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

_____)	
In the Matter of:)	
)	
Dianna Flowers-Hinnant, et al.)	
)	PERB Case No. 04-S-03
Complainant,)	
)	Opinion No. 1431
v.)	
)	
American Federation of State,)	
County and Municipal Employees,)	
Local 2095, et al.)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

On March 3, 2004, a Standards of Conduct Complaint ("Complaint") was filed by Diana Flowers-Hinnant, Janet B. Hill, Mark Leggett, Ronnie McFadden, and Glenda Hill ("Complainants") against the American Federation of State, County and Municipal Employees, Local 2095 and certain officers ("Respondents").¹ The Complaint asserted that the Respondents violated the provisions of the Comprehensive Merit Personnel Act ("CMPA"), governing the Standards of Conduct for a labor organization.

On March 24, 2004, the Respondents filed an Answer ("Answer") and a Motion to Dismiss for Failure to File Complaint Timely ("Motion to Dismiss"). On April 5, 2004, the Complainants filed a Response to Motion to Dismiss for Failure to File Complaint Timely

¹ The officers named in the Complaint are Willie Smith, removed President; Brenda Mathews-Davis, Vice-President; Christopher Leach, removed Secretary; Henry Nichols, President; Ed Ford, Area Director; and Cynthia Perry, Staff Representative.

("Motion Response") with PERB, but did not serve a copy on the Respondents.

On July 24, 2006, the Executive Director sent the matter to a hearing before Hearing Examiner Sean Rodgers ("Hearing Examiner"). On August 4, 2006, the Executive Director provided the Complainants until August 21, 2006, to correct the filing deficiency. On August 28, 2006, Respondents' representative notified PERB that Complainants had not corrected the filing deficiency, because Complainants had not served the Respondents.

A hearing was held on December 6, 2006. The Complainants did not appear. The Respondents presented three motions to the Hearing Examiner. On March 16, 2007, the Board received the Hearing Examiner's Report and Recommendation ("Report"), which is before the Board for disposition.

II. Hearing Examiner's Report and Recommendation

As stated above, the Complainants did not appear at the hearing. Respondents asserted three motions before the Hearing Examiner: (1) Motion to Dismiss for Failure to File Complaint Timely; (2) Motion to Dismiss for Failing to Show Cause as to Why Respondents were not Served with Complainant's Motion Response; and (3) Motion to Dismiss for Complainants Failure to Appear and Prosecute the Complaint. (Report at 2-3).

A. Motion to Dismiss for Failure to File Complaint Timely

Before the Hearing Examiner, the Respondents reasserted their Motion to Dismiss. (Report at 2). Respondents argued that Board Rule 544.4 required the Complainants to file their Complaint within 120 days of the alleged violation. *Id.* Notwithstanding, Respondents argued that only one allegation appeared in the Complaint that did meet the Board's timeliness requirement, but was "insufficient to state a standards of conduct claim." *Id.* Based on the above, Respondent asserted that the Board did not have jurisdiction to hear the March 24, 2004, Complaint. *Id.*

The Hearing Examiner found "the facts establish that the Complaint is untimely and the Respondents' Motion to Dismiss should be granted." *Id.*

B. Motion to Dismiss for Failing to Show Cause as to Why Respondents were not Served with Complainant's Motion Response

At the hearing, Respondents argued that "the Complainants had failed to show cause why the Respondents were not served with a copy of the April 5, 2004, Response to Motion to Dismiss for Failure to File Complaint Timely." (Report at 3). Respondents asserted that Board Rule 501.12 required the Complainants to serve the document on the Respondents, but had not by the time of the hearing. *Id.* The Respondents argued that the Complainants received notice from the Executive Director of the filing deficiency, and that the Complainants never corrected the deficiency by serving the Respondents and filing a certificate of service with PERB. *Id.*

The Hearing Examiner found that “no certificate of service from the Complainants establishing service of the subject documents is contained in the file.” *Id.* Therefore, the Hearing Examiner recommended “the Respondents’ motion to dismiss on these grounds should be granted.” *Id.*

C. Motion to Dismiss for Complainants Failure to Appear and Prosecute the Complaint

Respondents argued that the failure of the Complainants to appear at the hearing constituted, pursuant to Board Rule 550.19, a failure to prosecute the Complaint. (Report at 3). Respondents moved to have the Complaint dismissed with prejudice. *Id.* The Hearing Examiner stated: “The PERB staff and the Hearing Examiner attempted to locate and to contact the Complainants on the date of the hearing in an extraordinary effort to ensure the Complainants were provided the opportunity to put on their case. The Hearing Examiner delayed the start of the hearing in an extraordinary effort to ensure the Complainants were provided the opportunity to put on their case.” *Id.*

The Hearing Examiner found “[t]he record establishes that the Complainants have failed to prosecute their case and the failure to appear at hearing arguable constitutes an abandonment of the claim.” *Id.* The Hearing Examiner recommended that Board grant the Respondents’ motion to dismiss.

D. Hearing Examiner’s Recommendations

The Hearing Examiner recommended that the Respondents’ motions be granted as follows:

1. The March 24, 2004, Complaint is untimely and should be dismissed because the PERB is without jurisdiction to hear the case pursuant to PERB Rule 544.4.
2. The Complainants have failed to prove service of the April 5, 2004, [*Complainants’*] *Response to Motion to Dismiss for Failure to File Complaint Timely* on the Respondents, and the Complaint should be dismissed with prejudiced based on the Executive Director’s August 4, 2006, letter to the Complainants and PERB Rule 501.12; and
3. The record establishes that the Complainants have failed to prosecute their case and by failing to appear at hearing they have abandoned their claim, and the Complaint should be dismissed with prejudice based on PERB Rule 550.19.

III. Discussion

No Exceptions were filed. “Whether exceptions have been filed or not, the Board will adopt the hearing examiner’s recommendation if it finds, upon full review of the record, that the hearing examiner’s ‘analysis, reasoning and conclusions’ are ‘rational and persuasive.’” *Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public*

Schools, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Association and D.C. Department of Human Services*, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).

The Board determines whether the Hearing Examiner's Report and Recommendation is "reasonable, supported by the record, and consistent with Board precedent." *American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012). The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. See *American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

Pursuant to Board Rule 520.11, "[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." *Council of School Officers, Local 4, American Federation of School Administrators v. District of Columbia Public Schools*, 59 DC Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08; *Tracy Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995).

In light of these standards, the Board reviews the Hearing Examiner's findings and conclusions below.

A. Motion to Dismiss for Failure to File Complaint Timely

As a threshold issue, the Board must have jurisdiction in order to hear a standards of conduct complaint. Board Rule 544.4 provides: "A complaint alleging a violation under this section shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred." The Board's Rules proscribing time limits for filing appeals are mandatory and jurisdictional matters. See *D.C. Public Employee Relations Bd. v. D.C. Metropolitan Police Dept.*, 593 A.2d 641 (D.C. 1991) ("The time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters.")

The Complaint was filed on March 4, 2004. The Complaint lists a timeline of allegations from January 2, 2003, until November 13, 2003. (Complaint at 4-6). The Hearing Examiner's determination that the majority of the allegations did not meet Board Rule 544.4's 120-day requirement is reasonable.

Notwithstanding, the Hearing Examiner found only one allegation may have been timely, which was the allegation that at a November 13, 2003 appeal hearing, concerning the prior removal of two of the Respondents (Willie Smith and Christopher Leach) from union leadership, Mr. Smith and Mr. Leach did not appear. (Report at 2). The Hearing Examiner found that this allegation alone did not constitute a violation of the CMPA's Standards of Conduct for a labor organization. *Id.*

For the remaining allegation that fell within the 120 days, Board Rule 544.4 states: "Any individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations may file a complaint with the Board for investigation and appropriate action." The Standards of Conduct for a labor organization are set forth in the D.C. Code § 1-617.03(a)(1)-(4). The Complaint makes no correlation of how the remaining allegation that two of the Respondents did not attend their own appeal hearing violates any of Standards of Conduct for a labor organization. The Board finds that the Complainants have failed to state a claim for which relief may be granted under the CMPA. The Board finds the Hearing Examiner's recommendation to dismiss the Complaint is reasonable.

B. Motion to Dismiss for Failing to Show Cause as to Why Respondents were not Served with Complainant's Motion Response

The Hearing Examiner found that Complainants did not properly serve Respondents with a Response to the Respondents' Motion to Dismiss, as required by the Executive Director. (Report at 3). The Executive Director sent the Complainants a deficiency letter on September 4, 2006, citing Board Rule 501.12, for failing to properly serve Complainants' Response to Respondents' Motion to Dismiss and filing a proper certificate of service with PERB. PERB received no response. On September 27, 2006, the Executive Director sent a second letter, which stated, "you need to show cause as to why this case should not be dismissed based on your failure to comply with Board Rule 501.12. Your show cause argument should be presented to the Hearing Examiner on the rescheduled hearing date." The Hearing Examiner found that the Complainants never corrected the filing deficiency. (Report at 3). Therefore, the Board finds that the Hearing Examiner was reasonable in recommending that the Board grant the Respondents' Motion to Dismiss.

C. Motion to Dismiss for Complainants' Failure to Appear and Prosecute the Complaint

The Hearing Examiner recommended dismissal of the Complaint on the grounds that the Complainants had failed to appear and prosecute the Complaint. Board Rule 550.19 states, "If a party fails to prosecute a cause of action, the Hearing Examiner may recommend that the Board or Executive Director dismiss the action with prejudice or rule against the defaulting party." The Complainants' did not appear for the hearing, nor did the Complainants' contact PERB or file anything subsequent to their nonappearance at the hearing. The Hearing Examiner's recommendation to dismiss the Complaint on the grounds that the Complainants' did not appear and prosecute their Complaint is reasonable.

IV. Conclusion

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's recommendation that the Complaint be dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Standards of Conduct Complaint is dismissed with prejudice.
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.

September 26, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 04-S-03 was transmitted to the following Parties on this the 25th day of October, 2013:

Dianna Flowers-Hinnant
815 Copley Avenue
Waldorf, MD 20602-2802

via U.S. Mail

Margo Pave
Zwerdling, Paul, Kahn & Wolly, P.C.
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

via U.S. Mail



Erica J. Balkum
Attorney-Advisor
Public Employee Relations Board
1100 4th Street, S.W.
Suite E630
Washington, D.C. 20024