

**Decision and Order on Motion for
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(2) AFSCME, District Council 20 was responsible for advancing the grievances to the next level; and (3) AFSCME, Council 20 was not willing to take any further steps. The Complainants allege that to date, AFSCME, D.C. Council 20 has failed to: (1) advance the grievances; (2) provide confirmation that the grievances were processed through steps 1, 2, and 3; and (3) provide any explanation concerning why further action has not been taken. (Mot. at p.2) The Complainants assert that AFSCME, Local 2401 and AFSCME, D.C. Council 20 have committed unfair labor practices in violation of D.C. Code Sec. 1-618.4(b)(1), "by failing to provide [Complainants] with fair representation on their grievances."^{3/} (Comp. at par. 4)

Both AFSCME D.C. Council 20 and AFSCME, Local 2401 failed to file an Answer to the Complaint. On May 6 and June 2, 1999, the Complainants filed two documents styled "Motion for Finding of Admitted Facts" and "Second Motion for Finding of Admitted Facts", respectively.^{4/}

On August 6, 1999, the Board's Executive Director advised the Complainants that they did not allege a violation of any employee right under D.C. Code Sec. 1-618.6. Therefore, their Complaint allegations were evaluated as an alleged violation of AFSCME's duty to fairly represent the Complainants. In addition, the Complainants were informed that they failed to allege any acts or conduct that, if proven, would establish that AFSCME's decision not to arbitrate the grievance was arbitrary, discriminatory or the product of bad faith or any other prohibitive motive. As a result, the Executive Director administratively dismissed the Complaint for failure to state a cause of action.

The Complainants filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's administrative dismissal. An Opposition to the Motion was filed on behalf of both AFSCME, D.C. Council 20 and Local 2401. The Motion is now before us for disposition.

The Complainants do not dispute the Executive Director's legal reasoning, e.g. that a complaint must state a cause of action. (Mot. at 3.) However, they assert that there has been a misinterpretation of the alleged facts in this case. Specifically, the Complainants contend that "[a] reasonable reading of the original complaint is that it asserts that the Respondent ignored the complaint... [and] the [] amended complaint states that explicitly." (Mot. at 3.) Moreover, the

^{3/} The collective bargaining agreement provides for a four step grievance process. "By agreement between Local, 2401 and D.C. Council 20 the first steps of the grievance process are handled by the shop steward. However, D.C. Council 20 has the responsibility for the third and fourth steps...." (Mot. at p.2)

^{4/} During this period, the parties engaged in discussions in an effort to settle the matter. Those efforts were not successful. As a result, on July 6, 1999, the Complainants requested that the case go forward.

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Complainants contend that their grievances are meritorious. Citing Vaca v. Sipes, 386 U.S. 171, 191 (1967), the Complainants argue that a “union breaches the statutory duty of fair representation if it ignores a meritorious grievance or processes it in a perfunctory manner.” Id. Furthermore, the Complainants assert that a union’s decision is arbitrary if it lacks a rational basis. In the instant case, the Complainants contend that “D.C. Council 20 has not stated any rational basis for its handling of the [grievances] despite numerous requests inside and outside the PERB process.” Id. The Complainants allege that AFSCME’s conduct amounts to “irresponsible inattention” and is a breach of its duty to fairly represent. In light of the above, the Complainants urge the Board to reverse the Executive Director’s decision.

In the instant case, AFSCME did not file an Answer to the Complaint. As a result, pursuant to Board Rule 520.7, the Complaint allegations are deemed admitted. However, we cannot determine on the pleadings whether AFSCME’s conduct constitutes a violation of its duty to fairly represent the Complainants. The information necessary to make such a determination is exclusively within AFSCME’s knowledge. Moreover, given the undisputed circumstances of this case, it would be unfair for the Complainants to bear the burden of pleading a cause of action based on AFSCME’s alleged arbitrary conduct.

In light of the above, we are reluctant at this time to find a statutory violation based on a default. Therefore, pursuant to Board Rule 520.8, we are directing that AFSCME respond to the questions listed in our Order. After reviewing AFSCME’s response, we shall rule on the Complainants’ Motion for Reconsideration.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of State, County and Municipal Employees, D.C. Council 20 (AFSCME) and AFSCME, Local 2401 are directed to submit evidence in the form of affidavits and/or documents in response to the following questions:
 - a. Was any information provided to the Complainants concerning the status of their grievances? If information was provided, when was it provided?
 - b. If no information was provided to the Complainants concerning the status of their grievances, list the reasons why AFSCME did not respond to any of the Complainants’ inquiries.
 - c. What is the current status of the Complainants’ grievances?

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d. What, if any, explanation exists with respect to AFSCME's handling of the Complainants' grievances after step 3? Was any explanation provided to the Complainants concerning AFSCME's handling of the grievances?

2. AFSCME's responses to the questions referenced in paragraph one (1) of this Order, are due no later than fourteen (14) days from service of this Opinion. No extension of time will be granted.

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

April 5, 2000

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-U-24 was served by first class mail, on the following parties on this 5th day of April, 2000.

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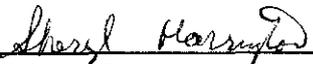
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