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

In the Matter of:)	
)	
American Federation of Government Employees, Local 631)	
)	
Petitioner)	PERB Case No. 19-U-03
)	
v.)	Opinion No. 1700
)	
Water and Sewer Authority)	
)	
Respondent)	
)	

DECISION AND ORDER

Complainant American Federation of Government Employees, Local 631 (“Union”) filed an unfair labor practice complaint against Respondent District of Columbia Water and Sewer Authority (“Authority”). In accordance with Rule 520.8 the Board conducted an investigation of the complaint, which included an investigatory conference. The investigation revealed that there is no issue of fact to warrant a hearing. For the reasons set forth below, the case is dismissed.

I. Statement of the Case

A. Grievance Arbitration Proceedings

The Union filed two grievances related to the Authority’s treatment of an employee, Abraham McKnight: an individual grievance on behalf of McKnight and a group grievance on behalf of all bargaining unit members including McKnight.

The individual grievance was submitted March 16, 2018. It alleged that the Authority subjected McKnight to discipline without cause.¹ On March 23, 2018, the Authority responded that the matter was neither grievable nor arbitrable because McKnight had resigned March 22, 2018. On March 27, 2018, the Union sent a letter to the Authority requesting that the matter be referred to an arbitrator.² In a letter to the Union dated April 6, 2018, the Authority adhered to its position that the matter was not arbitrable, concluding, “Accordingly, your correspondence asserting a ‘grievance’ following McKnight’s voluntary resignation will not be referred to an umpire.”

¹ Compl. Ex. 2.

² Compl. Ex. 3.

On March 18, 2018, the Union submitted what it contended was a group grievance, which the Authority found deficient on the ground that it was not filed on behalf of a group but only McKnight. On March 26, 2018, the Union submitted a revised group grievance on behalf of all bargaining unit members including McKnight. The group grievance alleged that the Authority had violated the parties' Working Conditions Agreement ("Agreement"), a settlement agreement, and the Family and Medical Leave Act by placing McKnight on forced sick leave and requesting him to provide documentation about his health.³ In a letter dated April 10, 2018, the Authority rejected the grievance. The Union then requested that an arbitrator be selected. The Authority agreed to participate in the selection of an arbitrator but advised the Union that a motion to stay arbitration was pending in D.C. Superior Court.⁴ James Abernathy was selected as the arbitrator on May 18, 2018.⁵

On June 29, 2018, Judge Hiram Puig-Lugo of the D.C. Superior Court granted the Authority's motion to stay arbitration on the ground that McKnight's resignation ended his eligibility to be represented by the Union under the Agreement.⁶ In a July 11, 2018 e-mail, the Authority notified Arbitrator Abernathy of the court's order and informed him that "we deem the Court's Order final and binding in precluding arbitrability of the issues raised by the Union and we will not be participating in any further adjudication of this matter."⁷ The Union responded by asserting to the arbitrator that the Authority's e-mail was incorrect in that the Authority's motion sought a stay of the March 27, 2018 arbitration request, which concerned the individual grievance and not the group grievance before the arbitrator.⁸

No arbitration hearing was scheduled by the arbitrator.⁹

B. Unfair Labor Practice Proceedings

On November 8, 2018, 120 days after the Authority informed the arbitrator that it would not participate in any further adjudication, the Union timely filed the instant unfair labor practice complaint ("Complaint"). The Complaint alleges that Authority notified the arbitrator it would not arbitrate the grievance based upon a court order that the Complaint alleges was inapplicable.¹⁰ The Complaint states that "[b]ased upon the Authority's intentional misrepresentation [the arbitrator] took no further action to schedule the arbitration hearing."¹¹

The Union presents two grounds upon which the Authority's action was an unfair labor practice. It alleges that the Authority's false statements interfered with the Union's right to arbitrate grievances under article 58(H) of the Agreement,¹² and it alleges that "[t]he Authority's refusal, to arbitrate the Union's group grievance, was a repudiation of the collective bargaining

³ Compl. Ex. 1.

⁴ Answer Ex. A.

⁵ Compl. ¶ 6; Answer ¶ 6; Compl. Ex. 4.

⁶ Authority's Motion to Stay Ex. 1.

⁷ Compl. Ex. 5, 6.

⁸ Compl. Ex. 6.

⁹ Compl. ¶ 10; Answer ¶ 10.

¹⁰ Compl. ¶¶ 8, 9.

¹¹ Compl. ¶ 10.

¹² Compl. ¶ 11.

agreement and a violation of D.C. Code § 1-617.04(a)(5).”¹³ The Union prayed for preliminary relief and for an order requiring the Authority to post a notice of its violation, pay the Union’s costs, and notify the arbitrator that it would arbitrate the group grievance.¹⁴

The Authority filed an answer in which it denies that it made any false statements or committed an unfair labor practice and raises affirmative defenses. The Authority avers that it “did not engage in any intentional acts constituting an unfair labor practice as defined in the Comprehensive Merit Personnel Act . . . nor does the Complaint state a basis on which any relief may be granted under PERB’s Rules.”¹⁵ The Authority “respectfully requests the Board dismiss the Complaint in the above-captioned matter in its entirety with prejudice.”¹⁶

Two motions to stay have been filed in the case. The first was filed on January 3, 2019, by the Authority. The Authority stated that the Union had appealed the Superior Court’s order. The Authority requested that the Board stay proceedings in the unfair labor practice case until that appeal was fully adjudicated. The Union filed an opposition to the motion, contending that the order at issue in the appeal concerns a different grievance. The Union stated, “The appeal in another court between the same parties, but on different issues, does not require a stay of proceedings before PERB.” On January 23, 2019, the Executive Director denied the motion, stating,

Under either party’s theory of the case, the appellate proceedings are irrelevant to this unfair labor practice case. If the Respondent obtained a court order staying the grievance arbitration at issue in the complaint, that order is a defense to the alleged unfair labor practice even if it is later reversed on appeal. If, on the other hand, the Respondent obtained a court order staying a different grievance arbitration, an appeal of that order would have no bearing at all on this case.

On January 17, 2019, the Superior Court held a hearing on the Authority’s motion for the Union to show cause why it should not be held in contempt of court for disobeying the court’s June 29th, 2018 order by filing the unfair labor practice complaint. The judge denied the motion but in doing so made statements from the bench that led the Union to file a motion to stay of its own. On January 25, 2019, the Union filed a pleading styled “Union’s Motion to Hold in Abeyance the Union’s Unfair Labor Practice Complaint.” In support of the motion, counsel for the Union submitted an affidavit in which she stated,

On January 17, 2019, Judge Puig-Lugo informed the parties he intended the June 29, 2018 Order to apply to the March 19, 2018 Step 3 General Group Grievance.

¹³ Compl. ¶ 12.

¹⁴ Compl. p. 4.

¹⁵ Answer ¶ 19.

¹⁶ Answer p. 4.

Based upon the Court's statements at the January 17, 2019 hearing, the Union believes the unfair labor practice complaint in this matter should be held in abeyance until a final decision is issued by the D.C. Court of Appeals in *American Federation of Government Employees, AFL-CIO Local 631 v. D.C. Water and Sewer Authority*, Case No. 18-CV-901.

Paragraphs 7 and 8 of the motion contained similar statements.

Pursuant to Rule 520.8 the Board's staff conducted an investigatory conference with the parties' representatives on February 7, 2019.¹⁷ At the conference, the representatives provided additional documents from the grievance proceedings. Counsel for the Authority agreed to obtain and file a transcript of the January 17, 2019 hearing in Superior Court. Counsel for the Authority filed the transcript on February 19, 2019.

The Complaint, the Union's motion to hold the case in abeyance, and the Authority's request that the case be dismissed are before the Board for disposition.

II. Discussion

The Board's investigation revealed that there is no issue of fact to warrant a hearing. Accordingly, the Board will render a decision on the pleadings pursuant to Rule 520.10.

Section 16-4407 of the D.C. Official Code authorizes motions to stay arbitration. That portion of the Arbitration Act is not preempted by the Comprehensive Merit Personnel Act.¹⁸

The Authority obtained an order staying arbitration of any grievance the Union brought on behalf of McKnight, in particular the arbitration of the group grievance, which was then pending. The Authority's memorandum in support of its motion to stay discussed the group grievance.¹⁹ The court's order refers to the March 19, 2018 group grievance.²⁰ As the Union admits, the judge stated at the show cause hearing that his order encompasses the group grievance at issue in the present case:

[A]s far as anything is concerned about Mr. McKnight, whether it's personal or a group, my June 29th order resolved that. . . . [L]et me stress that . . . the complaint filed with the Public Employee Relations Board is not consistent with the order that issued on June 29th. . . . [T]hat order applies only to actions brought using Mr.

¹⁷ The Authority unsuccessfully attempted to get the Superior Court to block the investigatory conference by filing an "Emergency Motion for an Order Dismissing All Proceedings before the Public Employee Relations Board." The court denied the motion.

¹⁸ *Washington Teachers' Union, Local #6 v. D.C. Pub. Sch.*, 77 A.3d 441, 454 (D.C. 2013).

¹⁹ Mem. of Points of Authority in Support of Pl.'s Mot. to Stay Arbitration 4, 7, 8.

²⁰ Authority's Mot. to Stay Unfair Labor Practice Proceedings Ex. 1.

McKnight's case as a predicate, because that's what we have here, a predicate case, nobody else has been identified. . . .²¹

The Authority was entitled to rely on the court's order staying the group grievance. "A judgment of any trial court is presumed to be valid."²² That reliance was not an unfair labor practice and cannot retroactively become an unfair labor practice if the court's order is subsequently reversed. Further, the Union's claim that the Authority violated article 58(H) of the Agreement does not state a statutory unfair labor practice proscribed by the Comprehensive Merit Personnel Act.²³

If the court's order is reversed on appeal and if the Authority thereafter refuses to participate in arbitration, the Union may then bring an unfair labor practice complaint. The time for filing such a complaint would begin to run from the date of that refusal.²⁴ Speculation that this sequence of events might occur in the future does not justify the Union's motion to hold the case in abeyance. There is no reason for the Board to maintain on its docket a meritless case throughout the course of appellate proceedings that cannot possibly affect its outcome. The Board, not the parties, controls its own docket.

In view of the foregoing, the Union's motion to hold the case in abeyance is denied and the Authority's request that the case be dismissed is granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Union's Motion to Hold in Abeyance the Union's Unfair Labor Practice Complaint is denied.
2. The Union's Complaint is dismissed.
3. Pursuant to Board Rule 559.1, this decision and order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.

February 21, 2019

²¹ Show Cause Hr'g Tr. 35-37, Jan. 17, 2019.

²² *Cobb v. Standard Drug Co.*, 453 A.2d 110, 111 (D.C. 1982).

²³ See *FOP/MPD Labor Comm. v. D.C. MPD*, 60 D.C. Reg. 2268, Slip Op. No. 1353 at 8, PERB Case No. 07-U-27 (2013).

²⁴ See PERB R. 520.4.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 19-U-03 is being transmitted by File & ServeXpress to the following parties on this the 22d day of February 2019.

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