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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
American Federation of Government)	
Employees, Local 2725, AFL-CIO,)	
)	
Complainant,)	
)	
v.)	PERB Case No. 96-U-24
)	Opinion No. 514
)	
District of Columbia)	
Housing Authority,)	
)	
Respondents.)	

DECISION AND ORDER

On September 3, 1996, an Unfair Labor Practice Complaint was filed in the above-captioned proceeding by the American Federation of Government Employees, Local 2725 (AFGE). The Complainant alleges that Respondent District of Columbia Housing Authority (DCHA) included the local union president in its reduction-in-force (RIF) because of his efforts and activities on behalf of AFGE. In this regard, Complainant asserts that DCHA committed unfair labor practices proscribed by the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(1), (3), (4) and (5).

By letter dated September 6, 1996, the Executive Director administratively dismissed the Complaint for failure to state a basis for a claim under the CMPA. January 3, 1997, Complainant filed an Appeal of the Executive Director's determination, requesting that the Board reverse the Executive Director's administrative dismissal and reinstate the Complaint. DCHA filed a Response supporting the Executive Director's administrative dismissal of the Complaint. For the limited asserted violation discussed below we reverse the Executive Director's administrative dismissal and reinstate the Complaint with respect to that alleged violation.^{1/}

^{1/} The Executive Director's administrative dismissal, to the extent not disturbed in this Decision and Order, is affirmed. Notwithstanding the Complainant's challenge to the Executive Director's authority to dismiss Complaints administratively, we have long held that D.C. Code § 1-605.1(k) authorizes the Board to

(continued...)

**Decision and Order on
Motion for Reconsideration
PERB Case No. 96-U-24
Page 2**

AFGE alleges that the local union president has been an active and indispensable officer on behalf of AFGE. Furthermore, AFGE asserts that DCHA has related heightened animosity toward the president since the appointment of a Receiver to administer DCHA. AFGE cites its recent challenge, led by its president, of DCHA's asserted attempt to prematurely terminate the parties collective bargaining agreement, i.e., PERB Case 96-U-19, and other union activities performed during times he would otherwise be on duty. AFGE asserts that DCHA's unlawful inclusion of the president in the RIF is further evidenced by DCHA's failure, upon request, to financially justify the necessity to abolish the position held by the local union president which AFGE contends is indispensable to DCHA.

We find that AFGE has adequately pled that DCHA's abolishment of the local president's position may have been a pretext to support an alleged unlawful RIF of the local union president in retaliation of his efforts on behalf of AFGE. The prominence and level of activity of the alleged discriminatee, the asserted attitude of DCHA toward this activity, and the timing of the activity with respect to the RIF, provide sufficient prima facie elements of the alleged violations of D.C. Code § 1-618.4(a)(1), (3) and (4).^{2/}

In view of the above, the Petitioner's request that the Board reverse the Executive Director's administrative dismissal of the Complaint for failure to state a claim is granted and the Complaint

¹(...continued)

delegate its authority to make such dispositions. We have ruled that an administrative dismissal of a Complaint based on a lack of jurisdiction, e.g., timeliness, is a proper exercise of the Executive Director's authority. Harold Fisher, Jr., et al. and D.C. Public Schools, 43 DCR 1275, Slip Op. No. 347, PERB Case No. 92-U-01 and 92-U-02 (1993). Consistent with this Decision, the Executive Director properly exercised his discretionary authority when he administratively dismissed the instant Complaint on mandatory jurisdictional grounds, i.e., failure to state a claim under the CMPA.

^{2/} AFGE alleges as the basis of the D.C. Code § 1-618.4(a)(5) violation, a refusal by DCHA --during impact bargaining after the RIF announcement-- to accept AFGE's proposal that union officers who have collective bargaining duties be exempt from the RIF. The duty to bargain in good faith does require any party to accept a particular proposal in the course of collective bargaining.

Decision and Order on
Motion for Reconsideration
PERB Case No. 96-U-24
Page 3

is reinstated and referred for a hearing.^{3/}

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration of the Executive Director's administrative dismissal of Petitioner's Complaint, to the extent consistent with this Opinion, is granted.
2. The Motion for Preliminary Relief is denied.

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

April 10, 1997

^{3/} In view of our reinstatement of the Complaint in PERB Case 97-U-07, involving these same parties and underlying facts, we shall consolidate that case with the instant case for hearing and disposition.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 96-U-24 was sent via facsimile and/or mailed (U.S. Mail) to the following parties on the 10th day of April, 1997.

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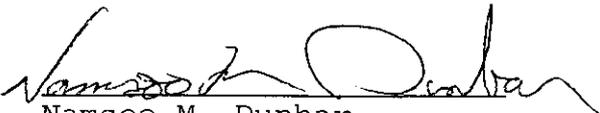
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