

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**

<p>In the Matter of:</p> <p>Ulysses S. Goodine,</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">v.</p> <p>Fraternal Order of Police/ Department of Corrections Labor Committee,</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>PERB Case Nos. 96-U-16 Opinion No. 476</p>
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DECISION AND ORDER

On April 16, 1996, an Unfair Labor Practice Complaint was filed in the above-captioned case by Ulysses S. Goodine (Complainant). Complainant is employed by the District of Columbia Department of Corrections (DOC) and is a member of the collective bargaining unit exclusively represented by the Respondent, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP). The Complaint alleged that certain conduct by FOP constituted unfair labor practices, as proscribed by the Comprehensive Merit Personnel Act (CMPA), at D.C. Code §§ 1-618.3(a)(1) and 1-618.4(b)(1).

By letter dated April 22, 1996, 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 allege in your complaint that the FOP/DOC Labor Committee (FOP) violated the CMPA by breaching its duty of fair representation "by refusing to pursue [your] grievance to arbitration". Specifically, you claim that the FOP violated Sections 1-618.3(a)(1) and 1-618.4(b)(1) of the CMPA.

Article 10, Section 1, of the parties' collective bargaining agreement provides in relevant part as follows:

g. Step 5: If the grievance remains unresolved, the Union, within fifteen (15) days after receipt of the Director's response shall notify the Director and the D.C. Office of Labor Relations and Collective Bargaining (OLRCB) in writing whether the Union intends to request arbitration or request that the Department agree to utilize the Grievance Mediation procedure described below on behalf of the employee(s). (Emphasis added).

"Under D.C. Code Section 1-618.3, a member of the bargaining unit is entitled to fair and equal treatment under the governing rules of the [labor] organization. As this Board has observed: '[t]he Union as the statutory representative of the employees is subject always to complete good faith and honesty of purpose in the exercise of its discretion regarding the handling of union members' interest.'" Stanley Roberts v. American Federation of Government Employees, Local 2725, 36 DCR 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989).^{1/} In addition, the Board has held that "in order to breach this duty of fair representation, a union's conduct must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair." Id.

In your complaint, you assert that FOP's failure to "take [your case] to arbitration...constitutes a breach of FOP/DOC Labor Committee's duty of fair representation."

The Board has previously addressed the question of whether a union's refusal to proceed to arbitration on a particular grievance constitutes a breach of its duty of fair representation. In Freson and Fraternal Order of Police, Metropolitan Police Department Labor Committee, 31 DCR 2293, Opinion No. 74, PERB Case No. 83-U-09 (1984) the Board noted, "[i]t is a well established principle that a labor organization's duty of fair representation does not require it to pursue every grievance to arbitration." Also, see Stanley Roberts v. American Federation of Government Employees, Local 2725, 36 DCR 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989).

^{1/} In Stanley, the Board was citing to its Decision and Order in Hairston and Fraternal Order of Police and the Metropolitan Police Department, 31 DCR 2793, Slip Op. 75, PERB Case Nos. 83-U-11, 83-U-12 and 83-S-01, in which the Board quoted Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976).

In the present case, it is clear from the parties' collective bargaining agreement that only the Union can file for arbitration. Also, in your complaint you fail to demonstrate that the decision not to proceed to arbitration was the product of bad faith on the part of the Union, or was arbitrary or discriminatory. Instead, your claim relies solely on the fact that the Union refused to proceed to arbitration. In short, you have neither sufficiently pled bad faith or discrimination, nor raised circumstances that would give rise to such an inference.

Since no statutory basis exists for the Board to consider your claims, your complaint is dismissed. If you disagree, you may formally request that the Board review my determination.

On May 7, 1996, Complainant filed a memorandum requesting that the Board review the Executive Director's administrative dismissal and overrule his determination. FOP filed no response to Complainant's request; however, FOP had previously filed an Answer and Motion to Dismiss the Complaint.

When asserting a breach of the duty to fairly represent, it is not necessary that the complaint prove that a "decision not to proceed to arbitration was the product of bad faith on the part of the Union, or was arbitrary or discriminatory". While the Complaint contains assertions that, if proven, would constitute a statutory violation, the assertions are merely conclusory. To maintain the cause of action, the Complainant must also alleged the existence of some evidence that, if proven, would tie Respondent's actions to the asserted violative basis for it. Without the existence of such evidence, Respondent's actions could 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. The instant Complaint did not contain such allegations and was therefore properly dismissed. See, Gregory Miller v. American Federation Of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works, ___ DCR ____, Slip Op. No. 371, PERB Case No. 93-U-02 and 93-U-25 (1994).

The Complainant bases his contention that FOP has breached its duty to fairly represent him merely upon his conclusory "belie[f] that the FOP/DOC Labor Committee['s] failure to take his meritorious case forward [to arbitration] was discriminatory and not in good faith." (Comp. at para. 14.) The Complainant alleges no basis for attributing a prohibitive motive to FOP's decision not to arbitrate his grievance. Complainant's Request provides no new allegations or assertions that, if proven, would establish the

claimed statutory violations.^{2/}

^{2/} Complainant asserts that during FOP's campaign to succeed the Teamsters as employees' bargaining representative, he actively opposed FOP while a shop steward for the Teamsters. He also contends that he had a meritorious grievance. The Complainant makes no allegation which, if proven, would connect FOP's decision not to advance Complainant's grievance to arbitration with his past activities on behalf of the Teamsters. While the Complainant alleges that FOP failed to take his case to arbitration because he was an active opponent of FOP during their campaign, Complainant asserts only his belief as the basis for the allegation. Since, under the collective bargaining agreement, FOP's right to arbitrate a grievance is discretionary, the Complainant must allege some overt act or conduct by FOP that, if proven, would provide some inference that FOP's decision not to arbitrate the grievance was prohibitively motivated. Proving that the allegation made by the Complainant --that he was an outspoken opponent of FOP in the past, filed a meritorious grievance, and that FOP decided not to pursue the grievance to arbitration-- would not establish that Complainant's past opposition served as the basis of FOP's decision, a necessary element of the asserted statutory violation.

With respect to the alleged violation of D.C. Code § 1-618.3, the standards of conduct for labor organization, the Complaint is devoid of any contention that FOP failed to adopt, subscribe or comply with any of the prescribed standards of conduct. We have held that a breach by an exclusive representative of the duty to fairly represent its employees --which would constitute an unfair labor practice under D.C. Code § 1-618.4(b)(1)-- does not concomitantly constitute a breach of the standards of conduct for labor organizations under D.C. Code § 1-618.3. Charles Bagenstose v. Washington Teachers' Union, Local 6, AFL-CIO, ___ DCR ___, Slip Op. No. 355, PERB Case No. 90-S-01 and 90-U-02 (1993). Therefore, the Complaint presents no basis for this cause of action as well. See, Gregory Miller v. American Federation Of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works, ___ DCR ___, Slip Op. No. 371, PERB Case No. 93-U-02 and 93-U-25 (1994).

We have held that we will not require that a pro se complainant provide the degree of clarity and conciseness as an attorney when articulating a cause of action. However, the Complainant's failure to allege any basis for his conclusory belief that his prior activities on behalf of a rival union motivated the manner in which his grievance was treated by FOP falls short of this amplitude. Clarence Mack, et al., v. FOP/DOC Labor Committee, Slip Op. 386, PERB Case No. 94-U-24 (1994).

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In view of the foregoing, the Petitioner's Request that we overrule 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 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.

June 26, 1996