

Notice: This decision may be finally revised before it is published in the District of Columbia Register. Parties should promptly notify the office of any formal errors to 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:)
)

Michael Tipps,)
)

Complainant,)
)

v.)
)

Fraternal Order of Police/
Department of Corrections)
Labor Committee,)
)

Respondent.)
)
)
)

PERB Case Nos. 94-U-19
Opinion No. 405

DECISION AND ORDER

On July 20, 1994, an Unfair Labor Practice Complaint was filed in the above-captioned case on behalf of the Complainant Michael Tipps. Complainant was formerly employed by the District of Columbia Department of Corrections (DOC) and was a member of the collective bargaining unit exclusively represented by the Respondent, the Fraternal Order of Police\DOC Labor Committee (FOP). Complainant had filed a grievance concerning his termination from employment as a correctional officer. The Complaint charges that the Respondent FOP violated the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(b)(1), by failing to pursue his grievance to arbitration. Complainant also alleges that by the same conduct the FOP has violated D.C. Code § 1-618.3(a)(1) (Standards of conduct for labor organizations).^{1/}

By Answer filed on August 4, 1994, the FOP denied that it had engaged in unfair labor practices and moved to dismiss the Complaint. No response to FOP's Motion was filed by Complainant.

The Board, after reviewing the pleadings in the light most

^{1/} The Complainant initially named the Department of Corrections (DOC) as an additional Respondent; however, the Complaint failed to allege any violation by DOC. The Complainant subsequently amended the Complaint, removing DOC as a named Respondent.

favorable to Complainant, and considering Respondent's Motion, hereby grants FOP's Motion to Dismiss the Complaint.

Turning first to the claim that FOP violated the standards of conduct for labor organizations, the Complaint is devoid of any contention that FOP failed to adopt, subscribe or comply with any of the prescribed standards of conduct. We have held that a breach by an exclusive representative of the duty to fairly represent its employees --which would constitute an unfair labor practice under D.C. Code § 1-618.4(b)(1)-- does not concomitantly constitute a breach of the standards of conduct for labor organizations under D.C. Code § 1-618.3. Charles Bagenstose v. Washington Teachers' Union, Local 6, AFL-CIO, ___ DCR ___, Slip Op. No. 355, PERB Case No. 90-S-01 and 90-U-02 (1993). As there is no basis for this cause of action, the alleged violation must be dismissed. See, Gregory Miller v. American Federation Of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works, ___ DCR ___, Slip Op. No. 371, PERB Case No. 93-U-02 and 93-U-25 (1994).

With respect to the remainder of the Complaint, Complainant alleges that FOP has breached its duty to fairly represent the Complainant through shortcomings in the investigation of Complainant's grievance. The acts or conduct that are alleged, however, even if proven, would not support a conclusion that FOP committed the alleged unfair labor practice.^{2/}

Without expressing any opinion with respect to whether or not FOP's approach in handling the Complainant's grievance is the best possible way to proceed, such matters are properly within the FOP's discretion. There is no contention that the FOP treated Complainant any differently than any other bargaining unit member.^{3/} Therefore, we find Complainant's contention --that

^{2/} Complainant claims that FOP did not conduct a proper investigation of his grievance by failing to interview witnesses -including the Complainant and the co-worker involved in the underlying incident. The Complainant also makes the nonspecific assertion that "the Labor Committee did not have objective facts" upon which to base its decision not to arbitrate Complainant's grievance. (Comp. at 4.) A review of the Exhibits filed with FOP's Response, however, include the record considered by FOP in reaching its decision not to arbitrate Complainant's grievance. Among the documents included were statements provided by the Complainant, the co-worker and other employees and supervisors possessing knowledge of the grieved incident. (Resp. Exh. 1.)

^{3/} Complainant argues that FOP's failure to invoke arbitration denied Complainant the opportunity to pursue a
(continued...)

alleged defects in the FOP's review process rendered that process and FOP's resulting decision not to arbitrate Complainant's grievance a breach of FOP's duty to fairly represent Complainant-- fails to state an unfair labor practice under the CMPA.

We have held that "the fact that there may have been a better procedure by which [the union's] decision could have been made did not render the process used by [the union] arbitrary or motivated by dishonesty or animus." Charles Bagenstose v. Washington Teachers' Union, Local 6, AFL-CIO, Slip Op. No. 355 at 4. A less than optimal approach by unions representing employees' interest cannot be viewed as discriminatory, conducted in bad faith or otherwise a "breach [of] the duty standard for fair representation" in violation of D.C. Code § 1-618.4(b)(1). Id.

Based upon these pleadings, the Complaint is dismissed for failure to state acts or conduct that would constitute the alleged unfair labor practice or cause of action within the Board's jurisdiction under the CMPA.

ORDER

IT IS HEREBY ORDERED THAT:

The Motion to Dismiss the Complaint is granted; the Complaint is dismissed.

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

October 13, 1994

³(...continued)
meritorious grievance and is thus a basis for the alleged unfair labor practice. Complainant acknowledges, however, that only FOP has the authority to arbitrate a grievance on behalf of employees under the parties' contractual grievance arbitration procedures. Therefore, the decision to do so belongs to FOP, notwithstanding the grievant's, i.e., the Complainant's, assessment of the merits of the grievance.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 94-U-19 was faxed and/or mailed (U.S. Mail) to the following parties on the 13th day of October, 1994.

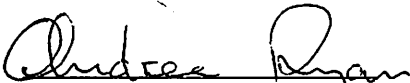
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