GOVERNMENT OF THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	)	
	)	
Carol McDonald,	)	PERB Case No. 11-U-41
	)	
Complainant,	)	Opinion No. 1129
	)	
and	)	**Motion to Dismiss**
	)	
Washington Teachers' Union, Local No. 6	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

I. Statement of the Case

On July 11, 2011, Carol McDonald, *pro se*, ("Complainant" or "Ms. McDonald") filed an Unfair Labor Practice Complaint ("Complaint") alleging that the Washington Teachers' Union ("Respondent" or "Union" or "WTU") committed an unfair labor practice by failing to process her grievance to arbitration. (Complaint at pgs. 1-2). The Respondent filed a Motion to Dismiss and an Answer to the Complaint ("Motion and Answer"), denying any violation of the Comprehensive Merit Personnel Act ("CMPA") and requesting that the Board dismiss the Complaint for untimeliness. The Complainant made a supplemental filing ("Amended Complaint") on August 3, 2011, alleging that she did not learn of the Union's failure to process her grievance to arbitration until April 11, 2011. The Complaint and the Union's Motion to Dismiss are before the Board for consideration.

The Complainant was terminated on or about 2008. She alleges that her grievance was selected for arbitration but was never processed. She asserts that there was no attempt made to resolve her arbitration "after attending two grievance procedures..." (Complaint at p. 1). According to the Complainant, Rachael Hicks represented her in June 2008. Two meetings were held concerning her termination. Mary Collins, WTU representative, informed the Complainant on February 3, 2010, that her grievance documents would be forwarded for arbitration. (Complaint at p. 1). On April 11, 2011, Union President Nathan Saunders informed the Complainant that her grievance was never filed for arbitration. (Amended Complaint at p. 1).

The Complainant asserts that she has not been afforded due process and requests that the Board "carefully examine [her] case and provide [her] due process that [she has] not received in the past three years." (Complaint at pgs. 1-2).

In its Motion and Answer, the Respondent asserts that the Complaint is time barred under Board Rule 520.4, which states that unfair labor practice complaints "shall be filed not later than 120 days after the date on which the alleged violations occurred." Further, the Respondent notes that the "the time limits for filing appeals with administrative adjudicative agencies...are mandatory and jurisdictional." *Gibson v. D.C. PERB*, 785 A.2d 1238, 1241 (D.C. 2001), quoting *Hoggard v. D. C. PERB*, 655 A.2d 320, 323 (D.C. 1994). *D.C. PERB v. D.C. Metropolitan Police Dep't*, 593 A.2d 641, 643 (D.C. 1991). WTU asserts that the most recent document cited by the Complainant is dated February 3, 2010, and is an e-mail from Mary Collins, WTU representative. The Complaint was not filed until July of 2011. WTU contends that this exceeds the 120-day filing period. Therefore, WTU requests that the Board dismiss the Complaint. (Motion and Answer at p. 2).

The Respondent further argues that the Complaint has failed to state a claim for which relief can be granted. (Motion and Answer at p. 4). WTU contends that to establish an unfair labor practice, the "Complainant must allege that WTU treated her in an arbitrary or discriminatory manner or [acted] in bad faith for a valid breach of its duty to lie." (Motion and Answer at p. 3). The Complainant has not alleged any arbitrary or discriminatory conduct.

II. Timeliness

The Complainant alleges facts which occurred over the past three years. On April 11, 2011, Union President Nathan Saunders notified the Complainant that the grievance was never filed to arbitration. This is when the Complainant learned of a potential cause of action. She filed her Complaint on July 25, 2011, approximately 105 days later. This is well within the filing period provided in Board Rule 520.4: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred."

Therefore, the Board concludes that the Complaint is timely filed.

III. Motion to Dismiss

The Respondent asserts that the Complainant has failed to state a claim for which relief can be granted under the Comprehensive Merit Personnel Act ("CMPA").

The Board notes that the Complaint does not specify any provision of the CMPA allegedly violated by WTU's actions. We believe that the Complainant is attempting to assert that WTU violated D.C. Code Sec. 1-617.04(b)(1).[1] The Union has a duty of fair representation. We have held that to

[1] D.C. Code Sec. 1-617.04(b)(1) provides as follows:

> (b) Employees, labor organizations, their agents or representatives are prohibited from:

breach the duty of fair representation, "a [labor organization's] conduct must be arbitrary, discriminatory or be based on considerations that are irrelevant, invidious or unfair." *Kenneth E. Graham and Rosemary Gardner v. Anthony Williams, Dept' of Corrections and Fraternal Order of Police/DOC Labor Committee*, Slip Op. No. 787 at p. 3, PERB Case No. 05-U-24 (2005). "Regardless of the effectiveness of a union's representation in the handling or processing of a bargaining unit employee's grievance, such matters are within the discretion of the union as the bargaining unit's exclusive bargaining representative." *Enoch Williams v. American Federation of State, County and Municipal Employees, District Council 20, Local 2290*, Slip Op. 454, PERB Case No. 95-U-28 (1995). Furthermore, "the fact that there may have been a better approach to handling [the] grievance or that [the grievant disagrees] with the approach taken by [the Union] does not render [the Union's] actions or omissions a breach of the standard for its duty standard of fair representation, in violation of D.C. Code Sec. 1-618.4(b)(1)."[2] *Id.*

"[W]hen considering the pleading of a *pro se* Complainant the Board construes the claims liberally to determine whether a proper cause of action has been alleged..." *Osekre v. AFSCME, Council 20, Local 2401*, 47 DCR 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (2000). In the instant case, the Complainant alleges that no attempt was made to resolve her arbitration after attending two grievance procedures. (Complaint at p. 1). The Complainant asserts that a WTU representative informed her that her grievance documents would be forwarded for arbitration. In April 2011, she learned that the grievance was never filed to arbitration. Assuming these facts to be true as alleged, the Complainant asserted only that the Union did not file her grievance to arbitration. This allegation cannot be construed as a claim of an unfair labor practice. The Complainant was required to allege in her complaint before the Board some facts showing "ill motive or arbitrary action to support her claim" against the union. See *Gibson v. D.C. Public Employee Relations Board*, 785 A.2d 1238, 1243 (D.C. 2001), ("*Gibson*"). The Board has held that a Union's "decision not to pursue arbitration does not breach the duty of fair representation." *Owens v. AFSCME, Local 2095, et al.*, Slip Op. No. 750 at 7, PERB Case No. 02-U-27 (2004). In the instant matter, the Complainant has neither identified nor asserted conduct that was arbitrary, discriminatory or the product of bad faith on the part of the Union; nor has she alleged that the processing of her grievance was based on considerations that are irrelevant, invidious, or unfair.

"[J]udgmental acts of discretion in the handling of a grievance, including the decision to arbitrate, do not constitute the requisite arbitrary, discriminatory, or bad faith element of [an unfair labor practice]." (*Gibson, supra*, 1242). The Board finds that the Complaint does not contain allegations which are sufficient to support a cause of action. Thus, there is no basis for finding that the Complainant's allegations could result in a violation of the Comprehensive Merits Personnel Act at D.C. Code 1-617.04(b)(1).

Based on the above analysis, the Board grants the Respondent's motion to dismiss the Complaint in this matter.

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(1) Interfering with, restraining or coercing any employees or the District in the exercise of rights guaranteed by this subchapter;

[2] Now cited as D.C. Code Sec. 1-617.04(b)(1) (2001 ed.).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion to Dismiss the Complaint filed by the Washington Teachers' Union, is **GRANTED.**

2. This Decision and Order is final upon issuance pursuant to Board Rule 559.1.

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

October 7, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-41 was transmitted via Fax and U.S. Mail to the following parties on this the 7th day of October 2011.

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