Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Marcus Steele	
Complainant	PERB Case No. 14-U-16
	Opinion No. 1492
v.	
	Motion for Reconsideration
American Federation of Government Employees Local 383	
Respondent	

MOTION FOR RECONSIDERATION

DECISION AND ORDER

I. Statement of the Case

This matter comes before the Board on a Motion for Reconsideration filed by Marcus Steele (Complainant). Complainant, a former employee of the D.C. Mental Retardation & Developmental Disability Administration, and a former bargaining unit member represented by the American Federation of Government Employees Local 383 ("Union"), requests that the Board reverse the Executive Director's administrative dismissal of his unfair labor practice complaint.[1]

The Board finds that the Motion for Reconsideration is a mere disagreement with the Executive Director's decision, and also finds the complaint untimely. Therefore, the Board dismisses the unfair labor practice complaint with prejudice.

II. Background

On May 16, 2014, Steele filed a complaint against AFGE Local 383, alleging violations of Section 1-617.04(b) of the CMPA. Specifically, Complainant asserted that he was entitled to

[1] The Executive Director dismissed the Complaint on August 21, 2014.

full reimbursement of parking costs and expenses, while employed at the MRDDA, plus 4% accrued interest, as a result of the Board's Order in Case No. 07-U-03.[2] In his complaint, Complainant alleged that he requested a reimbursement of all of his expenses from the Union, but did not receive the requested reimbursement.

III. Analysis

In the Motion for Reconsideration, Complainant does not assert any legal grounds that would compel the Board to overturn the Executive Director's administrative dismissal. Notwithstanding, the Motion for Reconsideration is considered under relevant case law.

A. Timeliness

Complainant asserts in his Motion for Reconsideration that, on November 11, 2013, he became aware that he may have been eligible for payment arising out of Case No. 07-U-03. The complaint was filed on May 16, 2014. Board Rule 520.4 states, "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." The Board does not have jurisdiction to consider unfair labor practice complaints filed outside of the 120 days prescribed by the Board Rule.[3] 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.[4] The complaint was filed May 16, 2014, which was more than 120 days from when the Complainant knew or should have known of the facts giving rise to the alleged violation. Therefore, the Board does not have jurisdiction to consider his complaint.

B. Failure to state a claim

Notwithstanding timeliness issues, the Board finds that the Executive Director did not err when she administratively dismissed the complaint for failing to state a claim for which the Board may grant relief.

The Board will uphold an Executive Director's administrative dismissal where the decision was reasonable and supported by Board precedent.[5] The Executive Director's review of the complaint and her construction of the complaint as an unfair labor practice against AFGE Local 383 are reasonable and supported by Board precedent. The Executive Director correctly applied the Board's case law that requires a liberal construction of a *pro se* complainant's

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[2] In *AFGE Local 383 v. D.C Mental Retardation & Developmental Disability Administration*, the Board found that the Agency had committed an unfair labor practice, by failing to bargain with the Union regarding allocation of parking spaces to employees. The Board ordered the Agency to make whole all employees for all monetary losses incurred as a result of the Agency's failure to bargain in good faith with interest. 59 D.C. Reg. 4584, Slip Op. No. 938, PERB Case No. 07-U-03 (2012).

[3] *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995) ("[T]ime limits for filing appeals with administrative adjudicative agencies...are mandatory and jurisdictional").

[4] *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).

[5] *See, e.g., Lomax v. Int'l Brotherhood of Teamsters, Local Union 639*, 59 D.C. Reg. 3474, Slip Op. No. 849, PERB Case No. 06-U-09 (June 21, 2007).

pleadings when determining whether a proper cause of action has been alleged.[6] For the aforementioned reasons, the Board upholds the Executive Director's determination that Complainant's pleading asserted an unfair labor practice by the Union as his cause of action.

Complainants do not need to prove their case on the pleadings, but they must plead or assert allegations that, if proven, would establish a statutory violation of the CMPA.[7] In addition, the Board views contested facts in the light most favorable to the complainant in determining whether the complaint gives rise to a violation of the CMPA.[8]

The Executive Director found that the complaint failed to state a claim under the CMPA, and the Board affirms this finding. Complainant alleged that the Union committed an unfair labor practice by failing to reimburse him for parking expenses accrued during his employment with the Agency. As a result, Complainant appears to assert that the Union failed its duty of fair representation in violation of D.C. Official Code 1-617.04(b)(1). In the evidence submitted by Complainant, it appears that the Union did not reimburse Complainant because he was not employed by the Agency at the time of Case No. 07-U-03 was filed, but then subsequently offered him $187 from a settlement. Complainant did not allege any unlawful conduct by the Union. Specifically, Complainant did not allege that the Union had engaged in any conduct that was arbitrary, discriminatory, or in bad faith, or was based on considerations that are irrelevant, invidious or unfair.[9] Without such asserted elements in the complaint, a violation of the CMPA cannot be found by the Board. Therefore, the Board finds that the Executive Director's administrative dismissal was proper.

IV. Conclusion

Complainant's Motion for Reconsideration does not provide any authority that compels reversal of the Executive Director's decision. The Motion for Reconsideration is merely a disagreement with the Executive Director's findings, which is not grounds for reconsideration of the administrative dismissal.[10]

As the complaint is untimely and does not state a claim for which the Board may grant relief, the complaint is dismissed with prejudice.

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[6] *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).
[7] *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).
[8] *Id.*
[9] *Stanley Roberts v. American Federation of Government Employees*, Local 2725, 36 D.C. Reg. 363, Slip. Op. No. 203, PERB Case No. 88-S-01 (1989).
[10] *Brenda V. Johnson v. D.C. Public Schools & Teamsters Local Union No. 639*, Slip Op. No. 1472, PERB Case No. 07-U-07 (June 4, 2014).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is denied.
2. The complaint is dismissed with prejudice.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Donald Wasserman, and Member Keith Washington

Washington, D.C.

October 30, 2014

CORRECTED CERTIFICATE OF SERVICE

This is to certify that the attached Motion for Reconsideration Decision and Order in PERB Case No. 14-U-16 was transmitted to the following parties on the 30th day of October 2014.

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