GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
Joan T. Frederick,	
Complainant,	
	PERB Case Nos. 94-U-20
	Opinion No. 407
v.	
American Federation of State County and Municipal Employees District of Columbia Council 20 Local 2776, AFL-CIO,	
Respondent.	

DECISION AND ORDER

On July 21, 1994, an Unfair Labor Practice Complaint was filed by the Complainant, Joan T. Frederick, an employee of the District of Columbia Department of Finance and Revenue (DFR). Complainant is a member of the collective bargaining unit represented by the Respondent, the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2776, AFL-CIO (AFSCME). For the past 10 years, she has also been a member of AFSCME.

Complainant alleges that AFSCME violated the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(b)(1) and (2), by its withdrawal of a grievance filed in 1990, concerning DFR's failure to promote Complainant. The Complainant alleges that AFSCME's withdrawal of its demand to arbitrate Complainant's grievance was "without the complainant's approval, knowledge and/or consent" and "without reasonable cause." (Comp. at para. 3.) [1/]

[1/] The Complainant initially named the Department of Finance and Revenue (DFR) and the American Federation of State, County and Municipal Employees International Union, AFL-CIO as additional Respondents. Complainant, however, did not allege any statutory violations by these entities. Responding to our notice of deficiency pursuant to Board Rule 501.13, the Complainant removed AFSCME International and DFR as Respondents in two Addenda to the Complaint, filed on August 2 and 16, 1994, respectively.

By Answer filed on August 26, 1994, AFSCME denied that it had engaged in unfair labor practices and moved to dismiss the Complaint based on timeliness and a failure to state an unfair labor practice claim. In further response to the Board's investigation of the Complaint, AFSCME argued in a letter dated October 17, 1994, that the Complaint should be barred by laches.

For the reasons below, we dismiss the Complaint.

Complainant alleges that in 1990, AFSCME withdrew its demand to arbitrate her grievance without her knowledge or consent, as part of an agreement --in which she received nothing-- between AFSCME and DFR. The purpose of the agreement, according to Complainant, was to settle a dispute concerning the promotion of another employee. Complainant claims that AFSCME's action "restrained Complainant in the exercise of her right to file a grievance and to exhaust the administrative process by having said grievance heard in an arbitration hearing." [2]/ Complainant further asserts that since 1990 "[she] was under the understanding that her ... grievance was waiting for arbitration" and "did not learn of [AFSCME's] dismissal [,i.e., withdrawal,] until April 26, 1994." (Comp. at para. 3; Addendum at 2.)

Complainant does not state the basis for her alleged "understanding" that her grievance was pending arbitration over a 4-year period after AFSCME's demand [3]/ or when and how she finally

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[2]/ While an employee has a statutory right under the CMPA to present grievances without union intervention, no similar employee right exists to arbitrate or otherwise exhaust the administrative process of a negotiated grievance/arbitration procedure, the terms of which are governed by the parties', i.e., DFR and AFSCME, collective bargaining agreement. See, Johnson v. Dept. of Public Works and AFSCME, Local No. 872, 35 DCR 4064, Slip Op. No. 175, PERB Case No. 87-U-02 (1988). Here, Complainant's grievance was brought on her behalf by AFSCME. Complainant does not allege that AFSCME's withdrawal of its demand for arbitration was motivated by animus, dishonesty or bad faith, i.e., necessary elements of the asserted unfair labor practice. Michael Tipps and Fraternal Order of Police/Department of Corrections Labor Committee, ___ DCR ____, Slip Op. No. 405, PERB Case No. 94-U-19. As the exclusive representative of the collective bargaining unit which includes Complainant, AFSCME's right to settle a grievance on behalf of unit members is within its discretion, notwithstanding the absence of a grievant's signature upon a settlement agreement.

[3]/ We note that the collective bargaining agreement between DFR and AFSCME requires that arbitrations proceed "as soon as (continued...)

learned of AFSCME's withdrawal of her grievance from arbitration.[4]/ Notwithstanding this asserted "understanding", there is no assertion that at any time during this 4-year period Complainant made any attempt to ascertain the cause of the delay in actually scheduling her grievance for arbitration. Complainant does not state what attempt she made, if any, to discover the status of her grievance or, in the alternative, offer any explanation as to why no such effort was made during this period.

Board Rule 520.3(d) requires unfair labor practice complaints to provide a "clear and complete statement of the facts constituting the alleged unfair labor practice, including date, time and place of occurrence of each particular act alleged ... ." In view of Complainant's claim that the alleged violation, AFSCME's withdrawal of its demand to arbitrate her grievance, occurred more than 120 days prior to the filing of her Complaint, i.e., July 25, 1991 and July 21, 1994, respectively, it is incumbent upon the Complainant to provide a "clear and complete statement of the facts" with respect to why the Board should accept jurisdiction over the Complaint allegations. Complainant's bare assertion that she did not learn of the AFSCME's action until April 26, 1994, falls grossly short of providing such facts to overcome our mandatory filing requirement under Board Rule 520.4(b).

Absent compelling reasons, not stated here, why the April 26, 1994 date should be ruled as being the earliest date on which Complainant should have known of the alleged violation, the Complaint must be dismissed as clearly exceeding the 120-day time period mandated by Board Rule 520.4(b)

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
November 21, 1994

Notice: The parties to this proceeding may appeal this Decision and Order to the D.C. Superior Court, within 30 days after its issuance, in accordance with the provisions of D.C. Code § 1-618.13(c).

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[3](...continued)
possible after notice of intent to arbitrate is received." (Art. 22, Sec. 5.)

[4]/ While AFSCME's demand for arbitration was made on October 18, 1990, its withdrawal of that demand was made as part of the terms of a July 25, 1991 settlement agreement. (Comp., Exh. A.)

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