



Both of the Respondents filed Answers denying the allegations and requesting that the Board dismiss the Complaint in its entirety.

The Complaint alleges the following:

1. The Complainant has been employed by DPW for four years as a Public Utilities Specialist and is a member of a bargaining unit consisting of non-professional employees for which AFGE, Local 872 is the certified representative.
2. Following a Hearing on a proposed adverse action, DPW rendered a final decision advising the Complainant that she was suspended for ten (10) days, as recommended by the Hearing Examiner.
3. The Complainant grieved the final decision, however she received no response from the Director of DPW to her step 4 grievance.<sup>1/</sup>
4. On or about November 11, 1986, the Complainant, a member in good standing of AFGE, requested that the Union invoke the arbitration provisions of the collective bargaining agreement. The Complainant was advised by the president of Local 872, contrary to what she had been previously told by him, that the grievance did not, in his opinion, warrant arbitration.

DPW contends that in its "Notice of Final Decision" it clearly informed the Complainant of her right to file an appeal with the Office of Employee Appeals or an appeal through her union representative under the negotiated grievance procedure, but not both.

AFGE asserts in its Answer that it did request, on the Complainant's behalf, assistance from its affiliate AFGE Council 211. The President of Council 211 advised the Complainant of her right to file an appeal with the Office of Employee Appeals, and also that she could not, as an individual, invoke the arbitration provisions of the contract; this right was accorded only to the Union. Furthermore, according to the Union's response to the Complaint, the Complainant was advised that the final decision as to whether a case would proceed to arbitration is determined by the Union's Executive Board.

---

<sup>1/</sup> The Complaint does not explain why the grievance was initiated at Step 4 of the grievance procedure.

The Union's Answer additionally asserts that on an unspecified date, the Executive Board of Local 872 decided that the Complainant's grievance did not warrant arbitration "due to the Union's limited resources." (Union's Response at p.2); and that it endeavored to provide the Complainant with assistance, despite its limited financial resources and the relative inexperience of its leadership at the time, by referring the Complainant to the Howard University Labor Law Clinic. The Answer argues that AFGE has met its responsibility of representing the Complainant to the best of its ability and therefore has not committed any unfair labor practice.

The issues before the Board are:

1. Whether the Complaint presents a cause of action in the allegation that DPW committed an unfair labor practice by failing to render a final decision within the prescribed forty-five (45) days; and
2. Whether AFGE has committed an unfair labor practice by interfering with the Complainant's exercise of her rights under Section 1-618.6, as alleged in the Complaint? 2

Based upon its review of the pleadings, the Board concludes that neither DPW nor AFGE committed unfair labor practices as alleged in the Complaint.

It is true that the CMPA in Section 1-617.3(a)(1)(D), states that a written decision shall be rendered to an employee within forty-five (45) calendar days from the date of the employee's Answer to the charges. However, the failure to comply with this provision does not per se constitute an unfair labor practice. In the Board's view, the Complainant has failed to demonstrate or even allege the existence of any nexus between DPW's presumed non-compliance with Section 1-617.3(a)(1)(D) and the unfair labor practices in this Complaint. Absent any allegation that DPW violated any provisions of Section 1-618.4(a)(1) through (5), the Board is constrained to find that the complaint fails to state a cause of action under the Unfair Labor Practice provisions of the CMPA.

Turning to the allegation that AFGE committed an unfair labor practice by interfering with and restraining the Complainant in the exercise of her rights under 1-618.6(b), the Board

---

2 Section 1-618.6(b) provides that "[a]n individual employee may present a grievance to his or her employer without the intervention of a labor organization".

PERB Case No. 87-U-02  
Opinion No. 175  
Page Four

similarly finds that the Complainant fails to allege a cause of action under the CMPA provisions.

The Complainant asserts that under Section 1-618.6(b) of the CMPA she is permitted to present grievances to her employer without the Union's intervention. While this is correct, the Statute does not entitle a grievant to invoke the arbitration provisions of an agreement as an individual where the agreement does not so provide nor is there any absolute statutory to arbitration.

ORDER

IT IS ORDERED THAT:

The Complaint is dismissed for failure to state a cause of action under the Comprehensive Merit Personnel Act for which relief could be granted.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
April 14, 1988