

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**

In the Matter of:

Keith Allison, Edwin Hull, Tyrone Jenkins,
Julian Lewis, Haywood McNeil, Tonia Adams,
Maraia Wiley, Swanda Dunn, Mary Cade,
Anthony Harris, Bernard Bryan, Rufus Wellington,
Tamira Roberson, Reginald Wheeler,
Therodole Anderson, Michael Ibigapo,
Dexter Allen, Jr., Layard Banks, Mary Allen,
Deniset Stewart, Eugenia Haines,
Susan Armstrong, Richard Helms, Thomas Lewis,
James Johnson, Jr., Ashley Green, Gerry Dyson,
Hosen Green, David Thomas, Judy Brown,
Doseph Stevenson, Temeka Smith,
Lashawn Lattishaw, Robin Saunders,
James Jones, Rome Ledbetter, Joseph Alexander,
Shawn Franklin, Kerel White, Robert Murphy,
Temika Herrell, Inga Campbell, Willie Colman,
Beverly Risherson, Julia Broadus, Sheil Marr,
James Miles, Keith Jarrett, Jackie Parker,
Glameiz Groom, Donald Graham, William Bailey,
Angola Childs, Lory Duddley, Tiffany Cobbs,
Derrell Roots, Benjamin Olubasusi,
Wayne Taylor, Eric King, Francine Muhamand,
Benita Bagley,

Complainants,

v.

Fraternal Order of Police/District of Columbia
Department of Corrections Labor Committee,
Fraternal Order of Police, Lodge 1,

Respondent.

PERB Case No. 12-U-04

Opinion No. 1439

Motion for Preliminary Relief

Motion to File Late Response to
Motion for Preliminary Relief

DECISION AND ORDER

I. Statement of the Case

On October 14, 2011, the above listed Complainants ("Complainants") filed a *pro se* Unfair Labor Practice / Standard of Conduct Complaint ("Complaint") with the Public Employee Relations Board ("PERB") against the Fraternal Order of Police/District of Columbia Department of Corrections Labor Committee, Fraternal Order of Police, Lodge 1 ("FOP" or "Union"), alleging 1) FOP "will" deprive a class of probationary employees from participating in a then upcoming Union election in violation of the Union's Bylaws; and 2) the Union's 2010 Election Rules violated the Union's Bylaws. (Complaint). Additionally, Complainants also seek Preliminary Relief in accordance with PERB Rules 520.15 and 544.15.

In its Answer, FOP generally denied the allegations and raised the affirmative defenses that: 1) PERB's Rules do not permit class action complaints; 2) Complainants failed to state a standard of conduct violation for which PERB can grant relief because alleged violations of the Union's Bylaws do not warrant PERB's intervention; 3) the Complaint provided no basis for its allegations beyond conjecture; 4) the Union's Bylaws required Complainants to first submit actions against the Union to the Labor Committee, which Complainants failed to do; and 5) the Complaint did not comply with PERB's filing Rules. (Answer, at 1-11). Additionally, FOP filed a request for an extension of time to file a late response to Complainant's Motion for Preliminary Relief. (Motion to File Late Response to Motion for Preliminary Relief, at 1-4).

II. Discussion

A complainant does not need to prove his/her case on the pleadings, but he/she must plead or assert allegations that, if proven, would establish a statutory violation of the CMPA. *Osekre v. American Federation of State, County, and Municipal Employees, Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (1998). When considering a dismissal, the Board views the contested facts in the light most favorable to the Complainant. *Id.*

A *pro se* litigant is entitled to a liberal construction of his/her pleadings when determining whether a proper cause of action has been alleged. *Thomas J. Gardner v. District of Columbia Public Schools and Washington Teachers' Union, Local 67, AFT AFL-CIO*, 49 D.C. Reg. 7763, Slip Op. No. 677, PERB Case Nos. 02-S-01 and 02-U-04 (2002).

Here, Complainants' allegation that FOP "will [deprive approximately 150] dues paying ["probationary employees"] in good standing ... their right to vote in the November 9, 2011 ... election" is unripe for consideration because it alleges something that Complainants assumed or believed would happen in the future.¹ (Complaint, at 2). Additionally, Complainants have not provided anything since the filing of their Complaint to establish that what they alleged "will" happen actually occurred, or that the Union did apply the 2010 Election Rules to the 2011 election. PERB only has jurisdiction to consider allegations that establish a past violation of the CMPA. *Osekre, supra*. Additionally, PERB Rule 520.4 states that: "Unfair labor practice complaints shall be filed not later than 120 days *after* the date on which the alleged violations occurred." (Emphasis added). PERB Rule 544.4 imposes a similar 120 day rule to Standards of Conduct complaints. As such, PERB lacks jurisdiction to consider Complainants' allegation because the violation had not yet occurred when the Complaint was filed. *Id.*

Additionally, PERB lacks jurisdiction to consider Complainants' allegation that the Union's 2010 Election Rules violated the Union's Bylaws because the allegation is untimely. The 120-day period for filing a complaint begins when the complainant first knew or should have known about the acts giving rise to the alleged violation. *Charles E. Pitt v. District of Columbia Department of Corrections*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009). Here, the 2010 Election Rules are dated March 1, 2010. (Complaint, Exhibit A). Therefore, the time period for Complainants to file a Complaint to challenge those Rules began to run on that date and expired 120 days later. *Id.*; and *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995) (holding that "time limits for filing appeals with administrative adjudicative agencies ... are mandatory and jurisdictional").

Even viewing the pleadings in the light most favorable to the Complainants cannot overcome the facts that the Complaint: 1) fails to state a claim for which PERB can grant relief; 2) is unripe; and/or 3) is untimely.² *Osekre, supra*. As such, the Complaint is hereby dismissed.³

¹ Complainants filed their Complaint on October 14, 2011, almost a full month prior to the election in question.

² The Board notes that even if the Complaint had been timely filed and had properly alleged a past statutory violation of the CMPA, it still would not likely have survived dismissal on grounds that Complainants failed to demonstrate how each named Complainant was individually "aggrieved", as required by PERB Rules 520.2 and 544.2. See *Antoino Rischardson, et al. v. Fraternal Order of Police/Department of Corrections Labor Committee*, Fraternal Order of Police, Lodge 1, Slip Op. No. 1426 at 2-3, PERB Case No. 11-S-01 (September 26, 2013).

³ As a result of the Board's dismissal of the Complaint, it is not necessary to address Complainants' Motion for Preliminary Relief, Respondent's Affirmative Defenses, or Respondent's Motion to File Late Response to Motion for Preliminary Relief.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed.
2. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

October 31, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-U-04, Slip Op. No. 1439, was transmitted to the following parties on this the 13th day of November, 2013.

VIA U.S. MAIL and E-MAIL

J. Michael Hannon
1901 18th Street, N.W.
Washington, DC 20009
JHannon@HannonLawGroup.com

VIA U.S. MAIL

**2236 Alice Ave, Apt. 202
Oxon Hill, MD 20745**

**1901 D. Street, S.E.
Washington, DC 20032**

For:

Mary Allen
Karel White
David Thomas
Thomas Lewis
Darrell Roots
Beverly Richerson
Keith Allison
Edwin Hull
Mary Cade
Tyrone Jenkins
Eric King
William Baily
James Jones
Wayn Taylor
Richard Helms
Tifany Cobbs
Swanda Dunn
Reginald Wheeler
Anthony Harris

For:

Julian Lewis
Tonia Adams
Maraia Wiley
Barnard Bryant
Rufus Wellington
Tamira Robertson
Therodole Anderson
Michael Ibigapo
Dexter Allen, Jr.
James Johnson, Jr.
Deniset Steward
Eugenia Haines
Susan Armstrong
Ashley Green
Gerry Dyson
Hasen Green
Judy Brown
Dosept Stevenson
Temeka Smith
Lashawn Lattishaw

Rome Ledbetter
Joseph Alexander
Shawn Franklin
Robert Murphy
Sheil Marr
James Miles
Keith Jarrett
Jackie Parker
Donald Graham
Angola Childs
Lory Duddley
Francine Muhammand
Benjamin Olubasusi
Haywood McNeil
Glameiz Groom
Inga Campbell
Julia Broadus
Temkia Herrel

/s/ Colby Harmon

Attorney-Advisor - PERB