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

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| In the Matter of: | |
| Cynthia Allen-Lewis, Diedre Lawson, Maria Dyson, Sylvia Jefferson, Louise Mims, Beatrice Mosely, Kelly Peeler and Gregory Woods, Complainants, | PERB Case No. 99-U-24<br>Opinion No. 703 |
| v. | |
| AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, Local 2401, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES D.C. COUNCIL 20, Respondents. | |

## DECISION AND ORDER

This case involves an unfair labor practice complaint filed by Cynthia Allen-Lewis and seven (7) other Grievants[1] (" Complainants" or "Grievants") against the American Federation of State, County and Municipal Employees, Local 2401 (" Respondent, "Council 20" or "Union") and the American Federation of State, County and Municipal Employees, D.C. Council 20 ("Respondent", "Local 2401" or "Union"). Specifically, the Grievants allege that Local 2401 and Council 20 (

[1]The Grievants were employed by the District of Columbia Child and Family Services Agency as social service assistants, social workers and secretaries. One Grievant, Beatrice Mosely, withdrew as a party prior to the hearing. ( R & R at pgs.1 and 5). Evidence in the record suggests that Ms. Mosely did not pursue her claim because she was a supervisor at the time that these grievances arose and; therefore, was not entitled to bargaining unit representation. ( Union's Brief at pg. 1, footnote 1).

hereinafter referred to as "the Unions[2]") violated their duty of fair representation pursuant to D.C. Code §1-617.04(b)(1), by failing to timely process and advance their grievances to arbitration.[3]

In their complaint, the Complainants argue that the Unions violated their duty of fair representation in several ways. The Grievants assert, *inter alia*, that: (1) the Unions' level of assistance was inadequate; (2) there was no communication concerning the status of their grievances; (3) the Unions did not address all issues contained in their grievances; and (4) the Unions did not respond to the Grievants' requests and file individual grievances until the Grievants hired a private attorney to represent them.[4] Additionally, the Grievants claim that the Unions handled their grievances in a perfunctory manner. Finally, the Grievants claim that Council 20's decision not to pursue arbitration for their individual grievances was not rational.

The Respondents deny the allegations. Specifically, the Respondents claim that they did not commit an unfair labor practice because they provided the Grievants with some assistance. In addition, the Unions claim that they took no further action on behalf of the Grievants because they thought that the original issues were resolved.[5] Furthermore, the Unions assert that the Grievants

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[2]Throughout this Opinion, the word "Unions" will refer to both, AFSCME, Local 2401 and AFSCME, D.C. Council 20, when they are mentioned collectively.

[3]This case was originally administratively dismissed by the Executive Director, but the Complainants filed a Motion for Reconsideration with the Board regarding the decision. As a result, the Board ordered the parties to brief specific issues concerning the Unions' level of assistance. After reviewing the briefs, the Board ordered a Hearing on the matter.

[4] According to the record, two sets of grievances were filed on behalf of the Grievants. The Hearing Examiner found that the first grievances were handled by Fonda Roy-Hankerson through the second step and were, primarily, in response to the workers' claims that the Agency was impermissibly instituting a realignment which would change the employees' schedules without giving them proper notice or the opportunity to bargain over the impact and effect of the change. After Ms. Hankerson thought that the realignment issue was resolved, the Grievants approached her again and completed "Official Grievance Forms" which raised other issues on or about October 23, 1998. ( R & R at p.12). The second set of grievances was filed on or about March 30, 1999 by the individual Grievants after they had retained a private attorney, David Wachtel and once their initial grievances were not responded to ( R & R at p.12). The Hearing Examiner found that this second set of grievances also included other claims that were not initially raised in the first grievances filed on behalf of the Complainants. (See, R & R at pgs. 7-10, 12-14, and 19-20).

[5]The Unions claim that they believed that the original grievance issue was resolved by the reissuance of the letters giving employees proper notice of the realignment and any

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later added claims that were not contained in their original grievances or were not expressed to the Unions. The Unions also claim that they did, in fact, communicate with the Grievants. They assert that the decision not to pursue arbitration was given to the Grievants in written form. In addition, the Unions contend that their handling of the grievances was not arbitrary, discriminatory or the result of bad faith, as is required for a finding of a breach of the duty of fair representation under the Board's standards. See, Barbera Hagans v. American Federation of State, County and Municipal Employees, Local 2743 (Hagans v. AFSCME, Local 2743), 48 DCR 10967, Slip Op. No. 646 at. p.5, PERB Case Nos. 99-U-26 and 99-S-06 (2001). While the Unions admit that the grievances could have been handled better[6], they also assert that the Unions' actions did not rise to the level of an unfair labor practice.

A hearing was held. The Hearing Examiner issued a Report and Recommendation. ( "Report" or "R & R" ). In her Report, the Hearing Examiner found that Council 20 and Local 2401 did not violate the Comprehensive Merit Personnel Act (CMPA) in their handling of the Complainants' grievances. Specifically, the Hearing Examiner found that the Complainants did *not* meet their burden of proving that the Unions violated their duty of fair representation. In making her decision, the Hearing Examiner noted the three criteria used to determine if a union has adhered to its duty to fairly represent its members. They include whether: (1) it treats members without hostility or discrimination; (2) it exercises discretion to assert the rights of individual members in good faith and honesty; and (3) it avoids arbitrary conduct. See, Griffin v. International Union, United Automobile, Aerospace and Agricultural Implement Workers, of America, UAW, 469 F. 2d 181, 183 (1972). The Board has adopted and applies this same standard. See, Ulysses S. Goodine v. Fraternal Order of Police/Department of Corrections Labor Committee, 43 DCR 5162, Slip Op. No. 476, PERB Case No. 96-U-16 (1996).

The Hearing Examiner elaborated on why the Complainants did not meet their burden. She explained that although it may not have been what the Complainants wanted, the Unions did provide its members with *some* assistance. In addition, she concluded that the Complainants did not present any evidence to support its contentions that the Unions' decisions in handling their grievances were unreasonable, arbitrary, discriminatory, or taken in bad faith. See, Hagans v. AFSCME, Local 2743, 48 DCR 10967, Slip Op. No. 646 at. p.5, PERB Case Nos. 99-U-26 and 99-S-06 (2001). Furthermore, the Hearing Examiner relied on the Vaca v. Sipes[7] standard, which the Board has

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reassignments or schedule changes that would result.

[6] To explain why it did not handle the case in a better manner, the Unions point to: (1) the inexperience of some of its staff; (2) its poor communication with the Grievants; and (3) its disorder as a result of being under an administrator ship.

[7] The Hearing Examiner noted that in Vaca v. Sipes, the Supreme Court described the
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adopted, to assert that finding a violation requires perfunctory handling, plus, arbitrary and bad faith conduct regarding the processing of the employee's grievance. See, 383 U.S. 171,177 (1967); Tracey Hatton v. Fraternal Order of Police, 47 DCR 769, Slip Op. No. 451, PERB Case No. 95-U-02 (2000). She also noted the Board's standard in Stanley O. Roberts v. American Federation of Government Employees, Local 2725, and observed that it "is not the competence of the Union, but rather whether the representation was in good faith and its actions motivated by honesty of purpose." 36 DCR 1590, Slip Op. No. 203 at p. 3, PERB Case No. 88-S-01(1989). Finally, the Hearing Examiner concluded that the Unions' handling of the grievances was reasonable under the circumstances because both parties were in a state of disarray and disorganization.[8]

The Complainants filed Exceptions to the Hearing Examiner's Report. In their Exceptions, the Grievants claim that the standard for finding that the Unions committed an unfair labor practice was met because the evidence shows that the Unions' actions were perfunctory. The Complainants contend that perfunctory action is enough to meet the standard for finding that the Unions breached their duty of fair representation to the Complainants. (Exceptions at p. 11.). Specifically, they claim that "District of Columbia public employee unions owe their members something better than perfunctory grievance-handling" and rely on Vaca v. Sipes, as cited in Cynthia Allen-Lewis, et al. v. AFSCME, D.C. Council 20, et.al., to support this contention. See, 386 U.S. 171 and 47 DCR 5309, Slip Op. No. 624, PERB Case No. 99-U-24 (2000). In addition, the Grievants assert that the Unions acted in bad faith. In making this assertion, they reiterate the fact that the Complainants could not persuade the Union to act on the grievances without hiring a private attorney. Finally, the Grievants claim that the Council 20, which makes decisions concerning the handling of grievance arbitrations for Local 2401 members, should not be held to a lesser standard because it was in a state of disarray. (Exceptions at p. 18).

After reviewing the record in the present case, the Board finds that the Hearing Examiner's findings are reasonable and supported by the record. We have held that no duty of fair representation violation lies where there is no evidence of arbitrary, discriminatory, or bad faith handling of grievances. See, Barbera Hagans v. American Federation of State, County and Municipal Employees, Local 2743, 48 DCR 10967, Slip Op. No. 646 at. p.5, PERB Case Nos. 99-U-26 and 99-S-06 (2001) and Ulysses S. Goodine v. Fraternal Order of Police/Department of Corrections Labor Committee, 43 DCR 5162, Slip Op. No. 476, PERB Case No. 96-U-16 (1996).

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[7](...continued)
duty of fair representation as the Union's obligation to act "without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." ( See, R & R at p. 17 and 386 U.S. 171, 177 (1967)).

[8]The record reflects that Council 20 had been placed in an administrator ship several years earlier as a result of "impropriety of funds [and] staff" problems. ( R & R at p.10; Tr. At p.29). The record also reflects that the District of Columbia Child and Family Services Agency (CFSA) was "under a receivership when it undertook a realignment in 1998." ( R & R at p. 5).

In addition, we have held that a decision is not arbitrary just because a member disagrees with the Union's judgment. Barbera Hagans v. American Federation of State, County and Municipal Employees, Local 2743, 48 DCR 10967, Slip Op. No. 646 at. p.5, PERB Case Nos. 99-U-26 and 99-S-06 (2001).

According to the parties' collective bargaining agreement, the Union, Council 20 in this case, has exclusive authority to decide whether grievances go to arbitration. Furthermore, the Board has held that the duty of fair representation does not require that the Union take every grievance to arbitration. Freson v. Fraternal Order of Police, 31 DCR 2290, Slip Op. No. 74, PERB Case No. 83-U-09 (1984). Council 20 declined to pursue arbitration on the Grievants' behalf.

While the Board's precedent is clear that the Union is not required to pursue every grievance to arbitration, the Union is required to provide *some* level assistance in order to avoid being found in breach of the duty of fair representation. In Barbera Hagans v. American Federation of State, County and Municipal Employees, Local 2743[9], the Board found that the Union did not commit an unfair labor practice where it provided the Complainant with *some* level of assistance in handling her grievance and where it did not engage in conduct that was arbitrary, discriminatory or the product of bad faith. 48 DCR 10967, Slip Op. No. 646 at. p.5, PERB Case Nos. 99-U-26 and 99-S-06 (2001). As a result, the Board dismissed the Complaint after concluding that the record did not support a finding of a breach of the duty of fair representation. Id.

The Board finds that the facts in the present case are analogous to those in the Hagans v. AFSCME, Local 2743 case and, as a result, should be decided the same way. In the present case, the record demonstrates that the Unions provided the Grievants with some assistance by, *inter alia,*: (1) attempting to resolve the Grievants' concerns about the realignment with various management officials; (2) filing written grievances on their behalf; and (3) advancing those grievances through the various steps of the process pursuant to the parties' collective bargaining agreement. In the present case, as in Hagans, the Grievants hired their own private attorney to assist them when they felt that the grievances were not being processed properly. It is also apparent in this case, as in the

[9]In Barbera Hagans v. AFSCME, Local 2743, Ms. Hagans filed an Unfair Labor Practice (breach of the duty of fair representation) and Standards of Conduct Complaint against the Union concerning the handling of her grievance. 48 DCR 10967, Slip Op. No. 646, PERB Case Nos. 99-U-26 and 99-S-06 (2002). The underlying grievance concerned a dispute about her employee evaluation and other related issues. Id. In this case, Ms. Hagans hired a private attorney to assist her with her grievance, just as the Grievants did in the case presently before the Board. Id. The Board dismissed Ms Hagans' complaint after it found that the Unions *did* provide her with *some* level of assistance and did not act in an arbitrary, discriminatory or bad faith manner. Id.

Hagans, that the Grievants were dissatisfied with Council 20's decision not to pursue their grievances to arbitration. However, that fact, in and of itself, does not constitute a breach of the duty of fair representation where no evidence of arbitrariness, discrimination, or bad faith is shown. Barbera Hagans v. American Federation of State, County and Municipal Employees, Local 2743, 48 DCR 10967, Slip Op. No. 646 at. p.6, PERB Case Nos. 99-U-26 and 99-S-06 (2001). As noted earlier, the Hearing Examiner did not find any evidence of arbitrariness, discrimination, or bad faith in this case. We conclude that the Hearing Examiner's finding on this issue is supported by the record. Additionally, we believe that the Hearing Examiner used the correct legal standard when concluding that the Unions did not violate their duty of fair representation. Therefore, we adopt the Hearing Examiner's finding that the Unions did not commit an unfair labor practice or violate the duty to fairly represent its members pursuant to D.C. Code§1-617.04(b)(1), as alleged by the Grievants.

A review of the record also reveals that the Complainants' Exceptions amount to no more than a disagreement with the Hearing Examiner's findings of fact. This Board has held that mere disagreement with the Hearing Examiner's findings is not grounds for reversal of the Hearing Examiner's findings where the findings are fully supported by the record. American Federation of Government Employees 874 v. D. C. Department of Public Works, 38 DCR 6693, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-18 and 90-U-04 (1991). The Board has also rejected challenges to the Hearing Examiner's findings based on: (1) competing evidence; (2) the probative weight accorded evidence; and (3) credibility resolutions. American Federation of Government Employees, Local 2741 v. D. C. Department of Recreation Parks, 46 DCR 6502, Slip Op. No. 588, PERB Case No. 98-U-16 (1999). As noted earlier, we find that the Complainants' Exceptions merely disagree with the Hearing Examiner's Report and Recommendation. Furthermore, we note that the Complainant's Exceptions simply reiterate arguments that were previously made and rejected by the Hearing Examiner. In view of the above, we conclude that the Complainant's Exceptions lack merit.

Pursuant to D.C. Code §1-605.2(3)(2001 ed.) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and find them to be reasonable, persuasive and supported by the record. Therefore, for the reasons discussed above, we hereby adopt the Hearing Examiner's findings and conclusion that AFSCME, Local 2401 and AFSCME, Council 20 did *not* violate D.C. Code §1-617.04(b).

## ORDER

**IT IS HEREBY ORDERED THAT:**

1. Cynthia Allen-Lewis, et. al.'s Complaint is hereby dismissed.

2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

April 4, 2003