

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

_____)
In the Matter of:)
)
David Russell, et al.)
)
Complainants,) PERB Case No. 89-U-01
) Opinion No. 221
and)
)
District of Columbia)
Department of Human Services,)
)
Respondent.)
_____)

DECISION AND ORDER

On December 16, 1988 David Russell (Complainant) filed an unfair labor practice complaint with the D.C. Public Employee Relations Board (Board) "on behalf of himself and other Firefighters of St. Elizabeths Hospital." The Complainant alleges that he is a member of a collective bargaining unit which includes, among other job classifications, firefighters at St. Elizabeths Hospital and is represented by the American Federation of State, County and Municipal Employees, Council 20, Local 2095 (AFSCME). ^{1/}

According to the Complaint, on September 21, 1988 the Department of Human Services, Commission on Mental Health Services (DHS) "unilaterally and adversely affected the working conditions of St. Elizabeth's Firefighters" by executing a memorandum of understanding without bargaining with the exclusive representative. ^{2/} The Complainant alleges that by engaging in such conduct, DHS violated the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 1-618.4(a)(5).

^{1/} In its Answer DHS pointed out that the unit in question is jointly represented by AFSCME, Local 2095 and the American Federation of Government Employees, Local 383. AFSCME, Council 20, Local 2095 and Commission on Mental Health Services, District of Columbia Department of Human Services and AFGE, Local 383, Certification No. 45, PERB Case No. 87-R-15 (1987).

^{2/} This memorandum, a copy of which is attached to the Complaint, transferred a detail of St. Elizabeths firefighters from the D.C. Fire Department to DHS.

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DHS filed its Answer on January 3, 1989. While denying having committed an unfair labor practice, the Agency contended, inter alia, that Russell as an individual member of the bargaining unit lacks standing to bring the instant Complaint.

The Executive Director of the Board, by letter dated December 19, 1988, solicited a response to the Complaint from AFSCME. Counsel for AFSCME Council 20 submitted a letter to the Board on January 5, 1989, stating that since AFSCME is not a party to the Complaint it was inappropriate to respond to the merits of the matter. AFSCME also noted that as the exclusive representative of these employees, it had not authorized the filing of the Complaint, and that the attorneys who signed the Complaint are not authorized representatives of the Union.

On January 17, 1989 the Complainant filed a Response to the Agency Answer asserting that under D.C. Code Section 1-618.6(b), Board Rule 103.1 and precedent established by the National Labor Relations Act the Complainant, as an individual employee, has standing in this matter.

For the reasons that follow, the Board holds that David Russell, an individual employee in a unit represented exclusively by AFSCME and AFGE, lacks standing to file an unfair labor practice alleging the Agency's refusal to bargain with the exclusive representative. Board Rule 103.1 states in pertinent part, "An agency, a labor organization or an aggrieved person may file a complaint alleging a violation of Section 1704 of D.C. Law 1-139." [Emphasis added.] D.C. Code Section 1-618.4(a)(5), however, makes it an unfair labor practice for the District, its agents and representatives to "refus[e] to bargain collectively in good faith with the exclusive representative." [Emphasis added.] Thus, the employer's obligation to bargain is a duty owed to the exclusive representative. It is therefore the exclusive representative alone and not an individual unit member that has standing to complain of a breach of that duty. An individual unit member has no authority to compel such action by the unit's representative and thus is not "aggrieved" by the challenged employer.

Our conclusion finds support in a recent decision of the Court of Appeals for the District of Columbia concerning the status of individual unit members as "aggrieved" persons within the meaning of the Federal Service Labor-Management Relations Statute, 5 USC Section 7101 et seq., Hanlon v. U.S. Federal Labor Relations Authority, 859 F.2d 971 (D.C. Cir. 1988). The issue before the Court was whether individual unit members were "aggrieved" persons within the meaning of 5 USC Section 7123(a), so that they had standing to appeal a ruling by the Federal Labor Relations Authority, which was adverse to the exclusive

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bargaining representative, regarding an Agency obligation to supply the union with requested information. The Court concluded that the Petitioners were not "aggrieved" because "[t]he right articulated in the statute simply does not run to individual employees, it runs, instead to the Union itself.... [W]e are convinced that the statute simply does not lend itself to the curious interpretation that an individual employee can carry on litigation as an unauthorized surrogate for a union...." Id. at 974.

The Complainant's reliance on precedent under the National Labor Relations Act (NLRA), is misplaced. Under the NLRA, any individual, may file an unfair labor practice charge with the National Labor Relations Board (NLRB). The NLRB places no limitation on who may file a charge because a charge "merely sets in motion the machinery of an inquiry." NLRB v. Indiana & Michigan Electric Co., 318 U.S. 9,17 (1943). Under the NLRA, it is the General Counsel who issues a complaint and thus "[t]he charge does not even serve the purpose of a pleading." Ibid. The CMPA creates a far different scheme, in that there is no counterpart either to the NLRA charge or to the NLRB's General Counsel. Under the CMPA, the initial pleading is an aggrieved party's complaint.

Contrary to the Complainant's assertion, D.C. Code Section 1-618.6(b), which permits individual unit members to file grievances without union intervention, does no more than carve out a limited exception to D.C. Code Section 1-618.11(a)'s general provision that the certified exclusive representative shall have the right to act for unit members and shall be responsible for representing their interests. Moreover, that individual right is conditioned upon the Union having the "effective opportunity be present and offer its view at any meeting held to adjust the complaint." Sec. 1-618.6 (b).

ORDER

IT IS ORDERED THAT:

The Complaint is dismissed.

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

May 1, 1989