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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

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In the Matter of: )

Gregory Miller, )

Complainant, )

v. )

American Federation )  
of Government Employees, )  
Local 631, AFL-CIO, )

and )

District of Columbia )  
Department of Public Works, )

Respondent. )

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PERB Case No. 93-S-02  
93-U-25  
Opinion No. 371

DECISION AND ORDER

On June 14, 1993, Complainant Gregory Miller, an employee of the D.C. Department of Public Works (DPW), filed an Unfair Labor Practice Complaint with the Public Employee Relations Board (Board). <sup>1/</sup> Complainant alleges that DPW and the American Federation of Government Employees, Local 631 (AFGE) had committed unfair labor practices under the Comprehensive Merit Personnel Act (CMPA). The Complainant also alleges that AFGE violated the CMPA's Standards of Conduct for labor organizations.

On July 9, 1993, the Board received a letter from AFGE in

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<sup>1/</sup> Complainant's initial Complaint was deficient with respect to certain requirements for unfair labor practice complaints, as prescribed by Board Rules. In accordance with Board Rule 501.3, a notice of deficiency was issued to the Complainant. On June 25, 1993, the Complainant filed an Unfair Labor Practice Complaint which cured the noted deficiencies and incorporated allegations of Standards of Conduct violations. Those allegations are treated as a separate complaint (PERB Case No. 93-S-02).

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response to the Complaint. AFGE requested that the Board dismiss the Complaint as untimely.<sup>2/</sup> On July 19, 1993, Respondent DPW filed an Answer to the Complaint denying that it had committed any unfair labor practices. DPW further asserted that many of the allegations do not constitute unfair labor practices and, therefore, are not properly before the Board.

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<sup>2/</sup> By letter dated July 2, 1993, in response to the Executive Director's solicitation of AFGE's answer to the Complaint, AFGE contended that Complainant had not served the Union with a copy of the Complaint and therefore was unable to answer the Complaint. AFGE reiterated in its July 9, 1993 correspondence that Complainant failed to concurrently serve AFGE when he filed his Complaint with the Board. AFGE further contended that the Complaint was untimely since the Complainant did not cure this service defect by the June 25, 1993 deadline in the Executive Director's notice to Complainant of deficiencies in his Complaint. On that basis, AFGE refused to accept Complainant's attempt to serve AFGE at a union meeting on July 2, 1993.

Reference is made by AFGE to Board Rule 501.12. We have held with respect to this rule that, absent actual prejudice to the party, a good faith effort to serve, concurrently, a party to a proceeding before the Board, coupled with actual service, will satisfy Board Rule 501.12. Fraternal Order of Police/Department of Corrections Labor Committee and District of Columbia Department of Corrections, et al., DCR, Slip Op. No. 370, PERB Case No. 93-R-04 (1993). Complainant provided a certificate of service reflecting that he hand-delivered a copy of the cured Complaint to AFGE on June 25, 1993. AFGE admits refusing service of the Complaint from Complainant on July 2, 1993. Assuming, arguendo, that service was not made on June 25, 1993, AFGE has not shown, nor do we find, that AFGE would have been prejudiced by accepting service on July 2, 1993. Therefore, we find Complainant's service requirement satisfied by his undisputed service attempt on July 2, 1993, notwithstanding AFGE's refusal to accept service on that date. We note that if Complainant in fact served AFGE by U.S. Mail on June 25, 1993, in due course AFGE would have received the Complaint around the time it acknowledges it refused Complainant's attempted personal service. A respondent's refusal to accept a complaint concurrently served by mail, but actually received after the filing date, is immaterial to meeting the service requirements of Board Rule 501.12.

In view of this ruling, we shall forward AFGE a copy of the Complaint and Amended Complaint and extend to AFGE the additional opportunity to file an Answer to the Complaint until 7 days from the service of this Decision and Order.

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The Complaint consists of a series of claims and assertions against both DPW and AFGE chronicling the manner in which Respondents allegedly "conspired" and "colluded" in handling and, ultimately, disposing of a grievance over disciplinary action against the Complainant. The Complaint indicates that the bases of the unfair labor practice and standards of conduct violations are the alleged acts and conduct by Respondents which Complainant claims culminated in the "unacceptable result of the parties' settlement." (Compl. at para. 12.)<sup>3/</sup>

Complainant contends that DPW's participation in the settlement of his grievance constituted unfair labor practices under D.C. Code Sec. 1-618.4(a)(1) through (5). With respect to Respondent AFGE, Complainant alleges that the same acts and conduct alleged to constitute unfair labor practices under D.C. Code Sec. 1-618.4(b)(1) and (2), also constitute violations by AFGE of the Standards of Conduct provision under D.C. Code Sec. 1-618.3(a)(1). (Compl. at para. 8, 9 and 11.)

With respect to the alleged standards of conduct violations, the Board has held that D.C. Code Sec. 1-618.3 sets certain minimum standards that a labor organization must meet with respect to its "operation, practices and procedures" at the time it is awarded recognition. Charles Bagenstose v. Washington Teachers' Union, Local 6, AFL-CIO, \_\_\_\_\_ DCR \_\_\_\_\_, Slip Op. No. 355 at n.1, PERB Case No. 90-S-01 and 90-U-02 (1993) (copy attached).

The Board, in 1984, determined that Respondent AFGE, Local 631 met the prescribed standards set forth under Section 1-618.3

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<sup>3/</sup> Complainant refers to the settlement of his grievance by AFGE. See Compl., Paragraph 8 ("...union thoroughly misrepresented the employee regarding the settlement agreement of arbitration case #92-25890..."); Paragraph 9 ("...on employee's meritorious grievance arbitrarily...") Paragraph 11 ("...on January 27, 1993 (notification date February 17, 1993) that the union did knowingly and willfully obstruct and circumvent the employee's (statutory/civil) right to fair and impartial treatment pre-emptively..."); and Paragraph 12 ("...the employer D.C. Department of Public Works (DPW), by way of circumstantial notification (through union) on February 17, 1993 did on January 27th, 1993 apparently sign an agreement to settle the grievance with Local 631 (AFGE, "UNION") for arbitration case #92-25890 regarding petitioner in bad faith participation with the union..."). On January 27, 1993, DPW, AFGE and DPW's representative, the Office of Labor Relations and Collective Bargaining (OLRCB) executed an agreement to settle Complainant's grievance which included, among other things, withdrawing the grievance from arbitration. (Compl. Exh. 1.)

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of the CMPA to qualify for certification as the labor organization representing the unit of employees that includes the Complainant. See, District of Columbia Department of Public Works and American Federation of Government Employees, Local 631, 872, 2553 and 1975, PERB Case No. 84-R-08 (Certification No. 24). Complainant makes no allegation that Respondent AFGE did not meet the prescribed standards of conduct at the time we accorded AFGE recognition, i.e., 1984. According to the Complainant, the allegedly violative conduct by AFGE took place between July 10, 1992 (when complainant's grievance was filed), and January 27, 1993 (the date Respondents entered into a settlement agreement). Therefore, the Standards of Conduct Complaint must be dismissed for failure to state a claim.

Since the Complainant leaves material questions of fact outstanding with respect to alleged unfair labor practices by AFGE, we shall defer our disposition of those allegations of the Complaint pending the completion of our on-going investigation pursuant to Board Rules 520.8 and 520.9. <sup>4/</sup>

With respect to the Unfair Labor Practice Complaint against DPW, our review of the pleadings reveals that taking all of Complainant's allegations as true, the Complaint does not present a statutory violation. <sup>5/</sup> The Complaint against DPW fails to allege any other cause of action within the Board's jurisdiction

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<sup>4/</sup> The Board is awaiting the Complainant's response to interrogatories and a request to produce certain documents issued on November 29, 1993, concerning the unfair labor practice allegations against Complainant AFGE.

<sup>5/</sup> All the asserted violations of D.C. Code Sec. 1-618.4(a)(1) through (5) are based upon alleged "continuous reprisals [sic] retaliations and harassment". (Amend. Compl. at 7.) According to the Complaint, the most recent of such alleged acts by DPW consisted of its settlement with AFGE of Complainant's grievance, whereby DPW agreed to reduce the length of a suspension imposed upon Complainant. Complainant offers no statutorily proscribed motive or reason for this alleged conduct by DPW. We have held that claims of statutory violations that do not allege the requisite statutory elements of the alleged unfair labor practice do not present a cause of action within the Board's jurisdiction under the CMPA. See, e.g., JoAnne G. Hicks v. American Federation of State, County and Municipal Employees, D.C. Council 20, et al., DCR, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Other instances of DPW's alleged conduct set forth in the Complaint and alleged to have occurred between July 11, 1990 and June 21, 1993, are clearly beyond our jurisdictional 120-day limit prior to the filing of the Complaint. Board Rule 520.4(b).

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and therefore must be dismissed.

**ORDER**

1. The Standards of Conduct Complaint is dismissed.
2. The Unfair Labor Practice Complaint (93-U-25) against the District of Columbia Department of Public Works is dismissed.
3. The Board retains jurisdiction over the Standards of Conduct Complaint (93-S-02) against American Federation of Government Employees, Local 631, AFL-CIO pending further investigation.

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

January 14, 1994