

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	)	
	)	
Local 1550, American Federation of Government Employees,	)	
	)	
Complainant,	)	PERB Case No. 83-U-03
	)	Opinion No. 59
and	)	
	)	
The District of Columbia Department of Corrections,	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

On November 30, 1982, Local 1550 of the American Federation of Government Employees (AFGE) filed an Unfair Labor Practice Complaint (ULP) with the Public Employee Relations Board (Board) against the District of Columbia Department of Corrections (DOC). The complaint alleges that DOC violated Sections 1704(a)(1)(2)(3) and (4) of the Comprehensive Merit Personnel Act of 1978 (CMPA) (codified as District of Columbia Code Sections 1-618(a)(1)(2)(3) and (4)) by failing to properly respond to a series of eight (8) grievances filed by AFGE on behalf of members of the bargaining unit. AFGE seeks, as a remedy, a Board order directing DOC to honor the contractual grievance procedure, to refrain from committing violations as set forth in the Complaint and to renegotiate "offensive portions" of the grievance procedure.

On December 10, 1982, DOC filed its Response denying that it violated the CMPA by failing to respond to AFGE's grievances. DOC contends that AFGE was notified, that three of the grievances were returned because they did not meet requirements of the grievance procedure and informed AFGE that it had five days to refile. DOC contends that AFGE failed to properly refile the grievances within five days and, accordingly, DOC considered them abandoned. DOC contends also that the five (5) remaining grievances have or are currently being processed through the negotiated grievance procedure and are, therefore, not properly brought before the Board as alleged statutory violations.

Article 10, Section 3 c., Step 2, of the Agreement provides that:

"If the grievance is not settled, the employee with or without his/her union representative, shall submit a signed, written grievance to the appropriate Administrator or Office Chief within seven (7) days following the supervisor's oral response. This specific Step 2 grievance shall be the sole and exclusive basis for all subsequent steps. The grievance at this and at every further step shall contain:

- (1) A statement of the specific provision(s) of the Agreement alleged to be violated.
- (2) The date(s) on which the alleged violation occurred.
- (3) A brief description of how the alleged violation occurred.
- (4) The specific remedy of adjustment sought.
- (5) Authorization by the employee if Union representation is desired.
- (6) The signature of the aggrieved employee and the Union representative, if applicable, according to the category of the grievance.

Should the grievance not contain the required information, the grievant shall be so notified and given five (5) days from receipt of notification to resubmit the grievance. Failure to resubmit the grievance within the five (5) day period shall void the grievance."

Three AFGE grievances (#313.4, #313.5 and #315.5), were all returned to the individual grievants on August 24, 1982, for failure to comply with the negotiated procedure. AFGE alleges that these grievances were refiled with the Director of DOC on September 2, 1982. DOC contends that these grievances were considered abandoned because they were not properly resubmitted to the Assistant Director nor were they submitted at the Director's level within the prescribed time limitations. Therefore, DOC's position is that it has properly responded to the grievances and that AFGE's failure to properly file voids them.

There is no contention by AFGE that it resubmitted the grievances within the prescribed five day period with complete information as required by Article 10, Section 3 c., Step 2 (6). Nor has AFGE pursued the matter any further through the grievance procedure upon being formally informed of DOC's position on these three grievances. Accordingly, the Board finds the alleged grievances involve contractual disputes, not statutory violations, which are properly resolved through the parties' negotiated procedures.

Another grievance (#316.10) was filed on August 20, 1982, absent the grievant's signature, but with the explanation that the grievant was unavailable to sign for two (2) weeks. The grievance was rejected by DOC because of the lack of the signature and was subsequently resubmitted by AFGE on September 3, 1982, properly signed. DOC formally denied the grievance on November 26, 1982. There is no evidence to support a statutory violation, but evidence only of a contractual dispute which should properly be addressed by the parties' negotiated procedures.

Three other grievances (319.2, 319.3, and 319.4) were filed by AFGE on August 5, 1982 and were returned by DOC for the grievants' signatures. Subsequent to being properly signed, they were processed through the various steps of the grievance procedure. They were delivered to the Director's office on September 10, 1982. On February 9, 1983, the Director granted the relief requested in grievances 319.2 and 319.3 but denied grievance 319.4.

Article 10, Section 3 g-h, provides:

- "g. Step 4. If the grievance remains unsettled, the employee shall submit it to the Director within five (5) days following the response of an Assistant Director. The Director, or his designee(s), shall meet with the grievant and his/her representative and witnesses should the Director feel it necessary, in an attempt to settle the grievance. Subsequent to that meeting, within seven (7) days the Director will respond in writing to the grievant and/or his representative.
- h. Step 5. If the grievance remains unresolved, the Union within fifteen (15) days after receipt of the Director's response shall advise the Director in writing whether the Union intends to request arbitration on behalf of the employee or employees."

DOC contends that the negotiated grievance procedure does not require the Director to respond to grievances within a specified period of time where no meeting is held, and therefore, no ULP has been committed on the basis of the delay in responding. DOC contends further that the Director made a reasonable effort to respond in a timely manner.

The Board finds that the parties have not exhausted their negotiated grievance procedures. DOC's interpretation of step 4 of the grievance procedure may be questionable, but disputes concerning contract interpretation and alleged contract violations should be properly resolved through negotiated grievance procedures.

Finally, grievance 313.8 was filed with the Assistant Director on October 12, 1982. On October 15, 1982, the Assistant Director notified the grievant that the grievance was denied because it was not timely filed in accordance with the grievance procedure. The grievance was filed with the Director on October 22, 1982. On November 23, 1982, the Director returned the grievance because it did not contain a written response as required and gave AFGE five (5) days in which to refile. The grievance was refiled by the grievant and is currently awaiting a response from the Director. AFGE alleges that on October 26, 1982, the Assistant Director, in a meeting with AFGE's representative and the grievant, suggested that the grievant was being coerced, pressured and intimidated by the representative. AFGE complains that this action by the Assistant Director was a clear violation of Section 1704(a). DOC denies the allegation.

The Board notes that there are factual discrepancies and differences of opinion concerning both what constitutes a violation of the negotiated agreement and the proper interpretation of contractual requirements. The parties have not exhausted their negotiated grievance procedures in the effort to resolve these contractual disputes and the Board finds insufficient evidence of statutory violations to support the unfair labor practice charges alleged here by AFGE.

O R D E R

IT IS ORDERED:

The Complaint is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
March 30, 1983