

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:)	
)	
Anitha L. Davis,)	PERB Case No. 15-S-01
Complainant,)	
)	Opinion No. 1633
v.)	
)	
American Federation of State)	
County & Municipal Employees)	
Local Union No. 2921,)	
)	
American Federation of State)	
County & Municipal Employees)	
Council 20,)	
)	
American Federation of State)	
County & Municipal Employees)	
International Union,)	
)	
Respondents.)	
)	

DECISION AND ORDER

I. Statement of the Case

On June 10, 2015, Anitha L. Davis (“Complainant”) filed a Standards of Conduct Complaint (“Complaint”), alleging the American Federation of State, County, and Municipal Employees (“AFSCME”), AFSCME Local Union No. 2921, AFSCME Council 20, and AFSCME International (collectively referred to as “Respondents”) breached their duty of fair representation, in violation of the Comprehensive Merit Personnel Act (“CMPA”). On June 25, 2015, Respondents AFSCME, AFSCME Local Union No. 2921 and AFSCME Council 20 submitted a joint answer and motion to dismiss the Complaint on grounds that it was untimely filed, failed to state a claim for which relief could be granted, and that Complainant lacked standing to bring her claims. The motion to dismiss was denied. On, July 7, 2015, Ms. Davis moved for summary judgment. The matter was sent to a hearing. The Hearing Examiner’s Report and Recommendation (“Report and Recommendation”) is before the Board for disposition. No exceptions were filed in the case.

For the reasons stated herein, the Board adopts the Hearing Examiner's Report and Recommendations and the Complaint is dismissed with prejudice.

II. Hearing Examiner's Report and Recommendation

A. Factual Findings

Ms. Davis was an administrative aide with the District of Columbia Public Schools ("DCPS"). On May 24, 2013, she was notified that her position was being abolished pursuant to a reduction in force ("RIF") effective August 16, 2013.¹ Ms. Davis filed a petition of appeal concerning the RIF with the District of Columbia Office of Employee Appeals ("OEA") as well as a Standards of Conduct Complaint with the Board, PERB Case No. 14-S-01, against AFSCME for failure in their duty to represent her.²

On May 2, 2014, AFSCME agreed that a member of its staff would represent her in her appeal to OEA.³ Stephen White, an employee of AFSCME, was identified in OEA's Initial Decision as Ms. Davis' Union Representative.⁴ On December 30, 2014, OEA issued an Initial Decision upholding DCPS's actions regarding the RIF.⁵

After receiving OEA's decision, Ms. Davis sent a letter to all three Respondents regarding the OEA procedures for appeal. Ms. Davis stated that the deadline to file an appeal was impending and her appointed AFSCME representative had not contacted her concerning the appeal. According to Ms. Davis, this was a breach of the AFSCME's duty to represent her.⁶ Ms. Davis herself filed a petition for review with OEA on February 4, 2015.⁷

In the case at hand, the Hearing Examiner stated that the Complaint, which was submitted *pro se*, lacked clarity about certain factual matters such as what collective bargaining agreement was in force during the period between Ms. Davis's loss of her job and her filing of the Complaint in June of 2015, as well as what specific failures on the part of the AFSCME form the basis of her Complaint.⁸ To clarify these matters, the Hearing Examiner conducted extensive off the record discussions with Ms. Davis, her representative, and the representatives of AFSCME during the hearing.⁹ Ms. Davis agreed on the record that her Complaint related solely to her claim that AFSCME failed in its duty to represent her in her OEA appeal.¹⁰

According to the Hearing Examiner, although Ms. Davis's efforts to gain assistance for her appeal petition took place over several weeks, by February 4, 2015, it was clear she was not

¹ Report and Recommendations at 2-3.

² Report and Recommendations at 3.

³ Report and Recommendations at 3.

⁴ Report and Recommendations at 3.

⁵ Report and Recommendations at 3.

⁶ Report and Recommendations at 3.

⁷ Report and Recommendations at 4.

⁸ Report and Recommendations at 5.

⁹ Report and Recommendations at 5.

¹⁰ See Transcript at 18-20.

going to receive the desired assistance because, at this point, she filed the appeal herself.¹¹ The Complaint was submitted to the Board on June 10, 2015, more than 120 days after February 4, 2015. The Hearing Examiner concluded that under PERB Rule 544.4 the Complaint was untimely filed.¹²

B. Recommendations

The Hearing Examiner found that the Complaint was untimely and recommended that it be dismissed in its entirety with prejudice. As a result of this finding, the Hearing Examiner found it unnecessary to make any further findings with respect to the merits of the underlying complaint.¹³

III. Discussion

The Board will affirm a Hearing Examiner's findings and conclusions if they are reasonable, persuasive, supported by the record, and consistent with PERB precedent.¹⁴ Determinations concerning the admissibility, relevance and weight of evidence are reserved to the Hearing Examiner.¹⁵ Issues concerning the probative value of evidence are also resolved to the Hearing Examiner.¹⁶ In this case, no Exceptions were filed by either party, and the Board has previously held that "whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendations if it finds, upon full review of the record, that the hearing examiner's analysis, reasoning and conclusions' are 'rational and persuasive.'"¹⁷

As a threshold issue, it is necessary to determine whether the Complaint was timely filed. PERB Rule 544.4 states that a complaint alleging a standard of conduct violation shall be filed no later than 120 days from the date the alleged violation(s) occurred. In order to determine when the basis of the violation occurred, the Board looks to when the Complainant became aware of the violation. As stated earlier, Ms. Davis agreed that the Complaint relates solely to AFSCME's failure to represent her in her OEA appeal. The Hearing Examiner determined that February 4, 2015, should be the start date of the alleged violation because at this point Ms. Davis did not expect any representation from AFSCME.¹⁸ Based on this interpretation, the Complaint was untimely under PERB Rule 544.4. Board rules governing the initiation of actions before the Board are mandatory.¹⁹ Neither the Board nor PERB rules allow an exception for extending the deadline in the initiation of this type of action.

¹¹ Report and Recommendations at 5.

¹² Report and Recommendations at 5.

¹³ Report and Recommendations at 5.

¹⁴ *Am. Fed'n of Gov't Emp., Local 1000 v. D.C. Dep't of Emp. Svcs.*, Slip Op. No. 1555, PERB Case No. 13-U-03 (November 19, 2015)

¹⁵ *Hoggard v. D.C. Pub. Sch.*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20 (1996).

¹⁶ *Am. Fed'n of Gov't Emp., Local 2725 v. D.C. Hous. Auth.*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07 (1998).

¹⁷ *Council of Sch. Officers, Local 4 v. D.C. Pub. Sch.*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at 6, PERB Case No. 09-U-08 (2012).

¹⁸ Report and Recommendations at 5.

¹⁹ *D.C. Pub. Employee Relations Bd. v. D.C. Metro. Police Dep't*, 593 A.2d 641 (D.C. 1991). See also *Jones-Patterson v. SEIU*, 62 D.C. Reg. 16471, Slip Op. No. 1546, PERB Case No. 14-S-06 (2015).

The Board has consistently acknowledged that *pro se* litigants generally lack the same level of expertise and experience as attorneys and that the Board does not hold *pro se* parties to the same standard required of parties represented by counsel.²⁰ A *pro se* litigant is entitled to a liberal construction of his/her pleadings when determining whether a proper cause of action has been alleged.²¹ Using this approach, Ms. Davis's standards of conduct complaint could be construed as an unfair labor practice complaint based on the Respondent's duty of fair representation.²² PERB Rule 520.4 states that an unfair labor practice complaint shall be filed no later than 120 days after the date on which the alleged violation(s) occurred. The deadlines for filing an unfair labor practice complaint and a standards of conduct complaint are identical. Under PERB rules, Ms. Davis' Complaint would still be untimely even if it were construed as an unfair labor practice complaint.

IV. Conclusion

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, persuasive, supported by the record, and consistent with Board precedent. Ms. Davis's Complaint is untimely under PERB Rule 544.4, therefore it should be dismissed and no findings need to be made regarding the underlying merits of the Complaint. The Board adopts the Hearing Examiner's Report and Recommendation.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559, this Decision and Order shall become final thirty (30) days after issuance unless a party files a motion for reconsideration or the Board reopens the case within fourteen (14) days after issuance of the Decision and Order.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Members Douglas Warshof, Barbara Somson and Mary Anne Gibbons.

July 27, 2017

Washington, D.C.

²⁰ See *Zenian v. Am. Fed'n of State, Cnty. and Mun. Emps., Local 2743*, 59 D.C. Reg. 3601, Slip Op. No. 890, PERB Case No. 04-U-30 (2007).

²¹ *Allison v. Fraternal Order of Police/Dep't of Corr. Labor Comm.*, 61 D.C. Reg. 7583, Slip Op. No. 1477, PERB Case No. 14-S-04 (2014).

²² Although Ms. Davis was represented by an attorney at the hearing, she filed the Complaint *pro se*. PERB has no record of any representative filing an appearance on her behalf.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-S-01, Op. No. 1633 is being transmitted to the following parties on this the 31st day of July 2017.

Anitha L. Davis
1617 21st Place, SE #101
Washington, D.C. 20020

via U.S. Mail

Judith Rivlin, Esq.
Office of the General Counsel
AFSCME, AFL-CIO
1101 17th Street, NW
Suite 900
Washington, D.C. 20036

via File&ServeXpress

Brenda Zwack, Esq.
Murphy Anderson, PLLC
1401 K Street, NW
Suite 300
Washington, D.C. 20005

via File&ServeXpress

/s/ Merlin George
PERB