GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
Felicia A. Thomas,	
Complainant,	
v.	**PERB Case Nos. 98-S-04**
	Opinion No. 554
American Federation of Government Employees, Local 1975, AFL-CIO,	
Respondent.	

DECISION AND ORDER

On February 6, 1998, a Standards of Conduct Complaint was filed in the above-captioned case by Felicia A. Thomas (Complainant). Complainant was employed by the District of Columbia Department of Public Works and was a member of the collective bargaining unit exclusively represented by the Respondent, the American Federation of Government Employees (AFGE). The Complainant was terminated during her probationary period effective March 14, 1997. Upon her request, AFGE grieved the Complainant's termination; however, AFGE did not pursue the matter beyond step 4 of the grievance arbitration process.

The Complaint alleged that AFGE's failure to pursue her grievance to arbitration and to provide her, after repeated requests, with a copy of the collective bargaining agreement constituted violations of the standards of conduct for labor organizations and unfair labor practices, as proscribed by the Comprehensive Merit Personnel Act (CMPA), at D.C. Code §§ 1-618.3(a)(1) and 1-618.4(b)(1) and (3), respectively. AFGE filed an Answer denying that it had committed the alleged violations of the CMPA.

By letter dated March 19, 1998, the Executive Director

administratively dismissed the Complaint as untimely filed and for failing to state a basis for a claim under the CMPA. In pertinent, part the Executive Director's letter to Complainant stated the following:

> You assert in the Complaint that AFGE, Local 1975 and David Schlein (AFGE, National Vice President) "violated D.C. Code Sections 1-618.3 (a) (1b), 1-618.4 (b)(1) and 1-618.4 (b) (3)." (Complaint at page 2). Specifically, you allege that AFGE (or union) violated the standards of conduct for labor organizations as set forth under the Comprehensive Merit Personnel Act (CMPA), by failing to take your grievance to arbitration.
>
> After reviewing your Complaint and exhibits, I have determined that your Complaint: (1) is not timely; and (2) fails to state a basis for a claim under the CMPA. Therefore, I am administratively dismissing your Complaint.
>
> Board Rule 544.4 requires that standards of conduct complaints "be filed not later than [ ] 120 days from the date the alleged violation(s) occurred."[1] In the instant case, you acknowledge that during a July 25, 1997 telephone conversation you were informed of the union's decision not to proceed with your grievance to arbitration. Specifically, in a August 30, 1997 letter addressed to David Schlein you note the following:
>
> > During my last conversation with Mr. Rager on July 25, 1997 regarding the status of my grievance, he stated that it was up to the Local to decide the next grievance step for me, which was the Office of Employee Appeals. He said it costs to go to Arbitration. Then, Mr. Rager said I would have lost anyway. . . He also said I forfeited my appeal rights to the Office of Employee Appeals because 30 days had [elapsed].
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> The Board has held that "the time for filing a complaint with the Board concerning [alleged standards of conduct] violations as a statutory cause of action commenced when the basis of those violations occurred.. . . However, proof of the occurrence of an alleged statutory violation is not necessary to commence the time limit for initiating a cause of action before the Board. The validation, i.e. proof,

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[1]/Similarly, Board Rule 520.4 provides an identical period of "120 days after the alleged [unfair labor practice] violation occurred". The Executive Director's dismissal on jurisdictional grounds of timeliness apply to the Complainant's unfair labor practice allegations as well as her alleged standards of conduct violations.

of the alleged statutory violations is what proceedings before the Board are intended to determine." Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO, Slip Op. No. 414, PERB Case No. 95-S-01 (1995). In light of the above, it is clear that on July 25, 1997 you became aware that the union was not going to file for arbitration. Therefore, the time for filing a complaint with the Board concerning the union's alleged violation commenced when the basis of that violation occurred (namely, July 25, 1997). However, your Complaint was not filed in this office until February 6, 1998. This filing date was one hundred and ninety six (196) days after the alleged violation occurred. Thus, your filing clearly exceeded the 120 days noted in Board Rule 544.4.

Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (1991). Moreover, the Board has held that a complainant's "ignorance of Board Rules governing [the Board's] jurisdiction over standards of conduct complaints provides no exception to [the Board's] jurisdictional time limit for filing a complaint." Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO, Slip Op. No. 414, PERB Case No. 95-S-01 (1995).

Notwithstanding its untimeliness, the instant Complaint does not contain allegations which are sufficient to support a cause of action. "Under D.C. Code Section 1-618.3, a member of the bargaining unit is entitled to fair and equal treatment under the governing rules of the [labor] organization. As this Board has observed: '[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 2725, 36 DCR 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989). In addition, the Board has held that "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 your complaint, you assert that AFGE's failure to take your case to arbitration, constitutes a breach of AFGE's duty of fair representation. The Board has previously addressed the question of whether a union's refusal to proceed to arbitration on a particular grievance constitutes a breach of its duty of fair representation. In Freson and Fraternal Order of Police, Metropolitan Police

Department Labor Committee, 31 DCR 2293, Opinion. No. 74, PERB Case No. 83-U-09 (1984), the Board noted, "[i]t is a well established principle that a labor organization's duty of fair representation does not require it to pursue every grievance to arbitration." (Also, see Stanley Roberts v. American Federation of Government Employees, Local 2725, 36 DCR 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989)).

In the present case, it appears that pursuant to the parties' collective bargaining agreement only the union can file for arbitration. However, in your Complaint you fail to demonstrate that the union's decision not to proceed to arbitration was the product of bad faith on the part of the union, or was arbitrary or discriminatory. Instead, your claim relies solely on the fact that the union refused to proceed with your grievance to arbitration. Moreover, a statement noted in one of your exhibits implies that the union's decision not to proceed to arbitration was based on the cost involved and the fact that the national representative believed that you would not prevail at arbitration. (See letter to David Schlein dated August 30, 1997). The Board has "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]." Brenda Beeton v. D.C. Department of Corrections and the Fraternal Order of Police Dpartment of Corrections Labor Committee, Slip Op. No. 538, PERB Case No. 97-U-26 (1998). In the present Complaint, you assert no basis for attributing a prohibitive motive to the pace or manner by which AFGE handled your grievance. In addition, you fail to provide any allegations or assertions that, if proven, would establish a statutory violation. To the contrary, documents submitted by you indicate that the union processed your grievance from step 1 through step 4. Therefore, you did not present allegations sufficient to support a cause of action.

Also, the Board has 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, Slip Op. No. 476, at page 3, PERB Case No. 96-U-16 (1996). For the reasons stated above, the instant Complaint does not contain allegations which are sufficient to support a cause of action.

Since no statutory basis exists for the Board to consider your claims, your

> Complaint is dismissed. If you disagree, you may formally request that the Board review my determination. However, pursuant to Board Rule 500.4, this decision shall become final unless a motion for reconsideration is filed within thirty (30) days of this decision.

On April 16, 1998, Complainant filed a document styled "Motion for Consideration" requesting that the Board reverse the Executive Director's administrative dismissal. AFGE filed a response to Complainant's request.

The Complainant contends that her cause of action arose on December 13, 1997, which was 30 days after AFGE national vice president Schlein advised her by letter (dated November 13th, 1997), that AFGE national representative Rager would "review [her] correspondence, investigate and prepare a reply... Expect a response in 30 days." (Mot. at 2.) However, the November 13th letter does not expressly or implicitly reverse AFGE's previous July 25, 1997 communication that the Local would not arbitrate her grievance. The Complainant acknowledged this fact in her August 30, 1997 letter to AFGE. [2]/

Moreover, AFGE's statutory duty as the representative of employees at DPW lies with the local. See, Dept of Public Works and AFGE, Locals 631, 872, 2553 and 1975, PERB Case No. 84-R-08, Certification No. 24 (1984). As such, AFGE's statutory obligations under the CMPA to its bargaining unit accrues to the certified representative, i.e., AFGE, Local 1975, not its national organization. The Complainant asserts that she appealed to AFGE national officials to advance her grievance to arbitration. However, any obligations to do so under the CMPA, lied with Local 1975.[3]/ Therefore, any cause of action against

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[2]/In pertinent part, the Complainant notes in her August 30, 1997 letter to AFGE National President David Schlein, that during a July 25, 1997 conversation with AFGE official Harry Rager she was informed that "it was up to the Local to decide the next grievance step for me, which was the Office of Employee Appeals." The Complainant goes on to say in her letter that she was told that "it costs to go to Arbitration", she "would have lost anyway", and that her "issue was dead". Finally, the Complainant states Mr. Rager told her that he "d[id] not know why Mr. Hackney did not tell [her] that." Mr. Hackney is AFGE, Local 1975's president. Any ambiguity concerning AFGE. Local 1975's intention not to pursue Complainant's grievance further through the grievance arbitration process was made clear during this July 25, 1997 conversation.

[3]/The Complainant also asserted as a violation AFGE's alleged failure to provide her with a copy of a collective bargaining agreement. However, the Complainant acknowledges as early as May 28,

(continued...)

AFGE arose when the asserted statutory violations by AFGE, Local 1975 occurred. AFGE, Local 1975's decision not to pursue the Complainant's grievance to arbitration was made unequivocally clear to the Complainant during her acknowledged July 25, 1997 conversation with an AFGE official. (See footnote 2.)

With respect to the merits of the alleged violations, the Complainant does not present any arguments not previously made in her Complaint and adequately addressed by the Executive Director in his letter dismissing the Complaint. The Complainant bases her contention that AFGE, Local 1975 committed the asserted statutory violations of the CMPA merely upon her assertion that the Local and/or the National AFGE office should have taken her grievance to arbitration upon her request. As noted by the Executive Director, the Complainant alleges no basis for attributing a prohibitive motive to AFGE's decision not to pursue her grievance to arbitration. Complainant's Motion provides no new allegations or assertions that, if proven, would establish the claimed statutory violations.

Additionally, Complainant does not assert that she is a member of AFGE, Local 1975, a prerequisite to participate in the affairs of the union and thereby, assert a violation of the standards of conduct for labor organizations as codified under D.C. Code Sec. 1-618.3(a)(1). Ernest Durant v. FOP/DOC Labor Committee, Slip Op. No. 430, PERB Case No. 94-U-18 and 94-S-02 (195). Notwithstanding this omission, the Complainant does not assert a claim concerning her participation in the internal operations or affairs of AFGE, Local 1975 which the standards of conduct for labor organizations secure. Finally, we have held that an employee lacks standing to bring an action under D.C. Code Sec. 1-618.4(b)(3). Willard Taylor, et al. v. University of the District of Columbia Faculty Association/NEA, 41 DCR 6687, Slip Op. No. 324 at n. 2, PERB Case No. 90-U-24 (1994).

In view of the foregoing, the Complainant's Motion that we reverse the Executive Director's determination is denied. The Executive Director's administrative dismissal of the Complaint as untimely and for failing to state a cause of action is affirmed.

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[3](...continued)
1997 in a letter of appeal to AFGE national that Local 1975 president "Mr. Hackney clearly omitted to address the ... issue[ ]." Therefore, any claim that this conduct also constitutes a violation is untimely filed as well.

ORDER

IT IS HEREBY ORDERED THAT:

The Complainant's request that the Executive Director's administrative dismissal of the Complaint be reversed is denied.

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

June 12, 1998

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 98-S-04 was sent via mailed (1st class U.S. Mail) to the following parties on the 12th day of June 1998.

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Namsoo M. Dunbar
Deputy Executive Director