of her grievance. A violation by a labor organization of its duty to fairly represent a bargaining unit employee can constitute a violation of D.C. Code Sec. 1-618.4(b)(1) or (2). However, as the Executive Director articulated in his dismissal, the Complainant has failed to make any allegations that, if proven, would constitute such a violation. The assertion by the Complainant that FOP "has failed to agree to a procedure by which her grievance could be resolved" does not, standing alone, present a basis for this violation by FOP.

We have held that judgmental acts of discretion in the handling of a grievance, including the decision to arbitrate, do not constitute the requisite arbitrary, discriminatory or bad faith conduct element of such a violation. Williams v. AFSCME, D.C. Council 20, Local 2290, Slip Op. No. 454, PERB Case No. 95-U-28 (1995). The Complainant alleges no basis for attributing

(continued...)

Decision and Order
PERB Case No. 97-U-26
Page 4

the Executive Director's administrative dismissal of the Complaint and we hereby affirm the dismissal of the Complaint.

We note, however that Complainant's charges of retaliation by Respondent DOC for "giv[ing] testimony in open court" and "assistance to the Federal Bureau of Investigation in their probe of trafficking in contraband in the District of Columbia's Prison Facilities" by DOC officials give rise to claims under Subchapter XVI. Employee Rights and Responsibilities, of the CMPA, as codified under D.C. Code Sec. 1-616.1, et seq. (Mot. at 3.) The Board has concluded that its jurisdiction with respect to unfair labor practices under D.C. Code Sec. 1-618.4(a)(4) exist only with respect to the prescribed protected conduct under Subchapter XVII. Labor-Management Relations of the CMPA. The CMPA provides an alternate forum where Complainant's particular claim can be pursued, i.e., the Superior Court of the District of Columbia.^{2/}

^{1/}(...continued)

a prohibitive motive to the pace or manner by which FOP has handled the Complainant's grievance. Complainant's Request provides no new allegations or assertions that, if proven, would establish the statutory violations. To the contrary, documents submitted by the Complainant indicate that FOP continues to process the grievance. Therefore the Complainant does not present allegations sufficient to support a cause of action.

^{2/} D.C. Code Sec. 1-616.3(b) and (c) provide as follows:

(b) The District shall not take any retaliatory action against an employee who:

(1) Discloses or threatens to disclose to a supervisor or public body an activity, policy, or practice that the employee reasonably believes is a violation of law or rule promulgated pursuant to law, or is a misuse of government resources or funds under the control of a government official;

(2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into an alleged violation of a law or rule promulgated pursuant to law, or into an alleged misuse of government resources or funds under the control of a government official;

(c) If an employee or former employee reasonably believes that a violation of any

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Decision and Order
PERB Case No. 97-U-26
Page 5

To the extent that the scope of our jurisdiction over unfair labor practices proscribed under D.C. Code Sec. 1-618.4(a)(4) is ambiguous with respect to claims under Subchapter XVI, causes of action that are expressed and peculiar to Subchapter XVI preempt our jurisdiction under D.C. Code Sec. 1-618.4(a)(4).

Documents submitted by the Complainant indicate that she has initiated such an action in the Superior Court of the District of Columbia. However, it appears that the Court, at the Complainant's request, has stayed those proceeding in order to permit the Complainant to exhaust her administrative remedies under the CMPA. In addition, with respect to Complainant's claim that her termination violated personnel regulations, other documents submitted by the Complainant indicate that the Complainant is pursuing and exhausting her administrative remedies in the forum charged with resolving such claims, i.e., the D.C. Office of Employee Appeals.

In view of the foregoing, the Request that we reverse the Executive Director's determination is denied. The Executive Director's administrative dismissal of Petitioner's Complaint for failing to state a cause of action with respect to Respondents DOC and FOP is affirmed.

ORDER

IT IS HEREBY ORDERED THAT:

The Complainant's request that the Executive Director's administrative dismissal of the Complaint be reversed is denied.

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

February 13, 1998

²(...continued)

of the provisions of this section has occurred, the employee may, within 1 year of the date of the violation, institute a civil action in the Superior Court of the District of Columbia ("Court") for relief

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Cases Nos. 97-U-26 was mailed (U.S. Mail) to the following parties on this the 13th day of February, 1998.

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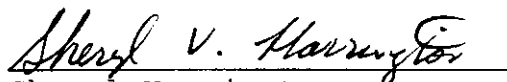
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