

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

Stanley O. Roberts,)

Complainant,)

and)

American Federation of)
Government Employees, Local 2725,)

Respondent.)

PERB Case No. 88-S-01
Opinion No. 203

DECISION AND ORDER

On December 31, 1987, Stanley O. Roberts (Complainant) filed a Standards of Conduct Complaint against Local 2725 of the American Federation of Government Employees (AFGE or Local 2725). The gravamen of the Complaint is that in violation of D.C. Code Section 1-618.3(a) AFGE has breached the standards of conduct governing labor organizations by: (1) failing to provide adequate assistance in the processing of the Complainant's grievance, and (2) refusing to invoke the arbitration provisions of the collective bargaining agreement. No Answer was filed.

Roberts alleges the following:

The Complainant is a financial analyst, DS-11, with the Department of Public and Assisted Housing (DPAH). He was employed by the Department of Housing and Community Development during part of the events in controversy. He is a dues paying member of AFGE, Local 2725. Commencing July 8, 1986, the Complainant was assigned to three consecutive one hundred and twenty (120) day details at a DS-13 grade level position. At the time of his detail, Roberts was at the DS-9 grade level, and in August, 1986 was promoted to a DS-11 grade.

Roberts met with the president of Local 2725, Louise Smothers, on April 17, 1987, about an asserted failure of the Agency to compensate him at the DS-13 grade level during the period of his details, and about the inclusion of documentation in his personnel file concerning his detail. With the matter unresolved, on July 1, 1987 the Complainant, on his own initiative, filed a grievance seeking: (1) back-pay; (2) inclusion in his personnel file of an outstanding rating received while detailed; and (3) documentation for the initial detail. The grievance was rejected as procedurally defective. Roberts refiled the grievance on August 3, 1987, (with a copy to Smothers) and received a settlement offer dated August 7, 1987 from Alphonso Jackson, then Deputy Director for Public Housing.

Roberts indicated to Smothers his displeasure with the offer on several occasions and requested arbitration, only to be informed by both Smothers and the Union's attorney that, because of the untimeliness of the grievance, arbitration would not be invoked. Thereafter, he was berated by Jackson for contacting his Congressman and fruitlessly sought the assistance of the AFGE District office in resolving his grievance. ¹/

The issues before the Board are whether AFGE met its responsibilities under the Standards of Conduct provisions of the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 1-618.3, in (1) its handling of the Complainant's grievance and (2) its refusal to proceed to arbitration in this matter.

Under D.C. Code Section 1-618.3, a member of the bargaining unit is entitled to "fair and equal treatment under the governing rules of the [labor] organization." As this Board has observed, "The Union as the statutory representative of the employees is subject always to complete good faith and honesty of purpose in the exercise of its discretion regarding the handling of union members' interests." Hairston and Fraternal Order of Police and The Metropolitan Police Department, 31 DCR 2793, Opinion No. 75, PERB Case Nos. 83-U-11, 83-U-12, 83-S-01 (1984), quoting Hines v. Anchor Motor Freight Inc., 424 U.S. 554 (1976).

¹/ Subsequent to the filing of the instant Complaint, Roberts submitted to the Board a copy of a settlement agreement resolving the underlying grievance which included back pay and other relief.

Decision and Order
PERB Case No. 88-S-01
Page Three

The applicable standard in cases such as this is not the competence of the union, but rather whether its representation was in good faith and its actions motivated by honesty of purpose. This Circuit has held that in cases under the National Labor Relations Act, in order to breach this duty of fair representation, a union's conduct "must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair." Teamsters, Local 310 v. NLRB, 587 F.2d 1176, 1181 (D.C. Cir. 1978).

The alleged facts of this case, show that the representation accorded by the Union was consistent with its duty of fair representation, and thus the Union did not breach its standard of conduct. While the agreement which settled the grievance did not include the full relief sought, the Complainant has failed to demonstrate that the agreement was the product of bad faith on the part of the Union, or was arbitrary or discriminatory. Instead, the allegations indicate that the Complainant and the Union representative discussed the grievance on a number of occasions, the Union pursued the grievance with management through its resolution, and legal representation was provided by the Union. In short, the Complainant has neither sufficiently pled bad faith, nor raised circumstances that would give rise to such an inference. The Union's handling of this grievance did not breach its duty of fair representation.

The Board has previously addressed the question of whether a union's refusal to proceed to arbitration on a particular grievance constitutes a breach of its duty of fair representation. In Freson and Fraternal Order of Police, Metropolitan Police Department Labor Committee, 31 DRR 2293, Opinion No. 74, PERB Case No. 83-U-09 (1984) the Board noted, "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." Here, as in that matter, the pleadings are insufficient to conclude that this decision resulted from arbitrariness, discrimination or bad faith. The Board finds that the Union provided the Complainant with a rational basis for its refusal to arbitrate the underlying grievance. Thus the Complainant has failed to establish a violation of D.C. Code Section 1-618.3(a)(1).

Decision and Order
PERB Case No. 88-S-01
Page Four

ORDER

IT IS ORDERED THAT:

The Complaint is dismissed.

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

February 14, 1989