

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

_____)	
In the Matter of:)	
)	
Barbara Hagans,)	
)	
Complainant,)	PERB Case Nos. 99-U-26 and
)	99-S-06
v.)	
)	Opinion No. 654
American Federation of State, County and)	
Municipal Employees, (AFSCME), District)	Motion for Reconsideration
Council 20, Local 2073)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

This matter involves a Motion for Reconsideration filed by Barbara Hagans (Complainant). The Complainant is requesting that the Board reverse its decision in Slip Op. No. 646.

The Complainant alleged that the American Federation of State, County and Municipal Employees, (AFSCME or Respondent), Local 2073 violated D.C. Code Sec 1-618.3(a)(1) and 1-618.4(b)(1) by failing to: (1) assist her in the processing of her grievance and (2) move her grievance to arbitration.

A hearing was conducted. The Hearing Examiner found that AFSCME did not violate D.C. Code Sec 1-618.3(a)(1) and 1-618.4(b)(1). As a result, the Hearing Examiner recommended that the Complaint be dismissed.¹

¹The Complainant also alleged that the Department of Consumer and Regulatory Affairs and the Department of Health violated the collective bargaining agreement between DCRA and AFSCME, Local 2743. However, the Board's Executive Director dismissed this allegation. The Complainant did not appeal the Executive Director's determination.

Decision and Order
PERB Case Nos. 99-U-26 and
99-S-06
Page 2

In Slip Op. No. 646, the Board concurred with the Hearing Examiner's findings and dismissed Ms. Hagans' complaint. The Complainant filed a Motion for Reconsideration, requesting that the Board reverse its decision in Slip Op. No. 646. The Respondent did not file a response to the present motion.² The Motion for Reconsideration is now before the Board for disposition.

Discussion

The Complainant was a Contact Representative at the Department of Consumer and Regulatory Affairs (DCRA). In this capacity, she served as a liaison between several licensing boards (those for nursing, pharmacy, podiatry and physical therapy) and DCRA. She was detailed in anticipation of a transfer of functions from DCRA to the Department of Health (DOH).

In July 1998, the Complainant received a performance appraisal from her supervisor of record at DCRA. Although the overall performance rating was "Excellent", the Complainant was unhappy about several narrative comments that she regarded as derogatory and unfair. As a result, she attempted to contact AFSMCE, Local 2743 and District Council 20 for assistance in filing a grievance.

The second event which caused her to seek the union's assistance with a grievance involved her supervisor at DOH. The Complainant's supervisor at DOH was James R. Granger, Jr., Executive Director, Office of Professional Licensing. The Complainant claims that she experienced some difficulty in working for Granger. Several memoranda written by Granger to Hagans identified deficiencies with the Complainant's work. As a result, the Complainant filed a grievance. In her grievance, the Complainant charged Granger with sexual harassment for the manner in which he communicated with her. In addition, she alleged that: (1) Granger did not treat her with respect and (2) her work assignment was outside of her position description. AFSMCE, Local 2743 assisted Hagans with the grievance.

Subsequently, the Complainant submitted a revised grievance in which she dropped the sexual harassment charge. The grievance was later denied by Geraldine K. Sykes, Administrator, Licensing Regulation Administration. The Complainant then advanced the grievance to Step 4.

The agency's response to the Step 4 grievance did not satisfy the Complainant. As a result, the Complainant contacted Local 2743 and requested that her grievance be moved to arbitration. The Local did not respond to her request.

In view of the above, Ms. Hagans filed a complaint. A hearing was held and the Hearing Examiner determined that the Complainant did not meet her burden of proof concerning the alleged

²The Respondent's response was due on May 8, 2001.

Decision and Order
PERB Case Nos. 99-U-26 and
99-S-06
Page 3

breach of the duty of fair representation. In addition, the Hearing Examiner found that the Complainant did not present any facts to establish that the Respondent retaliated against her because she opposed the slate of candidates that won office in the union election. Specifically, the Hearing Examiner determined that the Complainant's allegations of retaliation were conclusory, and not supported by any evidence.

In light of his findings, the Hearing Examiner recommended that the complaint be dismissed. In Slip Op. No. 646, the Board adopted the Hearing Examiner's findings and dismissed the complaint. The present motion seeks to reverse Slip Op. No. 646.

In her motion, the Complainant asserts that the Hearing Examiner erred in finding that the Respondent did not breach its duty of fair representation. As a result, the Complainant requests damages based on the alleged breach. The Complainant's claims amount to nothing more than the Complainant's disagreement with the Hearing Examiner's findings of fact.³

After reviewing the present motion, we believe that the arguments raised by Ms. Hagans, mirror those made in her "Exceptions to the Hearing Examiner's Report and Recommendation." The Complainant's current arguments were previously considered and rejected by this Board. Also, the motion does not raise any new issues. Therefore, we believe that the Complainant has failed to assert any grounds for the Board to reverse its earlier decision.

ORDER

IT IS HEREBY ORDERED THAT:

The Motion for Reconsideration is denied.

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

May 24, 2001

³The Board has held that "issues of fact concerning the probative value of evidence and credibility resolution are reserved to the Hearing Examiner." Doctors Council of the District of Columbia and Henry Skopek v. D.C. Commission on Mental Health Services, 47 DCR 7568, Slip Op. No. 636 at p.4, PERB Case No. 99-U-06 (2000). Also see Tracy Hatton v. FOP/DOC Labor Committee, 47 DCR 769, Slip Op. No. 451 at p.4, PERB Case No. 95-U-02 (1995).

CERTIFICATE OF SERVICE

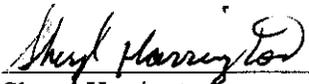
This is to certify that the attached Decision and Order in PERB Case Nos. 99-S-06 and 99-U-26 was transmitted via U.S. Mail to the following parties on this 24th day of May 2001.

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