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

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| In the Matter of: | |
| Jeffrey E. Brown, | |
| Complainant, | PERB Case No. 12-U-21 |
| v. | Opinion No. 1291 |
| Washington Teachers' Union, AFT Local No. 6, AFL-CIO | |
| Respondents. | |

## DECISION AND ORDER

### I. Statement of the Case

On March 30, 2012, Jeffrey E. Brown ("Complainant") filed an unfair labor practice complaint ("Complaint") against the Washington Teachers' Union ("Union" or "Respondent"). The Complaint alleges violations of D.C. Code § 1-617.04[1] of the Comprehensive Merit Personnel Act ("CMPA") as well as a breach of contract. (Complaint at 1).

In its Answer ("Answer"), the Union denies any violation of the CMPA and requests that the Board dismiss the Complaint. (Answer at p. 4).

The Complaint and Respondent's Answer are before the Board for disposition.

### II. Discussion

The Complainant states that he is a member in good standing with the Union. Specific dates are not provided in the Complaint, but Complainant asserts that in April of 2011 he apprised the Union of his desire to file grievances with the District of Columbia Public Schools concerning two issues: (1) an allegation that Mr. Brown was employed at the wrong grade and

[1] Complainant actually refers to the previously codified D.C. Code § 1-618.4.

pay status; and (2) a request for reimbursement for a (training) class. (Complaint at p. 1). The Complainant contends that he was informed that the Union would make inquiries regarding the grievances. (Complaint at p. 1). The Complainant claims that from April of 2011, to January 31, 2012, he has continued his communication with the Union, asking for the status of his grievances, but has not received a satisfactory response. (Complaint at pgs. 1-2).

The Board has held that a labor organization can violate D.C. Code §1-617.04(b)(1) or (2) (2001 ed.) [2] by failing to fairly represent a bargaining unit employee. In addition, the Board has previously found that an agency's violation of the duty to bargain in good faith under D.C. Code § 1-617.04(a)(5), results in interference of employee rights and also constitutes a violation of D.C. Code § 1-617.04(a)(1). *District of Columbia Water and Sewer Authority v. American Federation of Government Employees, Local 872*, ___ DCR ___, Slip Opinion No. 949, PERB Case No. 05-U-10 (2009). Similarly, the Board has found that a Union's failure to process grievances is a violation of the duty to bargain in good faith with the Complainant in violation of D.C. Code § 1-617.04(b)(3) and results in interference of employee rights under D.C. Code § 1-617.04(b)(1). *Id.* Moreover, the NLRB has found in *Baumgartner Masonry, LLC and Bricklayers & Allied Craftworkers District Council of Wisconsin*, 329 NLRB No. 4 (1999), that refusal to process grievances constitutes a violation of § 8(a)(1) and (5) of the NLRA.

However, in the instant matter, the Board finds that Mr. Brown has failed to provide any allegations that, if proven, would constitute a statutory violation by the Union. While a union's refusal to process a grievance can be found to violate the CMPA, a union does not breach its duty of fair representation unless it has been found to have engaged in conduct or acts that are either arbitrary, discriminatory or done in bad faith. *See, Owens v. AFSCME, Local 2095 and National Union of Hospital and Healthcare Employees, District 1199*, _DCR_, Slip Op. No. 750, PERB Case No. 02-U-27 (2004); *and see Vaca v. Sipes*, 386 U.S. 171 (1967).

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[2] D.C. Code § 1-617(b) provides that:

> Employees, labor organizations, their agents, or representatives are prohibited from:
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> (1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter;
> (2) Causing or attempting to cause the District to discriminate against an employee in violation of § 1-617.06;
> (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;
> (4) Engaging in a strike, or any other form of unauthorized work stoppage or slowdown, or in the case of a labor organization, its agents, or representatives condoning any such activity by failing to take affirmative action to prevent or stop it; and
> (5) Engaging in a strike or refusal to handle goods or perform services, or threatening, coercing or restraining any person with the object of forcing or requiring any person to cease, delay, or stop doing business with any other person or to force or to require an employer to recognize for recognition purposes a labor organization not recognized pursuant to the procedures set forth in § 1-617.06.

In his submission, Mr. Brown does not claim that any of his employee rights as prescribed under D.C. Code §1-617.06(a) and (b) (2001 ed.)[3], have been violated in any manner by the Union. Also, the Board has found that "[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 or the bargaining unit's exclusive bargaining representative." *Enoch Williams v. American Federation of State, County and Municipal Employees, District Council 20, Local 2290*, 43 DCR 5598, Slip Op. No. 454 at p. 2, PERB Case No. 95-U-28 (1995). Furthermore, the Board has held that "judgmental acts of discretion in the handling of a grievance do not constitute the requisite arbitrary, discriminatory or bad faith element [needed to find a violation of the CMPA]." *Brenda 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). Specifically, the Board has determined "that the fact that there may have been a better approach to handling the Complainant's grievance or that the Complainant disagrees with the approach taken by [the union] does not render the [union's] actions or omissions a breach of the standard for its duty of fair representation." *Enoch Williams v. American Federation of State. County and Municipal Employees, District Council 20, Local 2290*, supra.

While a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, it proven, would establish the alleged statutory violation. *See*, *Virginia*

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[3] D.C. Code § 1-617.06 - Employee rights, provides:

> (a) All employees shall have the right:
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> (1) To organize a labor organization free from interference, restraint, or coercion;
> (2) To form, join, or assist any labor organization or to refrain from such activity;
> (3) To bargain collectively through representatives of their own choosing as provided in this subchapter; and
> (4) To refrain from any or all such activities under paragraphs (1), (2), and (3) of this subsection, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in § 1-617.11.
>
> (b) Notwithstanding any other provision in this chapter, an individual employee may present a grievance at any time to his or her employer without the intervention of a labor organization: Provided, however, that the exclusive representative is afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the complaint. Any employee or employees who utilize this avenue of presenting personal complaints to the employer may not do so under the name, or by representation, of a labor organization. Adjustments of grievances must be consistent with the terms of the applicable collective bargaining agreement. Where the employee is not represented by the union with exclusive recognition for the unit, no adjustment of a grievance shall be considered as a precedent or as relevant either to the interpretation of the collective bargaining agreement or to the adjustment of other grievances.

*Dade v. National Association of Government Employees, Services Employees International Union. Local R3-06*, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); *and Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 DCR 6560, Slip Op. Nos. 93-S-02 and 93-U-25 (1994). However, in the instant case, Mr. Brown's Complaint did not contain allegations which were sufficient to support a cause of action. Instead, the Complainant merely indicates his dissatisfaction with the progress, or lack thereof, with the Union's handling of his grievances.

THEREFORE, the Board finds that Mr. Brown's allegations against the Union do not constitute an unfair labor practice, and the Complaint is dismissed.

## ORDER

**IT IS HEREBY ORDERED THAT:**

1. The Complainant's Unfair Labor Practice Complaint is dismissed.

2. 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 30, 2012

## CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order and Notice in PERB Case No. 12-U-21, Slip Opinion No. 1291 is being transmitted *via* U.S. Mail to the following parties on this the 29th day of June, 2012.

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