



On December 1, 2006, PERB sent a letter to Ms. Johnson listing multiple deficiencies in the Complaint, and affording Ms. Johnson an opportunity to correct the deficiencies within ten (10) days from the date of the letter. (Letter from Julio A. Castillo (Dec. 1, 2006)). The deficiencies included a failure to include: (1) the Complainant's signature (Board Rule 520.3); (2) the name, address, and telephone number of the person, agency, or labor organization filing the request (Board Rule 520.3(a)); (3) the name, address, and telephone number of the person, agency, or organization against whom the unfair labor practice complaint is made (Board Rule 520.3(b)); (4) a clear and concise statement of the facts constituting the alleged violation, including the date and the place of the occurrence and a citation to the provisions of D.C. Law 2-139 alleged to have been violated (Board Rule 520.3(d)); (5) the effective date and duration of the negotiated labor-management agreement between the parties, or a statement that no such agreement exists; (6) six (6) legible copies of every document filed with the Board, in addition to the original (Board Rule 510.10)<sup>2</sup>; and (7) a certificate of service (Board Rule 501.12). (Letter from Julio A. Castillo (Dec. 1, 2006)).

The deficiencies were not cured, and due to Ms. Johnson's failure to serve Respondents DCPS and the Teamsters, no responsive pleadings were filed.

No further action was taken in this case until July 16, 2012, when PERB sent Ms. Johnson a letter stating:

To aid PERB in expeditiously resolving this case and to eliminate it from our backlog, we need the following information:

- (1) Are you still the representative of Record for the Complainant; and
- (2) Have the Complainant's matters been resolved.

(Letter from Ondray T. Harris (July 16, 2012)).

The letter instructed Ms. Johnson that if no response was received within ten (10) business days, the case would be closed. *Id.* Ms. Johnson promptly notified PERB that the case had not been resolved.

On August 30, 2012, Ms. Johnson sent a letter to PERB stating: "Pursuant to our conversation on the ninth business day, I expressed an interest in closure or resolution to Ms. Waller. I'm looking forward to a hearing date." (Letter from Brenda V. Johnson (Aug. 30, 2012)). On December 6, 2013, Ms. Johnson sent a letter to PERB and its Executive Director stating that she had "returned the form included with the letter of July 12, 2012, for a hearing."<sup>3</sup> (Letter from Brenda V. Johnson (Dec. 6, 2013)).

On March 25, 2014, Executive Director Clarene Martin administratively dismissed the Complaint for a failure to cure deficiencies, pursuant to Board Rule 501.13. (Administrative

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<sup>2</sup> This Board Rule has since been repealed.

<sup>3</sup> The letter from the Board was sent on July 16, 2012, and no form was included with the letter. (Letter from Ondray T. Harris (July 16, 2012)).

Dismissal at p. 2-3). Additionally, Director Martin found that even had Ms. Johnson cured the deficiencies, the allegations against DCPS must be dismissed as untimely<sup>4</sup>. (Administrative Dismissal at 3). Similarly, Director Martin held that the allegations against the Teamsters must be dismissed due to a failure to state a claim upon which relief may be granted. (Administrative Dismissal at p. 3-4).

On April 9, 2014, Ms. Johnson filed a Motion for Reconsideration ("MFR"), asking the Board to review the Administrative Dismissal. The MFR is before the Board for disposition.

## II. Discussion

### A. Motion for Reconsideration

In her MFR, Ms. Johnson states that she seeks to resolve the issues of "improper or illegal union membership, job termination, [and] the disparity in the salaries of attendance counselors." (MFR at 5).

Ms. Johnson alleges the following facts:

In the year 2003 I was hired by Principal Tilgman of Minor Elementary School as an attendance counselor. She did not inform me the position was a wage as earn job. All other attendance counselors were hired as a full time position in other schools. Therefore the salary was not the same as other attendance counselors. The [Teamsters] came to Minor School to obtain membership in Teamsters Local Union 639, which was other attendance counselors and other jobs in the school system. The Teamsters [were] located off Bladensburg Road N.E. I became a member of the Union. I did not understand or was aware a wage as earn could not be a member of the union. The membership was considered illegal. After numerous meetings with the [Teamsters] the fact that my union membership was illegal was mention[ed]. I went to the [Teamsters] for improper termination of my attendance counselor position. When my case came before the Board of Education, the union representative that went to the case meeting was not the union people I was meeting with about my termination. I had to represent myself. After the Board of Education meeting there wasn't any further communication on the case from the Board of Education or the Union. I had documentation of my excellent work at Minor Elementary School [and] the difference in my salary and the other attendance counselors. There was never any indication of termination of my position. At present, I am a licensed attendance officer.

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<sup>4</sup> Director Martin found that the Complaint was filed over two and a half years after Ms. Johnson's termination from DCPS became effective. (Administrative Dismissal at 3).

After Minor Elementary School, I obtained a position as an attendance counselor in Roosevelt High School under Mr. Phillips, Principal. I worked a year improving the school's attendance. I was terminated because of under enrollment of the students. I have documented in my file the enrollment at Roosevelt High School never declined. There was no communication about these above matters until I heard from the Public Employee Relations Board on July 12, 2012. The letter from [the] Public Employee Relations Board sent a form requesting a hearing. There was other communication from the agency. I [made] numerous calls inquiring about the status. I would never get [an] appropriate response from the Public Employee Relations Board. I finally located Mr. Derrick Gorman, Director of the Board of Commission[s]. I sent him letters I had written to the Public Employee Relations Board. I never received a response. Mr. Gorman sent me a letter to reach someone at the Public Employee Relations Board. I call[ed] the number Mr. Gorman suggested. I received communication from the agency since July 12, 2012.

I am requesting a Motion for Reconsideration to resolve the issues of improper illegal union membership, job termination, [and] the disparity in the salaries of attendance counselor.

(MFR at 1-5).

B. Analysis

When filing a complaint with PERB, a complainant must clear certain procedural hurdles before the substance of the complaint may be considered. For example, a complainant must file his or her unfair labor practice complaint within 120 days of the date on which the alleged violations occurred. Board Rule 520.4. Additionally, Board Rule 501 lists multiple items that must be present in any pleading filed with PERB. Board Rule 501.13 sets out the consequences of a failure to comply with the requirements of the CMPA or the Board Rules when filing a complaint: "Failure to cure deficiencies shall result in dismissal without further notice." Board Rule 501.13.

PERB reviewed Ms. Johnson's Complaint and found that it had not met several of these procedural requirements, and therefore had to be administratively dismissed. (Administrative Dismissal at 2-4). Because the Complaint did not clear the procedural hurdles, PERB could not move on to consider the merits of Ms. Johnson's claims against the Teamsters and DCPS. See Board Rule 520.4, 501.13.

Additionally, even if Ms. Johnson had cured the deficiencies in her Complaint, the allegations against DCPS would still have been dismissed as untimely. The Complaint alleges

that Ms. Johnson was terminated from her employment at DCPS on January 29, 2004. (Complaint at 3). The Complaint was filed on November 7, 2006, over two and a half years after Ms. Johnson's termination became effective. The 120-day time period in Board Rule 520.4 is mandatory and jurisdictional. *See Hoggard v. D.C. Public Schools and American Federation of State, County and Municipal Employees, District Council 20, Local 1959*, 43 D.C. Reg. 1297, Slip Op. No. 352, PERB Case No. 93-U-10 (1993), *aff'd sub nom. Hoggard v. Public Employee Relations Board*, MPD-93-33 (D.C. Super. Ct. 1994), *aff'd* 655 A.2d 320 (D.C. 1995). Therefore, because the Board lacks jurisdiction over the allegations against DCPS, it must be dismissed.

Similarly, even had Ms. Johnson cured the deficiencies in her Complaint, the allegations against the Teamsters would have been dismissed for a failure to state a claim upon which relief could be granted. Though a complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged statutory violations. *Dade v. National Association of Government Employees, Service Employees Int'l Union, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996). The Complaint alleges that Ms. Johnson was "never represented by [the Union] properly as well as sold an illegal membership." (Complaint at 5). According to documents submitted with the Complaint, a step 3 grievance proceeding challenging Ms. Johnson's termination from DCPS was held on August 9, 2005. (Step 3 Grievance Report (January 4, 2006)). On January 4, 2006, the Hearing Officer at the step 3 grievance proceeding determined that Ms. Johnson failed to prove that she was terminated from DCPS in violation of the parties' collective bargaining agreement. *Id.* at 2. Ms. Johnson also submitted a letter from the Teamsters, dated February 13, 2006, informing her that her grievance was scheduled to come before the Union's Executive Board at its March 2006 meeting for review and consideration for arbitration. (Letter from Larry D. Hawkins (February 13, 2006)). Finally, Ms. Johnson submitted another letter from the Teamsters, dated August 16, 2006, stating that the grievance had been reviewed by the Union's Executive Board and would not be advanced to arbitration. (Letter from Thomas Ratliff (August 16, 2006)).

The duty of fair representation does not require a union to pursue every grievance to arbitration. *See Freson v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 31 D.C. Reg. 2290, Slip Op. No. 74, PERB Case No. 83-U-09; *see also Owens v. American Federation of State, County and Municipal Employees, Local 2095 and Nat'l Union of Hospital and Healthcare Employees, District 1199*, 52 D.C. Reg. 1645, Slip Op. No. 750, PERB Case No. 02-U-27 (2004). To show that a union has breached its duty of fair representation, a complainant must demonstrate that the union's decision not to file for arbitration was arbitrary, discriminatory, or the product of bad faith. *Goodine v. Fraternal Order of Police/Dep't of Corrections Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476, PERB Case No. 96-U-16 (1996). In addition, the complainant must allege facts that, if proven, would tie the union's actions to the alleged violation. *Id.* Moreover, a union's handling of an employee's grievance, including its decision on whether to pursue arbitration, is not arbitrary, discriminatory, or the product of bad faith simply because the grievant disagrees with the union's judgment. *See Beeton v. D.C. Dep't of Corrections and Fraternal Order of Police/Dep't of Corrections Labor Committee*, 45 D.C. Reg. 2078, Slip Op. No. 538, PERB Case No. 97-U-26 (1998).

In the instant case, Ms. Johnson failed to allege any facts that tie the Teamsters' actions to a breach of its duty of fair representation. Accordingly, the allegations against the Teamsters must be dismissed.

The Board has repeatedly held that "a motion for reconsideration cannot be based upon mere disagreement with its initial decision." See, e.g., *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 59 D.C. Reg. 6013, Slip Op. No. 1004 at p. 10, PERB Case No. 09-U-26 (2009) (citing *American Federation of Government Employees, Local 2725 v. D.C. Dep't of Consumer and Regulatory Affairs and Office of Labor Relations and Collective Bargaining*, 59 D.C. Reg. 5041, PERB Case Nos. 06-U-43 and 02-A-05 (2003)). Ms. Johnson's Motion for Reconsideration does not provide any authority which compels reversal of the Executive Director's decision. A simple disagreement with the Executive Director's findings does not merit reconsideration of the Administrative Dismissal. Therefore, we conclude that Ms. Johnson's Motion for Reconsideration must be dismissed.

### **ORDER**

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

1. The Motion for Reconsideration is dismissed.
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.

June 4, 2014

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 07-U-07 was transmitted via U.S. Mail to the following party on this the 5th day of June, 2014.

Ms. Brenda V. Johnson  
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**U.S. MAIL**

/s/ Erin E. Wilcox

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Attorney-Advisor