

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

In the Matter of)	
)	
Jeffrey Canady)	
)	
Complainant)	PERB Case No. 21-S-01
)	
v.)	Opinion No. 1801
)	
Washington Teachers' Union, Local #6)	
American Federation of Teachers AFL-CIO)	
)	
Respondent)	

DECISION AND ORDER

I. Statement of Case

On July 2, 2021, Jeffrey Canady, *pro se*, (Complainant) filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's administrative dismissal of a standards of conduct complaint (Complaint) filed on November 30, 2020. On July 27, 2021, the Washington Teachers' Union (WTU) filed an Opposition to the Motion for Reconsideration (Opposition).

For the reasons stated herein, the Motion for Reconsideration is denied.

II. Background

On November 30, 2020, the Complainant filed his Complaint alleging that WTU violated D.C. Official Code § 1-617.03(a)(3)¹ by accepting a consent² grievance arbitration award (Award) that put WTU's financial interest ahead of the Complainant's financial interest. Specifically, the Complainant argues that the Award provided WTU with \$315,000 in attorney fees but failed to include \$270,000 in performance bonuses that the Complainant alleged he was owed. On December 21, 2020, the Respondent filed an answer and motion to dismiss.

On June 7, 2021, in an administrative dismissal letter, the Executive Director granted

¹ D.C. Official Code § 1-617.03(a) states, "Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following... (3) The prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members."

² WTU and DCPS entered into a consent arbitration award to resolve a grievance WTU had filed pursuant to the parties' collective bargaining agreement.

WTU's motion to dismiss. The Executive Director determined that WTU properly raised the affirmative defense that the Complaint was time-barred pursuant to Board Rule 544.4. The Executive Director found that the Complainant knew or should have known of the allegations on July 28, 2020, and untimely filed the Complaint on November 30, 2020, five days past the 120-day filing deadline required by Board Rule 544.4.³

On July 2, 2021, the Complainant filed a Motion for Reconsideration.⁴ On the issue of timeliness, the Complainant asserted that an independent audit revealed the alleged payment inaccuracy several months after the Complainant's receipt of the consent arbitration award.⁵ The Complainant also raised new allegations that DCPS provided the Complainant with incomplete settlement documents that prevented the Complainant's discovery of a \$600,000 shortfall in payment.⁶ In his Motion for Reconsideration, the Complainant also asserted that he was unable to provide this evidence in response to WTU's motion to dismiss, because the Complainant's attorney withdrew from the case and failed to provide the Complainant with notice of WTU's motion to dismiss. Based on these arguments, the Complainant asserted that dismissal of his Complaint on timeliness grounds was improper.⁷

On July 27, 2021, WTU filed an Opposition to the Motion for Reconsideration (Opposition). WTU argued that, prior to July 28, 2020, the Complainant was aware that WTU would not seek compensation for the Complainant's performance bonuses.⁸ WTU contended that the Motion for Reconsideration provided no basis for the Complainant's claim of a \$600,000 shortfall in payment and failed to address the date when the Complainant knew or should have known about WTU's refusal to seek compensation for performance bonuses or WTU's alleged conflict concerning attorney fees.⁹ WTU argued that it provided the Complainant with copies of its brief and informed the Complainant that it would not seek compensation for performance bonuses in its settlement agreement.¹⁰ WTU asserted that the Complainant did not request additional documents until after he filed his Complaint.¹¹

On August 12, 2021, the Complainant filed a Response to the Opposition (Response).¹² The Response reiterated claims raised in the Motion for Reconsideration. The Response further alleged that the Complainant "could not have ascertained why there has been no accounting of attorney fees and whether WTU received payments that rightfully owed to [the Complainant]."¹³

³ Board Rule 544.4.

⁴ The original filing was deficient because it failed to include a certificate of service. The deficiency was cured on July 13, 2021. Under Board Rule 502.14, an amended pleading filed to cure a deficiency relates back to the date of the original pleading.

⁵ Motion for Reconsideration at 2.

⁶ Motion for Reconsideration at 2.

⁷ Motion for Reconsideration at 2.

⁸ Opposition at 6.

⁹ Opposition at 6.

¹⁰ Opposition at 2. *See* Ex. 7 and Ex. 8.

¹¹ Opposition at 6. *See* Ex. 8.

¹² On August 5, 2021, PERB granted the Complainant an extension of time to file a Response to the Opposition.

¹³ Response at 3.

The Complainant asserted that WTU did not correctly calculate his backpay and he was unable to complete a financial analysis related to \$360,000 payment owed.¹⁴

III. Discussion

A motion for reconsideration must present legal grounds that compel the reversal of the Executive Director's decision. In his Motion for Reconsideration, the Complainant's argument that his attorney withdrew from the case and failed to provide the Complainant with notice of WTU's motion to dismiss fails to provide a factual basis for equitable tolling. The Board's precedent does not permit the consideration of arguments that were not presented to the Executive Director.¹⁵

The claimed violation in the Complaint arises from an alleged conflict of interest between the Union's pursuit of attorney fees and its advocacy on behalf of the Complainant for additional compensation for performance bonuses. WTU moved to dismiss the Complaint by asserting the defense that the Complaint was time-barred by Board Rule 544.4. In a motion to dismiss, the Board must consider all factual allegations and construe them in favor of the non-moving party.¹⁶ If a party fails to file a pleading, the Board will consider that filing waived.¹⁷ The only date presented to the Board by either party on timeliness was the service date of the Award. WTU argued that, because the Award was issued on July 28, 2020, the Complainant had knowledge of the violation on that date.¹⁸ Furthermore, the Board notes that the Complainant has not provided a date on which he became aware of the alleged violations in any subsequent filing.

Based on the record before the Board, the Board finds that the Executive Director appropriately concluded that the Complainant knew or should have known of the alleged violation at the time WTU sent the Award to the Complainant. Therefore, the Board upholds the Executive Director's decision to dismiss the Complaint for untimeliness.

IV. Conclusion

A motion for reconsideration must present legal grounds that compel the reversal of the Executive Director's decision. The Complainant has not presented legal grounds that compel reversal of the dismissal. Therefore, the Motion for Reconsideration is denied.

¹⁴ Response at 3, 5.

¹⁵ *Alesia Hamilton v. AFSCME, District Council 20*, 63 D.C. Reg. 4598, Slip Op. No. 1564 at 3, PERB Case No. 16-S-01 (2016).

¹⁶ *FOP/MPD Labor Comm. v. MPD*, 59 D.C. Reg. 7228, Slip Op. No. 1241 at 4, PERB Case No. 10-U-52 (2012).

¹⁷ *AFGE, Local 2798 v. DOH*, 59 D.C. Reg. 10736, Slip Op. No. 1275 at 2, PERB Case No. 11-U-21 (2012).

¹⁸ Motion to Dismiss at 2.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is hereby denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and members Mary Anne Gibbons, and Peter Winkler. (Board member Renee Bowser recused.)

Washington, D.C.
October 21, 2021

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order, Slip Opinion No. 1801, was served to the following parties on this 29th day of October 2021:

Via File & ServeXpress

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/s/ Dawan Jones
Public Employee Relations Board

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration within fourteen (14) days, requesting the Board to reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides thirty (30) days after a Board decision is issued to file an appeal.