Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Carlton Butler, Iola Slappy, Julian Battle, Lawrence Benning, John Busby, Jr., Dancy Simpson and Andrea Byrd,	***CORRECTED COPY***
Complainants,	PERB Case No. 02-U-02
v.	Opinion No. 673
District of Columbia Department of Corrections and Anthony Williams, Mayor,	Motion for Preliminary Relief
Respondents.	

DECISION AND ORDER

On October 5, 2001, the Complainants filed an Unfair Labor Practice Complaint and Motion for Preliminary Relief, in the above referenced matter. The Complainants allege that the District of Columbia Department of Corrections ("DOC" or "Respondent") violated D.C. Code §1-618.4(a)(1),(2),(3),(4) and (5) by: (a) failing to negotiate in good faith; and (b) denying employees full compensation (night differential) for work performed. In addition, the Complainants assert that DOC has violated the parties' collective bargaining agreement. The Complainants are asking the Board to grant their request for Preliminary Relief and order DOC to: (1) comply with its personnel manual; (2) cease and desist from making unilateral changes to the night differential pay; (3) reimburse complainants for night differential compensation which was not received; and (4) pay attorney fees and costs.

DOC filed a response opposing the Complainants' Motion for Preliminary Relief. In its response, DOC argues that the allegations contained in the Complaint do not satisfy the criteria for granting preliminary relief. The Motion for Preliminary Relief is before the Board for disposition. After reviewing the pleadings, we believe that the Complainants have failed to state a basis for a claim under the Comprehensive Merit Personnel Act. Therefore, for the reasons discussed below, we are dismissing the Complaint in its entirety. In light of our disposition of the Complaint, it is not necessary to consider the Complainants' Motion for Preliminary Relief.

The Complainants claim that on "May 26, 29, 30, 2001, [they] were pre-approved to work voluntary overtime by their Supervisors in accordance [with] Article 19, Section (1) of the [parties'] collective bargaining agreement.[1] (Compl. at par.4). However, the Complainants contend that when they received their paychecks, they noticed that they were not paid night (shift) differential in violation of the parties' collective bargaining agreement and the District of Columbia Personnel Manual. (Compl. at par. 5). The Complainants claim that DOC's failure to pay night differential amounts to a unilateral change in its personnel policy. In addition, the Complainants argue that DOC implemented this change without engaging in impact and effects bargaining. (Compl. at par.7). The Complainants filed a grievance under the parties' collective bargaining agreement concerning this matter. However, the grievance has not been resolved. In view of the above, the Complainants filed their Complaint and Motion for Preliminary Relief.

It is alleged in the Complaint that DOC's actions violate D.C. Code §1-618.4(a)(1),(2),(3),(4) and (5) of the Comprehensive Merit Personnel Act (CMPA). Pursuant to the CMPA, management has an obligation to "bargain collectively in good faith" and employees have the right "[t]o engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative[.]" American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921 v. District of Columbia Public Schools, Slip Op. 339, PERB Case No. 92-U-08 (1992). D.C. Code § 1-618.4(a)(5) provides that "[t]he District, its agents and representatives are prohibited from...[r]efusing to bargain collectively in good faith with the exclusive representative." D.C. Code § 1-618.(4)(a)(5) protects and enforces, respectively, these employee rights and employer obligations by making their violation an unfair labor practice. However, "[i]n determining a violation of this obligation, the Board has always made a distinction between obligations that are statutorily imposed under the CMPA and those obligations that are contractually agreed-upon between the parties. The CMPA provides for the resolution of the former, [the Board has] stated, while the parties have contractually provided for the resolution of the latter, vis-a-vis, the grievance and arbitration process contained in their collective bargaining agreement. [The Board has] concluded, therefore that they lack jurisdiction over alleged

[1] The collective bargaining agreement that is alleged to have been violated is the one between the D.C. Department of Corrections and the Fraternal Order of Police/Department of Corrections Labor Committee.

violations that are strictly contractual in nature." American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921 v. District of Columbia Public Schools, supra. See also, Washington Teachers' Union, Local 6, American Federation of Teachers, AFL-CIO v. District of Columbia Public Schools, 42 DCR 5488, Slip Op. No. 337, PERB Case No. 92-U-18 (1992).

In the present case, the Complainants assert that DOC has failed to comply with Article 19, Section 1 of the parties' collective bargaining agreement (CBA). As noted above, any alleged refusal by a party to comply with the terms of the collective bargaining agreement, presents an issue of contract interpretation. Accordingly, the Board lacks jurisdiction concerning this allegation.

"Under D.C. Code § 1-618.4(a)(3), [a] discriminatory act by a District government agency with respect to an employee's term or condition of employment must be motivated by an intent to encourage or discourage membership in any labor organization." Teamsters,Local Union 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. D.C. Public Schools, 43 DCR 5585, Slip Op. No. 375, PERB Case No. 93-U-11 (1994). In their submission, the Complainants do not allege that they have been prohibited from engaging in union activity. Thus, the allegations asserted in the Complaint do not satisfy the requirements of D.C. Code § 1-618.4(a)(3).

In addition, the Complainants claim that the Respondent has violated D.C. Code § 1-618.4(a)(4). D.C. Code § 1-618.4(a)(4), provides that "[t]he District, its agents and representatives are prohibited from [d]ischarging or otherwise taking reprisals against an employee because he or she has signed or filed an affidavit, petition or complaint or given any information or testimony. . ." The Board has held that in order to sustain a claim of retaliation for union activity a party must demonstrate a link between the employee's union activity and the action taken against the employee. See, Jones v. D.C. Department of Corrections, 31 DCR 3254, Slip Op. No. 81, PERB Case No. 84-U-04 (1984). In the present case, the Complainants did not receive night differential pay for work performed prior to filing their Complaint. Therefore, the Complainants have failed to assert a nexus between the Respondent's decision not to pay night differential (to the Complainants) and any protected activity under D.C. Code § 1-618.4(a)(4). This same nexus is lacking with respect to Respondent's alleged violation of D.C. Code § 1-618.4(a)(3).

Also, the Complainants assert that DOC failed to engage in impact and effect bargaining concerning a change in personnel policy. The Board has held that the impact and effect of non-bargainable management decisions on terms and conditions of employment are only bargainable: (1) upon request and (2) with the exclusive representative. See, IBPO, Local 446, AFL-CIO v. D.C. General Hospital,41 DCR 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994); Teamstewrs Local 639 v. D.C. Public Schools, 38 DCR 96, Slip Op No. 249, PERB Case No. 89-U-17 (1991). In light of the above, the Complainants do not have standing to raise this allegation.

Finally, 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 unfair labor practice. 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, PERB Case No. 96-U-16 (1996). For the above-noted reasons, the present Complaint does not contain allegations which are sufficient to support a cause of action. Since no statutory basis exists for the Board to consider the Complainants' claims, the Complaint is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed in its entirety.

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

November 15, 2001

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 02-U-02 was transmitted via Fax and/or U.S. Mail to the following parties on this 7th day of December 2001.

Mary Leary, Esq.
Director
D.C. Office of Labor Relations & Collective Bargaining
441 4th Street, N.W.
Suite 200 South
Washington, D.C. 20001

FAX & U.S. MAIL

Mr. Carlton Butler
8612 Jason Court
Clinton, MD 20735

FAX & U.S. MAIL

Courtesy Copies:

Odie Washington, Director
D.C. Department of Corrections
1923 Vermont Avenue, N.W.
Washington, D.C. 200003

U.S. MAIL

Ms. Iola Slappy
1355-57 New York Avenue, N.E.
Washington, D.C. 20002

U.S. MAIL

Mr. Julian Battle
1355-57 New York Avenue, N.E.
Washington, D.C. 20002

U.S. MAIL

Ms. Andrea Byrd
1355-57 New York Avenue, N.E.
Washington, D.C. 20002

U.S. MAIL

Mr. Lawrence Benning
1355-57 New York Avenue, N.E.
Washington, D.C. 20002

U.S. MAIL

Dancy Simpson
1355-57 New York Avenue, N.E.
Washington, D.C. 20002

U.S. MAIL

Mr. John Busby
1355-57 New York Avenue, N.E.
Washington, D.C. 20002

U.S. MAIL

Sheryl V. Harrington

Sheryl Harrington
Secretary