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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

William Sanders, Raymond Butler,
Edward Horne, Gregory Williams,
Eugene Cobb and Joseph Hall,

Complainants,

v.

District of Columbia,
Department of Public
and Assisted Housing,

and

District of Columbia,
Department of Housing
and Community Development,

Respondents.

PERB Cases Nos. 93-U-
13, 93-U-14, 93-U-15,
93-U-16, 93-U-17 and
93-U-20
Opinion No. 364

DECISION AND ORDER

Between April 14, and May 5, 1993, six documents styled "Appeals" (Complaints) were separately filed with the Public Employee Board (Board) by Counsel on behalf of Complainants William Sanders, Raymond Butler, Edward Horne, Gregory Williams, Eugene Cobb and Joseph Hall. The Complainants allege in their Complaints that the District of Columbia Department of Public and Assisted Housing (DPAH) and District of Columbia Department of Housing and Community Development (DHCD), by certain acts and conduct, violated the Comprehensive Merit Personnel Act (CMPA), D.C. Code 1-618.4(a)(1) and (3).^{1/} The Office of Labor

^{1/} All six Complaints set forth the Department of Public and Assisted Housing as a subsidiary of the Department of Housing and Community Development (DHCD). These agencies, however, are (continued...)

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Relations and Collective Bargaining, on behalf of DPAH and DHCD (Respondents), filed timely Answers to each of the Complaints.

Our review of the Complaints reveals that all six Complainants allege the same acts and conduct as the basis of Respondents' alleged violations of D.C. Code Sec. 1-618.4(a)(1) and (3).^{2/} Therefore, the Board hereby consolidates these proceedings and, for the reasons set forth below, dismisses the Complaints in all six cases.

The asserted violative acts and conduct consist of Respondents' alleged breach of the parties' collective bargaining agreement by refusing to compensate Complainants at a higher rate of pay when they were "officially assigned to [] higher level position[s] for more than ninety days". (Compls. at 2.) Complainants further assert that Respondents "failed and refused to respond in any manner" to Complainants' grievances and numerous follow-up inquiries. Id. Complainants state that this conduct has persisted since 1985, when Complainants were first assigned to the higher-level positions.^{3/}

^{1/}(...continued)

separate and distinct departments under the personnel authority of the Mayor. Documents and correspondence attached to the Complaints appear to indicate that Complainant Eugene Cobb is currently employed by DHCD and Complainant Raymond Butler was formerly employed by DHCD. The other four Complainants appear to have been continuously employed by DPAH during all times material to their Complaints. Cobb was reassigned from DHCD to DPAH in 1988.

^{2/} Complainants allege the same acts and conduct as constituting both the D.C. Code Sec. 1-618.4(a)(1) and (3) violations.

^{3/} Correspondence attached to the Complaints of William Sanders, Edward Horne, Gregory Williams and Eugene Cobb (from Complainants' Counsel to Respondents) reveals that these Complainants, through Counsel, initiated steps as early as October 17, 1991, and no later than January 13, 1992, to resolve grievances that Counsel asserts were filed concerning these same Complaint allegations. In this regard, notwithstanding Complainants' assertions that they were "lured into inaction" and "prevented.. from filing a grievance at an earlier period", the Complaints, with respect to at least the aforementioned Complainants, are also clearly untimely. Board Rule 520.4(b) requires unfair labor practice complaints to be filed by an individual employee "not later than (continued...)

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The threshold issue presented to the Board by the parties' pleadings is whether the Complaints give rise to an unfair labor practice claim under the CMPA. For the reasons we stated in Carlease Madison Forbes v. Teamsters, Local Union No. 1714 and Teamsters Joint Council 55, 36 DCR 7097, Slip Op. No. 205, PERB Case No. 87-U-11 (1989), we rule that the Complaints do not state an unfair labor practice as prescribed under the CMPA.^{4/} We, therefore, lack the jurisdiction to consider them.

In Carlease Madison Forbes, we observed that "[w]hile some state and local laws make the breach of a collective bargaining agreement by employer or union an unfair labor practice, the CMPA contains no such provision, nor do we find such a necessary connection implicit in the Act." Id. at p. 3. We further observed that "[u]nder the CMPA, breach of a contract does not constitute a per se statutory violation." Id. Therefore, there is no statutory basis for the Board to consider allegations that strictly concern a breach of contract. See, e.g., American Federation of Government Employees, Local Union no. 3721 v. District of Columbia Fire Department, 39 DCR 8599, Slip Op. No.

³(...continued)
120 days after the date the alleged violations occurred".

We have ruled, and the D.C. Court of Appeals has affirmed, that the Board's rules establishing time limits for initiating a proceeding before this agency are mandatory and jurisdictional. Public Employee Relations Board v. D.C. Metropolitan Police Department, No. 88-868 (June 29, 1991). "[T]he forfeiture of a party's right to initiate a proceeding is automatic and the existence of prejudice is irrelevant..." District of Columbia Public Schools and Washington Teachers' Union, ___ DCR ____, Slip Op. No. 335 at n. 2, PERB Case No. 92-A-02 (1992).

^{4/} The Board has ruled that "[t]he filing of grievances is provided under the CMPA as a protected employee right under D.C. Code Sec. 1-618.6(b)." Charles Bagenstose, et al. v. District of Columbia Public Schools, 38 DCR 4154, Slip Op. No. 270 at n. 8, PERB Case No. 88-U-33 and 88-U-34 (1991). There is no allegation, however, that Respondents interfered with, restrained or coerced Complainants in the exercise of their right as "[] individual employee[s]" to "present a grievance at any time to his or her employer without the intervention of a labor organization". D.C. Code Sec. 1-618.6(b). On the contrary, the Complaints reflect that at all times material to the allegations, Complainants pursued their respective "complaint[s]" either individually or through Counsel, albeit without success. Id.

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287, PERB Case No. 90-U-11 (1991) and Georgia Mae Green v. District of Columbia Department of Correction, 37 DCR 8086, Slip Op. No. 257, PERB Case No. 89-U-10 (1990).

While some issues of fact are disputed, taking all of the Complainants' allegations as true, the Complaints do not give rise to any unfair labor practices under the CMPA. All six Complaints, therefore, must be dismissed for want of jurisdiction. ^{5/}

ORDER

IT IS HEREBY ORDERED THAT:

The proceedings in PERB Cases Nos. 93-U-13, 93-U-14, 93-U-15, 93-U-16, 93-U-17 and 93-U-20 are consolidated and the Complaints in these cases are dismissed. ^{6/}

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

September 22, 1993

^{5/} Counsel asserts in these Complaints that "[a]dministrative remedies with the Agency[, i.e., DHCD and DPAH,] have been exhausted." Compls. at 2. The Complaints also indicate that the grievances filed concerning these same Complaint allegations were employee initiated. We note that, with respect to employee-initiated grievances, the Office of Employee Appeals (OEA), pursuant to D.C. Code Sec. 1-617.1(c) "shall be the final administrative appellate authority with respect to adverse action appeals, subject to judicial review." See also D.C. Code Sec. 1-617.3(b).

^{6/} In view of our disposition of these Complaints, Counsel's request for costs are denied for the reasons we stated in International Brotherhood of Police Officers, Local 446, AFL-CIO/CLC v. D.C. General Hospital, ___ DCR ___, Slip Op. No. 322, PERB Case No. 91-U-14 (1992).