Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Dr. Judy A. Christian,	)	
Complainant,	)	PERB Case No. 02-S-05
v.	)	Opinion No. 700
University of the District of Columbia Faculty Association/ National Education Association,	)	Motion for Reconsideration
Respondent.	)	

DECISION AND ORDER

I. Statement of the Case

This matter involves a Motion for Reconsideration filed by Dr. Judy A. Christian ("Complainant" or "Dr. Christian"). The Complainant is requesting that the Board reverse the Executive Director's dismissal of her Complaint.

The Complainant filed a Standards of Conduct Complaint against the University of the District of Columbia Faculty Association/National Education Association ("UDCFA", "Union" or "Respondent"). It is asserted in the Complaint that UDCFA violated the Comprehensive Merit Personnel Act. Specifically, it is alleged that UDCFA failed to: (1) provide the Complainant with adequate representation; (2) advise the Complainant that the arbitrator's award could be appealed; and (3) advise the Complainant that she could file a standards of conduct complaint against UDCFA. (Compl. at p. 3). In addition, the Complaint asserts that UDCFA "concealed and withheld [from the Complainant] the regulations and deadlines for filing both an Arbitration Review Request and a Union Grievance with PERB." (Compl. at p. 3). Finally, it is alleged in the Complaint that "the union and the University of the District of Columbia conspired to defeat the [Complainant's] Arbitration Review Request with PERB." (Compl. at p. 4).

After reviewing the pleadings, the Executive Director determined that the Complaint: (1) was untimely; and (2) failed to state a basis for a claim under the Comprehensive Merit Personnel Act (CMPA). As a result, the Executive Director dismissed the Complaint.

The Complainant filed a Motion for Reconsideration requesting that the Board reverse the Executive Director's decision. The Respondent filed a response to the present Motion. The Motion for Reconsideration is now before the Board for disposition.

II. Discussion

We believe that the arguments raised in the Complainant's Motion were previously considered and addressed by the Executive Director. Therefore, the Board must determine whether the Executive Director erred in dismissing the Complaint.

Board Rule 544.4 provides as follows:

> A complaint alleging a violation under this section **shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) 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, 43 DCR 1297, Slip Op. No. 352 at p. 3, PERB Case No. 93-U-10 (1993). [1] 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, commerce 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 violation is what proceedings before the Board are intended to determine." Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

In the present case, the Complaint asserts that UDCFA failed to provide fair representation to the Complainant during a December 10, 2000, arbitration proceeding in which the Complainant was grieving her bumping rights.[2] The Complainant claims that as a result of UDCFA's action, the arbitrator issued an award on January 19, 2001 denying her grievance. Furthermore, the Complaint

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[1]See also, American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority, 46 DCR 119, Slip Op. No. 509, PERB Case No. 97-U-07 (1997).

[2]The underlying grievance arose out of a reduction-in-force (RIF) conducted by the University of the District of Columbia. As a result of the RIF, the Complainant was terminated. Subsequently, the Complainant filed a grievance which ultimately went to arbitration. The arbitrator identified the issue as follows: "was the date of employment (EOD) the agency applied for the purpose of determining the grievant's Reduction In Force (RIF) 'bumping rights' under provisions of the [collective bargaining agreement] the proper date?"

alleges that UDCFA failed to: (1) file an arbitration review request; (2) advise the Complainant that the arbitrator's award could be appealed; and (3) advise the Complainant that she could file a standards of conduct complaint against UDCFA. (Compl. at p. 3).

After reviewing the pleadings, the Executive Director determined that the events giving rise to the Complaint allegations took place on or about January 19, 2001 (date of the arbitrator's award). Therefore, the Executive Director concluded that Dr. Christian was required to file her Complaint (against UDCFA) within one hundred twenty (120) days of the January 19, 2001 date. However, the present Complaint was not filed until March 10, 2002. As a result, the Executive Director found that the filing in this case occurred more than one year after the Complainant became aware of the alleged violations. In light of the above, the Executive Director concluded that the Complainant's filing exceeded the 120 day requirement in Board Rule 544.4. Therefore, he determined that the Complaint was not timely and the Complaint was dismissed.[3]

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. See, Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A. 2d 641 (D.C. 1991). As a result, the Board can not extend the time for filing a complaint. After reviewing the present Motion, we note that the Complainant does not dispute the Executive Director's determination concerning the timeliness of her claims. Instead, the Complainant contends that UDCFA "withheld and manipulated information. . . concerning filing [deadlines] . . [Also, the Complainant asserts that UDCFA's actions] caused the [Complainant] to miss the 120 day filing deadline." (Motion at p. 1). In view of the above, we believe that the Complainant's claims amount to a disagreement with the Executive Director's findings. In addition, we find that the Complainant's arguments are just a repetition of the allegations contained in the Complaint and are not a sufficient basis for reversing the Executive Director's decision. Furthermore, after reviewing the pleadings, we find that the Executive Director's determination was reasonable and supported by Board precedent. As a result, we concur with the Executive Director's finding that the Complainant's claims regarding UDCFA's alleged violations of the CMPA, are untimely.

Notwithstanding the untimeliness of the allegations concerning UDCFA, the Executive Director found that the Complaint also failed to state a statutory cause of action with regard to UDFA's alleged failure to provide fair representation to Dr. Christian when she was terminated due to a reduction-in-force (RIF).

D.C. Code §1-617.04(b)(1) (2001 ed.) prohibits employees, labor organizations, their agents or representatives from "[i]nterfering with, restraining or coercing any employees or the District in the exercise of rights guaranteed by this subchapter ...". "Employee rights under this subchapter are

[3]The Executive Director informed the Complainant's counsel of his decision in a letter dated January 10, 2003.

prescribed under D.C. Code. [1-617.06(a) and (b) (2001 ed.)] and consist of the following: (1) [t]o organize a labor organization free from interference, restraint or coercion; (2) [t]o form, join or assist any labor organization; (3) [t]o bargain collectively through a representative of their own choosing. . .; (4) [to] present a grievance at any time to his or her employer without the intervention of a labor organization [.]" American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks, 45 DCR 5078, Slip Op. No. 553 at p.2, PERB Case No. 98-U-03 (1998). "[The Board has] ruled, . . . that D.C. Code §1-617.04(b)(1) (2001 ed.) also encompasses the right of employees to be fairly represented by the labor organization that has been certified as the exclusive representative for the collective-bargaining unit of which the employee is a part . . . Specifically, the right to bargain collectively through a designated representative includes the duty of labor organizations to represent [] the interest of all employees in the unit without discrimination and without regard to membership in the labor organization . . .". Glendale Hoggard v. American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO, 43 DCR 2655, Slip Op. No. 356 at pgs. 2-3, PERB Case No. 93-U-10 (1996).

In her submission, Dr. Christian does not claim that any of her employee rights as prescribed under D.C. Code §1-617.06(a) and (b) (2001 ed.), have been violated in any manner by UDCFA. Instead, the asserted violation of the CMPA, appears to be based on the alleged breach by UDCFA of Dr. Christian's right to fair representation. Under certain circumstances, a labor organization can violate D.C. Code §1-617.04(b)(1) or (2) (2001 ed.) by failing to fairly represent a bargaining unit employee. However, for the reasons discussed below, we find that the Complainant failed to make any allegation that, if proven, would constitute a statutory violation by UDCFA.

"Under D.C. Code Section [1-617.03 (2001 ed.)], 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: '[the 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 "the 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.

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.

In the present case, the Complainant fails to assert or demonstrate that UDCFA's conduct in handling her grievance, was arbitrary, discriminatory, or the product of bad faith. Instead, the Complainant asserts that "throughout the UDC court-ordered remedial bumping rights process, the UDCFA/NEA (i.e. union) and it's agents maliciously and repeatedly allowed UDC to repeatedly deny [the] grievant's evidence and witnesses, which [would have] affirm[ed] the grievant's . . . full faculty bumping rights in early childhood education and elementary education." (Compl. at p.5). In addition, the Complainant claims that "on specific occasions in the court-ordered remedial bumping rights process, Brenda Brown, President of the UDCFA/NEA (i.e. union) encouraged ..., Dr. Christian to accept a resolution/disposition of her ... grievance in a manner, which had nothing to do with the merits of [] Dr. Christian's bumping rights ... grievance." (Compl. at p. 5). Furthermore, Dr. Christian contends that if she had accepted Ms. Brown's recommendation, it would have "force[d] [her] to accept diminished compensation for her wrongful discharge and would have forced her to relinquish her rights and entitlements." (Compl. at p.5). In view of the above, it appears that the Complainant disagrees with Ms. Brown's (UDCFA's President) recommendation that she (Dr. Christian) accept a settlement. However, the Complainant asserts no basis for attributing an unlawful motive to Ms. Brown's recommendation or to the manner by which the Union handled the Complainant's grievance. In addition, the Complainant fails to provide any allegations or assertions that, if proven, would establish a statutory violation. In short, the Complainant has neither sufficiently pled bad faith or discrimination, nor raised circumstances that would give rise to such an inference.

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 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).

Furthermore, 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 [statutory violation]. Without the existence of such evidence, Respondent's actions [can not] be found to constitute the asserted [statutory violation]. 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 Executive Director determined that Dr.

Christian's Complaint did not contain allegations which were sufficient to support a cause of action. As a result, the Complaint was dismissed.

In her Motion, the Complainant asserts that the Executive Director erred in finding that the Complainant failed to state a cause of action under the CMPA. As a result, the Complainant requests that the Board reverse the Executive Director's decision. However, the Complainant's Motion does not raise any issues or arguments not considered and addressed by the Executive Director. As a result, we believe that the Complainant's claims amount to nothing more than a disagreement with the Executive Director's determination. Moreover, we find that a mere disagreement with the Executive Director's decision is not a sufficient basis for reversing the decision. Furthermore, the Complainant does not identify any law or legal precedent which the Executive Director's decision contravenes. Instead, the Complainant contends she is being denied an opportunity to have her case heard. (Motion at p. 2). However, we find that this argument is just a repetition of the allegation contained in the Complaint and is not a sufficient basis for reversing the Executive Director's decision.

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 above, that the Complaint fails to state a cause of action under the CMPA. Therefore, no basis exists for disturbing the Executive Director's administrative dismissal of the Complaint. As a result, we affirm the Executive Director's dismissal of the Complaint.

In light of the above, we find that the Executive Director's decision was reasonable and supported by Board precedent. Therefore, we deny the Complainant's Motion for Reconsideration.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's Motion for Reconsideration is denied.

2. The Complaint is dismissed in its entirety.

3. Pursuant to Board Rule 559.1, this order shall be final upon issuance.

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

June11, 2003