GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
Glendale Hoggard,	
Complainant,	
v.	
The American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO,	**PERB Case No. 93-U-10** **Opinion No. 356**
Respondent.	

DECISION AND ORDER

On February 1, 1993, an Unfair Labor Practice Complaint was filed with the Public Employee Relations Board (Board), by Counsel, on behalf of Complainant Glendale Hoggard (Complainant). On April 16, 1993, Complainant filed two separate amendments to the Unfair Labor Practice Complaint (the Complaint and its amendments are hereinafter referred to as the Complaint). The Complaint alleged that certain conduct by Respondents, District of Columbia Public Schools (DCPS) and American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO (AFSCME), constituted unfair labor practices, as proscribed by the Comprehensive Merit Personnel Act (CMPA), at D.C. Code Sec. 1-618.4. et seq. We affirmed the Board's Executive Director's dismissal of the Complaint allegations with respect to DCPS as untimely filed in Glendale Hoggard v. The District of Columbia Public Schools et al., ___DCR_____, Slip Op. No. 352, PERB Case No. 93-U-10 (1993).

On March 5 and April 29, 1993, Respondent AFSCME filed Answers to the Complaint and amendments thereto. AFSCME denies that it has violated the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.4(b)(1), as alleged in the Complaint. As affirmative defenses, AFSCME contends that (1) Complainant failed to state a cognizable claim against it within the meaning of the CMPA and (2) the Complaint allegations with respect to AFSCME are time-barred by the Board's rules. Based on this latter defense, on June 10, 1993, AFSCME filed a Motion to Dismiss the Complaint.

Pursuant to Board Rule 520.8, the Board issued and requested that AFSCME respond to a First Set of Interrogatories and Request for Production of Documents. AFSCME complied with the Board's request on May 24, 1993. Based on the parties' pleadings and the Board's investigation, we do not find any issue of fact that would warrant a hearing. Therefore, pursuant to Board Rule 520.10, we render our decision upon the pleadings.

D.C. Code Sec. 1-618.4(b)(1) makes an unfair labor practice the following:

> (b) Employees, labor organizations, their agents or representatives are prohibited from:
>
> (1) Interfering with, restraining or coercing any employees or the District in the exercise of rights guaranteed by this subchapter;

Employee rights under Subchapter XVIII Labor-Management Relations of the CMPA, are expressly provided under D.C. Code Sec. 1-618.6[1]/. We have ruled, however, that D.C. Code Sec. 1-618.4(b)(1) also encompasses the right of employees to be fairly represented by the labor organization that has been certified as

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[1]/ In pertinent part, Section 1-618.6 provides the following:

> (a) All employees have the right:
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> (1) To organize a labor organization free from interference, restraint or coercion;
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> (2) To form, join or assist any labor organization or to refrain from such activity; and
>
> (3) To bargain collectively through representatives of their own choosing as provided in this subchapter.
>
> (b) Notwithstanding any other provision in this chapter, an individual employee may present a grievance at any time to his or her employer without the intervention of a labor organization: ...

the exclusive representative for the collective-bargaining unit of which the employee is a part. See, Charles Bagenstose v. Washington Teachers' Union, Local 6, AFT, AFL-CIO, ___DCR____, Slip Op. No. 355, PERB Case Nos. 90-U-02 and 90-S-01 (1993). Specifically, the right to bargain collectively through a designated representative includes the duty of labor organizations to "represent[] the interests of all employees in the unit without discrimination and without regard to membership in the labor organization... ." D.C. Code Sec. 1-618.11(a).

The Complainant makes no claim that any of Complainant's employee rights, as prescribed under Section 1-618.6, have been abridged in any manner by AFSCME. Upon review of the alleged violative acts and conduct described in the Complaint, the asserted violation of D.C. Code Sec. 1-618.4(b)(1) appears to be based on an alleged breach by AFSCME of the employee right to fair representation.[2]/ The Complaint sets forth three instances that Complainant asserts constitute violations of D.C. Code Sec. 1-618.4(b)(1). Complainant alleges that because of his activities in protesting a "supposed" collective bargaining agreement dated February 12, 1992, the Union failed to:

> (1) protect him when Management terminated [Complainant's] participation in the Field Trip transportation program;
>
> (2) protect him when Management refused to select him for summer employment from July 1, 1992 through August 7, 1992; and
>
> (3) investigate or process his grievance when Management refused to reappoint [Complainant] effective October 1, 1992. (Sec. Amend. Compl. at 5 and 6.)

Based upon undisputed facts contained in the parties' pleadings and documentary evidence, we conclude that the time that has elapsed between the occurrence of these alleged unfair labor practices and the filing of the Complaint, exceed the time prescribed by Board Rule 520.4(b) for initiating unfair labor practice complaints. Therefore, we are without authority to

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[2]/ As noted by Respondent in its response to First Set of Interrogatories and Production of Documents, there is no guaranteed employee right recognized under the CMPA to an exclusive representative's "protection". We conclude, however, that the better approach to the disposition of this Complaint is to view what may be a mischaracterization of legal terms of art as an allegation that Respondent failed to fairly represent Complainant, as discussed in the text, infra.

consider the matter.

Complainant states in an April 3, 1992 letter attached to his Complaint, that by that date DCPS had provided him notice that he would not be participating in the field trip transportation program. (Attach. 20.) As indicated in the allegation above, Complainant admits receiving a written notice dated June 8, 1992, of DCPS's decision not to select him for summer employment and had actual notice no later than July 1, 1992, when the summer employment began. (2nd Amend Compl., para. 15 and Attach. 21.) Complainant further states and presents documentation that DCPS provided to him and AFSCME on July 12 and again on July 31, 1992, a notice of its decision, without exception, not to reappoint him, effective October 1, 1992.

Articles V (C) and VI (C)(1) of the collective bargaining agreement, in effect at all times relevant to these allegations, provides the following:

> Article V (C)
>
> If the Board has reason to suspend or discharge an employee, notice shall be given, in writing, no later than five (5) days prior to the effective date. The notice shall contain the reason for the discipline. A copy of the notice shall be sent to the employee, the Chief Shop Steward and the Staff Representative for AFSCME, Local 1959. Within ten (10) work days of receipt of such notice, the Union may grieve all discipline and discharge.
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> Article V (C)(1)
>
> No matter shall be entertained as a grievance hereunder unless it is raised with the other party within fifteen (15) work days after the occurrence of the event giving rise to the alleged grievance. (Resp. to Prod. of Doc.)

The extent of Complainant's right to grieve alleged violations of the collective bargaining agreement is governed by the grievance-arbitration provisions of the collective bargaining agreement. Article V (C)(1) allows the grievant 15 work days after the occurrence of each of the events giving rise to the alleged violation to grieve or to have AFSCME do so in his

behalf.[3]/ Complainant does not assert that he pursued a grievance or sought AFSCME's representation with respect to any of the alleged violations within 15 days after the occurrence of the event giving rise to them.

Moreover, there is no assertion, with respect to the first and second allegations, that Complainant actually sought AFSCME's representation at any time. As for the third allegation, concerning Complainant's discharge, any representation that AFSCME could have afforded him had to be undertaken no later than 10 workdays after AFSCME received DCPS's July 31, 1992 notice of its decision not to reappoint Complainant. Article V (C). Again, there is no assertion that Complainant sought AFSCME's representation during this period. Thus, these allegations are also deficient with respect to an element of the unfair labor practice, i.e., AFSCME's failure to fairly represent Complainant, since Complainant failed to seek AFSCME's representation to grieve these three asserted contractual violations during the times when Complainant had the right to pursue the matters or have AFSCME pursue it on his behalf.[4]/ Under these incontrovertible circumstances, AFSCME's alleged violative conduct does not amount to a nonfeasance proscribed under the CMPA.

The date the Complaint was filed, i.e., February 1, 1993, is far beyond the 120 days from the date Complainant had the right to seek AFSCME's representation with respect to all three alleged instances to fairly represent Complainant concerning the actions taken by DCPS. We have held that in computing any period of time prescribed by our rules, time begins to run starting with the first day after the date the actual event giving rise to the alleged violation occurs. Glendale Hoggard v. The District of Columbia Public Schools et al., ___DCR_____, Slip Op. No. 352,

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[3]/ The actions taken by DCPS address subject matters covered in the collective bargaining agreement that was in effect at all times material to the Complaint. Therefore any challenge to DCPS's action was through the grievance arbitration procedure. Articles V, VI and VIII.

[4]/ We further note that Complainant states he contacted AFSCME for the first time concerning DCPS's decision not to reappoint him on October 7, 1992. (Attach. 22.) This was almost 3 months after receiving his first notice of this decision. Moreover, were we to accept Complainant's argument, with respect to the third allegation, that the basis of his grievance did not arise until "he reported for duty on October 1, 1992", Complainant was no longer a District government employee statutorily entitled to AFSCME's representation. (Req. for Rev. at 1.)

PERB Case No. 93-U-10 (1993).

In view of the above, Complainant has failed to set forth charges which implicate the violation alleged, i.e., a breach of the duty of fair representation, and therefore the Complaint fails to state a basis for a claim under the CMPA for which relief can be granted. We, therefore, dismiss the remaining Complaint allegations with respect to Respondent AFSCME. We also deny Complainant's request for attorney fees and costs. See, University of the District of Columbia Faculty Association, NEA v. University of the District of Columbia, 38 DCR 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991).

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO's Motion to Dismiss, as untimely, the remaining allegations in Complainant's Unfair Labor Practice Complaint is granted.

2. The Complaint is dismissed in its entirety.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.
June 24, 1993

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 93-U-10 was hand-delivered and/or mailed (U.S. Mail) to the following parties on the 24th day of June, 1993.

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