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

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| In the Matter of: | |
| Dr. Brahma S. Kaushiva, Complainant, | |
| v. | PERB Case Nos. 94-U-25 |
| | Opinion No. 408 |
| University of the District of Columbia | |
| and | |
| University of the District of Columbia Faculty Association\NEA, Respondents. | |

DECISION AND ORDER

On September 19, 1994, Complainant Dr. Brahma S. Kaushiva, a retired professor of the University of the District of Columbia (UDC), filed an Unfair Labor Practice Complaint. Complainant alleges that UDC and the University of the District of Columbia Faculty Association (UDCFA) committed unfair labor practices under the Comprehensive Merit Personnel Act (CMPA) by "refus[ing] to arbitrate the issue of sabbatical leave as a substantive issue on the merits, during an arbitration hearing ... held on June 13, 1994 ... ." [1/] Complainant claims that UDC and UDCFA's failure

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[1/] The Complaint was administratively dismissed, by the Board's Executive Director, based on timeliness. Complainant was advised that the dismissal could be appealed to the Board. The Complainant did not appeal the dismissal, but amended the Complaint. Pursuant to Board Rule 501.13, Complainant was then advised that the amended Complaint was deficient because it failed to set forth an unfair labor practice under D.C. Code § 1-618.4. Complainant replied by letter filed October 4, 1994, in which additional arguments were made, including Complainant's unresponsive assertion that "[t]he Complaint is filed more aptly under D.C. Code § 1-618.2(b)(2),(3),(7) rather than D.C. Code Section 1-618.4."

Complainant's amended Complaint and letter responding to the notice of the Complaint's deficiency does not appear to provide any further assertions of fact that would alter the Executive

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to arbitrate the issue of his sabbatical leave pay violates the collective bargaining agreement between UDC and UDCFA, as well as various titles of UDC's Faculty Personnel Policy. Complainant also contends that by this same action UDCFA has violated its duty of fair representation. (Comp. at Para. 4.) By Answers filed October 24, 1994, both UDC and UDCFA denied the commission of any unfair labor practices and filed Motions to Dismiss the Complaint. Complainant filed an Opposition to the Motions on November 7, 1994.

The Complaint allegations stem from a grievance filed by UDCFA in 1984 over UDC's suspension of Complainant for an alleged unexcused absence in October 1983. In May 1991, an arbitrator rendered a decision in favor of Complainant, finding that Complainant's absence was not without UDC's authorization. The arbitrator also found that Complainant was wrongfully suspended for his absence and denied his salary for that period. UDC and UDCFA agreed to allow the arbitrator to retain jurisdiction to determine the remedial issues of back pay and interest owed to the Complainant for these wrongful actions.

Although sabbatical leave was apparently an issue before the arbitrator in the initial arbitration on the merits of Complainant's grievance, the arbitrator failed to determine whether or not Complainant was wrongfully denied sabbatical leave during the academic year 1984-1985. The arbitrator attempted to cure this oversight by making a determination on sabbatical leave in the supplemental arbitration proceeding limited to the issue of remedy. UDC filed a request to review the arbitrator's supplemental arbitration award on remedy, which resulted in the our Decision and Order in University of the District of Columbia and University of the District of Columbia Faculty Association\NEA, ___DCR _____, Slip Op. No. 321, PERB Case 92-A-05.

In response, we denied review of all but one portion of UDC's appeal of the supplemental award. The Board found that the arbitrator was without or exceeded his retained jurisdictional authority in the supplemental arbitration proceeding by making findings that the grievant was wrongfully denied sabbatical leave. The Board concluded that while the issue of whether or not Complainant was wrongfully denied sabbatical leave could have

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Director's administrative determination that the Complaint is untimely filed. In view of our disposition of the Complaint on other grounds, however, we shall not revisit the issue of timeliness or address Complainant's failure to meet the Board's filing requirements for unfair labor practice complaints.

been decided by the arbitrator in the initial arbitration proceeding and award, the issue was not properly within the arbitrator's jurisdiction in any supplemental proceeding absent mutual consent by UDC and UDCFA. Consequently, the Board set aside the supplemental award granting the remedy of sabbatical leave pay based on an improper determination of this issue.

UDCFA and UDC's cross appeals of the Board's Order resulted in a Superior Court Order, which reversed the Board's holding on the part of the supplemental award on interest, but upheld the Board's ruling setting aside the award of sabbatical leave pay. Pursuant to the Superior Court's Order, on October 15, 1993, the Board issued a Decision and Order on Remand (Slip Op. No. 368), amending its Decision and Order in Opinion No. 321 (to reflect the Court's ruling) and remanded the award to the Arbitrator for further proceedings consistent with the Court's Order. The proceeding on remand, limited by the Board's Order in Slip Opinion No. 368 to applying the proper interest rate to the sustained parts of the supplemental award, was held on June 13, 1994. The alleged acts or omissions by UDC and UDCFA at this hearing are the bases of the Complaint.[2]/

The issue now presented is whether Complainant has established a cause of action within our jurisdiction by alleging that at the June 13, 1994 arbitration proceeding UDCFA and UDC did not pursue on the merits the issue of sabbatical leave pay. In our Decision and Order in Opinion 368, we specifically defined the scope of the June 13, 1994 remand to the arbitrator. The purpose of the hearing was to apply the proper interest rate to the portions of the award we sustained in Opinion No. 321. This did not include the issue of sabbatical leave pay, which we had expressly set aside. By not pursuing the issue of sabbatical leave pay at remand proceeding, although urged by the Complainant to do so, both UDC and UDCFA were acting in accordance with our Decision and Orders in Opinions 321 and 368.

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[2]/ In one of the many Court decisions generated by the various motions and appeals filed in the underlying dispute by all parties involved, the Superior Court, in an October 4, 1993 Memorandum Opinion and Order, dismissed, on jurisdictional grounds, the same underlying claims made by the Complainant against UDC and UDCFA to support the instant Unfair Labor Practice Complaint. See Kaushiva v. UDC, et al., Civil Action No. 4373-84. In the most recent civil action filed by Complainant against UDC, UDCFA and the Board, the Superior Court granted Motions to Dismiss filed by all defendants. On October 21, 1994, the Complainant filed a Notice of Appeal of that Order with the D.C. Court of Appeals.

The controlling legal issue upon which the Complaint is predicated was determined in our Decisions and Orders in Opinions 321 and 368. There is no cause of action for relitigating this issue against UDC and UDCFA based on the claims contained in the Complaint. Cf., Washington Teachers' Union, Local 6, AFL-CIO v. District of Columbia Public Schools, 38 DCR 2650, Slip Op. No. 258, PERB Case No. 90-U-13 (1991). [3]/ While we recognize that this leaves Complainant without a determination of the merits concerning the issue of sabbatical leave pay, in view of the above, we nevertheless must dismiss the Complaint.

## ORDER

**IT IS HEREBY ORDERED THAT:**

The Complaint is dismissed.

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

November 30, 1994

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[3]/ Moreover, alleged violations of provisions of a collective bargaining agreement or an employer's personnel policies do not constitute an unfair labor practice under the CMPA. See, e.g., American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2091, AFL-CIO v. District of Columbia Public Schools, ___DCR _____, Slip Op. No. 339, PERB Case No. 92-U-08 (1992). With respect to UDCFA, Complainant fails to make any allegations that, if proven, would render UDCFA's alleged failure to fairly represent Complainant a product of bad faith, arbitrary or discriminatory. Absent these elements, there can be no finding of an unfair labor practice. See, e.g., Michael Tipps v. Fraternal Order of Police/ Department of Corrections Labor Committee, ___ DCR _____, Slip Op. No. 405, PERB Case No. 94-U-14 (1994). On the merits, these allegations alone fail to state a violation under the CMPA by UDC and UDCFA since there is no claim that UDC and UDCFA breached any statutory obligation or right --proscribed under the CMPA as an unfair labor practice-- at the remanded arbitration proceeding.