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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of)
)
)
Sharon Denise Wise)
)
) Complainant) PERB Case No. 20-U-12
)
) Opinion No. 1781
v.)
)
)
American Federation of Government)
Employees, AFL-CIO, Local 631)
)
) Respondent)
)

DECISION AND ORDER

I. Statement of the Case

On January 10, 2020, the Complainant, *pro se*, filed an Unfair Labor Practice Complaint (Complaint) against the American Federation of Government Employees, Local 631 (Union). The Complainant alleged violations of D.C. Official Code § 1-617.04(b)(1), (2), (3), (4), and (5) of the Comprehensive Merit Personnel Act (CMPA).¹ The Union filed an Answer and a Motion to Dismiss, raising timeliness of the allegations, and claiming the Complaint failed to allege facts to support a claim that the Union violated the CMPA.²

The Executive Director dismissed the Complaint on December 4, 2020, for timeliness and for failing to allege facts that would entitle the Complainant to relief under the CMPA. The Board accepted the *pro se* filer's email communication regarding the Executive Director's administrative dismissal, as a motion for reconsideration.³ The Board notified the Complainant by email on December 17, 2020, that she had until January 1, 2021, to file additional evidence. The Complainant did not submit any response. For the reasons stated herein, the Board upholds the Executive Director's administrative dismissal.

¹ The Complaint also alleged violations of D.C. Official Code § 1-617.04(a), which prohibits conduct by agencies and, thus, is not applicable in claims against the Union.

² Mot. to Dismiss at 3-5.

³ Between December 4, 2020, and December 7, 2020, the Complainant communicated with PERB staff via email regarding her appeal options. On December 17, 2021, the Board decided to treat the Complainant's email communication as a request for reconsideration. On December 17, 2020, PERB notified the Complainant and the Respondent via email that PERB was reconsidering this case.

II. Discussion

A. The Complaint

The Complainant alleged that, on or about March 6, 2019, the Union refused to assist her with workplace issues, and she was transferred to a different office in June 2019.⁴ She also claimed that the Union declined to represent her when she was terminated on November 20, 2019.⁵ The Complainant further asserted that she spoke to the Union President about her situation on January 8, 2020, and January 10, 2020, but the Union declined to act.⁶

B. Untimely Allegations

The Union asserted in its Answer and Motion to Dismiss that the Complaint contained time-barred allegations under the Board's rules.⁷ Board Rule 520.4 states, "An unfair labor practice complaint must be filed no later than one hundred twenty (120) days after the date on which the alleged violation occurred or the date the complainant knew or should have known of the alleged violation, if later." The Complainant filed her Complaint on January 10, 2020, meaning any allegations that occurred before September 22, 2019, are untimely. Thus, the allegations concerning events transpiring in November 2019 and January 2020 are timely, while those concerning the events of March 2019 and June 2019 are untimely. The Executive Director's determination on these allegations is reasonable and supported by PERB precedent.⁸ Remaining are the timely allegations that the Union declined to represent the Complainant regarding her termination in November 2019.

C. Failure to State a Claim Upon Which Relief Can Be Granted

In its Motion to Dismiss, the Union asserts that the Complainant was employed on a term appointment that expired on November 27, 2019.⁹ The Union submitted as an exhibit the November 19, 2019 letter from the Department of Energy and Environment (DOEE) to the Complainant advising her that her term appointment was coming to an end and would not be extended. The letter stated that "this termination action is not appealable or grievable." The Complainant does not take issue with the Union's assertion as to her status or DOEE's statement that its decision declining to extend her appointment was not grievable. Nor has the Complainant

⁴ Complaint at 4.

⁵ Complaint at 4.

⁶ Complaint at 4.

⁷ Answer at 2; Mot. to Dismiss at 1.

⁸ See e.g., *FOP Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 63 D.C. Reg. 6490, Slip Op. No. 1568, PERB Case No. 09-U-37 (2016) (upholding Executive Director's dismissal of Complaint due to untimeliness and failure to state a claim because dismissal was reasonable and supported by PERB precedent).

⁹ Mot. to Dismiss at 1.

alleged any facts that would support a claim that the Union treated her in an arbitrary or discriminatory manner.¹⁰

Assuming that the Complaint's allegations are true, the Complainant alleged that the Union denied her representation because the Union believed she should have sought the Union's help earlier about her termination.¹¹ In the December 4, 2020, dismissal letter, the Executive Director dismissed, for failure to state a claim upon which relief could be granted, the Complainant's claims stemming from her termination.¹² The Board agrees with the Executive Director. Simply put, the Complaint failed to allege any facts upon which one could conclude that the Union acted in bad faith or was motivated by a dishonest purpose.¹³ Therefore, the Executive Director's decision will not be overturned. The Complaint's allegations related to the Union's duty of fair representation are dismissed.

III. Conclusion

The Executive Director's decision to dismiss the Complaint is reasonable and supported by the Board's precedent. No allegations remain that the Board has authority to consider. Therefore, the Complaint is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Barbara Somson, Mary Anne Gibbons, and Peter Winkler.

April 15, 2021

Washington, D.C.

¹⁰ On the record before us, it is not clear whether, as a temporary appointee, the Complainant was a member of the bargaining unit represented by the Union. In response to a December 27, 2019 email inquiry from the Union, a DOEE official stated that the Complainant "is in a union position." But earlier, in a December 3, 2018 letter from the Office of Labor Relations & Collective Bargaining (OLLCB) to the Union, OLLCB rejected the Complainant's request that union dues be deducted from her wages, stating that she was "assigned to non-union CBU code." Because the Complainant failed to state a claim upon which relief could be granted even assuming that the Union represented her, we find it unnecessary to address the question.

¹¹ Complaint at 4.

¹² Administrative Dismissal Letter at 2.

¹³ See *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*, 41 D.C. Reg. 1751, Slip Op. No. 303, at 2, PERB Case No. 91-U-17 (1992). See also *Stanley O. Roberts v. American Federation of Government Employees, Local 2725*, 36 D.C. Reg. 1590, Slip Op. No. 203 at 3, PERB Case No. 88-S-01(1989).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 20-U-12, Op. No. 1781 was sent to the following parties on this the 21st day of April 2021.

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/s/ Elizabeth Slover
Public Employee Relations Board