**Government of the District of Columbia**
**Public Employee Relations Board**

| | |
|---|---|
| In the Matter of: | |
| Alice P. Morgan, | |
| Complainant, | PERB Case No. 01-U-26 |
| | Opinion No. 665 |
| v. | |
| District 1199E-DC, Service Employees International Union, AFL-CIO, | |
| Respondent. | |

## DECISION AND ORDER

This matter involves a Motion for Reconsideration filed by the Complainant. The Complainant is requesting that the Board reverse the Executive Director's dismissal of her Complaint. The Complainant filed an Unfair Labor Practice Complaint, alleging that District 1199E-DC, Service Employees International Union, AFL-CIO ("District 1199E-DC" or "union") violated D.C. Code §1-617.04(b)(1) and (2) (2001).[1] (Compl. at p. 1). Specifically, the Complainant claims that the union failed to: (1) provide fair and adequate representation; (2) bring about a timely resolution to her October 15, 1998 grievance; (3) pursue her amended grievance; (4) protect her from continued reprisals and adverse action by Dr. Orenstein; and (5) adhere to the "established grievance time frames with full knowledge that [she would be] unable to pursue resolution outside of the [collective

[1]Prior codification D.C. Code §1.618.4(b)(1) and (2) (1981).

bargaining agreement] ."[2] (Compl. at p. 2).

After reviewing the pleadings, the Executive Director determined that the Complaint allegations failed to state a basis for a claim under the Comprehensive Merit Personnel Act (CMPA). He noted that the Complainant's asserted violation of D.C. Code §1-617.04(b) (2001)[3] appeared to be based on the alleged breach by District 1199E-DC of the Complainant's right to fair representation. Specifically, the Executive Director opined that the Complainant's claims are based on her belief that the union failed to obtain a quick resolution to her grievance and then decided not to pursue her grievance beyond Step 2. However, the Executive Director determined that the Complainant failed to assert or demonstrate that the handling of her grievance was arbitrary, discriminatory, or the product of bad faith on the part of the union. As a result, the Executive Director found that the Complaint did not contain allegations which were sufficient to support a cause of action under D.C. Code §1-617.03 (2001) or D.C. Code §1-617.04 (2001).[4] In light of the above, the Executive Director dismissed the Complaint.

The Complainant filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's dismissal of her Complaint. The union filed an Opposition to the Motion. The Motion is now before the Board for disposition.

We believe that the arguments raised in the Complainant's Motion were previously considered and addressed by the Executive Director. Therefore, the Board must determine whether the Executive Director erred in dismissing the Complaint.

"Under D.C. Code §1-617.03 (2001),[5] a member of [a] bargaining unit is entitled to 'fair and equal treatment under the governing rules of the [labor] organization'. As [the] Board has observed: D.C. Code §1-617.03(b) (1) (2001)[6] prohibits employees, labor organizations, their agents or representatives from "[i]nterfering with, restraining or coercing any employees or the District in the exercise of rights guaranteed by this subchapter. . . ." "Employee rights under this subchapter are prescribed under D.C. Code Sec. §1-617.06 (2001)[7] and consist of the following: (1) [t]o organize a labor organization free from interference, restraint or coercion; (2) [t]o form, join or assist any labor

---

[2]The Complainant asserts that she would be unable to pursue her grievance outside of the collective bargaining agreement "because [District] 1199-E is the exclusive [representative]." (Compl. at p. 2).

[3]Prior codification D.C. Code §1.618.4(b) (1981).

[4]Prior codification D.C. Code §1.618.3 (1981) and §1-618.4 (1981).

[5]Prior codification D.C. Code §1.618.3(b)(1) and (2) (1981).

[6]Prior codification D.C. Code §1.618.3(b)(1) and (2) (1981).

[7]Prior codification D.C. Code §1.618.6 (1981).

organization; (3) [t]o bargain collectively through a representative of their own choosing. . . .; (4) [to] present a grievance at any time to his or her employer without the intervention of a labor organization[.]" American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks, 45 DCR 5078, Slip Op. No. 553 at p. 2, PERB Case No. 98-U-03 (1998). "[The Board has] ruled, . . . that D.C. Code §1-617.04(b)(1) (2001)[8] also encompasses the right of employees to be fairly represented by the labor organization that has been certified as the exclusive representative for the collective bargaining unit of which the employee is a part. . . . 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. . . ." Glendale Hoggard v. American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO, 43 DCR 2655, Slip Op. No. 356 at pgs. 2-3, PERB Case No. 93-U-10 (1996).

In her submissions, the Complainant does not claim that any of her rights as prescribed under D.C. Code §1-617.06 (2001)[9] have been violated in any manner by District 1199E-DC. Instead, the asserted violation of D.C. Code Sec. §1-617.04(b)(1) (2001)[10], appears to be based on the alleged breach by the union of the Complainant's right to fair representation.

"Under D.C. Code Sec. §1-617.03 (2001),[11] a member of a bargaining unit is entitled to fair and equal treatment under the governing rules of the [labor] organization. [The] Board has observed that: '[t]he union as the statutory representative of the employees is subject always to complete good faith and honesty of purpose in the exercise of its discretion regarding the handling of union members' interest'." Stanley Roberts v. American Federation of Government Employees, Local 2625, 36 DCR 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989). Also, the Board has determined that "[t]he applicable standard in cases [like this], is not the competence of the union, but rather whether its representation was in good faith and its actions motivated by honesty of purpose. . . [Furthermore,] 'in order to breach this duty of fair representation, a union's conduct must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair'." Id.

In the present case, the Complainant failed to assert or demonstrate that the union's conduct in handling her grievance was arbitrary, discriminatory, or the product of bad faith. Instead, she claims that "[she] had been in the grievance process for over two years when [she] received a letter from the current Vice President, Armeta Dixon, stating that the union would no longer pursue [her] grievance." (Compl. at pgs. 5-6). In view of the above, it appears that the Complainant believes that the union failed to obtain a quick resolution to her Complaint and then decided not to pursue her grievance. However, the Complainant asserts no basis for attributing an unlawful motive to the pace

---

[8]Prior codification D.C. Code §1.618.4(b) (1981).

[9]Prior codification D.C. Code §1-618.6 (1981).

[10]Prior codification D.C. Code §1.618.4(b)(1) (1981).

[11]Prior codification D.C. Code §1.618.3(1981).

or manner by which the union handled her grievance. In addition, she failed to provide any allegations or assertions that, if proven, would establish a statutory violation. To the contrary, her Complaint indicates that the union filed Step 1 and Step 2 grievances on her behalf. (Compl. at p. 4). Moreover, by letter dated May 16, 2001, the union informed the Complainant that pursuant to Article 13, Section (B)(1)(a) of the parties' collective bargaining agreement (CBA), she had to use "sick leave" when receiving physical therapy for a job related injury. In addition, the union determined that pursuant to Article 11 of the CBA, the Complainant could not grieve the fact that she was not selected for a position. As a result, the union decided that the Complainant's grievance lacked merit and that they would not pursue her grievance beyond Step 2. (Complainant's Exhibit 27). In her submissions, the Complainant asserts that she disagrees with the union's decision not to pursue her grievance because it lacked merit. However, the fact that the Complainant disagrees with the union's determination, does not constitute a breach of the union's duty of fair representation. Moreover, the Complainant asserts no basis for attributing a prohibitive motive to the union's decision. Furthermore, a union's decision not to arbitrate a grievance based on the likelihood of success, does not constitute arbitrary conduct. See, Thomas v. American Federation of Government Employees, Local 1975, 45 DCR 6712, Slip Op. No. 554, PERB Case No. 98-S-04 (1998). In view of the above, the Complainant has neither sufficiently pled bad faith or discrimination, nor raised circumstances that would give rise to such an inference. Therefore, the Complaint does not present allegations which are sufficient to support a cause of action.

Also, the Complainant contends that "the union arbitrarily and capriciously disposed of [her] complaint by ignoring and failing to address the real grievance issues, ..." (Compl. at. p.2 ). In addition, she questions the union's failure to challenge "Dr. Orenstein manipulation of the personnel system with regards to advertising and selecting a Housing Resource Specialist." (Compl. at p. 11). The Board has found that "[r]egardless of the effectiveness of a union's representation in the handling or processing of a bargaining unit employee's grievance, such matters are within the discretion of the union or the bargaining unit's exclusive bargaining representative." Enoch Williams v. American Federation of State, County and Municipal Employees, District Council 20, Local 2290, 43 DCR 5598, Slip Op. No. 454 at p. 2, PERB Case No. 95-U-28 (1995). Furthermore, the Board has held that "judgmental acts of discretion in the handling of a grievance, do not constitute the requisite arbitrary, discriminatory or bad faith element [needed to find a violation of the CMPA]." Brenda Beeton v. D.C. Department of Corrections and Fraternal Order of Police Department of Corrections Labor Committee, 45 DCR 2078, Slip Op. No. 538, PERB Case No. 97-U-26 (1998). Specifically, the Board has determined "that the fact that there may have been a better approach to handling the Complainant's grievance or that the Complainant disagrees with the approach taken by [the union] does not render the [union's] actions or omissions a breach of the standard for its duty of fair representation." Enoch Williams v. American Federation of State, County and Municipal Employees, District Council 20, Local 2290, supra. In the present case, the Complainant disagrees with the union's interpretation of the issues involved in her grievance. Specifically, the Complainant asserts that the union: (1) oversimplified issue number 1 of the grievance; and (2) incorrectly identified issue number 2 of the grievance. (Compl. at pgs. 7-9). The fact that the Complainant disagrees with the approach taken by the union concerning these two issues, does not constitute a breach of the union's duty of fair representation. In addition, the Complainant asserts no basis for attributing an unlawful motive to the union's handling of her grievance. Therefore, the Complainant fails to provide any

allegation that, if proven, would establish a statutory violation.

In addition, the Complainant claims that the union failed to adhere to established grievance time frames with full knowledge that the Complainant would be unable to pursue resolution outside of the union contract. The Board has determined that "[t]he failure of a party to a grievance proceeding to comply with contractual . . . requirements governing a grievance procedure, does not state a cause of action within the jurisdiction of the Board." Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996). As a result, the Complainant's claim does not establish the asserted statutory violation.

Finally, the Complainant asserts that the union has violated D.C. Code §1-617.04(b)(2) (2001).[12] D.C. Code §1-617.04(b)(2)(2001) prohibits employees, labor organizations, their agents or representatives from "causing or attempting to cause the District to discriminate against an employee in violation of [Sec.] 1-617.06 (2001)." In the present case, the Complaint allegations concerning violations of D.C. Code §1-617.04(b)(2) (2001),[13] consists largely of the Complainant arguing the merits of her underlying dispute with her employer. Moreover, the asserted statutory violations appear to be nothing more than the Complainant's opinion. Specifically, the Complaint is devoid of allegations supporting any basis for this cause of action. 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 p. 4, PERB Case No. 96-U-22 (1996); Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works, Slip Op. No. 371, PERB Case Nos. 93-U-02 and 93-U-05 (1994). In light of the above, we believe that the Complainant has neither asserted or pled discrimination, nor raised circumstances that would give rise to such an inference.

We have held that "[t]o maintain a cause of action, the Complainant must [allege] the existence of some evidence that, if proven, would tie Respondent's actions to the asserted violative basis for it. Without the existence of such evidence, Respondent's actions [can not] be found to constitute the asserted [statutory violation]. Therefore, a Complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action." Goodine v. FOP/DOC Labor Committee, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996). For the above noted reasons, we believe that the present Complaint does not contain allegations which are sufficient to support a cause of action with respect to District 1199E-DC.

After reviewing the present Motion, we find that the arguments raised by the Complainant, mirror those made in her Complaint. Moreover, the Complainant's arguments were previously

---

[12]Prior codification D.C. Code §1-618.4 (1981).

[13]Prior codification D.C. Code §1-618.4(b)(2) (1981).

considered and rejected by the Executive Director. Also, the Motion does not raise any new issues. Therefore, we believe that the crux of the present Motion is the fact that the Complainant disagrees with the Executive Director's decision. Specifically, the Complainant contends that "it is beyond comprehension how the Board was able to determine that the Union's representation was in good faith and its actions were motivated by honesty of purpose." (Motion at p. 2.). We find that this argument is not sufficient to overturn the Executive Director's decision. As a result, we conclude that the Complainant has failed to assert any grounds for the Board to reverse the Executive Director's decision.

In view of the above, we conclude that the Executive Director's decision was reasonable and supported by Board precedent. Therefore, we deny the Complainant's Motion for Reconsideration and affirm the Executive Director's dismissal of the Complaint in its entirety.

## ORDER

**IT IS HEREBY ORDERED THAT:**

(1) The Motion for Reconsideration is denied.

(2) The Complaint is dismissed in its entirety.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Washington, D.C.
February 21, 2002

## CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 01-U-26 was transmitted U.S. Mail to the following parties on this 21st day of February 2002.

Stephen W. Godoff, Esq.
14 West Madison Street
Baltimore, MD 21201

U.S. MAIL

Ms. Alice P. Morgan
1513 Dogwood Drive
Alexandria, VA 22302

U.S. MAIL

Courtesy Copy:

Ms. Rhonda Brady
D.C. Area Administrator
SEIU District 1199 E-DC
Second Floor
Baltimore, MD, 21201

U.S. MAIL

Sheryl V. Harrington

Sheryl Harrington
Secretary