

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

| | | |
|---------------------------------|---|----------------------------|
| In the Matter of: |) | |
| |) | |
| |) | |
| Adjeley Osekre, |) | |
| |) | PERB Case Nos. 99-U-15 and |
| Complainant, |) | 99-S-04 |
| |) | |
| v. |) | Opinion No. 623 |
| |) | |
| American Federation of State, |) | |
| County and Municipal Employees, |) | |
| D.C. Council 20, Local 2401, |) | |
| |) | |
| Respondent. |) | |
| |) | |

DECISION AND ORDER

This matter involves a Motion for Reconsideration filed by a pro se Complainant. The Complainant, Adjeley Osekre, is a social worker employed by the District of Columbia Department of Human Services and is a member of a bargaining unit represented by the Respondent, American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2401 (AFSCME). The Complainant is requesting that the Board reverse the Executive Director's dismissal of her Complaint.

The Complainant alleges that on September 9, 1998, she requested representation from AFSCME in order to file a grievance concerning two AWOL incidents. AFSCME responded that same day to the Complainant and informed her that the matter could not be grieved due to the lapse of time. As a result of AFSCME's action, the Complainant requested that AFSCME refund the union dues which had been deducted from her pay.

On December 11, 1998, the Complainant filed a grievance on her own behalf. She asserts that from September 1, 1998, to February

**Decision and Order on
Motion for Reconsideration of Administrative Dismissal
PERB Case Nos. 99-U-15 & 99-S-04
Page 2**

2, 1999, she contacted Local 2401, D.C. Council 20 and the AFSCME International office in an effort to obtain AFSCME's representation on her behalf. (Comp. at 1.) The Complainant contends that AFSCME failed to: (1) represent her; (2) provide requested confirmation of her status as a member of AFSCME; and (3) provide information concerning the officers and activities of AFSCME.

Without alleging how the above conduct constitutes the specific statutory violations, the Complainant asserts that AFSCME's conduct violates D.C. Code Sec. 1-618.4 and 1-618.3(a) (1), (2), (4) and (5).

After reviewing the pleadings, the Executive Director determined that the Complaint allegations failed to state a cause of action with respect to the asserted unfair labor practice and standards of conduct violations. By letter dated August 19, 1999, the Complaint was administratively dismissed.^{1/} In his letter, the Executive Director stated that the Complaint failed to state a claim under the Comprehensive Merit Personnel Act (CMPA). Specifically, he determined that the Complainant failed to claim that any of her employee rights as prescribed under D.C. Code Sec. 1-618.6, had been violated in any manner by AFSCME. Instead, he noted that the Complainant's asserted violation of D.C. Code Sec. 1-618.4(b) (1), appeared to be based on the alleged breach by AFSCME of the Complainant's right to fair representation. However, the Complainant failed to assert or demonstrate that AFSCME's decision not to file a grievance (on her behalf) was arbitrary, discriminatory, or the product of bad faith on the part of the union. As a result, the Executive Director found that the Complaint did not contain allegations which were sufficient to support a cause of action under D.C. Code Sections 1-618.3 or 1-618.4. He informed the Complainant that in order to maintain a cause of action, a Complaint must allege the existence of some evidence that, if proven, would tie Respondent's actions to the asserted statutory violation. Therefore, the Executive Director concluded that since no statutory basis existed for the Board to

^{1/} The Executive Director's letter is attached as an appendix to this Decision and Order.

**Decision and Order on
Motion for Reconsideration of Administrative Dismissal
PERB Case Nos. 99-U-15 & 99-S-04
Page 3**

consider the Complainant's claim, her Complaint would be dismissed.

On October 6, 1999, the Complainant filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's administrative dismissal.^{2/} AFSCME did not file an Opposition to the Motion.

The Complainant's Motion raises no new contentions or arguments not considered and addressed by the Executive Director. Moreover, a review of the exhibits reveal that the Complainant was informed by AFSCME that it could not file a grievance on her behalf because it would be untimely. In her Motion, the Complainant does not dispute AFSCME's determination concerning the timeliness of her grievance.

In the instant case, the Complainant's grievance concerned two AWOL incidents which occurred in May 1998. However, the Complainant did not seek AFSCME's representation until September 1998. In light of the above, the Complainant's request for assistance exceeded the 15 day time limit in the collective bargaining agreement and was untimely. See Glendale Hoggard v. AFSCME, D.C. Council 20, Local 1959, AFL-CIO, 43 DCR 2655, Slip Op. 356, PERB Case No. 93-U-10 (1996).

Upon review of the pleadings in a light most favorable to the Complainant and taking all the allegations as true, we find for the reasons stated in the Executive Director's August 19th letter that the Complaint fails to state a cause of action against the respondent AFSCME.^{3/} Therefore, no basis exists for disturbing the Executive Director's administrative dismissal of the Complaint and we hereby affirm the Executive Director's dismissal of the

^{2/} The Complainant filed an Amended Motion on October 6, 1999 which cured filing deficiencies which were identified concerning her initial filing.

^{3/} When considering the pleadings of a pro se Complainant, we construe the claims liberally when determining whether a proper cause of action has been alleged. However, as the Executive Director indicated in his dismissal letter, the Complainant has failed to make any allegations that, if proven, would constitute a violation of the CMPA.

**Decision and Order on
Motion for Reconsideration of Administrative Dismissal
PERB Case Nos. 99-U-15 & 99-S-04
Page 4**

Complaint in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's request that we reverse the administrative dismissal of the Complaint is denied.
2. The Complaint is Dismissed.

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

February 23, 2000

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Nos. 99-U-15 and 99-S-04 was served, via (U.S. Mail), on the following parties on this 23rd day of February, 2000.

Ms. Adjeley Osekre
917 Perry Place, N.E.
Washington, D.C. 20017

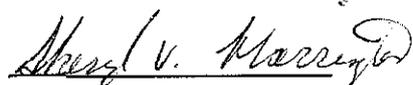
U.S. MAIL

Deborah Courtney, President
AFSCME, Local 2401
815 15th Street, N.W.
Suite 610
Washington, D.C. 20005

U.S. MAIL

George T. Johnson, Administrator
AFSCME, D.C. Council 20
815 15th Street, N.W.
Suite 610
Washington, D.C. 20005

U.S. MAIL


Sheryl V. Harrington
Sheryl Harrington
Secretary