

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 formal 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 Relation Board**

In the Matter of:)	
)	
Deborah Chisholm,)	
)	
Complainant,)	PERB Case No. 99-U-33
)	
v.)	Opinion No. 628
)	
District of Columbia)	
Office of Labor Relation and)	
Collective Bargaining,)	
)	
Respondent.)	

Decision And Order

The Complainant filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's administrative dismissal of the Complaint. An opposition was filed by the Office of Labor Relations and Collective Bargaining (OLRCB). The Complainant's Motion for Reconsideration is before us for disposition. After reviewing the pleadings, we grant the Complainant's Motion for Reconsideration and reverse the Executive Director's administrative dismissal of the complaint.

The Complainant, Deborah Chisholm, was terminated effective March 8, 1998, from her employment as a Social Services Representative for the District of Columbia Department of Human Service (DHS or Respondent). The Complainant retained counsel in order to convince her union, the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2401 (AFSCME), to invoke arbitration on her behalf. ^{1/} Arbitration was invoked and a hearing was scheduled for January 7, 1999. However, two continuances were granted. During one of these continuances, OLRCB asserted, on behalf of DHS, that the matter was not arbitrable. (Comp. at par. 7.) Specifically, OLRCB asserted that the Complainant's counsel invoked arbitration without the union's consent. ^{2/}

^{1/} The Complainant retained the law firm of Passman and Kaplan. This firm also represented the Complainant at the arbitration hearing.

^{2/} OLRCB attached a letter from AFSCME supporting AFSCME's asserted lack of authorization.

The Arbitrator scheduled an evidentiary hearing regarding the arbitrability of the Complainant's grievance. By letter dated May 13 1999, AFSCME informed the Arbitrator of its formal withdrawal of the Complainant's grievance against DHS. In addition, AFSCME requested that the arbitration be rescinded. (Comp. at par. 9). On May 14, 1999, the Arbitrator dismissed the arbitration based on AFSCME's withdrawal.

As a result of the arbitrator's ruling, the Complainant's counsel filed an Unfair Labor Practice Complaint, alleging that OLR CB violated D.C. Code § 1-618.4(a)(1), (3) and (5) by inducing AFSCME to rescind its agreement to arbitrate the grievance. (Comp. at par. 1). Specifically, the Complainant asserts that AFSCME had no legitimate basis for: (1) withdrawing its approval for arbitration ; and (2) directing the Arbitrator to cancel the hearing. (Comp. at par. 10.). Therefore, the Complainant claims that the Respondent induced AFSCME to withdraw its consent. Also, the Complainant notes that AFSCME's decision to revoke arbitration, constituted an irrevocable election of Ms. Chisholm's appeal rights. Furthermore, the Complainant states that "[o]nce the Union withdrew its approval for arbitration and directed the Arbitrator to cancel the hearing, Ms Chisholm was without any means to challenge her improper removal."

After reviewing the pleadings, the Executive Director determined that the Complaint allegations failed to state a cause of action. As a result, the Complaint was administratively dismissed.

The Complainant filed a Motion for Reconsideration. After reviewing the pleadings, we conclude that the question concerning whether OLR CB's action rise to the level of a violation of the Comprehensive Merit Personnel Act, is a matter best determined after the establishment of a factual record, through an unfair labor practice hearing. As a result, we grant the Complainant's Motion for Reconsideration and reverse the Executive Director's dismissal of the Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's Motion for Reconsideration is granted.
2. Pursuant to Board Rule 559.1, this Decision and Order is effective and final upon issuance.
3. PERB Case Nos. 99-U-32 and 99-U-33 are consolidated.
4. The Executive Director shall refer the Consolidated Complaints to a Hearing Examiner and schedule a hearing under the expedited scheduled set forth below.
5. The Notice of Hearing shall issue seven (7) days prior to the scheduled date of the hearing.
6. Following the hearing, the designated hearing examiner shall submit a report and

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recommendation to the Board no later than twenty-one (21) days following the conclusion of closing arguments (in lieu of post-hearing briefs).

7. Parties may file exceptions and briefs in support of the exceptions no later than seven (7) days after service of the hearing examiner's report and recommendation. A response or opposition to the exceptions may be filed no later than five (5) days after service of the exceptions.

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

July 14, 2000

CERTIFICATE OF SERVICE

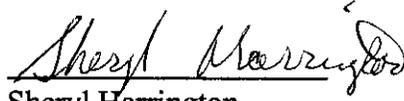
This is to certify that the attached Decision and Order in PERB Case No. 99-U-33 was transmitted via Fax and /or U.S. Mail to the following parties on this 14th day of July, 2000.

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