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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

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| In the Matter of: |) | |
| |) | |
| Virginia H. Dade, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PERB Case No. 96-U-22 |
| |) | Opinion No. 491 |
| National Association of |) | |
| Government Employees, Service |) | |
| Employees International Union, |) | |
| Local R3-006, AFL-CIO, |) | |
| |) | |
| Respondent. |) | |
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| |) | |
| |) | |

DECISION AND ORDER

On July 31, 1996, an Unfair Labor Practice Complaint was filed in the above-captioned case by Virginia H. Dade (Complainant). Complainant is employed by the District of Columbia Water and Sewer Authority (WASA) and is a member of the collective bargaining unit exclusively represented by the Respondent, the National Association of Government Employees, Service Employees International Union, Local R3-006 (NAGE). The Complaint alleged that certain conduct by NAGE violated Complainant's employee rights under the Comprehensive Merit Personnel Act (CMPA), as prescribed under D.C. Code § 1-618.6(a)(3). By such conduct, Complainant asserts that NAGE has committed unfair labor practices, as proscribed by D.C. Code § 1-618.4(b)(1), (2) and (3).

By letter dated August 15, 1996, the Executive Director dismissed the Complaint 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 allege in your complaint that the National Association of Government Employees (NAGE) violated the CMPA, as codified under D.C. Code Section 1-618.4(b)(1), (2) and (3), by: (1) refusing to file a grievance on your behalf; (2) taking management's side; (3) settling a matter concerning AWOL/annual leave; and (4) refusing to provide you with a copy of the NAGE collective bargaining agreement. Also, you allege that the failure of NAGE representatives "to speak on [your] behalf, when [you

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were in] meetings with agency representatives over [disputed] issues... caused the District to discriminate against [you] in violation of [D.C. Code] Sec. 1-618.6."

"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. The 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 fail to demonstrate that the decision not to file a grievance 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 file a grievance. In short, you have neither sufficiently pled bad faith or discrimination, nor raised circumstances that would give rise to such an inference.

Also, "[r]egardless 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 [your] grievance or that [you disagree] with the approach taken by [NAGE] does not render [NAGE's] actions or omissions a breach of the standard for its duty standard of fair representation, in violation of D.C. Code §1-618.4(b)(1)." Id.

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.

On August 16, 1996, Complainant filed an Appeal of the

Executive Director's administrative dismissal of her Complaint, requesting that the Board reverse his determination.^{1/} NAGE filed

^{1/} The Complainant raised a general objection to the Executive Director's dismissal based on the pleadings rather than after a full investigation or hearing. However, when a genuine issue of fact with respect to the elements of the alleged violation does not exist, no further development of the record is required to render a decision or determination on the pleadings. See, e.g., Ulysses S. Goodine v. the Fraternal Order of Police/Department of Corrections Labor Committee, Slip Op. 476, PERB Case No. 96-U-16 (1996).

Complainant further asserts that the Executive Director failed to address the alleged violations of D.C. Code §§ 1-618.4(b)(2) and (3) and 1-618.6(a)(3). D.C. Code § 1-618.4(b)(2) and (3) provide as follows:

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

(2) Causing or attempting to cause the District to discriminate against an employee in violation of § 1-618.6;

(3) Refusing to bargain collectively in good faith with the District if it has been designated in accordance with this chapter as the exclusive representative of employees in an appropriate unit;

These asserted statutory violations were merely conclusory. The Complaint is devoid of allegations supporting any basis for these causes of action. See, e.g., University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, 31 DCR 5389, Slip Op. 92, PERB Case 84-U-11 (1984). Moreover, with respect to D.C. Code § 1-618.4(b)(3), the Board has held that only an employer can demand that a recognized labor organization bargain in good faith. Willard Taylor v. University of the District of Columbia Faculty Association/NEA, 41 DCR 6687, Slip Op. 324, PERB Case 90-U-24 (1994). It was not essential to consider these asserted violations separately when the allegations contained in the Complaint otherwise fail to state a cause of action upon which we could grant relief. We find this also to be the case with respect to Complainant's asserted violation of D.C.

(continued...)

a Response to Complainant's Appeal.

The basis of Complainant's asserted statutory violations by NAGE is essentially twofold: (1) the manner Respondent NAGE handled her dispute with management and (2) NAGE's refusal to provide her with a copy of its collective bargaining agreement with WASA. With respect to the latter, NAGE states that no initial collective bargaining agreement has yet been negotiated with WASA. Therefore, no collective bargaining agreement exists that could be provided to the Complainant.

Complainant has raised several grounds for appealing the Executive Director's administrative dismissal of the remaining claim in her Complaint, alleging that NAGE did not properly represent her in her dispute with management. First, the Complainant takes issue with the applicability of the cases cited in support of the dismissal of this claim. Specifically, Complainant states that unlike those cases, NAGE did not at a minimum initiate a grievance on her behalf. As noted above, NAGE has never negotiated an initial collective bargaining agreement with WASA and, consequently, no contractual grievance-arbitration procedure exists. Therefore, any grievance that the Complainant wishes to pursue could only be initiated through the grievance procedure provided under the District's Personnel Regulations. The Complainant states that she has availed herself of this precise course of action.

Next, Complainant contends that NAGE's handling of her dispute did not conform with contractual requirements or NAGE's constitution and bylaws. The failure of a party to a grievance proceeding to comply with contractual or, in this case, the regulatory requirements governing a grievance procedure, does not state a cause of action within the jurisdiction of the Board. See, e.g., American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921, AFL-CIO v. D.C. Public Schools, 42 DCR 5685, Slip Op. 339, PERB Case No. 92-U-08 (1995). Furthermore, a labor organization's alleged failure to comply with its bylaws and/or constitution does not alone give rise to a breach of its duty to fairly represent employees. The alleged acts or conduct must be motivated by bad faith, or by discriminatory or arbitrary reasons. See, e.g., James Hairston v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, Slip Op. 75, PERB Case Nos. 83-U-11, 83-U-12 and 83-S-01 (1984).

¹(...continued)

Code § 1-618.6(a)(3), which secures an employee's right to bargain collectively through a representative of his/her own choosing.

While the Complainant need not prove her case on the pleadings, the Complainant has not pled any allegations that, if proven, would meet this standard and therefore, establish the asserted statutory violations. See, Gregory Miller v. American Federation Of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works, Slip Op. No. 371, PERB Case No. 93-U-02 and 93-U-25 (1994). To the contrary, the Complaint consists largely of Complainant arguing the merits of her underlying dispute with WASA. The balance of the Complaint essentially consists of Complainant's conclusory assertions that Respondent acted in bad faith or exercised its discretion in a discriminatory or arbitrary manner because Respondent's settlement of the dispute was not congruent with what the Complainant believed was appropriate. The Complainant has failed to allege facts supporting the required prohibitive motive behind Respondent's representation and, therefore, an essential element of the violation is not present in the Complaint.^{2/}

Complainant's Appeal provides no new allegations or assertions that, if proven, would establish the claimed statutory violations. See, Ulysses S. Goodine v. the Fraternal Order of Police/Department of Corrections Labor Committee, Slip Op. 476, PERB Case No. 96-U-16 (1996). In view of the foregoing, the Petitioner's Appeal of the Executive Director's determination is denied. The Executive Director's administrative dismissal of Petitioner's Complaint for failing to state a cause of action is affirmed.

^{2/} In an ancillary argument, the Complainant asserts that the Board has also recognized "negligence" as a breach of the duty of fair representation by an exclusive representative. The Complainant cites our Decision and Order in Carl Ferson v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, 31 DCR 2290, PERB Case No. 83-U-09 (1984), for this contention. The Complainant relies on the Board's conclusion in that case that the complainant did not establish that the union's decision not to pursue the complainant's grievance to arbitration "was due to negligence or bad faith." Id. at p. 3. That conclusion, however, was merely referring to what the complainant had pled as the basis of his complaint. In footnote 3 of that case, the complainant acknowledged that the Board's standard for establishing this violation was adopted from the U.S. Supreme Court decision in Vaca v. Sipes, 386 U.S. 171 (1967), i.e., that "a breach of the duty of fair representation occurs only when a union's conduct... is arbitrary, discriminatory or in bad faith." Id. at n. 3.

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ORDER

IT IS HEREBY ORDERED THAT:

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

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

September 27, 1996