

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

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In the Matter of:	)	
James Monroe, Sr.,	)	
Complainant,	)	
and	)	PERB Case No. 87-S-04
American Federation of Government	)	Opinion No. 191
Employees, Local 1550,	)	
Respondent.	)	

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DECISION AND ORDER

On May 26, 1987, James Monroe, Sr., the Complainant, filed with the District of Columbia Public Employee Relations Board (Board) a Complaint alleging violations of the Standards of Conduct and Unfair Labor Practice provisions of the Comprehensive Merit Personnel Act of 1978 (CMPA). 1/

The relevant background of this Complaint is as follows. The Complainant was employed as a Correctional Officer by the District of Columbia Department of Corrections (DOC) for approximately ten (10) months. By letter dated February 2, 1983, Mr. Monroe was advised of the unanimous decision of the Probationary Officer Retention Interview Board (PORIB) not to retain him because of poor job performance as specified in the letter. 2/

On or about February 23, 1983, the Complainant was accompanied by a representative of AFGE to a meeting regarding his termination with the Acting Administrator of DOC. AFGE's representative also accompanied

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1/ Complainant also filed an Unfair Labor Practice Complaint against DOC, alleging that he was discriminated against because of his union membership. The Complaint was dismissed administratively for failure to meet the timeliness requirements of Board Interim Rule 103.6.

2/ According to Exhibit #2, attached to the second amendment to the Complaint, the Complainant was required to successfully complete a probationary status of one year in order to be converted to permanent employment status.

Mr. Monroe to a meeting on or about February 24, 1983, with the Director of DOC, who allegedly refused to meet with either of them.

The Complaint alleges that AFGE violated D.C. Code Section 1-618.3(a)(1), by failing to accord the Complainant with fair and equal treatment in disciplinary proceedings. Specifically, the Complainant contends that he was not told that the February 23, 1983 meeting with the Acting Administrator of DOC was a first step grievance hearing. As relief, the Complainant seeks reinstatement as a Correctional Officer and back pay retroactive to the date of his termination.

On June 3, 1987, AFGE responded to the Complaint contending that it must be dismissed as untimely since the Board's Rules require that a complaint must be filed within 120 days of the event(s) which led to the filing of the Complaint.

On June 18, 1987, the Complainant submitted an additional statement concerning his Complaint, contending that his Complaint was not time-barred because Standards of Conduct Complaints are governed by Board Rule 108, which does not contain any prescribed time limits for the filing of these complaints.

The issue before the Board is whether the Complainant's delay of four years in the filing of this Complaint bars its acceptance under the doctrine of laches.

For the following reasons, the Board finds that unreasonable delay in filing this Complaint bars its acceptance.

The events complained of, i.e., AFGE's representation of the Complainant, occurred in 1983. The Complainant has not presented any explanation as to why he delayed for four years the filing of this Complaint; nor has he contended that efforts were made to complain about the adequacy of the Union's representation through internal Union procedures, thereby alerting the Union to his concerns. <sup>3/</sup> If in fact the Complainant believed that he was entitled to more formal assistance from the Union in the processing of a grievance, he could have and should have made it known to the Union at a much earlier point in time. While the Board acknowledges that there is no statute of limitations for the filing of a Standards of Conduct Complaint, the Board nevertheless has recognized

3/ Article XIV, Section II of the AFGE Constitution states the following:

"Any bargaining unit employee alleging an arbitrary, discriminatory or bad faith processing of the employees' grievance or other complaint shall timely appeal to the president of the employee's respective local. Such appeal must be in writing, alleging specific grounds, and must be accomplished within the time requirements set forth in the bargaining agreement or other applicable proceeding or immediately upon discovery of such alleged improper processing..."

the inequitable consequences which may follow from allowing delay of a complaint that places in jeopardy the rights and defenses of the respondent. See, Irene H. Wilkes v. Washington Teachers' Union, Local 6, 34 D.C. Register 3634 (1987); Opinion No. 162, PERB Case No. 87 S-01.

"[L]aches is an equitable time limitation on a party's right to bring suit...[t]he doctrine bars an action where a party's unexcused or unreasonable delay has prejudiced his adversary...[t]he bare fact of delay creates a rebuttable presumption of prejudice" Boone v. Mechanical Specialities Co., 609 F.2d. 956 (9th Cir. 1979).

The Board finds that the Complainant presented nothing to rebut the presumption of prejudice against the Respondent, which stems from his delay in the filing of this Complaint. <sup>4/</sup> We therefore conclude that the Complaint is barred on the basis of laches.

O R D E R

The Complaint, alleging Standards of Conduct violations, is dismissed.

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

August 24, 1988

<sup>4/</sup> In his June 18, 1987 letter to the Board, Mr. Monroe argues that his filing is not untimely because his complaint has been "caught up within the [machinery] and [red tape] of the Human Rights Commission since 1983." The Board cannot find that this is a justification for the delay in filing here, absent some reason to believe that the pendency of a complaint before the Human Rights Commission impeded Mr. Monroe's ability to file a complaint before this agency, and no such reason has been suggested.