

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**

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| In the Matter of: |) | |
| |) | |
| Sylvia Cephas, |) | |
| |) | |
| Complainant, |) | CORRECTED COPY |
| |) | |
| v. |) | PERB Case No. 01-U-17 |
| |) | Opinion No. 676 |
| |) | |
| Fraternal Order of Police/Department of |) | |
| Corrections Labor Committee, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |

DECISION AND ORDER

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

The Complainant filed an Unfair Labor Practice Complaint and a Motion for Preliminary Relief. The Complainant alleges that the Fraternal Order of Police/Department of Corrections Labor Committee ("FOP" or "union") violated D.C. Code §1-617.04(a)(1) and (4) and D.C. Code §1-617.04(b)(1) and (2) (2001).¹ Specifically, the Complainant alleges that: (a) FOP has not engaged

¹Prior codification at D.C. Code §1-618.4(a)(1) and (4) (1981) and D.C. Code §1-618.4(b)(1) and (2) (1981).

in good faith bargaining on behalf of the entire membership;^{2/} (b) FOP has neglected union members and provided incompetent representation; (c) an independent investigation has revealed that FOP has used union funds to pay personal expenses; (d) FOP has made false statements; (e) shop stewards were selected without holding an election; (f) the election committee elected individuals of their choice; (g) FOP has failed to provide her with adequate representation when she has had problems with management; and (h) FOP's shop stewards are not providing adequate representation to rank-and-file members because they are receiving benefits from management. In addition, the Complainant asserts that Warden Patricia Britton has abused her authority.

After reviewing the pleadings, the Executive Director determined that the Complaint allegations failed to state a basis for a claim under the Comprehensive Merit Personnel Act (CMPA). Specifically, the Executive Director concluded that the Complainant failed to claim that any of her employee rights as prescribed under D.C. Code §1-617.06 (2001),³ had been violated in any manner by FOP. Instead, the Complainant's asserted violation of D.C. Code §1-617.04(b) (2001),⁴ appeared to be based on the alleged breach by FOP of the Complainant's right to fair representation. However, the Executive Director determined that the Complainant failed to assert or demonstrate that the handling of her grievance(s) was arbitrary, discriminatory, or the product of bad faith on the part of the union. Finally, the Complainant alleged that FOP violated D.C. Code §1-617.04 (a) (1) and (4) (2001).⁵ The Executive Director informed the Complainant that this subsection of the CMPA concerns the conduct of District agencies and not labor organizations. In addition, the Executive Director found that the Complainant lacked standing to assert some of her other allegations. In view of the above, the Executive Director determined that the Complaint did not contain allegations which were sufficient to support a cause of action under the CMPA.

The Complainant filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's decision. The Respondent did not file a response to the present Motion. The Motion for Reconsideration is now before the Board for disposition.

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.

²In support of this allegation, the Complainant asserts that officers have not received an increase in compensation (i.e. pay raise, cost of living increase, or bonus) in over six years. In addition, she claims that overtime was given to selected officers five or seven days a week.

³Prior codification at D.C. Code §1-618.6 (1981).

⁴Prior codification at D.C. Code §1-618.4(b) (1981).

⁵Prior codification at D.C. Code §1-618.4 (a)(1) and (4) (1981).

The Complainant asserts that FOP has not engaged in good faith bargaining on behalf of the entire membership. D.C. Code §1-617.04(b)(3) (2001)⁶ prohibits employees, labor organizations, their agents or representatives from “[r]efusing to bargaining 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” However, the Board has ruled “that the right to require a bargaining representative (of a unit of District employees) to bargain collectively in good faith, belongs exclusively to the District employer”. Willard Taylor v. University of the District of Columbia Faculty Association/NEA, 41 DCR 6687, Slip Op. No. 324 at n.2, PERB Case No. 90-U-24 (1992). Therefore, in the present case, only the Department of Corrections can require that FOP bargain in good faith. As a result, the Complainant lacks standing to assert that FOP has violated Section 1-617.04(b)(3) (2001)⁷ of the CMPA.

D.C. Code §1-617.04(b)(1) (2001)⁸ 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 prescribed under D.C. Code Sec. 1-617.06 (2001)⁹ 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) 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 designed 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 submissions, the Complainant does not claim that any of her employee rights as

⁶Prior codification at D.C. Code §1-618.4(b) (3) (1981).

⁷Prior codification at D.C. Code §1-618.4(b) (3) (1981).

⁸Prior codification at D.C. Code §1-618.4(b) (1) (1981).

⁹Prior codification at D.C. Code §1-618.(1981).

prescribed under D.C. Code §1-617.06 (2001),¹⁰ have been violated in any manner by FOP. Instead, the asserted violation of D.C. Code §1-617.04(b)(1) (2001),¹¹ appears to be based on the alleged breach by FOP of the Complainant's right to fair representation.

“Under D.C. Code §1-617.03 (2001),¹² 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 does not claim that FOP has refused to assist her with a particular grievance. Furthermore, she fails to assert or demonstrate that FOP’s conduct in handling her grievances/disputes with management was arbitrary, discriminatory, or the product of bad faith. Instead, the Complainant asserts that “[her] union dues were always paid on time [and that she received] very little help from the union representatives when it [concerned] management.” (Compl. at p. 2). In essence, the Complainant fails to identify or assert any specific conduct/action by FOP which was arbitrary, discriminatory, or the product of bad faith. Therefore, she fails to provide any allegations or assertions that, if proven, would establish a statutory violation. In short, the Complainant has not pled bad faith or discrimination, nor raised circumstances that would give rise to such an inference.

The Complainant claims that FOP has violated D.C. Code §1-617.04(b)(2) (2001). D.C. Code §1-617.04(b)(2) prohibits employees, labor organizations, their agents or representatives from “[c]ausing or attempting to cause the District to discriminate against an employee in violation of §1-617.06 [.]” In the present case, the Complainant has failed to assert or plead specific facts to support a statutory cause of action concerning this alleged violation. In view of the above, the Complaint does not contain allegations which are sufficient to support a cause of action under D.C. Code §1-617.04(b)(1) and (2) (2001).

¹⁰Prior codification at D.C. Code §1-618.6 (1981).

¹¹Prior codification at D.C. Code §1-618.4(b) (1) (1981).

¹²Prior codification at D.C. Code §1-618.3 (1981).

The Complainant also alleges that: (1) union funds have been used to pay for personal expenses; and (2) FOP's shop stewards are not providing adequate representation to rank-and-file members because they are receiving benefits from management. The Complainant asserts that this conduct violates the CMPA. However, the Complaint is devoid of allegations supporting any basis for these two causes of action. While a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged statutory violation. See, Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works, 48 DCR 6490, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994). In light of the above, we believe that the Complainant has failed to assert or plead specific facts to support a statutory cause of action concerning these two allegations.

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, all of Ms. Cephas' claims except those concerning the election of shop stewards, do not support a statutory cause of action under D.C. Code §1-617.04(b) (2001).

Finally, the Complainant claims that union members have been deprived of their right to elect shop stewards. Specifically, the Complainant claims that: (1) shop stewards were selected without holding an election; and (2) the election committee elected individuals of their choice. Although the Complainant asserts that FOP's actions (regarding the election of shop stewards and the actions of the election committee) constitute unfair labor practices as prescribed under D.C. Code §1-617.04(b)(1) (2001), the alleged unfair labor practices appear to turn on whether FOP has failed to comply with the standards of conduct for labor organizations, i.e., D.C. Code §1-617.03(a)(1) and (4) (2001).

We have held that a violation of the standards of conduct for labor organizations, does not ordinarily constitute an unfair labor practice under D.C. Code §1-617.04(b)(1) (2001). See, Charles Bagenstose v. Washington Teachers' Union, Local 6, AFT, AFL-CIO, 43 DCR 1397, Slip Op. No. 355, PERB Case Nos. 90-S-01 and 90-U-02 (1993). The only exceptions we have recognized are not presented by the complaint allegations. However, we believe that the complaint allegations regarding the election of shop stewards and the actions of the election committee, may involve a cause of action pursuant to our jurisdiction to "[m]ake decisions and take appropriate action on charges of failure to adopt, subscribe, or comply with the . . . standards of conduct for labor organizations as prescribed under D.C. Code §1-617.03 [(2001)]." Mack v. FOP/DOC Labor Committee, 49 DCR 1149, Slip Op. No. 443 at p. 2, PERB Case No. 95-U-16 (1995). See also, D.C. Code §1-605.02(9) (2001).

“We have stated that when a Complainant proceeds pro se in an unfair labor practice proceeding before the Board, the Board will not impose strict compliance with Board Rules ... as a basis of dismissing the complaint.” Mack v. FOP/DOC Labor Committee, 49 DCR 1149, Slip Op. No. 443 at p. 2, PERB Case No. 95-U-16 (1995). See also, Willard G. Taylor v. University of the District of Columbia Faculty Association/NEA, 41 DCR 6687, Slip Op. No. 324, PERB Case No 90-U-24 (1992). Therefore, despite the fact that the Complainant has captioned and asserted her cause of action to be an unfair labor practice, we will not dismiss the alleged standards of conduct allegations concerning the election of shop stewards. The reason for this determination is that the Board did not notify the Complainant of the defect concerning the asserted standards of conduct cause of action as required by Board Rule 501.13. As a result, by our Decision, the Complainant is hereby provided with notice of this defect and directed to comply with the more appropriate standards of conduct cause of action reflected by the allegations regarding the election of shop stewards. (See, Board Rule 544 and D.C. Code §1-617.03 (2001)). Furthermore, pursuant to Board Rule 501.13, the Complainant is directed to cure this deficiency within ten (10) days of the service of this Decision and Order.¹³ Failure to cure the filing deficiency in accordance with our Order shall result in the dismissal of the standards of conduct allegations.

After reviewing the present motion, we believe that the Complainant’s basis for seeking review of the dismissal of the unfair labor practice allegations, amounts to nothing more than a disagreement with the Executive Director’s findings. Moreover, we believe that the Executive Director’s decision (concerning the unfair labor practice allegations) is reasonable and supported by Board precedent. In view of the above, we find that a mere disagreement with the Executive Director’s decision is not a sufficient basis for reversing that decision.

As to the allegations regarding alleged improprieties concerning the election of shop stewards, we believe that these allegations may involve standards of conduct violations. Therefore, consistent with our discussion, we will suspend processing the standards of conduct allegations until the filing deficiency is cured by the Complainant. If the Complainant fails to cure the filing deficiency, we will dismiss the standards of conduct allegations.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant’s Motion for Reconsideration is denied concerning all the unfair labor practice allegations, except those regarding the election of shop stewards and the actions of the election committee.

¹³If the filing deficiency is cured, the Complaint would receive a new standards of conduct case number. However, the Complaint would retain the original filing date.

2. The processing of the standards of conduct allegations concerning the election of shop stewards and the actions of the election committee, are suspended until the Complainant has had the opportunity to cure her Complaint.
3. Pursuant to Board Rule 501.13, the Complainant is provided ten (10) days from the service of this Decision and Order to cure the filing deficiency in her Complaint in accordance with our discussion in this Opinion.
4. Any future submission filed by the Complainant shall comply with D.C. Code §1-617.03 (2001) and Board Rules 502 and 544.
5. 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.

April 16, 2002

CERTIFICATE OF SERVICE

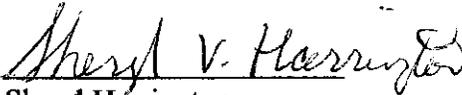
This is to certify that the attached Decision and Order (corrected copy) in PERB Case No. 01-U-17 was transmitted via U.S. Mail to the following parties on this 17th day of April 2002.

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