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

| | |
|---|---|
| In the Matter of: | |
| Billy P. Greer, Jr. et al<br><br>Petitioner, | |
| and | PERB Case No. 11-U-47<br><br>Opinion No. 1204 |
| American Federation of State County And Municipal Employees AFL-CIO; D.C. Council 20 Local 2087<br><br>Respondent. | |

## DECISION AND ORDER

### I. Statement of the Case

On August 5, 2011, Messrs. Billy P. Greer, James D. Downs, Antonio Bridges and John Dodd ("Complainants") filed an Unfair Labor Practice Complaint ("Complaint") in the above captioned matter against The American Federation of State County and Municipal Employees, AFL-CIO; District Council 20 Local 2087 ("Union" "Respondent") pursuant to the Comprehensive Merit Personnel Act ("CPMA"), D.C. Code §1-618.4. The Complaint alleges that the Union violated its duty of fair representation by failing to bargain in good faith with the University of the District of Columbia regarding compensation.

Before the Board is the Complainant's *pro se* Complaint. Respondents did not file an Answer. The issues before the Board are: (1) whether the Union had a duty to bargain over compensation with a municipal government entity in response to the Complainants' (bargaining unit members') demand based on allegations of salary disparity between union and non-union members; (2) whether the Respondents breached their duty of fair representation when they did not respond to the Complainant's request for such representation; (3) whether the Complainants state a cause of action under the CMPA[1]; and (4) whether the Complainants' allegations are deemed admitted as the Respondent did not answer the Complaint. According to PERB Rule 520.7, "A

[1] The Board's precedent has held that while a complainant need not prove his/her case on the pleadings, they must assert allegations that, if proven, would establish the alleged violations of the CMPA. 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); and *see Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); See also *Doctors' Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 DCR 1137, Slip Op. No. 437, PERB Case No. 95-U-10 (1995).

respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing. The failure to answer an allegation shall be deemed an admission of that allegation."

## II. Discussion

The Complainants are members of the District of Columbia Police Finance Committee. On May 30, 2011, they sent a letter to Dr. Allen L. Sessoms, President of the University of the District of Columbia, regarding alleged salary disparity between them and the employees of the D.C. Metropolitan Police Department. On June 7, 2011, Mr. Mark Farley, Vice President for Human Resources, responded by letter stating, "The University and District's Public Employee Relations Board (PERB) recognize the American Federation of State, County and Municipal Employees (AFSCME) as the sole and exclusive bargaining agent of all unit members of Local 2087." (Farley, Mark, 2011. Letter to Complainants, June 7.)

Complainants then sent a letter on June 15, 2011, to Mr. Walter Jones, President of AFSCME Local 2087, outlining their concerns and requesting to meet with him. Mr. Farley's letter was attached. In the letter, Complainants requested that the union address "the disparity in salary among union and non-union positions in the university." Additionally, they requested a meeting with Mr. Jones. When no response was forthcoming, the Complainants sent another letter on July 6, 2011, reiterating their request that the Union meet with them regarding the salary disparity referenced in the June 15, 2011 letter. Mr. Jones did not respond to the second letter.

## III. Analysis

### A. Employee Rights

Pursuant to D.C. Code §1-617.06(6)(b), an employee has the right "to 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 meeting held to adjust the complaint." In addition, an employee has the right to "organize a labor organization…to form, join, or assist any labor organization or to refrain from such activity; to bargain collectively through representatives of their own choosing… and to refrain from any or all such activities…" Absent from these "employee rights" is the right to demand that a union bargain on one's behalf or on behalf of a discrete group of individuals apart from the bargaining unit and beyond the contours of the collective bargaining agreement itself. If the collective bargaining agreement, the Union's constitution or by-laws contained language identifying the right of an employee to individual representation upon demand, complainants should have included reference to such language in their Complaint. Collective bargaining concerning compensation is statutorily defined (D.C. Code §§1-602.06 and 1-617.16) and is conducted according to strict, statutorily defined timelines. (D.C. Code § 1-617.179(f)(1)(A)(i)). Without reference to statutory language or to specific terms in their collective bargaining agreement, complainants cannot conjure a "right" to be represented concerning compensation outside of these statutory definitions and timelines and then assert such a "right" against their union.[2] (cite)

### B. Duty of Fair Representation

By failing to respond to their original request, the Union has breached its duty of fair representation (D.C. Code §1-617.03) Complainants allege. A union breaches its duty of fair representation only if "the union's conduct is arbitrary, discriminatory or in bad faith…or based on considerations that are irrelevant, invidious, or

[2] According to the "Literal Rule" or "Plain Meaning Rule" of statutory interpretation, we infer that the legislature chooses when to speak and when not to speak. As stated in an English case, *Hess v. The State* (1895) 2 O.R.C. 112, "The legislative intent must appear from the words actually used, not from what the legislature intended to say but did not say…".

unfair." (*Roberts v. American Federation of Government Employees, Local 2725,* 36 D.C. Register 1590, Slip Op. No. 203, PERB Case No. 88-S-01 (1989)). Nothing in the slim factual record demonstrates that the Complainants have suffered "arbitrary" or "discriminatory" treatment or that the Union acted in "bad faith." Mere failure to respond to a request that the Union bargain outside of collective bargaining rules, including timelines, and outside of the bargaining unit itself cannot be construed as a breach of the Union's duty. Indeed, according to PERB precedent, even when a complainant has filed a proper grievance, (which the complainants in this case did not do) mere disagreement with a union's decision not to pursue a grievance on a complainant's behalf does not constitute a breach of duty. As noted in *Rebecca Owens v. American Federation of State, County, and Municipal Employees, Local 2095 and National Union of Hospital and Healthcare Employees, District 1199,PERB Case No. 02-U-27, Opinion No. 750,* "Furthermore we find that Owens (the Complainant) merely disagreed with the union's judgment in the handling of her grievance. The Board's precedent is clear that a disagreement with a union's judgment in handling a grievance or its decision not to pursue arbitration does not breach the duty of fair representation."

**C. Failure to State a Claim**

In this case, the allegations presented are not sufficient, if proven, to establish any statutory violation under the CMPA. Complainants have merely alleged that their Union representative failed to respond to a request that he address an alleged salary disparity with another group of employees. Complainants have made no specific allegations of the prohibited behavior ("arbitrary", discriminatory" or "bad faith") that would constitute a violation of the CMPA. Further, the Complainants offer no terms in their collective bargaining agreement which would permit this kind of request or mandate Mr. Jones' response to it.

Even if the Complainants were to allege one of the prohibited behaviors (which they do not) regarding a violation of the CMPA, they would have to demonstrate how Mr. Jones' failure to respond was "arbitrary", "discriminatory" or in "bad faith." Complainants have made no attempt to address these specific factors, thus even if the Board construed the Complainants' claims very liberally to determine whether a proper cause of action has been alleged, Complainants have presented no evidence that the Union violated the CMPA.

**D. PERB Rule 520.7**

As noted above, according to PERB Rule 520.7, "...failure to answer an allegation shall be deemed an admission of that allegation." As also noted, the Complainants have failed to provide a proper cause of action. Therefore, even if the Complainants' allegations were deemed admitted and the Board were to view Complainants' allegations to be true because of the Respondent's failure to answer the Complaint, the Board still can find no evidence of a breach of duty of fair representation.

**III. Conclusion**

In light of the above, the Board finds that Complainants have failed to provide a statutory cause of action. Dissatisfaction or disagreement with the Union's decision not to respond to the Complainants' request does not, in itself, create a breach of the duty of fair representation where no evidence of arbitrariness, discrimination or bad faith is shown. (*Brenda Beeton v. D.C. Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, PERB Case No. 97-U-26, Op. No. 538 (1998), *Freson v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, PERB Case No. 83-U-09, Op. No. 74 (1984)).

AFSCME did not violate the CMPA when it failed to respond to Complainants. Since no statutory basis exists for the Board to consider the Complainants' claim, the Complaint is dismissed.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1) Complainant's 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.**

**October 7, 2011**

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 11-U-47 was transmitted via Fax and U.S. Mail to the following parties on this the 7th day of October 2011.

Billy P. Greer, Jr.
3335 Eighteenth Street, N.W.
Washington, D.C. 20008 — **U.S. MAIL**

Antonio Bridges
3912-28th Avenue
Temple Hills, MD 20748 — **U.S. MAIL**

John Dodd
177 Hidden Hill Circle
Odenton, MD 21113 — **U.S. MAIL**

James D. Downs
4512 Four Seasons Place
Oxon Hill, MD 20746 — **U.S. MAIL**

Walter Jones
President
American Federation of State, County and
Municipal Employees, Council 20, Local 2087
P.O. Box 4863
Washington, D.C. 20008 — **FAX & U.S. MAIL**

Sheryl V. Harrington