



CMPA. See *Virginia Dade v. National Association of Government Employees, Service Employees International Union*, Local R3-06, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and see *Gregory Miller v. American Federation of Government Employees*, Local 631, AFL-CIO and D.C. Department of Public Works, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); See also *Doctors' Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 DCR 1137, Slip Op. No. 437, PERB Case No. 95-U-10 (1995). Furthermore, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. See *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees*, District Council 20, 40 DCR 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Without the existence of such evidence, Respondent's actions cannot be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action." *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

On December 19, 2009, the Complainant was placed on paid administrative leave from Woodson High School in the District of Columbia. The Complainant was criminally charged and was prevented from entering on District of Columbia Public School property. The complainant attended a "Fitness for Duty" exam with a Doctor Webb but alleges a lack of fair representation by the Washington Teachers' Union. Further allegations include: that the Complainant was injured at work as the principal at Woodson High School but was not afforded representation by the Washington Teachers' Union and, thus, did not receive any workers' compensation, that he was assaulted by students - assaults which went unreported by the Metropolitan Police Department, that he sustained nerve damage and Post Traumatic [Stress] Syndrome; and that WTU failed to provide him with new counsel to represent him on criminal charges. The Complainant maintains that on December 7, 2010, Mr. Ali from the Employment Commission stated that the commission received a statement that the Complainant was still a part of the school district as of December 22, 2010, but was not yet getting paid.

**A. Complainant's Complaint is Time Barred and Must be Dismissed**

This Complaint is time barred under PERB Rule 520.4, which states that an unfair labor practice complaint "shall be filed not later than 120 days after the date on which the alleged violations occurred." See also *Gibson v. D.C. Pub. Empl. Rels. Bd*, 785 A.2d 1238,1241 (D.C. 2001). "PERB's rule concerning the time for filing exemplifies the principle that 'the time limits for filing appeals with administrative adjudicative agencies ... are mandatory and jurisdictional.'" *Gibson*, 785 A.2dat 1241 (quoting *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320,323 (D.C. 1995) (ellipse in original); *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Dep't*, 593 A.2d 641,643 (D.C.1991).

According to his own allegations, Mr. Powell was placed on administration leave on December 19, 2009. The latest factual allegation in the Complaint, although its relevance to this case is unclear, occurred on December 7,2010, when Complainant alleges that "Mr. AH from Employment Commission stated the commission received a statement that the Complainant was still apart [sic] of school district as

of December 22, 2010 and yet is not being paid." By even the most generous interpretation of the Complaint, the alleged violations for which he seeks redress occurred in 2010, more than 120 days before he filed this Complaint. Complainant bears the burden to establish that his claims are not time barred, and he has failed to do so. Therefore, his complaint must be dismissed in its entirety with prejudice. *Eg. Gibson*, 785 A.2d 1238; PERB Rule 520.4.

### **B. Complainant Has Not Alleged a Valid Unfair Labor Practice**

In order to state a valid unfair labor practice complaint, Complainant must allege that his termination by DCPS violated the collective bargaining agreement and that the WTU treated him in an arbitrary or discriminatory manner or in bad faith. Complainant fails to allege that his dismissal from DCPS was in violation of the collective bargaining agreement. *See Gibson v. D.C. Pub. Empl Rets. Bd.* 785 A.2d 1238, 1243 (D.C. 2001) ("judgmental acts of discretion in the handling of a grievance, including the decision to arbitrate, do not constitute the requisite arbitrary, discriminatory, or bad faith element of such a violation") (citation omitted).

Mr. Powell's filing here is similar to *Gibson*. In *Gibson*, 785 A.2d at 1242, the court "agree[d] with PERB's conclusion that [Ms. Gibson] failed to state a claim against her union." *Id.* In this regard, "[Complainant]'s complaint, even if accepted as true, alleges only that the union did not properly grieve her termination. Such an allegation cannot be construed as a claim of an unfair labor practice." *Id.* Similarly, Mr. Powell's complaint here alleges that the WTU refused to represent him at a fitness for duty exam, or to provide him alternative counsel when it had already provided him with competent counsel in a criminal case- all equally discretionary, judgmental acts, which do not rise to the level of an Unfair Labor Practice. *Id.* In fact, representation in a criminal manner is not a part of WTU's duty of fair representation but rather was done as a courtesy service to its member.

Furthermore, with respect to the individual WTU Respondents, Nathan Saunders, Charles Moore, Candi Peterson, and Clay White, Complainant fails to allege sufficient conduct by any of them that, if true, would constitute an unfair labor practice. For these reasons, Complainant's Complaint must be dismissed in its entirety with prejudice.

### **C. Complainant's Additional Claims Cannot Be Heard By the Board**

The Complainant alleges numerous other wrongs that fall outside of the Board's jurisdiction (i.e., fraud, neglect, blackmail, and violation of the Complainant's 5<sup>th</sup> and 14<sup>th</sup> amendment rights). Claims of this sort are not unfair labor practices. Therefore, these claims should be dismissed as failing to give rise to a cause of action within PERB's jurisdiction: *See D. C. Code* §§ 1-617.02, 1-617.04.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. Theodore E. Powell's Unfair Labor Practice Complaint is denied.
2. The Washington Teacher's Union, American Federation of Teachers', *et al.* Motion to Dismiss is **GRANTED**.
3. 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.

October 7, 2011

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 11-U-26 was transmitted via Fax and U.S. Mail to the following parties on this 7<sup>th</sup> day of October 2011.

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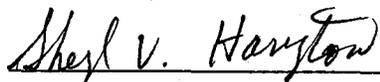
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