Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Sabrina Cobb	)	
Complainant,	)	PERB Case No. 11-U-42
v.	)	Opinion No. 1205
American Federation of State, County and Municipal Employees, AFL-CIO, District Council 20	)	Unfair Labor Practice Complaint
Respondent.	)	

DECISION AND ORDER

I. Statement of the Case

Ms. Sabrina Cobb ("Ms. Cobb" or "Complainant") filed an Unfair Labor Practice Complaint ("Complaint") against the American Federation of State, County and Municipal Employees, AFL-CIO, District Council 20 ("Respondent" or "Union"). The Complaint alleges that the Respondent violated the its duty of fair representation by "act[ing] in bad faith and in an arbitrary manner when it provided Complainant with inaccurate advice in regards to the remedies available to challenge her removal" and "act[ing] in bad faith and an arbitrary manner when it led Complainant to believe that it would submit her case to arbitration, filed a request for arbitration, yet inexplicably and without explanation withdrew the case from arbitration at the last minute." (Complaint at p. 1).

Respondent failed to file an Answer.

II. Discussion

In the Complaint, Ms. Cobb makes the following factual allegations:

> 3. Complainant is a member of the Respondent Union.
>
> 4. DC terminated Complainant's employment in a letter dated January 4, 2011. The letter stated that Complainant had the right either to appeal her termination to the Office of Employee Appeals or grieve the action in accordance with Article 7 of the AFSCME Master Working Conditions Agreement, and that, **"You may elect only one avenue or review."**
>
> 5. Respondent advised Complainant that she should grieve the termination rather than file an appeal with OEA.
>
> 6. In an email dated January 6, 2011 from Respondent's President Lawrence P. Brown, to Complainant, Mr. Brown wrote, "I got my copy of the letter that was fedexed to you. You have been officially terminated as of January 5th. The next step in this process is for Stephen White to file a formal grievance with agency protesting your termination. We then wait for their response. During this waiting period I will meet with the executives of Council 20 to discuss the merits of taking your case to arbitration. A final decision on arbitration hinges on the agency's response to our grievance. The decision to take a matter to arbitration rest[s] with Council 20. **If they decide not to go forward with arbitration, you will still have the opportunity to protest your termination through the Office of Employee Appeals**."
>
> . . . .
>
> 8. In an email from Mr. Brown to Complainant dated January 21, 2011, Mr. Brown wrote, "Stephen White is preparing to submit a formal grievance on your behalf. This should be done the first of next week. As soon [as]it is filed, and we have a date to present our arguments[,] we will get together. Hang in there, the process is not fast [,] but we have your back."
>
> 9. In an email from Mr. Brown to Complainant dated February 2, 2011, he wrote, "If she continues to think that she can be judge, jury and executioner, **it will make our arbitration case easier to win**. Before we can appeal your case to arbitration, we have to file a step 4 grievance, which is what I did. Since she was the proposing and deciding official, the step 4 grievance is elevated to the next level of management, that is Mr. Lundquist."
>
> 10. Respondent filed a step 4 grievance on behalf of Complainant dated January 29, 2011.

11. DC declined the grievance and upheld the termination in a brief letter dated March 22, 2011.

12. Respondent appealed the denial of the step 4 grievance to arbitration in a letter dated April 11, 2011.

13. Respondent withdrew the case from arbitration in an undated form letter it sent to Complainant on or about May 24, 2011.

(Complaint at pgs. 2-3).

Based on these factual allegations, Complainant contends: "Mr. Brown's advice that is highlighted is incorrect and conflicts with the rules that once a grievance is filed an employee may not appeal to OEA," and "OEA rules require that a petition be filed within 30-days of removal[; thus,] Respondent's decision to withdraw Complainant's case from arbitration left Complainant without a remedy to challenge her removal." (Complaint at pgs. 2-3). Consequently, Complainant alleges that Respondent violated its duty of fair representation owed to Complainant by "act[ing] in bad faith and in an arbitrary manner when it provided Complainant with inaccurate advice in regards to the remedies available to challenge her removal" and "act[ing] in bad faith and an arbitrary manner when it led Complainant to believe that it would submit her case to arbitration, filed a request for arbitration, yet inexplicably and without explanation withdrew the case from arbitration at the last minute." (Complaint at p. 1).

Respondent failed to file an Answer to the Complaint.

While a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged statutory violations. See *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 DCR 6876, Slip Op. No. 491 at 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 63, AFL-CIO and D.C. Department of Public Works*, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994). In addition, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. See, *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor of Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 24*, 40 DCR 1751, Slip Op. No. 303, PERB Case No.91-U-17 (1992). "Without the existence of such evidence, Respondent's actions cannot be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action." *Goodline v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

D.C. Code § 1-617.03 (2001 ed.) provides that the members of a bargaining unit are entitled to "fair and equal treatment under the governing rules of the [labor] organization." We have maintained that this statutory standard establishes that a labor organization must always exercise its discretion with "complete good faith and honesty of purpose as regards union members' interests." To fulfill the duty of fair representation, this standard requires that a labor

organization act in good faith motivated by honesty of purpose. A labor organization's competency is not subject to review under this statutory standard. Conversely, to breach the duty of fair representation, "a [labor organization's] conduct must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair." *Stanley Roberts v. AFSCME, Local 2725*, 36 DCR 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989).

The alleged facts of this case show that the representation afforded by the Union was consistent with its duty of fair representation, and thus the Union did not breach its standard of conduct. Concerning Complainant's allegation that the Respondent breached its duty of fair representation by providing Complainant inaccurate advice in regards to the remedies available to challenge her removal, the Complainant has neither sufficiently pled bad faith, nor raised circumstances that would give rise to such an inference. Complainant's allegations suggest the Union made a mistake in its recommendation. Despite the Complainant's assertion, a labor organization's competency is not subject to review under this statutory standard. *Stanley Roberts v. AFSCME, Local 2725*, 36 DCR 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989). Concerning Complainant's second allegation that the Union acted in bad faith and in an arbitrary matter when it withdrew Complainant's case from arbitration, 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." In the instant case, the pleadings are insufficient to conclude that the Union's decision to withdraw the case from arbitration resulted from anything more than a change of opinion as to the likely success of arbitrating the matter. Thus, Complainant once again has neither sufficiently pled bad faith, no raised circumstances that would give rise to such an inference.

As a result, Ms. Cobb's Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint filed by Sabrina Cobb ("Ms. Cobb" or "Complainant") is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

October 7, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-42 was transmitted via Fax and U.S. Mail to the following parties on this the 7th day of October 2011.

Alan Lescht, Esq.
Alan Lescht & Associates, P.C.
1050 17th Street, N.W.
Suite 400
Washington, D.C. 20036

FAX & U.S. MAIL

Geo T. Johnson
American Federation of State, County and
Municipal Employees, Council 20
1724 Kalorama Road, N.W.
Suite 200
Washington, D.C. 20009

FAX & U.S. MAIL

Sheryl V. Harrington