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

In the Matter of:)	
Alexandra A. Jones,)	
Complainant,)	PERB Case No. 08-U-33
and)	Opinion No. 990
National Association of Government Employees,)	
Local R3-07,)	
Respondent.)	

DECISION AND ORDER

I. Background:

Alexandra A. Jones (“Complainant” or “Ms. Jones”), a Telecommunications Equipment Operator, filed an unfair labor practice complaint (“Complaint”) against the National Association of Government Employees, Local R3-07 (“Respondent” or “Union” or “Local R3-07”). The Complainant asserts that the Union: (1) failed to represent her when her agency director placed her on administrative leave on January 10, 2008; and (2) caused the District to discriminate against her at a March 7, 2008 meeting with management at the Office of Unified Communications. (See Compl. ¶ 1-7). The Complaint seeks a finding by the Board that the Union: (1) committed an unfair labor practice in violation of the Union’s constitution and by-laws and (2) violated D.C. Code § 1-617.06(b)(2). (See Compl., last page).

In a document styled “National Association of Government Employee’s Response to Complaint” (“Answer”), the Respondent denies any violation of the CMPA and contends that this matter is not properly before the Board because the Complainant failed to exhaust internal remedies found in the Union’s constitution and by-laws. (See Answer at pgs. 3-4). As a result, the Union requests that the Board dismiss the Complaint.

A hearing was held in this matter. The Hearing Examiner issued a Report and Recommendation (“R&R”) finding no violation of the CMPA and recommending that the

Complaint be dismissed. The Complainant filed Exceptions and the Respondent filed an Opposition to the Exceptions. The Hearing Examiner's R&R, the Complainant's Exceptions and the Respondent's Opposition are before the Board for disposition.

II. Statement of the Case

The Hearing Examiner noted that "[the] Complainant is a Telecommunications Equipment Operator in the Office of Unified Communications ["OUC"] [and] is a member of the bargaining unit represented by . . . NAGE Local R3-07. . . . [The] Complainant testified that she ran unsuccessfully for office with Local R3-07. . . . Officers for Local R3-07 were elected in October 2007 and sworn [in,] in February 2008. . . ." (R&R at p. 2).

The Hearing Examiner determined that "[o]n January 10, 2008, [the] Complainant was called to the office of OUC Director Janice Quintana. . . . [who] told her . . . that she was being placed on administrative leave pending an investigation. [The] Complainant was then escorted out of the building. She testified that she did not ask for union representation at that time. . . ." (R&R at p. 2). The Complainant claims that later that day she contacted Local R3-07 and spoke to Vice President-elect Jacqueline White, who informed her that she was off-duty. (See R&R at p. 2).

The Hearing Examiner noted that "[o]n the morning of January 10, a number of the officers-elect of Local R3-07 were meeting to discuss or interview shop stewards. According to Vice President-elect Jacqueline White, Robert Sutton, OUC's Assistant Operations Manager, came into the meeting, called her outside, and told her that Quintana was about to meet with [the] Complainant. White asked Sutton to find out if [the] Complainant wanted union representation at the meeting. About 30 minutes later . . . Sutton returned and told her that [the] Complainant did not want union representation." (R&R at p. 2).

The Hearing Examiner found that "[l]ater that day, [the] Complainant contacted Local R3-07 and spoke to White [who] . . . told her she was off-duty. [The] Complainant asked [White] for the phone number of Vincent Fong, the Local's President-elect; White gave it to her. . . . [The] Complainant called Fong, who told her he was in a meeting and would call her back later. . . . According to the Complainant, Fong did not return her call that day, but did call her the next day. After discussing the matter with her, Fong told [the] Complainant he would arrange a meeting with [Director] Quintana. Fong called back a day or two later to say that Quintana would not meet with him, but that he would try again to set up a meeting. . . . According to the Complainant, Fong did not phone her again. . . . Fong sent her an e-mail message . . . but [the Complainant] claims she did not receive it until some weeks later because her e-mail was not working." (R&R at p. 2).

The Hearing Examiner stated that several of the Complainant's witnesses testified that officers-elect of Local R3-07 expressed their apparent pleasure at Ms. Jones being placed on administrative leave, and their skepticism about representing her. (See R&R at pgs. 2-3). The

Hearing Examiner found that “[o]n January 18 . . . the Complainant, received notice of a proposal to suspend her for 30 days. She sent a letter to Local R3-07 . . . stating ‘I have no confidence in your representation and will not have the local union (R3-07) . . . represent me in this serious matter’. . . . She grieved the proposed suspension . . . [and the grievance] was sustained sometime around the end of January. The administrative leave was then lifted and [the Complainant] returned to duty.” (R&R at p. 3).

Around the same time, the Complainant contacted a national representative for the Union and requested that “Michael Patterson, president of Local R3-05 and a national vice president of NAGE, represent her” at a meeting concerning a matter not related to the administrative leave or the proposed suspension. (See R&R at p. 3). A meeting was held on March 7, 2008. When the Complainant and Michael Patterson arrived at the meeting, Lee Blackmon, Local R3-07’s Treasurer, and Pearl Hodge, Chief Steward, were already there along with several management officials. “According to the Complainant, she was told Blackmon and Hodge were there ‘as witness[es] for management’.” (R&R at p. 3). The Complainant indicated that she did not want Hodge and Blackmon present. After some discussion, Blackmon and Hodge left and the meeting proceeded without them.

In view of the above, on March 21, 2008, the Complainant filed an unfair labor practice Complaint alleging that “by its behavior in connection with her being placed on administrative leave on January 10 and the meeting of March 7[,] Local R3-07 violated her rights by assisting management and failing to represent her”. (See R&R at p. 4).

III. Hearing Examiner’s Report and Recommendation

The Hearing Examiner noted that although the Complainant cited D.C. Code § 1-617.06, concerning employee rights, in her Complaint she alleges unfair labor practices. Specifically, based on the evidence presented, the Hearing Examiner determined that the Complainant was asserting violations of D.C. Code § 1-617.04(b)(1) and (2). (See R&R at p. 6). He stated that D.C. Code § 1-617.04(b)(1) “makes it an unfair labor practice for a labor organization to interfere with an employee’s rights under the labor-management relations provisions of the [CMPA], generally referred to as breaches of the labor organization’s duty of fair representation . . . [while D.C. Code] § 1-617.04(b)(2) . . . makes it an unfair labor practice for a labor organization ‘to cause the District to discriminate against an employee’ in violation of his rights under § 1-617.06.” (R&R at p. 6).

Based on the pleadings and the record developed at the hearing, the Hearing Examiner determined that the Complainant “ha[d] not shown that any violations of [D.C. Code] § 1-617.04(b)(1) or (b)(2) occurred.” (R&R at p. 6). As a result, he recommended that the Complaint be dismissed.

First, the Hearing Examiner found that the Complainant did not request union representation by Local R3-07 during the January 10, 2008 meeting with OUC’s Director. The

fact that White did not immediately abandon her other activities in order to assist the Complainant was not a basis for finding a breach of the duty of fair representation. (See R&R at p. 6). The Hearing Examiner also determined that "nothing in Fong's behavior, as described by [the] Complainant, constitutes a breach of [the] Respondent's duty of fair representation. . . . Mr. Fong returned [the] Complainant's initial telephone call to him, contacted [Director] Quintana, and called [the] Complainant again after Quintana declined to meet with him." (R&R at p. 6). The Hearing Examiner noted that Fong also sent an e-mail on January 16 soliciting from the Complainant her written request for representation from Local R3-07. He stated that the Complainant's failure to receive the e-mail did not result in a breach of Fong's duty of fair representation. Rather, the Complainant had a duty to follow up on her request when she did not hear from Fong. (See R&R at p. 6).

The Hearing Examiner noted that "it is not the competence of a union in cases alleging breach of the duty of fair representation that is at issue, but whether the union's actions are motivated by good faith. [He found] no showing that either White's or Fong's actions . . . were not taken in good faith. Even if [he accepted] the testimony [that] officers-elect of Local R3-07 . . . said they did not know if [the] Complainant could be helped and that they did not intend to provide her with representation, there is no showing that these union officials did, in fact, carry through on these statements." (R&R at pgs. 6-7).

Regarding the January 18, 2008 proposal to suspend the Complainant, the Hearing Examiner found that there was no violation by the Respondent because the "Complainant pointedly, in writing, refused to have Respondent represent her in this matter." (R&R at p. 7). Finally, the Hearing Examiner opined that "the duty of fair representation does not appear to arise in connection to the March 7 meeting in that there was no grievance at issue at that time, and [the] Complainant, by her own testimony, did not wish to have officials of Local R3-07 present [Furthermore, the Hearing Examiner determined that the] Complainant has offered no evidence to show that any official of the District discriminated against her in violation of [D.C. Code] § 1-617.06, much less that any such discrimination was caused by action of [the] Respondent." (R&R at p. 7). Therefore, the Hearing Examiner found no violation of D.C. Code § 1-617.04(b)(1) or (2), or § 1-617.06, and recommended that the Complaint be dismissed.

IV. Exceptions

In her Complaint, Ms. Jones asserts that the Union violated D.C. Code § 1-617.06(b)(2). However, the Hearing Examiner concluded that Ms. Jones incorrectly cited the provisions of the CMPA which she wishes the Board to consider. The Board has noted that when considering the claims of *pro se* litigants, the Board construes those claims liberally to determine whether a proper cause of action has been alleged. See *Thomas J. Gardner v. D.C. Public Schools and Washington Teachers' Union, Local 6, AFL-CIO*, 49 DCR 7763, Slip Op. No. 677 at p.3, n.1, PERB Case Nos. 02-S-01 and 02-U-04 (2002). See also, *Beeton v. D.C. Dep't of Corrections and FOP/DOC Labor Committee*, 45 DCR 2078, Slip Op. No. 538 at p. 3, n. 1, PERB Case No. 97-U-26 (1998). While the Complaint fails to allege that the Respondent violated any of

the statutory provisions that delineate unfair labor practices by a labor organization, we believe that the Complainant attempted to assert that the Respondent violated D.C. Code § 1-617.04 (b)(1) and (2) by failing to represent her at the January 10, 2008 meeting and causing the agency to discriminate against her at the March 7, 2008 meeting. Therefore, we adopt the Hearing Examiner's findings that although the Complainant alleged a violation of D.C. Code § 1-617.06, she actually was attempting to show a violation of D.C. Code § 1-617.04(b)(1) and (2).

The Complainant alleges that the Hearing Examiner erred by giving more weight to the testimony of some witnesses and ignoring testimony that was favorable to the Complainant.¹ However, a review of the record reveals that the Complainant's exceptions amount to a mere disagreement with the Hearing Examiner's findings. The Complainant would have the Board

¹ The Complainant raises the following factual findings asserting that the Hearing Examiner should not have made the findings, or inferring that the Complainant's version of the findings should be adopted by the Board: (a) the Complainant did not present any documents at the hearing because she presented seven witnesses; (see exceptions at p. 2); (b) although the Complainant did not request union representation at the [January 10 meeting with management, "based on the substance of the meeting, the Complainant *did* request union representation the same day"; (exceptions at p. 2); (c) Fong did not contact the Complainant concerning the outcome of attempting to schedule a meeting with management; (see exceptions at p. 2); (d) "White stated that she was off duty but was in fact on the premises . . . and did not offer [the Complainant] any assistance" (exceptions at p. 2); (e) White "testified untruthfully that she offered to meet the Complainant off the premises" - the Complainant offers to call witnesses who were subpoenaed and who did not appear at the hearing to refute this testimony; (see exceptions at p. 2); (f) the Complainant was not barred from the premises (see exceptions at p. 2); (g) White testified both that she had "no knowledge of the incident prior to January 10th" and that "two (2) days prior to January 10th the Director mentioned [the] incident to her." (exceptions at p. 2); (h) the Complainant called Mrs. White around 1:30 p.m., requesting union representation and "[w]itness for the Complainant, Michelle Enouch-Injoku, [testified] that Mrs. White had informed her that the Union was in an emergency meeting [with] reference to Ms. Jones and this conversation occurred around 11:00 a.m. January 10th, 2008. (see exceptions at p. 2); (i) Chief Shop Steward Pearl Hodge's testimony "contradicts Mrs. White's testimony that Mrs. White informed the Union official that Robert Sutton advised her [that] Ms. Jones was being served and Mrs. White continued to perform interviews" (exceptions at p. 2); (j) Mrs. White took the word of Mr. Sutton "over [the word of] a dues paying member." (see exceptions at p. 2); (k) the Complainant immediately received calls from other employees stating that the Union was not going to represent her (see exceptions at p. 3); (l) this allegation was "deemed truthful" by the Complainant "based on the non-response and lack of concern from Mr. Fong . . . and Mrs. White"; (see exceptions at p. 3); (m) National Representative Rosemary Davenport agreed that National Vice President Michael Patterson would represent the Complainant; (see exceptions at p. 3); (n) Witnesses Michelle Thurston and Carla Howard testified that "Mr. Fong, Mrs. White and Ms. Hodge directly said to them that they don't know if they could help Ms. Jones, Ms. Jones should have kept her mouth closed, she is on her own, glad they had [done it] they hope they fire her, not going to represent her, called Ms. Jones a derogatory name, i.e., Dusty[,] and laughed at Ms. Jones" (exceptions at p. 3); (o) "Ms. Hodge and Mrs. Blackmon [were] indeed [witnesses] for management based on witness testimony" (exceptions at p. 3); (p) the Complainant had a witness present and did not need Ms. Hodge and Mrs. Blackmon to be present for a personal issue (see exceptions at p. 3); (q) the Complainant acknowledges that she said she did not need Hodge and Blackmon at this time; (see exceptions at p. 3); (r) Hodge and Blackmon refused to leave the meeting until the Office of Labor Relations advised management that it was not necessary (see exceptions at p. 3); (s) Hodge testified that management asked her to attend the meeting but [she did not] inquire about the purpose of the meeting (see exceptions at p. 3); (t) Blackmon's testimony was contradictory to the testimony of Mrs. White and Ms. Hodge concerning the notification of the meeting (see exceptions at p. 3); and (u) during the January incident Local R3-07 was the bargaining unit representing the Complainant. (see exceptions at p. 3).

adopt her view of the evidence. The Board has determined that a mere disagreement with the Hearing Examiner's findings is not grounds for reversal where the findings are fully supported by the record. *See American Federation Government Employees, Local 872 v. D.C. Department of Public Works*, 38 DCR 6693, Slip Op. No. 266 at p. 3, PERB Case Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). We have also held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." *Tracy Hatton v. FOP/DOC Labor Committee*, 47 DCR 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995); *see also, Charles Bagenstose, et. al. v. D.C. Public Schools*, 38 DCR 4154, Slip Op. No. 270 at p. 7, n. 5, PERB Case Nos. 88-U-33 and 88-U-34 (1991); *Doctors Council of the District of Columbia and Henry Skopek v. D.C. Commission on Mental Health Services*, 47 DCR 7568, Slip Op. No. 636 at p. 4, PERB Case No. 99-U-06 (2000).

Here, the Hearing Examiner has found that the Complainant did not request representation at the January 10, 2008 meeting with the Director and refused to have the Respondent represent her concerning the January 18, 2008 proposal and the March 7, 2008 grievance hearing. He also determined that the Complainant has not shown that OUC has discriminated against her, or that the union caused any discrimination. The Board finds that the Hearing Examiner's findings are reasonable, based on the record and consistent with Board precedent. Therefore, we adopt the Hearing Examiner's findings that there has been no violation of the CMPA. As a result, we find no violation of D.C. Code §1-617.06 (as alleged by the Complainant), nor D.C. Code § 1-617.04(b)(1) and (b)(2). The Complaint in this matter is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Hearing Examiner's Report and Recommendation recommending dismissal is adopted. The unfair labor practice complaint is dismissed.
2. Pursuant to Board Rule 559.1 this decision is final upon issuance.

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

September 30, 2009

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-U-33 was transmitted via U.S. Mail to the following parties on this the 30th day of September 2009.

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