

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 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:)	
)	
Alice Valentine,)	
)	
Complainant,)	PERB Case Nos. 00-U-21 and 00-S-02
)	
v.)	Opinion No. 648
)	
Local 2095, 1199 Metropolitan District,)	MOTION FOR RECONSIDERATION
D.C. National Union of Hospital and)	
Health Care Employees; American)	
Federation of State, County and Municipal)	
Employees (AFSCME), Local 2091,)	
)	
Respondents.)	

DECISION AND ORDER

This matter involves a Motion for Reconsideration filed by the Complainant. The Complainant is requesting that the Board reverse the Executive Director's dismissal of the Complaint.

The Complainant alleges that Local 2095, 1199 Metropolitan District, D.C. National Union of Hospital and Health Care Employees ("NUHHCE" or "union"), American Federation of State, County, and Municipal Employees (AFSCME) and 1199 Metropolitan District D.C., NUHHCE, AFSCME ("NUHHCE" or "Respondents"), violated the Comprehensive Merit Personnel Act (CMPA). (Compl. at p. 4). Specifically, the Complainant claims that the union's failure to obtain an expedited arbitration hearing date on her behalf, constitutes an unfair labor practice under D.C. Code Sec 1-618.4(b)(3). (Compl. at p. 2). In addition, she contends that the: (1) union has failed to fairly and properly represent her; and (2) union's attorney failed to provide competent representation. (Compl. at pgs. 3, 5-6.).

After reviewing the pleadings, the Executive Director determined that the Complaint allegations failed to state a basis for a claim under the CMPA. Specifically, the Executive Director

Decision and Oder

PERB Case Nos. 00-U-21 and 00-S-02

Page 2

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 the union. Instead, the Complainant's asserted violation of D.C. Code Sec. 1-618.4(b), is based on her belief that the: (1) the union failed to obtain an expedited arbitration date on her behalf; (2) union's attorney was not familiar with her case; and (3) union's attorney failed to request back pay. The Executive Director determined that the Complainant failed to assert or demonstrate that the handling of her grievance 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 Secs. 1-618.3 or 1-618.4. In view of the above, the Executive Director concluded that no statutory basis existed for the Board to consider the Complainant's claim. Therefore, the Consolidated Complaint was dismissed.

The Complainant filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's administrative dismissal. NUHHCE filed an Opposition to the Motion. The Complainant's Motion was previously considered by the Board in January 2001. In Slip Op. No. 643 we noted that we were concerned by the length of time that it had taken to schedule the Complainant's arbitration hearing. However, we decided not to rule on the Complainant's Motion. Instead, we ordered that the case be held in abeyance for thirty days. In addition, we ordered that the Respondents submit a statement concerning the status of the union's handling of the grievance, including information regarding why it had taken so long to schedule and hold an arbitration hearing in this case. Also, we agreed to consider this matter anew after the expiration of the thirty day period.

The Complainant's Motion is before the Board for Disposition because the thirty day period has expired.

After reviewing the pleadings, we concur with the Executive Director's determination that the Complaint allegations failed to state a basis for a claim under the CMPA. Therefore, for the reasons discussed below, we are dismissing the Consolidated Unfair Labor Practice and Standards of Conduct Complaint.

"Under D.C. Code Section 1-618.3, a member of the bargaining unit is entitled to 'fair and equal treatment under the governing rules of the [labor] organization'. As [the] Board has observed: '[t]he union as the statutory representative of the employee is subject always to complete good faith and honesty of purpose in the exercise of its discretion regarding the handling of union members' interest'." Stanley Roberts v. American Federation of Government Employees, Local 2725, 36 DCR 1590, Slip Op. No. 203 at p. 2, PERB Case No. 88-S-01 (1989). The Board has determined that "[t]he applicable standard in cases [like this], is not the competence of the union, but rather whether its representation was in good faith and its actions motivated by honesty of purpose. . . [Furthermore,] 'in order to breach this duty of fair representation, a union's conduct must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair'." *Id.*

In the present case, the Complainant failed to assert or demonstrate that NUHHCE's conduct in handling her grievance, was arbitrary, discriminatory, or the product of bad faith. Instead, the Complainant claims that NUHHCE failed to obtain an expedited arbitration hearing date on her behalf. However, the Complainant asserts no basis for attributing an unlawful motive to the pace or manner by which the union handled her grievance. In addition, the Complainant failed to provide any allegations or assertions that, if proven, would establish a statutory violation. To the contrary,

Decision and Oder

PERB Case Nos. 00-U-21 and 00-S-02

Page 3

her submission indicates that the union has processed her grievance through to arbitration. In short, the Complainant has neither sufficiently pled bad faith or discrimination, nor raised circumstances that would give rise to such an inference.

In addition, the Complainant asserts that she disagrees with the union's attorney decision not to seek back pay on her behalf, for the period covering portions of the 1998 calendar year. (Compl. at p. 5). In essence, the Complainant disagrees with the attorney's strategy. 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, 43 DCR 5598, Slip Op. No. 454 at p.2, PERB Case No. 95-U-28 (1995).

In view of the above, the Complainant's disagreement with the approach taken by the union's attorney, does not constitute a breach of the union's duty of fair representation. In addition, the Complainant asserts no basis for attributing an unlawful motive to the attorney's handling of her grievance. Therefore, the Complainant has failed to provide any allegation(s) that, if proven, would establish a statutory violation.

The Board has determined that "[t]o maintain a cause of action, [a] Complainant must [allege] the existence of some evidence that, if proven, would tie the Respondent's actions to the asserted violative basis for it. Without the existence of such evidence, Respondent's actions [can not] be found to constitute the asserted unfair labor practice. Therefore, a complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action." Goodine v. FOP/DOC Labor Committee, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996). For the reasons stated above, the Consolidated Complaint does not contain allegations which are sufficient to support a cause of action.

Upon review of the pleadings in a light most favorable to the Complainant and taking all the allegations as true, we find that the Consolidated Complaint fails to state a cause of action against the Respondents.^{1/} As a result, no basis exists for disturbing the Executive Director's administrative dismissal of the Consolidated Complaint. Therefore, we affirm the Executive Director's dismissal of the Complaint in its entirety.

^{1/} 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 allegation that, if proven, would constitute a violation of the CMPA.

Decision and Oder
PERB Case Nos. 00-U-21 and 00-S-02
Page 4

ORDER

IT IS HEREBY ORDERED THAT:

1. The Consolidated Unfair Labor Practice and Standards of Conduct Complaint is dismissed.
2. The Complainant's motion for reconsideration is dismissed.

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

May 4, 2001

CERTIFICATE OF SERVICE

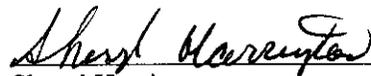
This is to certify that the attached Certification in PERB Case Nos. 00-U-21 and 00-S-02 was transmitted via U.S. Mail to the following parties on this 4th day of May 2001.

Stephen W. Godoff, Esq.
14 W. Madison Street
Baltimore, MD 21201

U.S. Mail

Alice Valentine
5044 Central Avenue, S.E.
Washington, D.C. 20019

U.S. Mail



Sheryl Harrington
Secretary