

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)
EDWIN MONONO and AUGUSTINE EKWIM,)
Complainants,) PERB Case No. 01-U-15
v.) Opinion No. 672
AMERICAN FEDERATION OF STATE,) Motion for Reconsideration
COUNTY AND MUNICIPAL EMPLOYEES,)
DISTRICT COUNCIL 20,)
and)
AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL EMPLOYEES,)
LOCAL 2401,)
Respondents.)
)

DECISION AND ORDER

This matter involves a Motion for Reconsideration filed on March 9, 2001 by Edwin Monono and Augustine Ekwim(Complainants). The Complainants are requesting that the Board reverse the Executive Director's decision to dismiss their Complaint.

Monono and Ekwim filed an Unfair Labor Practice Complaint against the American Federation of State, County and Municipal Employees (AFSCME), Local 2401 ("Respondent" or "Local 2401") and D.C. District Council 20 ("Respondent" or "Council 20") alleged that the Respondents violated D.C. Code §1-618.4(b)(1) and breached their duty of fair representation by: (1) "perfunctorily and arbitrarily processing" their grievances and (2) refusing to request arbitration. (Complaint at ¶16, Motion at p. 3)

Decision and Order
PERB Case No 01-U-15
Page 2

The underlying grievance arose out of the District of Columbia Child and Family Services Agency's ("Agency") acts of demoting¹ and subsequently, terminating the Complainants from their positions as Social Workers in October 1996. (Complaint at ¶ 8). Both Local 2401 and Council 20 were involved in handling the grievance. However, Council 20 made the decision not to pursue the grievance through the arbitration stage and notified the Complainants of this fact on November 13, 2000.(Complaint at ¶12). In response to their requests for an explanation, the Complainants were informed on November 27, 2000 that their "case was determined not to have sufficient merit by the Council." (Complaint at ¶13).

In view of the above, Monono and Ekwim filed the present Complaint with the Board. The Respondents denied the allegations contained in the Complaint.

After reviewing the pleadings, the Executive Director determined that the Complaint failed to contain allegations sufficient to support a cause of action under D.C. Code §1-618.4(b). (Executive Director's Letter a p. 2). In addition, the Executive Director determined that the Complaint's allegations failed to establish that the Union's decision not to file for arbitration was arbitrary, discriminatory, or the product of bad faith. See, Stanley Roberts v. American Federation of Government Employees, Local 2625, 36 DCR 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989). As a result, the Complaint was administratively dismissed by letter dated August 31, 2001. The Complainants filed a Motion for Reconsideration ("Motion") requesting that the Board reverse the Executive Director's decision. The Respondents did not file a response to the present Motion. The Motion for Reconsideration is now before the Board for disposition.

The Complainants assert several grounds in support of their motion. First, the Complainants' claim that the Executive Director's decision ignores Board Rule 520.8² which requires that each Complaint be investigated. The Board finds that this argument amounts to a mere disagreement with the Executive Director's determination. It is clear from the Executive Director's detailed dismissal letter that he reviewed the pleadings and all the evidence that was submitted with the Complaint. However, he determined that an investigatory hearing was not required since the alleged facts did not state a cause of action under the Comprehensive Merit Personnel Act (CMPA). Moreover, the Board's Rules do not require that investigations *necessarily* include a hearing. The Board's Rules clearly give the Board the authority to render a decision on the pleadings and *not* convene a

¹The Complainants were demoted from Social Workers to Social Service Representatives in September of 1996. The explanation given for their demotion, and subsequent termination was their lack of a Social Workers license.

²Board Rule 520.8 provides that: "the Board or its designated representative shall investigate each Complaint."

Decision and Order
PERB Case No 01-U-15
Page 3

hearing.³ Also, the Board has noted that D.C. Code §1-605.1 (k) authorizes the Board to delegate its authority to dismiss complaints administratively to the Executive Director. AFGE, Local 2725 v. D.C. Housing Authority, 45 DCR 3242, Slip Op. No. 514 at Note 1, PERB Case No. 96-U-24 (1998). Furthermore, the Board has determined that it is a proper exercise of the Executive Director's discretion to dismiss a complaint for failure to state a claim under the CMPA. Id. In light of the above, the Board believes that Complainants' arguments, as they concern the lack of a proper investigation, are without merit.

The Complainants also contend that the Board⁴ erred by drawing unwarranted inferences in favor of the Union. Specifically, they assert that the Executive Director inferred that the Union failed to pursue the grievance because of its concern that arbitration might not be successful. We also find this argument to be without merit. We note that this claim is inconsistent with the Complainants' original Complaint which states that the Union did not pursue the grievance because it felt that the grievance lacked "sufficient merit for arbitration." (Complaint at ¶ 13.) Therefore, it is reasonable to conclude that the Executive Director did not draw an inference concerning this matter. Rather, he relied on representations made by the Complainants in their original Complaint. In light of the above, the Board cannot reverse the Executive Director's decision on this ground.

In their Motion, the Complainants also contend that the Board erred by ignoring case law which holds that perfunctory or arbitrary processing of a grievance is a breach of the duty of fair representation. We find that the Complainants presented no evidence to support these contentions. Pursuant to Article 22, §2, Step 5⁵ of the parties' collective bargaining agreement, the decision concerning whether to arbitrate a grievance rests solely with the Union. In addition, we have held that "judgmental acts of discretion in the handling of a grievance, including the decision to arbitrate, do not constitute the requisite arbitrary, discriminatory, or bad faith conduct element [needed in order to find a violation of the CMPA]" (See, Executive Director's letter at p. 3 and Brenda Beeton v. D.C. Department of Corrections and the Fraternal Order of Police/Department of Corrections Labor

³Board Rule 520.10 provides that: "if the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings..."

⁴Throughout their Motion for Reconsideration, the Complainants refer to the "PERB" and/or the Board as having made the decision to administratively dismiss their Complaint. For clarification, we note that the Board's Executive Director actually made the decision to administratively dismiss the Complaint. Thus, all allegations of error mentioned in the Motion should refer to the Executive Director's decision, instead of "PERB."

⁵Article 22, §2, Step 5 of the parties' collective bargaining agreement provides that: "the Union may by written notice request arbitration within twenty (20) days after the reply at Step 4 is due or received, whichever one of sooner."

Committee, 45 DCR 20 Slip Op. No. 538, PERB Case No. 97-U-26 (1998)). We have also held that the decision not to arbitrate a grievance based on cost and *likelihood of success* does not constitute arbitrary conduct. (See Executive Director's Letter at p. 3 and Thomas v. AFGE, Local 1975, 45 DCR 6712, Slip Op. No. 554, PERB Case No. 98-S-04(1998)). We believe that the Executive Director properly found that the evidence presented indicated that Local 2401 and Council 20 provided the Complainants with *some* assistance. Since the "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...", we believe that the Complainants' argument on this issue is also without merit. Id.

Also, the Motion for Reconsideration argues that the Allen-Lewis, et. al. v. AFSCME, D.C. Council 20⁶ case is analogous to the case that is presently before the Board; therefore, the Board should reach the same result and reverse the Executive Director's decision. 47 DCR 5309, Slip Op. No. 624, PERB Case No. 99-U-24 (2000). We disagree. We find that the present case is not analogous to Allen-Lewis because the circumstances surrounding the Board's decision not to administratively dismiss that are totally different. Id. Specifically, all of the information⁷ that the Board sought through supplemental briefs in the Allen-Lewis case, has already been provided for consideration to the Executive Director in the present case. Moreover, the explanation given for why the grievances were not arbitrated has been held by the Board to be a valid reason that does not violate the CMPA.

Finally, the Complainants argue that the Executive Director failed to consider the basis for its Complaint concerning the Union's failure to give any substantive explanation for its decision not to invoke arbitration on their behalf. We find that this argument clearly has no merit. We make this finding because the parties' original Complaint states that the Union responded to the Complainants request for an explanation by stating that "the case was determined *not* (emphasis added) to have sufficient merit for arbitration by the Council." (Complaint at ¶13). In light of the above, it is

⁶ In Allen-Lewis, the Board refrained from ruling on the Motion for Reconsideration of an Administrative Dismissal where the Union had neither submitted an Answer to the original Complaint nor provided answers to the Complainants concerning its reasons for not pursuing arbitration. The Board reasoned that it needed more information from the Union concerning the allegations before rendering a decision concerning the validity of the administrative dismissal. Id. at 3. As a result, the Board ordered the Union to submit a brief responding to specific questions concerning its handling of the grievance and subsequent decision not to arbitrate. Id. After receiving the additional information, the Board referred the matter to a hearing. Id.

⁷ For instance, in the present case, the Union *did* submit an Answer to the original Complaint. Furthermore, the Union did provide an explanation for why the grievances were not arbitrated.

Decision and Order
PERB Case No 01-U-15
Page 5

clear that the Union gave a reason for not pursuing the grievance to arbitration, namely, *the Union did not believe that the grievance had merit.* (See, Complaint at ¶13)

After weighing the evidence presented to us, we find that the Executive Director's determination that the Complaint failed to state a basis for a claim under the CMPA is supported by Board precedent. In addition, we find that the Complainants have failed to assert any grounds for the Board to reverse the Executive Director's earlier decision. Therefore, the Motion for Reconsideration is denied and the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is denied.
2. The Complaint is Dismissed
3. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

November 30, 2001

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 01-U-15 was transmitted via Fax and/or U.S. Mail to the following parties on this 30th day of November 2001.

Roger Patterson, Esq.
AFSCME District Council 20
1724 Kalorama Road, N.W.
Suite 200
Washington, D.C. 20009

FAX & U.S. MAIL

David Watchel, Esq.
Rose & Rose
1320 19th Street, N.W.
Suite 601
Washington, D.C. 20036

FAX & U.S. MAIL

Courtesy Copies:

George T. Johnson
Administrator
D.C. Council 20, AFSCME, Local 2401
1724 Kalorama Road, N.W.
Suite 200
Washington, D.C. 20009

U.S. MAIL

Sheryl V. Harrington
Sheryl Harrington
Secretary