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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)
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Renee Jackson,)
)
)
Complainant,)
)
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v.)
)
)
Teamsters Local Union No. 639, a/w)
International Brotherhood of Teamsters,)
)
)
Respondent.)

PERB Case No. 14-S-02
Opinion No. 1572

DECISION AND ORDER

I. Statement of the Case

On March 7, 2014, Renee Jackson (“Complainant”) filed a Standards of Conduct Complaint (“Complaint”), alleging Teamsters Local Union No. 639 (“Teamsters”) violated D.C. Official Code § 1-617.03(a) by failing to ensure Complainant was provided monetary payments from a settlement agreement between Teamsters and the District of Columbia Public Schools. Teamsters filed an answer, denying the allegations and asserting that Complainant had failed to state a claim for a standards of conduct violation or a duty of fair representation violation. The matter was sent to a hearing. The Hearing Examiner’s Report and Recommendation (“Report and Recommendation”) is before the Board for disposition. No Exceptions were filed in the case.

II. Hearing Examiner’s Report and Recommendation

A. Factual findings

The Hearing Examiner found:

In 2008 the Complainant was a cafeteria worker for District of Columbia Public Schools (DCPS); she was a 10-month employee. She was in a bargaining unit that was represented by the Respondent (Local 639). At the beginning of the 2008-09 school year, DCPS contracted with Chartwell’s, a private company, to provide food services in the schools.

The Complainant, along with several hundred other food service workers, were transferred to Chartwell's. (The Complainant was still working for Chartwell's at the time of the hearing.) The Complainant's final pay period with DCPS ended on May 24, 2008. Her pay stub for this final period showed that she had accrued 356.35 sick leave hours.

There was some dispute between Local 639 and DCPS about what would happen to employees' accrued sick leave at the time of their transfer to Chartwell's....Eventually (the date is not in the record), DCPS said it would not honor unused sick leave. Local 639 then filed a grievance and an unfair labor practice charge.

In late 2013, prior to the grievance being heard by an arbitrator, or the unfair labor practice charge heard by a PERB hearing examiner, DCPS offered to settle the matter. According to [Teamsters' Business Agent] Scott Clark, DCPS agreed to pay employees, at the rate of approximately 25 cents on the dollar, for the accrued sick leave they had at the time of their transfer to Chartwell's. Employees who had transferred to Chartwell's but were no longer working for the company at the time of the settlement (whether by death, retirement, or resignation) would be excluded from the settlement. Also excluded would be employees who had zero or negative sick leave balances at the time of the transfer.¹

At some point after the settlement, Complainant notified Teamsters that she had not received payment for her sick leave hours under the settlement agreement. In order to determine who would receive payment under the settlement, Clark requested employees' sick leave records from Chartwell, as DCPS no longer kept the transferred employees' records. Chartwell's records for Complainant showed that she had a balance of zero sick leave hours at the time of the transfer. Clark investigated to see if there were any other records to verify Complainant's sick leave, but was unable to find any other verification of her sick leave.²

Complainant then filed the Complaint that is before the Board.

B. Recommendations

The Hearing Examiner considered whether Teamsters violated D.C. Official Code § 1-617.03(a) by failing to provide "fair and equal treatment" to Complainant.³ The Hearing Examiner found that Teamsters "took reasonable steps to ascertain the facts of the Complainant's sick leave status," that DCPS did not have Complainant's employee records, and that Chartwell's records showed that Complainant had a zero sick leave balance.⁴ The Hearing Examiner considered whether Teamsters' actions were in good faith and its actions motivated by honesty

¹ Report and Recommendation at 2.

² *Id.* at 2-3.

³ *Id.* at 4-5.

⁴ Report and Recommendation at 5.

of purpose, and not its competence.⁵ The Hearing Examiner found that Teamsters acted reasonably and in good faith while investigating Complainant's sick leave.⁶ The Hearing Examiner concluded that Teamsters' determination that Complainant was not entitled to a payment under the settlement agree was not arbitrary, discriminatory, or reached in bad faith, nor was the determination based on irrelevant, unfair, or invidious considerations.⁷ The Hearing Examiner recommended that the Complaint be dismissed, because Teamsters did not violate the standards of conduct set forth in D.C. Official Code § 1-617.03(a)(1).

III. Analysis

No Exceptions were filed. "Whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendation if it finds, upon full review of the record, that the hearing examiner's 'analysis, reasoning and conclusions' are 'rational and persuasive.'"⁸

Considering standard of conduct and duty of fair representation violations, the Board has held that "a breach by an exclusive representative of the duty to fairly represent its employees ... does not concomitantly constitute a breach of the standards of conduct, and vice versa."⁹ The CMPA's standards of conduct for labor organizations address standards that apply to the internal operation of the union and union members' participation in such affairs, which arises from a union's duty to comply with certain minimum standards prescribed by D.C. Official Code § 1-617.03(a).

The right to be fairly represented arises from a union's role as the employee's collective bargaining representative.¹⁰ An unfair labor practice alleging a breach of a union's duty of fair representation concerns infringements by the union of employees' statutory collective bargaining rights under the CMPA.¹¹ D.C. Official Code § 1-617.04(b)(1) prohibits employees, labor organizations, their agents or representatives from "[i]nterfering with, restraining or coercing any employees or the District in the exercise of rights guaranteed by this subchapter" "Employee rights under this subchapter" are prescribed under and consist of the following: "(1) [t]o organize a labor organization free from interference, restraint or coercion; (2) [t]o form, join or assist any labor organization; (3) [t]o bargain collectively through a representative of their own choosing ...; (4) [to] present a grievance at any time to his or her employer without the intervention of a labor organization [.]"¹² The Board has ruled that D.C. Official Code §1-

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public Schools*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Ass'n v. D.C. Dep't of Human Servs.*, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).

⁹ *Charles Bagenstose v. Washington Teachers Union, Local 6*, 43 D.C. Reg. 1397, Slip Op. No. 355, PERB Case Nos. 90-S-01 and 90-U-02 (1993).

¹⁰ *William H. Dupree v. FOP/DOC Labor Committee*, 46 D.C. Reg. 4034, Slip Op. No. 568, PERB Case Nos. 98-S-08 & 98-U-23 (1999).

¹¹ *Id.*

¹² *See Sylvia Cephas v. FOP/DOC Labor Committee*, 49 D.C. Reg. 4379, Slip Op. No. 676, PERB Case No. 01-U-17 (2002).

617.04 (b)(1) (2001) also “encompasses the right of employees to be fairly represented by the labor organization that has been certified as the exclusive representative for the collective-bargaining unit of which the employee is a part. Specifically, the right to bargain collectively through a designated representative includes the duty of labor organizations to ‘represent the interests of all employees in the unit without discrimination and without regard to membership in the labor organization’”¹³

A. Standards of Conduct allegations

D.C. Official Code § 1-617.03(a) sets certain minimum standards that labor organizations must maintain with respect to its operation, practice and procedures for recognition by the Board as a labor organization under the CMPA.¹⁴ The CMPA’s standards of conduct for labor organizations address standards that apply to the internal operation of the union and union members’ participation in such affairs.¹⁵ Under § 1-617.03(a)(1), a member of the bargaining unit is entitled to “fair and equal treatment under the governing rules of the [labor] organization.” The Board considers whether the union’s conduct was arbitrary, discriminatory, or in bad faith, or based on considerations that are irrelevant, invidious, or unfair.¹⁶

In the present case, Complainant does not state any allegations related to any internal union proceedings or breach of any of Teamsters’ by-laws or constitution. Complainant has not asserted a requisite element of a standards of conduct claim. While a Complainant need not prove his or her case on the pleadings, the Complainant must plead or assert allegations that, if proven, would establish the alleged statutory violations.¹⁷ Even if, *arguendo*, a proper standards of conduct claim was before the Board, the Board has held that, to find a violation, a union's conduct “must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair.”¹⁸ The Hearing Examiner found that the Teamsters acted reasonably while investigating Complainant’s sick leave hours and making the determination that she was not entitled to payment under Teamsters’ and DCPS’s settlement agreement.¹⁹ The Board finds that the Hearing Examiner’s findings and conclusions are reasonable, supported by the record, and consistent with the Board’s precedent. Therefore, the Board adopts the Hearing Examiner’s Report and Recommendation and dismisses the standards of conduct allegations.

¹³ *Glendale Hoggard v. American Federation of State, County and Municipal Employees, District Council 20, Local 1959*, 43 D.C. Reg. 2655, Slip Op. No. 356 at 2-3, PERB Case No. 93-U-10 (1996)(citing *Charles Bagenstose v. WTU, Local 6*, 40 D.C. Reg. 1397, Slip Op. No. 355, PERB Case Nos. 90-S-01 & 09-U-02 (1996)).

¹⁴ *Charles Bagenstose*, Slip Op. No. 355 (noting that the Board’s authority to “take appropriate action on charges of failure to adopt, subscribe or comply with the internal or national labor organization standards of conduct for labor organizations” is prescribed by D.C. Official Code § 1-605.2(9)).

¹⁵ *William Dupree v. FOP/DOC Labor Committee*, 46 D.C. Reg. 4031, Slip Op. No. 568, PERB Case Nos. 98-S-08 & 98-U-28 (1999).

¹⁶ *Id.*

¹⁷ *See, Virginia Dade v. National Ass’n of Gov’t Employees, Service Employees Int’l Union, Local R3- 06*, 46 D.C. Rwg. 6876, Slip Op. No. 491 at 4, PERB Case No. 96-S-22 (1996).

¹⁸ *Stanley O. Roberts v. American Federation of Government Employees, Local 2725*, 36 D.C. Reg. 1590, Slip Op. No. 203 at 3, PERB Case No. 88-S-01(1989).

¹⁹ Report and Recommendation at 5.

B. Duty of fair representation

Although Complainant captioned her Complaint as a standards of conduct complaint and not an unfair labor practice complaint, the Board has not required strict compliance with Board Rules for *pro se* complainants.²⁰ When considering an allegation that a union has breached its duty of fair representation, the Board has repeatedly held that the test is not the competence of a union, but rather whether a union's representation was in good faith and its actions motivated by honesty of purpose.²¹ The Board applies this test by determining whether a union engaged in any conduct that was arbitrary, discriminatory, or in bad faith, or was based on considerations that are irrelevant, invidious or unfair.²² The Hearing Examiner analyzed Complainant's allegations as if she had claimed a breach of the duty of fair representation. The Hearing Examiner found that Teamsters acted reasonably, and that Complainant did not assert any arbitrary, discriminatory, or bad-faith actions by the Teamsters.²³

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record, and consistent with Board precedent. The Board adopts the Hearing Examiner's Report and Recommendation with respect to Complainant's allegations.

IV. Conclusion

The Board adopts the Hearing Examiner's findings and conclusions, and dismisses the Complaint for a failure to state a claim for a standards of conduct violation

ORDER

1. The Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, and Member Keith Washington.

Washington, D.C.

March 17, 2016

²⁰ See *Sylvia Cephas*, Slip Op. No. 676.

²¹ *Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 20*, Slip Op. No. 303, at 2, PERB Case No. 91-U-17 (1992). See also, *Stanley O. Roberts v. American Federation of Government Employees, Local 2725*, 36 D.C. Reg. 1590, Slip Op. No. 203 at 3, PERB Case No. 88-S-01(1989). The *Roberts* case, cited by the Hearing Examiner, was a Standards of Conduct case analyzed by PERB as a duty of fair representation case.

²² *Id.*

²³ Report and Recommendation at 5.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-S-02 was served to the following parties on this the 25th day of March 2016:

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