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:	
Horace Lomax,	
Complainant,	PERB Case No. 08-U-17
v.	Opinion No. 942
International Brotherhood of Teamsters, Local Union 639,	Motion for Reconsideration
Respondent.	

DECISION AND ORDER

I. Statement of the Case:

This matter involves a Motion for Reconsideration filed by Horace Lomax ("Complainant" or "Mr. Lomax"). The Complainant is requesting that the Board reverse the Executive Director's dismissal of his unfair labor practice complaint.

The Complainant filed an unfair labor practice complaint ("Complaint") against the International Brotherhood of Teamsters, Local Union 639 ("Local 639 " or "Union"). It is asserted that Local 639 violated the Comprehensive Merit Personnel Act ("CMPA"), as codified at D.C. Code §§1-617.04 (a)(4) and (5) and 1-617.04 (b) (3). (See Complaint at p. 1). The Union filed an answer denying that it committed an unfair labor practice.

After reviewing the Complainant's submission, the Board's Executive Director determined that the Complaint was untimely filed. Therefore, by letter dated January 29, 2008, the Board's Executive Director administratively dismissed the Complaint.

On February 21, 2008, the Complainant submitted a letter termed a Motion for Reconsideration ("Motion") pursuant to Board Rule 500.4. The Complainant's submission is before the Board for disposition.

II. Discussion:

The Complainant claims that on August 9, 2004, he filed a grievance with Local 639 concerning his reassignment. (See Compl at p. 1 and Complainant's Unmarked Exhibit titled "Grievance Reporting Form"). On August 9, 2004, Local 639 requested a Step II grievance on behalf of the Complainant. (See *Complaint at* p. 1).

On October 1, 2004, Local 639 requested a Step III grievance meeting on behalf of the Complainant. The Complainant asserts that on October 25, 2004, he received notification of a Step III grievance meeting to be held on November 8, 2004. By letter dated October 26, 2004, Louis McLaughlin, Business Representative for Local 639 requested that the Complainant call him. (See Complainant's Unmarked Exhibit dated October 26, 2004).

On January 31, 2005, the Complainant received a letter from Loretta Blackwell, Director of the Public Schools' Office of Labor Management Employee Relations ("LMER"). Ms. Blackwell informed the Complainant that the school system has only three part-time hearing officers and that these hearing officers have a lot of cases. As a result, she indicated that "the issuance of [Step III] decisions can be lengthy." (Complainant's Unmarked Exhibit dated January 31, 2005).

On July 7, 2005, the Complainant wrote a letter to James Hoffa, General President of the International Brotherhood of Teamsters. In his July 7th letter the Complainant requested that Mr. Hoffa assign someone to look into the status of the Complainant's Step III grievance. In addition, the Complainant alleged that Local 639 did not provide him with adequate representation. (See Complainant's Unmarked Exhibit dated July 7, 2005). By letter dated July 13, 2005, Edward Keyser, Jr., International Representative, acknowledged receipt of the Complainant's July 7th letter. Mr. Keyser informed the Complainant that the questions and concerns raised in his July 7th letter related to the internal administration of Local 639. (See Complainant's Unmarked Exhibit dated July 13, 2005). Therefore, the Complainant's July 7th letter was being referred to Thomas Ratliff, President of Local 639. On July 20, 2005, the President of Local 639 responded to the Complainant's July 7th letter to Mr. Hoffa. (See Complainant's Unmarked Exhibit dated July 20, 2005). In his July 20th letter, the President of Local 639 advised the Complainant that Step III decisions can take up to a year before they are issued. In addition, he informed the Complainant that had the Complainant returned to work as requested by the District of Columbia Public Schools, the Union could have filed a grievance on his behalf concerning the termination. (See Complainant's Unmarked Exhibit dated July 20, 2005).

On January 25, 2008, the Complainant filed an unfair labor practice complaint against Local 639 alleging that Local 639 violated the CMPA. In his Complaint , Mr. Lomax asserted that Local 639 violated D.C. Code §§1-617.04(a)(4) and (5) and 1-617.04(b) (3). (See Complaint at p. 1). After reviewing the Complainant's submission, the Board's Executive Director determined that the

Complaint was untimely filed. By letter dated January 29, 2008, the Board's Executive Director dismissed the Complaint because it was untimely. (See Administrative Dismissal Letter dated January 29, 2008 at p. 1).

In a letter dated February 21, 2008, the Complainant asserts that pursuant to Board Rule 500.4 he is requesting reconsideration of the Executive Director's decision because the Executive Director's "time table is not correct." (Motion at p. 1). In support of this position, the Complainant asserts the following:

> [I] [r]eceived your letter regarding my complaint being untimely. . . I would like reconsideration by the Board under rule 500.4 as I am stating that your time table is not correct.
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> On August 9, 2004, I file[d] a grievance with the Local Union 639. On November 8, 2004, I receiv[ed] a hearing. The hearing was held as scheduled without a decision being rendered. On July 20, 2005, I received a letter from Local Union 639 stating that a decision takes almost a year to obtain. I waited until November 8, 2005, and a decision still was not rendered which would have been a year.
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> On November 16, 2005, I filed an unfair labor complaint with the PERB. On May 11, 2006; six months later, I received a letter from you stating that my complaint was denied due to my failure to provide a basis for the complaint.
>
> On May 22, 2006, I filed for reconsideration due to the evidence that I provided, believing that the Board would resolve this matter. On January 26, 2007, eight months later, I sent a certified letter to PERB requesting a status which was signed as received by Mr. David B. Washington with no response.
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> On May 1, 2007, four months later, I sent another letter requesting status of my case signed by a Sheryl Harrington in which I did not receive a response. On October 19, 2007, I sent another letter to you inquiring about the status of my case in which you claimed that on June 21, 2007 you sent me a letter notifying me that your decision was upheld by the Board. I am disputing your time line because PERB and the Local Union 639 held my case for 3 years and 2 months.
>
> You contend that the filing occurred after the August 3, 2004 allegation. What allegation during that time are you referring to? Also, you stated that I filed 2 years and 4 months after the September

> 2005 allegation. What allegation are you referring to when the Local
>
> Union 639 had the case, and PERB was not involved? My initial complaint was filed with PERB on November 16, 2005 after Local Union 639 failed to render a decision a year after the hearing was held as stated. PERB kept my complaint from November 2005 to December 2007. I then filed another Complaint at which time you informed me that the Complaint was untimely. How is it that my Complaint can be considered untimely when the Local Union 639 as well as PERB kept my complaint for 3 years and 2 months?
>
> I noticed at the bottom of the notification letter that I received from you indicated that my complaint filed on January 25, 2008, case #08U17 was untimely. I also noticed that you reopened case #06U09 in which you claimed was closed. If you are allowed to associate case #06U09 with case #08U17, then the entire case I filed on November 16, 2005, should be addressed, not the portion of the case you want addressed. I believe that all of your responses were untimely. How is it that it takes 2 years and 2 months for PERB to inform me that my complaint has no basis? I also would like to know specifically when the 120 days time line expired.

(Motion at pgs. 1-2).

Local 639 did not submit a response to the Complainant's Motion. In light of Mr. Lomax's submission, we must determine whether the Executive Director erred in dismissing the Complaint.[1] In considering this question the Board reviewed the current Motion, Mr. Lomax's Complaint and the Union's answer to the Complaint.[2]

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[1]The Executive Director did not participate in the Board's discussion concerning Mr. Lomax's motion.

[2]In an April 26, 2008 letter addressed to the Executive Director, Mr. Lomax states the following:

> I have valuable information that will benefit my case . . . and would like to know the method [by] which evidence is transmitted to the Board?

Mr. Lomax's letter suggests that he has evidence which has not been previously submitted

Board Rule 520.4 provides as follows:

> Unfair labor practice complaints **shall be filed not later than 120 days after the date on which the alleged** violations occurred. (Emphasis added).

Citing Hoggard v. DCPS and AFSCME, Council 20, Local 1959, 43 DCR 1297, Slip Op. No. 352 at p. 3, PERB Case No. 93-U-10 (1993), the Executive Director noted that the "Board has held that '[t]his deadline date is 120 days after the date Petitioner . . . bec[omes] aware of the event giving rise to th[e] complaint allegations . . .'." See also, American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority, 46 DCR 119, Slip Op. No. 509, PERB Case No. 97-U-07 (1997). The Executive Director also indicated that "Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. See, Glendale Hoggard v. District of Columbia Public Employee Relations Board, 655 A.2d 320, 323 (DC 1995)." (Dismissal Letter at pgs. 1-2).

The Executive Director determined that in the present case, all the dates noted in the Complaint "involve incidents that allegedly occurred between August 3, 2004 and September 14, 2005. Therefore, [the Executive Director found that consistent with Board Rule 520.4, Mr. Lomax was] required to file [his] Complaint against the Union within 120 days of the August 3, 2004 and September 14, 2005 dates, respectively. However, [Mr. Lomax's] Complaint was not filed until January 25, 2008. This filing occurred three years and five months after the August 3, 2004 allegation and two years and four months after the September 14, 2005 allegation. In light of the above, [the Executive Director concluded that Mr. Lomax's] filing clearly exceed[ed] the 120 day

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and would like to submit this evidence to the Board. This Board has found that "we will not permit evidence presented for the first time in a motion for reconsideration to serve as a basis for reconsidering [the Executive Director's dismissal] when the [Complainant] failed to provide any evidence at the afforded time." Lane v. University of the District of Columbia, Slip Op. No. 862 at p. 4, PERB Case No. 03-U-45 (2002). Consistent with the Board's ruling in the *Lane* case, we will only consider evidence previously submitted and will not consider new evidence that was not before the Executive Director, as a basis for reversing the Executive Director's determination. In light of the above, it is not necessary for us to delay our decision in order to allow Mr. Lomax the opportunity to submit new evidence.

requirement in Board Rule 520.4." (Dismissal Letter at p. 2). As a result, he dismissed Mr. Lomax's Complaint because it was untimely.

In his Motion, the Complainant contends that his Complaint was timely filed. In support of this position, the Complainant asserts the following:

> My initial complaint was filed with PERB on November 16, 2005 after Local Union 639 failed to render a decision a year after the [Step III] hearing was held . . . PERB kept my complaint from November 2005 to December 2007. I then filed another complaint at which time [the Board's Executive Director] informed me that the Complaint was untimely. How is it that my Complaint can be considered untimely when the Local Union 639 as well as PERB kept my Complaint for 3 years and 2 months. (Motion for Reconsideration at pgs. 1-2).

On November 16, 2005, Mr. Lomax filed an unfair labor practice complaint against Local 639. That case was assigned PERB Case No. 06-U-09. Mr. Lomax suggests that since his initial unfair labor practice complaint (PERB Case No. 06-U-09) was filed on November 16, 2005, his current Complaint (PERB Case No. 08-U-17) was filed within 120 days of the September 2005 date which in this case is the date that the Executive Director determined triggers the 120 day requirement of Board Rule 520.4.

The allegations in Mr. Lomax's November 16, 2005 unfair labor practice complaint failed to allege that the Union violated any of the statutory provisions that delineate unfair labor practices by a labor organization. However, when considering the pleadings of a *pro se* Complainant, the Board construes the claims liberally to determine whether a proper cause of action has been alleged. See, Beeton v. D.C. Department of Corrections and FOP/DOC Labor Committee, 45 DCR 2078, Slip OP. No. 538, PERB Case No. 97-U-25 (1998). The Executive Director applied this standard and concluded that Mr. Lomax was attempting to assert that the Union failed to fairly represent him by failing to: (1) represent him regarding his transfer from Fletcher Johnson Educational Center to Coolidge Senior High School; (2) represent him when he was terminated by the District of Columbia Public Schools; and (3) enforce the time limits contained in the grievance procedures section of the parties' collective bargaining agreement. However, the Executive Director determined that the Mr. Lomax failed to make any allegations that, if proven, would constitute a statutory violation by Local 639. On May 11, 2006, the Executive Director dismissed the November 16, 2005 unfair labor practice complaint for failure to state a claim under the CMPA.

On May 21, 2006, Mr. Lomax filed a motion for reconsideration requesting that the Board reverse the Executive Director's dismissal of PERB Case No. 06-U-09. In Slip Opinion No. 848 (issued June 21, 2007) we concurred with the Executive Director's conclusion that Mr. Lomax attempted to assert that Local 639 failed to fairly represent him when he was reassigned and

terminated. In addition, we noted that under certain circumstances, a labor organization can violate D.C. Code §1-617.04(b)(1) or (2) (2001 ed.) by failing to fairly represent a bargaining unit employee. (See Slip Op. No. 848 at p. 5). However, we found that Mr. Lomax failed to provide any allegations that, if proven, would constitute a statutory violation by Local 639. (See Slip Op. No. 848 at p. 5). Therefore, we denied Mr. Lomax's motion for reconsideration and dismissed the unfair labor practice complaint (PERB Case No. 06-U-09) in its entirety. (See Slip Op. No. 848 at p. 10).

As noted above, in Slip Op. No. 848, we considered and rejected Mr. Lomax's claim that Local 639 failed to fairly represent him when he was reassigned and terminated. Since PERB Case No. 06-U-09 was decided on the merits, Mr. Lomax can not use the filing date of that closed case to support his claim that his current Complaint (PERB Case No. 08-U-17) was timely filed. If Mr. Lomax disagreed with our findings in Slip Opinion No. 848, he could have within 30 days of our decision filed an appeal in the Superior Court of the District of Columbia. However, Mr. Lomax failed to do so. In view of the above, we find no merit to Mr Lomax's argument that PERB Case No. 08-U-17 is timely.

Also, a review of the record reveals that all the dates noted in the current Complaint (PERB Case No. 08-U-17) involve incidents that allegedly occurred between August 3, 2004 and September 14, 2005. We believe that the crux of the present motion is the fact that the Complainant disagrees with the Executive Director's decision. A mere disagreement with the Executive Director's decision is not a sufficient basis for reversing that decision. We conclude that the Complainant has failed to assert any grounds for the Board to reverse the Executive Director's decision. In view of the above, we find that the Executive Director's decision was reasonable, supported by the record and consistent with Board precedent. Therefore, we deny the Complainant's Motion for Reconsideration and affirm the Executive Director's administrative dismissal.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The Complainant's Motion for Reconsideration is denied.

(2) The Complaint is dismissed in its entirety.

(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.

April 30, 2008