

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:)
)
)

Antoino Richardson, Edwin Hull, Keith Allison,)
Dancy Simpson, James Jones, Gerald Rowlette,)
Scott Roman, Beverly Richardson, Joyce Webb,)
Tanya Flournoy, Judy Brown, Inga Campbell,)
Tammy Weathers, Benita Bagley, Satonya Brooks,)
Swanda Dunn, Tyrone Jenkins,)
)

Complainants,)
)

v.)
)

Fraternal Order of Police D.C. Department of)
Corrections Labor Committee, Fraternal Order)
of Police Lodge 1,)
)

Respondents.)
)
)

PERB Case No. 11-S-01

Opinion No. 1426

DECISION AND ORDER

I. Statement of the Case

On January 28, 2011, a document styled "Mo[t]ion for Preliminary Relief/Temporary Restraining Order Injunct[i]ve/Standards of Conduct Complaint" ("Complaint") was filed *pro se* with the Public Employee Relations Board ("Board"). The Complaint names seventeen (17) individuals as complainants ("Complainants") and names as respondents the Fraternal Order of Police D.C. Department of Corrections Labor Committee and Fraternal Order of Police Lodge 1 ("Union"). The Complaint alleges irregularities in Union elections from 2006 to 2010. The Union filed an answer and an "Opposition to Complainant's Motion for Preliminary and Injunctive Relief."

The answer raises the following defenses: (1) The Complaint is brought as a class action. Neither the CMPA nor Board rules authorize class actions. Rather, Board Rule 544.2 authorizes standards of conduct complaints to be filed by aggrieved individuals. (2) The Complaint alleges violations of the Union's by-laws. A violation of union by-laws standing alone does not constitute a cause of action within the Board's jurisdiction. (3) The Union's by-laws provide that members pledge not to bring an action against the Union without first submitting it to the Labor

Committee. The Complainants did not do so. The answer also denies nearly all the material allegations of the Complaint and asserts the untimeliness of many of them.

II. Discussion

After reviewing the pleadings in a light most favorable to the Complainants, we believe that the Complainants have failed to state a claim under the Comprehensive Merit Personnel Act ("CMPA"). Therefore, for the reasons discussed below, we are dismissing the Complaint in its entirety. In light of our disposition of the Complaint, it is not necessary to consider the Complainants' request for preliminary relief. This disposition results from application of principles of timeliness and standing.

A. Timeliness

A complaint alleging a standards of conduct violation "shall be filed not later than one hundred twenty (120) days from the date the alleged violation occurred." Board Rule 544.4. The instant Complaint was filed January 28, 2011. One hundred twenty days before that date is September 30, 2010. Thus, any allegation of a violation occurring before September 30, 2010, is untimely.

There are several such allegations in the Complaint. Paragraphs 4 and 5 complain of a rule change made on July 27, 2008. Paragraph 12 complains that new "probation correctional officers" were not permitted to vote in a May 2010 Union election. Paragraphs 13-15 object to the conduct of Union elections held in May 2006, July 2007, May 2008, September 2008, and May 2010. All of the foregoing allegations are untimely.

B. Standing

In *Barganier v. Fraternal Order of Police/Department of Corrections Labor Committee*, the Board considered a complaint that purported to be brought on behalf of the complainant as well as a "class of Labor Committee members at the D.C. Jail." 45 D.C. Reg. 4013, Slip Op. No. 542 at p. 1, PERB Case No. 98-S-03 (1998). The Board stated:

We note that while the effect of remedying any standards of conduct violation found would affect any FOP member affected by the violative conduct, neither the CMPA nor Board Rules formally provide for standards of conduct complaints purportedly brought on behalf of a class by an individual that does not in fact or officially represent the class described. Standards of conduct complaints may be brought by "[a]ny individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations. . . ." Board Rule 544.2.

Id. The Board treated the *Barganier* complaint as one brought on behalf of the complainant only. The Complainants in the present case do not expressly purport to bring a class action, but they do refer to themselves as "the membership." The Board will deem this to be a collective noun referring only to the Complainants and not to the entire membership of the Union.

Rule 544.2 provides: "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." This rule requires that complainants not only be individuals but also "aggrieved" individuals. *Dupree v. F.O.P./Dep't of Corrs. Labor Comm.*, 43 D.C. Reg. 5130, Slip Op. No. 465 at p. 2 n.2, PERB Case No. 96-U-05 (1996) (noting that a non-member of FOP "could not be aggrieved by FOP's alleged failure to comply with the standards of conduct for labor organizations, and would lack standing to allege such a violation by FOP.") See also *F.O.P. Metro. Police Dep't Labor Comm. D.C. Metro. Police Dep't*, 28 D.C. Reg. 5018, Slip Op. No. 23 at p. 3, PERB Case Nos. 81-R-05, 81-S-02, and 81-R-09 (1981) (construing former Board Rule 108.2). In order to state a claim that they are aggrieved, complainants must allege an actual injury. See *Durant v. F.O.P./Dep't of Corrs. Labor Comm.*, 43 D.C. Reg. 5130, Slip Op. No. 430 at p. 1 n.2, PERB Case Nos. 94-U-18 and 94-S-02 (1995).

Thus, to avoid dismissal the Complainants must have alleged that an actual injury resulted from the remaining alleged violations, i.e., those that are not untimely. The allegations that were brought timely are the following. (1) No shop steward election was held in September 2010. (Complaint ¶¶ 1, 2, 9, 15). (2) Paragraph 3 of the Complaint vaguely asserts that the Union violates the CMPA and does not act in the best interests of the membership. Paragraph 3 alleges no particular standards of conduct violation. (3) A January 3, 2011, list of shop stewards omits some shop stewards. (Complaint ¶ 8). (4) The time and place of membership meetings have lead to low turnout at the meetings. (Complaint ¶ 10). (5) At the December 21, 2010 meeting, no annual budget was approved and no financial documentation was made available to members. (Complaint ¶ 11). The Board has held that similar allegations, including allegations of inconvenient meeting times and places and failure to provide financial reports, had to be supported by allegations of actual injury. *Butler v. F.O.P./Dep't of Corrs. Labor Comm.*, 46 D.C. Reg. 4409, Slip Op. No. 580 at pp. 1 n.1, 4, PERB Case No. 99-S-02 (1999).

The Complainants have not alleged actual injuries that they suffered as result of the above alleged violations. None of the Complainants are even mentioned in the paragraphs of the Complaint cited above. In those paragraphs, "the complaint is not supported by an allegation that there is an aggrieved person." *F.O.P. Metro. Police Dep't Labor Comm. and D.C. Metro. Police Dep't*, 28 D.C. Reg. 5018, Slip Op. No. 23 at 3, PERB Case Nos. 81-R-05, 81-S-02, and 81-R-09 (1981).

As each of the alleged violations raised in the Complaint is either untimely or unsupported by an allegation that there is an aggrieved person, the Complaint fails to state a claim under the CMPA. Therefore, the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The standards of conduct 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

Washington, D.C.
September 26, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-S-01 was transmitted via U.S. Mail to the following parties on this the 10th day of October, 2013.

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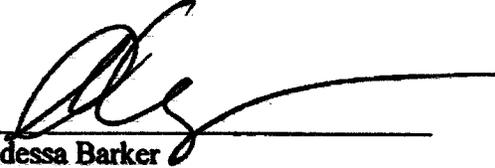
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