Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Paula Bonaparte,	)	
Complainant,	)	PERB Case No. 15-U-06
	)	Opinion No. 1573
v.	)	
District Council #20, Andrew Washington Executive Director,	)	
Respondent.	)	

DECISION AND ORDER

The instant complaint asserts an unfair labor practice claim and a standards of conduct claim for breach of the duty of fair representation and requests a variety of remedies. The complaint and a motion to dismiss are before the Board for disposition. As the complaint alleges neither the elements of a claim for breach of the duty of fair representation nor the elements of a standards of conduct violation, the motion to dismiss is granted.

I. Statement of the Case

A. Parties

On December 2, 2014, Complainant Paula Bonaparte ("Complainant" or "Bonaparte"), an employee of the Office of the Chief Financial Officer, acting *pro se*, filed a complaint styled "Unfair Labor Practice & Standards of Conduct" ("Complaint"). The Complaint contains four different versions of the name of the respondent. The caption names as the respondent "District Council #20, Andrew Washington, Executive Director." At the bottom of the cover page, the respondent's name appears as "Andrew Washington, Executive Director, Council #20." The certificate of service certifies service by U.S. Mail upon "Council #20, of AFSCME" and service by e-mail upon "Stephen Gerald White, agent." The body of the complaint refers simply to "the union" and to "Council #20."

PERB's Executive Director sent to Andrew Washington, Executive Director, Council #20, a letter advising him that the Complaint was filed and that he may file an answer no later

than December 17, 2014. No answer was filed. On December 17, 2014, the American Federation of State, County and Municipal Employees, District Council 20, Local 2776 ("Union") filed a motion to dismiss. The Union argues in its motion that the Complaint states neither an unfair labor practice claim nor a standards of conduct claim. As will be discussed below, the Union is correct that the Complaint does not state a claim against anyone. Consequently, it is unnecessary to determine whether the respondent is the Union or the Union's executive director.

B. Undisputed Facts

The Board deems the factual allegations of the Complaint to be true for two reasons. First, Board Rules 520.6 and 544.6 require an answer to be filed within fifteen days of service of the Complaint. Rules 520.7 and 544.7 provide, "A respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing." Second, when considering a motion to dismiss, the Board will view all factual allegations in a complaint as true in order to determine whether the complaint may give rise to a violation of the Comprehensive Merit Personnel Act ("CMPA").[1] It should be added that the Board does not deem to be true legal allegations or allegations that are legally conclusory or speculative.[2]

Paragraph 8 of the Complaint states, "See Exhibits for proof of my claims." We regard paragraph 8 as incorporating by reference the exhibits to the Complaint, which are e-mails between Bonaparte and Stephen White, staff representative of AFSCME District Council 20, and the collective bargaining agreement between AFSCME District Council 20, AFL-CIO and the Government of the District of Columbia ("CBA").

The following are the Complaint's allegations of material fact, which are deemed to be true:

In August 2014, Bonaparte was suspended without pay for 3 days. She filed a grievance challenging her suspension with Mr. Jeffrey DeWitt, the Chief Financial Officer. The Complaint further states that "no grievances are ever filed by the union. . . . [T]he sole reason is economics; the money is in the budget."[3] DeWitt never responded.[4]

The staff representative of AFSCME District Council 20, Stephen White, told Bonaparte on November 4, 2014, that he was going to sign documents to send her grievance(s) to arbitration.[5] On November 18, 2014, Bonaparte asked for proof that the arbitration had been filed. White sent Bonaparte an e-mail on November 24, 2014, stating, "After having our attorney

[1] *D.C. Fire & Emergency Med. Servs. Dep't v. AFGE, Local 3721*, Slip Op. No. 1556 at 4, PERB Case No. 15-U-22 (Nov. 19. 2015).
[2] *Id.* at 4 n.18.
[3] Complaint ¶ 3.
[4] Complaint ¶ 2.
[5] Complaint ¶ 3.

review your case, the Executive Director has declined to pursue arbitration at this time. We will be scheduling to meet with your Director after the Holiday."[6]

C. Complainant's "Motion to Stay"

A response to the Union's motion to dismiss was due on December 24, 2014, but was not filed. On December 30, 2014, Bonaparte filed a pleading styled "Motion to Stay." The pleading does not request a stay of anything. Instead, it re-states Bonaparte's dissatisfaction with the Union's conduct and responds generally to the motion to dismiss.

II. Discussion

The Complaint alleges that the Union committed unfair labor practices and violated the standards-of-conduct provisions of the CMPA in violation of D.C. Official Code sections 1-617.04(b)(1) and (3) and 1-617.03(a)(1).[7]

B. Bonaparte failed to allege facts establishing an unfair labor practice.

Section 1-617.04(b)(3) prohibits labor organizations designated as the exclusive representative from refusing to bargain collectively with the District. An employee, such as Bonaparte, does not have standing to allege an unfair labor practice in violation of this provision.[8] Only an employer can demand that a union bargain in good faith with the District.[9] Bonaparte does not allege that she is an employer.

Section 1-617.04(b)(1) states, "Employees, labor organizations, their agents, or representatives are prohibited from: (1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter. . . ." This provision "encompasses the right 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."[10]

Bonaparte filed her grievance herself.[11] She alleges that "no grievances are ever filed by the Union . . . and the sole reason is economics; the money is in the budget."[12] A complaint alleging that a union's *refusal* to file a grievance was arbitrary, discriminatory, or in bad faith could present a *prima facie* case of breach of the duty of fair representation,[13] but Bonaparte does

---

[6] Complaint ¶ 3, Ex. 2.
[7] Complaint ¶ 1, 3.
[8] *Thomas v. AFGE, Local 1975*, 45 D.C. Reg. 6712, Slip Op. No. 554 at 6, PERB Case No. 98-S-04 (1998).
[9] *Dade v. NAGE, SEIU, Local R3-006*, 46 D.C. Reg. 6876, Slip Op No. 491 at 3 n.1, PERB Case No. 96-U-22 (1996).
[10] *Hoggard v. AFSCME, Dist. Council 20, Local 1959*, 43 D.C. Reg. 2655, Slip Op. No. 356 at 2-3, PERB Case No. 93-U-10 (1993).
[11] Complaint ¶ 2.
[12] Complaint ¶ 3.
[13] *Cf. Sparks v. AFSCME, Dist. Council 20, Local 1959*, 59 D.C. Reg. 3906, Slip Op. No. 915 at 2, 5, PERB Case No. 05-U-26 (2007); *Oskere v. AFSCME*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case No. 99-U-15 (2000).

not allege that she requested the Union to file the grievance, that the Union refused to file the grievance, or that such refusal was arbitrary, discriminatory, or in bad faith. Absent those allegations, the filing of the grievance by Bonaparte rather than by the Union does not constitute a breach of the duty of fair representation.[14]

Bonaparte does allege that the Union refused to send her grievance to arbitration. In arguing that this refusal was "unfair representation," Bonaparte's motion to stay calls attention to the benefits of arbitration: it saves money; it is tailored to address workplace problems; arbitrators can apply the law to the facts as well as interpret the contract; and both the union and the arbitrator bring their expertise to the table.[15] In her praise of arbitration, Bonaparte overlooks the role of unions as gatekeepers in the process. The Supreme Court discussed the importance of that role in *Vaca v. Sipes*:

> In providing for a grievance and arbitration procedure which gives the union discretion to supervise the grievance machinery and to invoke arbitration, the employer and the union contemplate that each will endeavor in good faith to settle grievances short of arbitration. Through this settlement process, frivolous grievances are ended prior to the most costly and time-consuming step in the grievance procedures. Moreover, both sides are assured that similar complaints will be treated consistently, and major problem areas in the interpretation of the collective bargaining contract can be isolated and perhaps resolved. . . .
>
> If the individual employee could compel arbitration of his grievance regardless of its merit, the settlement machinery provided by the contract would be substantially undermined, thus destroying the employer's confidence in the union's authority and returning the individual grievant to the vagaries of independent and unsystematic negotiation. Moreover, under such a rule, a significantly greater number of grievances would proceed to arbitration. This would greatly increase the cost of the grievance machinery and could so overburden the arbitration process as to prevent it from functioning successfully.[16]

Board precedent and the CBA are consistent with *Vaca v. Sipes* in giving the Union discretion to handle a grievance in the way it sees fit and to pursue the grievance to the level it

---

[14] *See Gibson v. D.C. Pub. Employee Relations Bd.*, 785 A.2d 1238, 1240, 1243 (D.C. 2001) (affirming dismissal where employee did not allege that union's refusal to file grievance was arbitrary, discriminatory, or in bad faith); *Holloway v. Shambaugh & Son, Inc.*, 988 F. Supp. 2d 801, 908-909 (N.D. Ind. 2013) (dismissing complaint where employee did not allege he requested the union to file a grievance); *Kozina v. B & O Chicago Terminal R.R. Co.*, 609 F. Supp. 53, 55 (N.D. Ill. 1984) (dismissing complaint where employee did not allege he requested the union to file a grievance).

[15] Motion to Stay 4, 6.

[16] 386 U.S. 171, 191-92 (1967).

deems necessary.[17] Article 22, section 2 of the CBA provides that if a grievance is unresolved after Step 4, "the Union *may* by written notice request arbitration within twenty (20) days after the reply at Step 4 is due or received, whichever is sooner."[18] The duty of fair representation does not require a union to pursue every grievance to arbitration. A complainant alleging that a union breached the duty of fair representation by deciding against pursuing a grievance to arbitration must demonstrate that the decision was arbitrary, discriminatory, or the product of bad faith.[19]

The Union argues in its motion to dismiss that "[n]owhere in her complaint does Bonaparte allege that the Union acted arbitrarily, discriminatorily, or in bad faith."[20] A review of the undisputed allegations of fact in the Complaint reveals that the Union is correct.

Apparently referring to agents of the Union, Bonaparte states in her Complaint that "they treated me unequally and unfairly."[21] This conclusory statement is insufficient to establish that the Union's conduct was discriminatory. A complainant who alleges that a union breached its duty by not advancing a grievance to arbitration must go beyond mere conclusions or beliefs and allege the existence of some evidence that would tie actions of the union to the alleged violation.[22] The Complaint does not allege facts indicating that the Union discriminates in deciding when to request arbitration.

Bonaparte's motion to stay acknowledges that the Complaint does not allege discrimination.[23] In several places the motion to stay makes vague references to discrimination against women, minorities, and the disabled but does not indicate who has discriminated against them. Even if the motion to stay were to be construed as amending the Complaint, Bonaparte would still not have alleged facts that would establish that the Union's decision against arbitration of her grievance was discriminatory. Bonaparte asserts that she is disabled and expresses her "belief that unfair representation is made against women, minorities, and the disabled"[24] but does not suggest that the Union decided against arbitration of her grievance on the basis of her asserted disability or on any other invidious basis.

In the Complaint, Bonaparte claims that the Union misled her, lied to her, and was deceitful.[25] Like her claim that she was treated unequally, these are merely conclusions without any factual support. The facts alleged by Bonaparte support the opposite conclusion: that the Union reversed the position that Stephen White initially took not because the Union was dishonest but because a higher-ranking official of the Union, with the advice of counsel, re-evaluated the grievance after White had given his opinion. White e-mailed Bonaparte, "After

[17] *Owens v. AFSCME, Local 2095*, 52 D.C. Reg. 1645, Slip Op. No. 750 at 7, PERB Case No. 02-U-27 (2004).
[18] Complaint Ex. 4 at 35 (emphasis added).
[19] *Johnson v. D.C. Pub. Sch.*, 61 D.C. Reg. 7380, Slip Op. No. 1472 at 5, PERB Case No. 07-U-07 (2014) .
[20] Motion to Dismiss 3.
[21] Complaint ¶ 3.
[22] *Johnson v. Washington Teachers' Union, Local 6,* 60 D.C. Reg. 13747, Slip Op. No. 1420 at 10, 12, PERB Case No. 13-U-34 (2013).
[23] Motion to Stay 2.
[24] Motion to Stay 2, 4.
[25] Complaint ¶¶ 3, 6.

having our attorney review your case, the Executive Director has declined to pursue arbitration at this time."[26] Unions are allowed to reconsider such matters. A decision against arbitration is neither arbitrary nor in bad faith merely because it rescinds an earlier decision to invoke arbitration.[27] Considering a less costly alternative, such as meeting with the director, is not arbitrary either. In the absence of evidence of bad motive, the handling and processing of an employee's grievance are within the discretion of the Union as the bargaining unit's exclusive representative.[28]

C. Bonaparte failed to allege facts establishing a violation of standards of conduct.

The Complaint also claims that the Union's failure to bring Bonaparte's grievance to arbitration violated section 1-617.03(a)(1).

D.C. Official Code § 1-617.03(a) sets certain minimum standards that a labor organization must maintain with respect to its operation, practice and procedures for recognition by the Board as a labor organization under the CMPA.[29] 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.[30] One of the standards, to which the motion to stay refers, is "[t]he maintenance of . . . provisions defining and securing the right of individual members . . . to fair and equal treatment under the governing rules of the organization. . . ." In order to show that a union's conduct violates this standard, a complainant must demonstrate that the union's conduct was arbitrary, discriminatory, or in bad faith, or based on considerations that are irrelevant, invidious, or unfair.[31]

In the present case, Bonaparte does not state any allegations related to any internal union proceedings or breach of the Union's by-laws or constitution. She therefore 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.[32] Even if, *arguendo*, a proper standards of conduct

---

[26] Complaint Ex. 2.
[27] *Osborne v. AFSCME, Local 2095*, Slip Op. No. 713 at 6-7, PERB Case Nos. 02-U-30 and 02-S-09 (May 21, 2003); *Johnson v. D.C. Dep't of Pub. Works*, 35 D.C. Reg. 4064, Slip Op. No. 175, PERB Case No. 87-U-02 (1988).
[28] *See Brown v. Washington Teachers' Union, AFT Local No. 6*, Slip Op. No. 1291 at 3, PERB Case No. 12-U-21 (May 30, 2012).
[29] *Bagenstose v. WTU, Local 6*, 40 D.C. Reg. 1397, Slip Op. No. 355, PERB Case Nos. 90-S-01 & 09-U-02 (1996) (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)).
[30] *Dupree v. F.O.P./Dep't of Corrs. Labor Comm.*, 46 D.C. Reg. 4031, Slip Op. No. 568, PERB Case Nos. 98-S-08 & 98-U-28 (1999).
[31] *Green v. Int'l Bhd. of Teamsters, Local 730*, 61 D.C. Reg. 12845 Slip Op. No. 1496 at 8, PERB Case No. 14-U-17 (2014); *Christian v. Univ. of D.C. Faculty Ass'n/Nat'l Educ. Ass'n*, 50 D.C. Reg. 6786, Slip Op. No. 700 at 4, PERB Case No. 02-S-05 (2003); *Roberts and AFGE, Local 2725*, 36 D.C. Reg. 3631, Slip Op. No. 203 at 2-3, PERB Case No. 88-S-01 (1989).
[32] *See, Dade v. Nat'l Ass'n of Gov't Employees, Serv. Employees Int'l Union. Local R3- 06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-S-22 (1996).

claim were before the Board, the Complaint, does not allege facts establishing that the union's conduct was arbitrary, discriminatory, or the product of bad faith.[33]

III. Conclusion

As the Board said of the complainant in *Owens v. AFSCME, Local 2095*,[34] there is no question that Bonaparte was dissatisfied with the Union's decision, but her dissatisfaction, in and of itself, does not constitute breach of the duty of fair representation when no evidence of arbitrariness, discrimination, or bad faith is alleged. Accordingly, the motion to dismiss is granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Union's motion to dismiss is granted. 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

March 17, 2016
Washington, D.C.

[33] *See supra* text accompanying notes 21-28.
[34] 52 D.C. Reg. 1645, Slip Op. No. 750 at 7, PERB Case No. 02-U-27 (2004).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Number 15-U-03 is being transmitted to the following parties on this the 29th day of March 2016.

Paula Bonaparte
3507 Emperor Court **via File&ServeXpress**
Bowie, Maryland 21032

Brenda C. Zwack
Murphy Anderson, PLLC **via File&ServeXpress**
1300 L Street NW, suite 1210
Washington, D.C. 20005
Counsel for American Federation of State, County,
and Municipal Employees, District Council 20, Local 2776

Andrew Washington
Executive Director **via U.S. Mail**
Council #20
17 24 Kalorama Road NW, suite 200
Washington D.C. 20024

/s/ Sheryl V. Harrington
Sheryl V. Harrington
Secretary