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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
Kenneth E. Graham and Rosemary Gardner,)	
)	
Complainants,)	
)	
v.)	PERB Case No. 05-U-24
)	Opinion No. 787
Anthony Williams, District of Columbia)	
Department of Corrections and)	MOTION FOR RECONSIDERATION
Fraternal Order of Police/Department of)	
Corrections Labor Committee,)	
)	
Respondents.)	

DECISION AND ORDER

I. Statement of the Case

This matter involves a Motion for Reconsideration filed by Kenneth E. Graham and Rosemary Gardner ("Complainants"). The Complainants are requesting that the Board reverse the Executive Director's March 2, 2005 Administrative Dismissal ("Dismissal") of their Complaint.

On February 7, 2005, the Complainants filed an Unfair Labor Practice Complaint (Complaint). The Complainants assert that the Fraternal Order of Police/Department of Corrections Labor Committee ("FOP"), the District of Columbia Department of Corrections ("DOC") and Mayor Anthony Williams, violated the Comprehensive Merit Personnel Act (CMPA). Specifically, the Complainants allege that FOP committed an unfair labor practice by: (1) denying them representation; (2) failing to enforce the collective bargaining agreement; and (3) failing "to act in the Complainants' best interest." (Complaint at p. 1). In addition, the Complainants claim that DOC violated the Preamble and Article 19 of the collective bargaining agreement. Also, the Complainants contend that DOC violated "Program Statement HRMD, Number 3110.3B, dated August 1, 2004, Subject Promotion Process for Sergeants and

Lieutenants.¹ (Complaint at p. 2). Other than naming Mayor Anthony Williams in the Complaint's caption, the Complainants assert no allegations with regard to him.² Finally, the Complainants state that their Complaint "is being forwarded to the Public Employee Relation Board [sic] (PERB) for resolution due to the inability to resolve these issues at grievance level steps III and IV." (Complaint at p. 1).

After reviewing the pleadings, the Executive Director determined that the Complainants' submission did not contain allegations which were sufficient to support a cause of action under the CMPA. As a result, the Complaint was administratively dismissed. (Dismissal letter at p. 5).

The Complainants filed a Motion for Reconsideration (Motion), requesting that the Board reverse the Executive Director's decision. Respondents FOP and DOC filed oppositions to the Motion. The Complainants' Motion is now before the Board for disposition.

II. Discussion

In their Motion the Complainants state that they "disagree with Mr. Julio A. Castillo, Executive Director, decision to dismiss [our] case because he said 'it has no statutory basis and lacks merit'." (Motion at p. 1). Therefore, the Board must determine whether the Executive Director erred in dismissing the Complaint.

The Motion does not state what action the Complainants expect the Board to take concerning the Complainants disagreement with the Executive Director's Dismissal. However, when 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 and, in the instant Motion, whether the Complainants have requested proper relief. See, 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); Beeton v. D.C. Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee, 45 DCR 2078, Slip Op. No. 538, PERB Case No. 97-U-26, (1998). In light of the above, the Board construes the Complainants' Motion as a request to reverse the Executive Director's Dismissal. The Motion is now before the Board for disposition.

¹ The Complainants provided no further information concerning this "Program Statement" other than the title and date.

² The Complainants assert neither factual allegations nor claims of statutory violations as to Mayor Williams. Therefore, the Board concludes that the Complainants naming of Mayor Williams was perfunctory and that Mayor Williams is not a party to this case.

Concerning the FOP, the Complaint does not allege any violation of the Complainants' rights under D.C. Code § 1-617.06(a) and (b) (2001 ed.). As a result, the Executive Director indicated that he believed that the Complainants were attempting to assert that FOP violated D.C. Code § 1-617.04(b) (2001 ed.), by breaching the Complainants' right to fair representation concerning the results of the sergeants and lieutenant exams. However, the Executive Director determined that the Complaint did "not contain allegations which [were] sufficient to support a cause of action." (Dismissal letter at p. 2).

D.C. Code § 1-617.03 (2001 ed.) provides that the members of a bargaining unit are entitled to "fair and equal treatment under the governing rules of the [labor] organization." We have maintained that this statutory standard establishes that a labor organization must always exercise its discretion with "complete good faith and honesty of purpose as regards union members' interests." To fulfill the duty of fair representation, this standard requires that a labor organization act in good faith motivated by honesty of purpose. A labor organization's competency is not subject to review under this statutory standard. Conversely, to breach the duty of fair representation, "a [labor organization's] conduct must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair." Stanley Roberts v. AFSCME, Local 2725, 36 DCR 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989).

According to the facts presented by the Complainants, an FOP representative determined that the results of two DOC promotional examinations, which the Complainants sought to have the FOP challenge, were not appealable. As a result, the FOP did not file grievances on the Complainants' behalf. As to the FOP's conclusion regarding an appeal of the promotion examinations, the Complainants did not allege or assert a statutory violation. The Executive Director concluded that the Complainants "neither sufficiently pled bad faith or discrimination, nor raised circumstances that would give rise to such an inference." (Dismissal p. 3). The Executive Director concluded as well that the Complainants asserted "no basis for attributing an unlawful motive to the union's decision not to file a grievance on [the Complainants'] behalf." (Dismissal at p. 3). We find that the Executive Director's conclusions regarding the allegations concerning FOP are reasonable and consistent with Board precedent. Therefore, we concur with the Executive Director's findings.

As to the DOC, the Complainants alleged a violation of D.C. Code § 1-617.04(a)(5) (2001 ed.), refusal to bargain in good faith. The Complainants claim that the DOC violated the Preamble and Article 19 of the parties' collective bargaining agreement. The Executive Director noted that this claim involves a matter of contract interpretation and is not statutorily based. As a result, he concluded that the Board lacked jurisdiction over alleged violations that are strictly contractual in nature. This Board has determined that it lacks jurisdiction to rule on alleged contract violations. See, American Federation of Government Employees, Local No. 3721 v. D.C. Fire Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1991). We

believe that the Executive Director's conclusion concerning this allegation is reasonable and supported by Board precedent. As a result, we concur with his finding concerning this claim.

Finally, the Complaint asserts that the matter is being forwarded to the Board "for resolution due to the inability to resolve these issues at the grievance levels step III and IV." (Complaint p. 1). The Executive Director concluded that, for the reasons discussed above, the Board lacks jurisdiction to resolve grievances which are governed by the parties' collective bargaining agreement procedures. The Motion is unsupported with respect to the Complainants' claim that the Board is an appellate forum for unresolved grievance issues. In fact, PERB has no such role. The Executive Director suggested that the Complainants review the parties' collective bargaining agreement to determine what procedures are available to resolve the Complainants' grievances. We concur with that advice.

While Complainants need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged statutory violation. See, Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06, 46 DCR 7253, Slip Op. No. 491, PERB Case No. 96-U-22 (1996); and Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and DC Department of Public Works, 48 DCR 6560, Slip Op. No. 371, PERB Case No. 93-S-02; 93-U-25 (1994). Furthermore, this Board has held that in order to maintain a cause of action, a Complainant must allege that some evidence exists that, if proven, would tie the Respondent's actions to a statutory violation. In the absence of such evidentiary allegations, the Respondent's conduct cannot be found to constitute an unfair labor practice because the Complainants have failed to present allegations supporting the cause of action. See, Goodine v. Fraternal Order of Police, 43 DCR 5163, Slip Op. No. 476, PERB Case No. 96-U-16(1996).

In their Motion, the Complainants indicate that they are filing their Motion for Reconsideration because they "disagree with Mr. Julio A Castillo, Executive director, decision [sic] to dismiss [their] case because he said it has no statutory basis and lacks merit." (Motion p.1). As a result, the Complainants request that the Board reverse the Executive Director's decision. However, the present Motion raises no new contentions or arguments not considered and addressed by the Executive Director. Also, a review of the Complainants' submissions reveals that the Complainants were informed by an FOP representative that the results of the sergeants and lieutenants exams were not appealable. In light of the above, it is clear that the present Motion involves nothing more than a disagreement with the Executive Director's determination. We have previously addressed the question of whether a party's disagreement with the Executive Director's decision is grounds for a reversal. In Katrina Osborne, et al. V. AFSCME, Local 2095, Slip Op. No. 713 at p. 7, PERB Case Nos. 02-U-30 and 02-S-09 (2003), we found "that a mere disagreement with the Executive Director's decision is not a sufficient basis for reversing that decision." Also, in the present case the Complainants do not identify any law or legal precedent which the Executive Director's decision contravenes.

In view of the above, the Board finds that the Executive Director's decision was reasonable and supported by Board precedent. Therefore, the Board denies the Complainants' Motion for Reconsideration and affirms the Executive Director's Administrative Dismissal.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainants' Motion for Reconsideration is denied.
2. The Complaint is dismissed in its entirety.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

May 11, 2005

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 05-U-24 was transmitted via U.S. Mail to the following parties on this the 11th day of May 2005.

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