

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
Officer Carl Freson,)	
)	
Complainant,)	PERB Case No. 83-U-09
)	Opinion No. 74
and)	
)	
Fraternal Order of Police)	
Metropolitan Police Department)	
Labor Committee,)	
)	
Respondent.)	

DECISION AND ORDER

On May 12, 1983, Officer Carl Freson (Complainant), a member of a bargaining unit represented by the Fraternal Order of Police (FOP), filed an Unfair Labor Practice Complaint (ULP) against FOP alleging that FOP violated its duty to fairly represent him by failing to pursue his grievance to arbitration due to negligence and bad faith. Pursuant to a "Final Notice of Adverse Action" issued by the Chief of the Metropolitan Police Department (MPD) on March 17, 1982, the Complainant was fined 15 days pay or \$1,340. Complainant seeks, as a remedy, that the Board order FOP to remit to him the \$1,340 fine plus attorney's fees and costs. Complainant also requests that his record be cleared of the adverse action charge. FOP denies all allegations and asserts that it considered Complainant's request for arbitration fairly and in good faith.

I The issue presented by the Complaint is whether or not FOP violated Section 1704 of the Comprehensive Merit Personnel Act (CMPA) (D.C. Code Section 1.618.4) by the alleged breach of its duty of fair representation to the Complainant by not pursuing his grievance to arbitration due to negligence and bad faith.

On February 23, 1982, the Complainant received a notice of "Proposed Adverse Action" from MPD recommending that he be fined 15 days pay for his alleged (1) failure to maintain decorum and command of temper; (2) use of derogatory words; (3) failure to treat a prisoner in a fair and humane manner; and (4) making a false official statement. Complainant contacted FOP, designated FOP's counsel as his representative and filed an appeal drafted by counsel for FOP. After MPD denied his appeal

and issued the "Final Notice of Adverse Action", Complainant informed FOP's counsel that he wished to file an appeal with the Chief of Police, the next step in the grievance procedure. ^{1/} On March 18, 1982, the Complainant authorized FOP's counsel to file the appeal because he planned to be out of town. On March 19, 1982, FOP's counsel filed the appeal and requested that the Chief of Police reduce the fine or allow Complainant to substitute extra duty in lieu of payment. The Complainant contends that he also told FOP's counsel to assert his innocence in the appeal to the Chief. On March 24, 1982, the Chief of Police issued a "Final Agency Decision" denying the appeal, but granting the request for substitution of extra duty in lieu of payment of the fine.

On April 7, 1982, the Complainant protested the Chief's decision to FOP. He was instructed to complete an arbitration request form, the next step in the grievance procedure. Complainant's arbitration request was denied by FOP's Arbitration Committee. [The Arbitration Committee determined that the grievance lacked merit and should not be pursued to arbitration.] Additionally, there is evidence that the Complainant did not submit the arbitration request within the ten (10) day period required by the negotiated Agreement. ^{2/} It appears that many factors, such as the Complainant's insistence on reinterviewing witnesses, were among the considerations which led to the FOP's decision not to pursue the grievance to arbitration.

On July 6, 1983, the Board referred the matter to a Hearing Examiner for a Report and Recommendation. A hearing was held on September 23, 28, 1983, and October 11, 1983. Post-hearing briefs were filed by the parties on November 15, 1983. The Hearing Examiner's "Report and Recommendation" was filed with the Board on December 20, 1983. "Exceptions to the Hearing Examiner's Report and Recommendation" were filed by the Complainant on January 6, 1984. No Exceptions were filed by FOP.

^{1/} Article 14, Section 7 of the negotiated Agreement provides, among other things, that:

"Upon receipt of this notice, the employee may within five days appeal the action to the Chief of Police."

^{2/} Article 21E, Section 2 of the negotiated Agreement provides that:

"Within ten days of the decision of the Chief of Police on an adverse action or a grievance, the union, on behalf of an employee or employees, may advise the Chief of Police in writing signed by the aggrieved employee of its demand for arbitration."

The Board has reviewed this matter and finds that there is insufficient evidence to conclude that FOP's refusal to arbitrate was, in this instance, a breach of the duty of fair representation. It is a well established principle that a labor organization's duty of fair representation does not require it to pursue every grievance to arbitration. ^{3/} In this instance, it is evident that FOP considered Complainant's request for arbitration and determined that the matter should not be pursued. There is insufficient evidence to conclude that this decision was due to negligence or bad faith. Accordingly, the Complaint does not establish a violation of Section 1704 of the CMPA by FOP.

O R D E R

IT IS ORDERED THAT:

The Complaint is dismissed due to its failure to establish a violation of Section 1704 of the CMPA (D.C. Code Section 1.618.4).

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

April 23, 1984

^{3/}See Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967) in which the U.S. Supreme Court held that a breach of the duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith.