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

In the Matter of:)	
)	
Lloyd Forrester,)	
)	
Complainant,)	
)	
v.)	PERB Case No. 98-U-01
)	Opinion No. 577
)	
American Federation of Government)	Motion for Reconsideration
Employees, Local 2725,)	
)	
and)	
)	
District of Columbia Housing)	
Authority (David Gilmore,)	
Receiver),)	
)	
Respondents.)	
)	

DECISION AND ORDER

On November 19, 1997, an Unfair Labor Practice Complaint was filed in the above-captioned case by counsel on behalf of Lloyd Forrester (Complainant). The Complainant was employed as an accountant by the District of Columbia Housing Authority (DCHA) until his separation in a reduction-in-force on September 30, 1996. He was a member of a collective bargaining unit represented by the American Federation of Government Employees (AFGE), Local 2725. During his tenure as a DCHA employee, the Complainant's compensation while detailed to another position became the subject of a grievance that was filed on behalf of the Complainant by AFGE. The grievance culminated in a favorable arbitration award rendered on October 30, 1996.

The Complainant alleged that AFGE, Local 2725 and AFGE

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National^{1/} have committed unfair labor practices in violation of the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code Sec. 1-618.4(b)(1), when they failed to represent or assist him in his efforts to effect implementation of the award. The Complainant further claims that DCHA has also violated D.C. Code Sec. 1-618.4(b)(1) by its failure to implement the award.^{2/} The Complainant contends that DCHA's failure to implement the award interfered with, coerced and restrained him in the exercise of his employee right "to have his grievances adjusted consistent with the terms of his Collective Bargaining Agreement." (D.C. Code Sec. 1-618.6; Comp. at 8.)

On December 19 and 22, 1997, DCHA and AFGE, respectively, filed Answers to the Complainant, denying the commission of any unfair labor practices, and requested that the matter be dismissed. Upon review of the pleadings, the Executive Director determined that the Complaint allegations failed to meet the jurisdictional time requirements under Board Rule 520.4 for filing an unfair labor practice complaint. By letter dated May 5, 1998, the Complaint was administratively dismissed as untimely filed. In pertinent part, the Executive Director's letter stated the following:

It is asserted in the Complaint that the District of Columbia Housing Authority (DCHA) and AFGE, Local 2725 (AFGE) have violated the Comprehensive Merit Personnel Act (CMPA). Specifically, it is alleged that DCHA violated D.C. Code Section 1-618.4 (b)(1), by failing to comply with an arbitrator's award. (Complaint at pages 4-5.) In addition, it is alleged in the Complaint that AFGE violated D.C. Code Section 1-618.4 (b)(1), "by interfering with, restraining, or coercing Mr. Forrester in the exercise of his rights to fair representation...". (Complaint at page 7.)

^{1/}We note that AFGE's statutory duty to the Complainant is at the local level, not the national, since that is where AFGE's certification as the exclusive representative has been accorded. Therefore, no cause of action can lie against the national office of AFGE for this alleged violation. See, Felicia A. Thomas v. AFGE, Local 1975, AFL-CIO, 45 DCR 6712, Slip Op. No. 554, PERB Case No. 98-S-04 (1998).

^{2/} We note that D.C. Code Sec. 1-618.4(b) delineates conduct by "[e]mployees, labor organizations, their agents or representatives" that constitutes unfair labor practices. Allegations that District agencies have violated subsections of this provision, i.e., Sec. 1-618.4(b)(1), fail to state a claim.

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After reviewing your submission, I have determined that the Complaint is untimely. Therefore, I am administratively dismissing Mr. Forrester's Complaint.

Board Rule 520.4 provides as follows:

Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred.
(Emphasis added.)

The Board has held that "[t]his deadline date is 120 days after the date Petitioner admits he actually became aware of the event giving rise to [the] complaint allegations...". Hoggard v. DCPS and AFSCME Council 20, Local 1959, Slip Op. No. 352, PERB Case No. 93-U-10 (1993). See, American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority, Slip Op. No. 509, PERB Case No.97-U-07 (1997). Also, the Board has determined that "the time for filing a complaint with the Board concerning [] alleged violations [which may provide for] a statutory cause of action, commence when the basis of those violations occurred. . . However, proof of the occurrence of an alleged statutory violation is not necessary to commence the time limit for initiating a cause of action before the Board. The validation, i.e. proof, of the alleged statutory violations is what proceedings before the Board are intended to determine." Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO, Slip Op. No. 414, PERB Case No. 95-S-01 (1995).

In the instant case, it is clear that the arbitrator's award was issued on October 30, 1996. (Complaint at page 4.) Therefore, the complainant was required to file the above-referenced Complaint within 120 days of the October 30, 1996 date. However, Mr. Forrester did not file his Complaint until October 19, 1997. Also, it is acknowledged in the Complaint that the filing in this case occurred more than eleven months after the arbitrator's award was issued. (Complaint at page 4.) In light of the above-noted facts, Mr. Forrester's filing clearly exceeds the 120 days noted in Board Rule 520.4. Therefore by this letter, I am dismissing the Complaint.

Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (D.C. 1991).

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If you disagree, you may formally request that the Board review my determination. However, pursuant to Board Rule 500.4, this decision shall become final unless a motion for reconsideration is filed within thirty (30) days of this decision.

On June 1, 1998, the Complainant filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's administrative dismissal. A Response to the Motion was filed by Respondent AFGE.

The Complainant takes issue with the Executive Director's determination that the alleged violation in the Complaint arose on October 30, 1996, i.e., the date the arbitration award was rendered. The Complainant asserts that the conduct constituting the alleged violation did not become clear until DCHA's refusal to comply with the award extended beyond the period it could "timely seek Board review of the Arbitrator's Opinion and Award." (Mot. at 6.) With respect to AFGE, the Complainant argues that his Complaint was filed within 120 days of his "July 30[, 1997] initiation of formal efforts to seek representation and assistance from Respondents AFGE [National], and [AFGE,] Local 2725, in resolving the Receiver's, and the D.C. Government's non-compliance with the arbitration award." (Mot. at 7.)

The Complainant's claim that Respondent AFGE "failed to provide adequate representation" first arose between December 3, 1996 and June 26, 1997. (Comp. at 5.) It was sometime during this period that the Complainant left the employ of DCHA. The Complainant asserts that the AFGE representative that had been assisting him became unavailable when she left DCHA. Moreover, AFGE failed to respond to subsequent regular inquiries made by the Complainant regarding the status of its efforts to obtain DCHA's compliance with the arbitration award. Id. Having failed to receive any response to his inquiries, the Complainant states that he retained an attorney who wrote to AFGE's local president on June 26, 1997.

We reverse the Executive Director's decision to dismiss the Complaint. We conclude that the time within which a complaint alleging a violation of the duty of fair representation by an exclusive bargaining representative can be timely filed commences when the employee knew or should have known the union would not provide the requested representation. We also conclude that a unit member can, and should, make efforts to obtain adequate representation by the union by seeking service from the local, and if necessary, national representatives. Once these efforts become futile, the 120 days for filing a complaint commences.

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The pleadings clearly indicate that a determination of when the Complainant knew or should have known of AFGE's alleged failure to satisfy its duty is a question of fact that can be resolved only after the development of a complete record.

The Complaint was filed on November 19, 1997.^{3/} During the 120-day period preceding the filing of the Complaint, efforts to obtain AFGE's assistance on behalf of the Complainant were ongoing.^{4/} A determination of how reasonable those continuing efforts were at that time or when AFGE manifested its intent with respect to its asserted duty cannot be made on these pleadings alone. As such, we cannot find that the November 19, 1997 filing of the Complaint clearly exceeded 120 days from the time AFGE's alleged violation of its statutory duty occurred.

With respect to the claims against DCHA, the Board has held that an alleged refusal to comply with an undisputed arbitrator's award or settlement agreement gives rise to a violation of the duty to bargain under the CMPA, as codified under D.C. Code § 1-618.4(a)(5). American Federation of Government Employees v. D.C. Water and Sewer Authority, Slip Op. No. 497, PERB Case No. 96-U-23 (1996). DCHA's obligation to bargain in good faith lies with the certified representative of its employees, i.e., AFGE. The Board has held that the right to demand that the District, its agents and representative bargain in good faith belongs to the exclusive bargaining representative. Georgia Mae Green v. D.C. Dept. of Corrections, 37 DCR 8086, Slip Op. No. 89-U-10 (1990). See, also, Taylor v. University of the District of Columbia/NEA, 41 DCR 6687, Slip Op. No. 324 at n. 2, PERB Case No. 90-U-24 (1994). Therefore, the Complainant lacks standing to bring a cause of action alleging a statutory violation of the CMPA that secures this right, i.e., to bargain in good faith.

In view of the foregoing, the Complainant's Motion that we reverse the Executive Director's dismissal of the Complaint as untimely is granted with respect to the allegations against AFGE.

^{3/} We note that the Executive Director's letter administratively dismissing the Complaint inadvertently noted the filing date as October 19, 1997. However, this does not change the outcome of his determination.

^{4/} The Complainant states that "[o]n July 30, 1997, Mr. Forrester's attorney contacted Mr. Nate Nelson, National Representative, AFGE, requesting that the Union enforce the October 30, 1996, Award, and t[ook] issue with the failure of Local 2725, AFGE to respond to the good faith efforts of Mr. Forrester." (Mot. at 7.)

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For the reasons discussed, the Complaint allegations against DCHA are dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's request that the Executive Director's dismissal of the Complaint as untimely with respect to claims against the American Federation of Government Employees, Local 2725 be reversed, is granted.
2. The Complaint allegations against the District of Columbia Housing Authority are dismissed.

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

December 21, 1998

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 98-U-01 was sent via mail (U.S. Mail) to the following parties on the 21st day of December, 1998.

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