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

In the Matter of:	)	
	)	
Andebrhan Berhe	)	
	)	
Complainant	)	PERB Case No. 19-U-08
	)	
v.	)	Opinion No. 1723
	)	<b>Motion for Reconsideration</b>
Washington Teachers' Union	)	
	)	
Respondent	)	
	)	

**DECISION AND ORDER**

**I. Introduction**

Before the Board is a Motion for Reconsideration (Motion) filed by Andebrhan Berhe, *pro se*, (Complainant) filed on August 5, 2019. The Complainant, a former employee of the District of Columbia Public Schools (DCPS) and former member of the Washington Teachers' Union (WTU), requests that the Board overturn the Executive Director's July 8, 2019, administrative dismissal of the Complainant's unfair labor practice complaint (Complaint). The Executive Director dismissed the Complaint for untimeliness. The Motion seeks the Board's reconsideration, asserting there is additional evidence to support his Complaint. WTU opposes the Motion.

For reasons stated herein, the Board denies the Complainant's Motion.

**II. Background**

On April 15, 2019, the Complainant filed a Complaint,<sup>1</sup> alleging that WTU committed unfair labor practices in violation of D.C. Official Code § 1-617.04(a)(1), (2), (3), and (5). The Complaint alleges that WTU refused to represent the Complainant as a part of the class of probationary teachers represented by WTU against DCPS in PERB Case 14-U-02. The

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<sup>1</sup> The Complainant filed an Amended Complaint on May 30, 2019, in order to submit new evidence.

Complaint also alleges that after WTU attorney Danny Rosenthal told the Complainant in an email on September 7, 2018, that he would work on the Complainant's case, Rosenthal refused to respond to the Complainant's eleven (11) subsequent emails. On May 6, 2019, WTU moved to dismiss the Complaint for untimeliness.<sup>2</sup> On July 8, 2019, the Executive Director dismissed the Complaint as untimely, pursuant to Board Rule 520.4, which requires that an unfair labor practice complaint be filed no later than 120 days after the complainant first knew or should have known of the acts giving rise to the alleged violations.<sup>3</sup>

In the present Motion, the Complainant offers purportedly new evidence in the form of an email to support his assertion that the Complaint was timely filed. The email from Rosenthal is dated March 22, 2019, and states, in pertinent part, "As we previously told you, WTU has determined that you are not one of the teachers covered by this case." The Motion asserts that before receiving this email, the Complainant thought WTU was representing him. The Complainant contends that the Complaint was filed within 120 days of WTU's March 22, 2019 email.

WTU opposes the Complainant's Motion (Opposition) on several grounds. First, WTU asserts that Board precedent prohibits the Board from considering newly submitted evidence as a basis for reversing the Executive Director's administrative dismissal. Second, WTU contends that the Complainant has not provided any legal argument for reversing the Executive Director's decision. Finally, WTU argues that the newly submitted evidence does not make the Complaint timely, as WTU previously told the Complainant, more than 120 days before the Complaint was filed, of WTU's determination that the Complainant was not a probationary teacher represented by WTU.

### III. Analysis

The Board will not grant a motion for reconsideration that does not assert any legal grounds that would compel overturning an Executive Director's dismissal.<sup>4</sup> The Board will uphold an Executive Director's dismissal where the decision is reasonable and supported by PERB precedent.<sup>5</sup>

#### A. Newly submitted evidence

In the present Motion, the Complainant offers purportedly new evidence and raises a new argument to support his assertion that the Complaint was timely filed. The Board has repeatedly held that it will not consider evidence presented for the first time or new arguments raised in a motion for reconsideration to serve as a basis for reconsidering the Executive Director's

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<sup>2</sup> WTU filed an amended Motion to Dismiss and Answer to Amended Complaint on June 14, 2019.

<sup>3</sup> *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 65 D.C. Reg. 6430, Slip Op. No. 1661 at p. 2, PERB Case No. 17-U-26 (2018) (citing *Pitt v. D.C. Dep't of Corr.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009)).

<sup>4</sup> *Kenneth Johnson v. D.C. Gov't and D.C. Metro. Police Dep't*, 63 D.C. Reg. 6485, Slip Op. No. 1567 at 1, PERB Case No. 15-U-40 (2016).

<sup>5</sup> *Id.*

dismissal when the Complainant failed to provide any evidence at the afforded time.<sup>6</sup> The Board will only consider the evidence and arguments raised in the Complaint and Amended Complaint. The Board will not consider the Complainant's evidence submitted with his Motion as a basis for reversing the Executive Director's determination that the Complaint was untimely filed.

B. Timeliness

The Board finds that the Complaint was untimely filed. Board Rule 520.4 requires that an unfair labor practice complaint be filed within 120 days from when the complainant first knew or should have known of the acts giving rise to the alleged violations.<sup>7</sup> The Board has held that filing deadlines established by the Board's rules are claim-processing rules that may be waived.<sup>8</sup> The Board may waive the filing deadline to allow a case to proceed, if a filer can demonstrate good cause as to why the filing should not be dismissed.<sup>9</sup>

The Complaint alleged that WTU agreed to represent the Complainant, but then WTU refused to respond to eleven (11) subsequent emails that the Complainant submitted to WTU and its attorneys between September 7, 2018 and November 8, 2018. The filing date of April 15, 2019, is well beyond 120 days of November 8, 2018. The Board notes that the Complaint's exhibits include an email that the Complainant sent to WTU on March 22, 2019. Notwithstanding this email, which is dated within 120 days of the Complaint's filing date, the Board finds that the Complainant's allegation that WTU refused to represent him is untimely.

In its Motion to Dismiss, WTU asserted that the Complaint was untimely filed and presented evidence that WTU informed the Complainant that he was not a part of the class of probationary teachers three times: an email dated June 27, 2018, an email dated August 28, 2018, and a formal letter dated November 30, 2018. WTU submitted copies of this correspondence in support of its Motion to Dismiss. The Complainant did not dispute this evidence in the Complaint or Amended Complaint.

As stated above, Board Rule 520.4 requires an unfair labor practice complaint be filed within 120 days from when the complainant first knew or should have known of the acts giving rise to the alleged violations. The Board finds that Complainant knew or should have known that WTU would not represent the Complainant prior to Rosenthal's March 22, 2019 email. The undisputed evidence shows he had notice of the acts giving rise to the alleged violations at the latest, on or about November 30, 2018, when WTU sent Complainant the last of three letters, refusing to represent him. The Complaint's April 15, 2019, filing date was well beyond the

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<sup>6</sup> *Kenneth Johnson v. D.C. Gov't and Metro. Police Dep't*, 63 D.C. Reg. 6485, Slip Op. No. 1567 at 2, PERB Case No. 15-U-40 (2016).

<sup>7</sup> *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 65 D.C. Reg. 6430, Slip Op. No. 1661 at p. 2, PERB Case No. 17-U-26 (2018) (citing *Pitt v. D.C. Dep't of Corr.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009)).

<sup>8</sup> *Jenkins v. Dep't of Corrs.*, 65 D.C. Reg. 4046, Slip Op. No. 1652, PERB Case No. 15-U-31 (2018). *See also Metro. Police Dep't v. Metro. Police Dep't Labor Comm.*, 65 D.C. Reg. 11111, Slip Op. No. 1678, PERB Case No. 18-A-05 (2018).

<sup>9</sup> *Metro. Police Dep't*, Slip Op. No. 1678.

required 120 days. The Complainant did not provide a reason for the Complaint's untimely filing.

As the Complainant has not provided a reason for his delay in filing the Complaint, the Board finds that the Complainant does not demonstrate good cause for not meeting the 120-day deadline in Board Rule 520.4. The Board finds that the Complaint was untimely filed.

#### **IV. Conclusion**

The Board finds the Executive Director's determination that the Complaint was untimely is reasonable and supported by PERB precedent. The Motion for Reconsideration is denied.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Complainant's Motion for Reconsideration is denied.
2. The Complainant's unfair labor practice complaint is dismissed.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By the unanimous vote of Board Chairperson Charles Murphy and Members Mary Anne Gibbons, Ann Hoffman, and Douglas Warshof.

Washington, D.C.

September 12, 2019

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 19-U-08, Opinion No. 1723 was sent by File and ServeXpress to the following parties on this the 16th day of September, 2019.

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