

GLORIA HALCOMB,
Complainant,

v.

ASSOCIATION AND EXECUTIVE BOARD
OF THE COMMITTEE OF CORRESPONDENTS)
RADIO AND TELEVISION PRESS GALLERY)
OF THE UNITED STATES SENATE,)
Respondent.)

O.C. No. 03-SN-45 (CV, RP)

ORDER

Respondent has moved to dismiss the complaint on jurisdictional grounds. Complainant opposes the motion. For reasons set forth below, the motion must be granted.

Respondent urges that it is not complainant's employer. This is almost certainly true, since complainant was admittedly an employee of the Office of the Senate Sergeant at Arms ("OSAA") and Moore v. Capitol Guide Board, 982 F. Supp 35 (D.D.C. 1997), establishes that one may not be an employee of more than one employing office. However, Moore announced this principle in rejecting a contention that plaintiff was an employee of multiple "employing offices" designated in the Congressional Accountability Act. Halcomb argues that respondent, a private entity, shared (with OSAA) supervisory authority over her and was thus, effectively, her co-employer. This proposition, while doubtful, was not specifically addressed in Moore, and it would be unfair to complainant to dismiss her complaint on this ground without first affording her the opportunity to gather the facts and legal authorities which allegedly support her argument.

It also appears likely that respondent was not afforded the opportunity to participate in mediation with the instant complainant, which is a statutory pre-requisite for a hearing on her complaint. However, at the February 2, 2004 Pre-Hearing Conference, complainant asserted that respondent was given notice of mediation in this matter. Thus, determination of the motion on this ground would require examining evidence, not presently before the hearing officer, concerning what, if any, notice of mediation was provided to respondent.

However, it is not necessary to expend further time and resources in pursuing either of the issues described above because, even if respondent were complainant's "employer" and even if respondent had been afforded an opportunity to mediate the complaint, this complaint would have to be dismissed for lack of jurisdiction. The Office of Compliance is a limited-jurisdiction tribunal established by Congress for the purpose of entertaining certain employee complaints against particular federal government offices specified in the Congressional Accountability Act of 1995 as "employing offices." 2 USC 1405(a). Respondent is not among the offices identified in

the Act as employing offices. 2 USC 1301(9). Indeed, it is undisputed that respondent is not even a governmental agency but is instead a private entity. As such, the Office of Compliance is simply without jurisdiction to determine any complaint against respondent, whether brought by an employee or anyone else.

This is not to say that complainant may not be able to bring legally cognizable claims against respondent in another forum. The undersigned hearing officer expresses no view on that question, which was not briefed in this proceeding and is, in any event, beyond my jurisdiction to determine. All that is determined herein is that the instant complaint must be dismissed because respondent is not one of the employing offices specified in the Act and, accordingly, the Office of Compliance has no legal authority to adjudicate any complaints against it.

WHEREFORE, the instant complaint is dismissed with prejudice as regards any subsequent proceedings in the Office of Compliance but without prejudice as regards proceedings in any other forum.

February 3, 2004

Curtis E. von Kann

Curtis E. von Kann
Hearing Officer

CERTIFICATE OF SERVICE

I, the undersigned employee of the Office of Compliance certify that on the date indicated below I served the following Order upon the below named persons, addressed to them at the address indicated.


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Signed in Washington, D.C. this 3rd day of January 2004


Kisha L. Harley
Hearing Clerk