

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

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In the Matter of:

Deborah Y. Jones,

Complainant,

PERB Case No. 84-U-04  
Opinion No. 81

and

The District of Columbia Department  
of Corrections,

Respondent.

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DECISION AND ORDER

On January 27, 1984, Deborah Y. Jones (Complainant) a Senior Correctional Specialist at Occoquan Facility, Lorton, Virginia, filed an Unfair Labor Practice Complaint (ULP) with this Board against the District of Columbia Department of Corrections (Employer). The Complainant alleged that Employer violated Section 1704 of the Comprehensive Merit Personnel Act (CMPA) (D.C. Code Section 1-618.3) by taking reprisals against her because of her union activities, i.e., refusing to promote her to the position of Lead Correctional Officer (Sergeant). The Complaint seeks, as a remedy, that the Board require the Employer "to promote Complainant to Lead Correctional Officer, to cease and desist from interfering with Complainant's exercise of her rights as Chief Union Steward and grant further relief as may be proper."

On February 16, 1984, Employer filed its "Answer" denying that it took any reprisal against Complainant because of her union activities. Employer contends that, "[i]n addition to Complainant's non-selection, approximately one-third of the qualified applicants for the announced positions also were not selected." Employer requests that the Board dismiss the Complaint.

The issue before the Board is whether or not the Complaint and record filed with the Board supports the charge that the Employer violated the CMPA by unlawfully "interfering, restraining or coercing an employee in the exercise of rights guaranteed by the CMPA."

In July 1983, Employer published a "Vacancy Announcement" for the position of Lead Correctional Officer. In December 1983, Employer selected 77 applicants from an "Official Selection Certificate" containing 102 certified applicants who had been rated qualified, well-qualified, or highly qualified. Complainant was one of 25 applicants who had been rated qualified but who was not selected. All applicants rated highly qualified or well-qualified were selected. The majority of the individuals selected were union members.

Decision and Order  
Case No. 84-U-04  
Opinion No. 81  
Page 2

Complainant is Chief Steward of Local 1550, American Federation of Government Employees (AFGE). She contends that, on October 16, 1983, at a meeting with top management officials, she pointed out alleged violations of safety regulations to the Director of the Department of Corrections who also served as the selecting official for the promotions. Complainant cites this meeting and two (2) grievances she filed as evidence that the failure to promote her was retaliation against her because of her union activities.

On November 2, 1983, complainant filed two (2) grievances. The first alleged that she was placed on forced sick leave for one hour. On November 18, 1983, this grievance was adjusted by restoring the one hour sick leave. The second grievance alleged that she was forced to take a fitness-for-duty physical in retaliation for requesting a limited duty assignment. On November 25, 1983, the second grievance was denied. Article XIV Section 3(e) of the negotiated Agreement provides that Employer can require an employee on a limited duty assignment to submit to a fitness-for-duty physical to determine his or her fitness for full duty. Accordingly, this grievance was denied by the Assistant Director and Employer's position was upheld.

The Board has reviewed this matter and finds that no link, direct or indirect, has been established between Complainant's activity as Chief Steward and her non-selection for promotion to Lead Correctional Officer. Complainant was just one of 25 persons who were not selected for promotion. Many others not selected were also union members. The Board finds, further, that there is insufficient evidence to conclude that the selecting official, i.e., the Director, was aware of the grievances filed by Complainant since both were adjusted or resolved at a level below that of Director.

O R D E R

IT IS ORDERED THAT:

The Complaint is dismissed without prejudice because the evidence presented is insufficient to establish a violation of the CMPA.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
June 4, 1984