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

In the Matter of:)	
)	
Andebrhan Berhe)	
)	PERB Case No. 19-U-20
Complainant)	
)	Opinion No. 1746
v.)	Motion for Reconsideration
)	
Washington Teachers' Union)	
)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

Before the Board is a Motion for Reconsideration (Motion) filed by Andebrhan Berhe, *pro se*, (Complainant) on October 9, 2019. The Complainant, a former member of the Washington Teachers' Union (WTU), seeks the Board's reconsideration of the Executive Director's September 24, 2019, administrative dismissal of the Complainant's unfair labor practice complaint (Complaint). The Executive Director determined that the Complaint was barred by the doctrine of collateral estoppel. WTU opposes the Motion.

For reasons stated herein, the Board denies the Complainant's Motion and dismisses the Complaint.

II. Background

On April 15, 2019, the Complainant filed a Complaint,¹ alleging that WTU violated D.C. Official Code §§ 1-617.03(a)(1), (2), (4) and (5)² and 1-617.04(b)(1), (2), (3), (4), and (5). The

¹ The Complainant filed an amended unfair labor practice complaint on August 30, 2019, to submit additional evidence.

² In a letter dated August 19, 2019, the Executive Director determined that the allegations in the Complaint did not concern standards of conduct violations and that the matter would be processed as an unfair labor practice complaint.

Complaint alleged that WTU refused to represent the Complainant (1) in a grievance against District of Columbia Public School (DCPS) relating to the Complainant's termination in 2008 and (2) in PERB Case No. 14-U-02, filed on behalf of probationary teachers represented by WTU.³ The Complainant requested that WTU reimburse the Complainant for all union dues paid from 2003 to August 2008, including interest.⁴ On September 18, 2019, WTU moved to dismiss the Complaint for timeliness and on the grounds that the Complainant was barred from re-litigating claims already brought before the Board in PERB Case No. 19-U-08, Opinion No. 1723.⁵

In PERB Case 19-U-08, the Complainant alleged that WTU committed an unfair labor practice by refusing to represent him in a grievance against DCPS. On July 8, 2019, the Executive Director dismissed the complaint as untimely. In Opinion No. 1723, pertaining to PERB Case No. 19-U-08, the Board found the Executive Director's determination reasonable and supported by PERB precedent.⁶ The Board denied the motion for reconsideration of the Executive Director's dismissal and dismissed the complaint as untimely.

In a letter filed on September 24, 2019, the Executive Director determined that the Complainant had filed the present Complaint on the same grievance as PERB Case No. 19-U-08. The doctrine of collateral estoppel bars the re-litigation of the issue of law or fact that was determined by the Board in a prior proceeding between the parties. Therefore, the Executive Director dismissed the Complaint.

III. Discussion

It is well settled that a mere disagreement by the Complainant with the Executive Director's decision is not a valid basis for the Board to grant a motion for reconsideration.⁷ Moreover, the Board will not grant a motion for reconsideration that does not assert any legal grounds that would compel overturning an Executive Director's dismissal.⁸ The Board will uphold an Executive Director's dismissal where the decision is reasonable and supported by Board precedent.⁹

In the Motion, the Complainant requests "the Board to waive the filing deadline to allow the case to proceed" because the Complainant did not learn until March 22, 2019, that WTU would not process the Complainant's grievance.¹⁰ The Motion does not address the issue of collateral estoppel. Instead, the Complainant's Motion disagrees with the Board's determination

³ Am. Compl. at 1-5.

⁴ Am. Compl. at 3.

⁵ Resp't Mot. to Dismiss at 2; *Adebrhan Berhe v. Wash. Teachers' Union*, Slip Op. No. 1723, PERB Case No. 19-U-08 (Sept. 16, 2019).

⁶ *Berhe*, Slip Op. No. 1723, at 4.

⁷ *Kenneth Johnson v. D.C. Gov't and D.C. Metro. Police Dep't*, Slip Op. No. 1546 at 2, PERB Case No. 15-U-40 (2016).

⁸ *Id.*

⁹ *Id.*

¹⁰ Mot. at 1, 4.

in Opinion No. 1723 that the Complainant's unfair labor practice complaint was untimely filed.¹¹ Therefore, the Board finds that the Motion is merely an attempt to re-litigate the Board's decision in Opinion No. 1723 that the Complainant's unfair labor practice complaint was untimely filed.

Further, the Board finds that the Executive Director's decision is reasonable and supported by Board precedent. The doctrine of collateral estoppel prohibits the re-litigation of an issue of law or fact that was raised, litigated, and actually decided by a judgment in a prior proceeding between the parties, if the determination of that issue was essential to the judgment.¹² In Opinion No. 1723, the Board determined that the Complainant's allegations that WTU refused to represent the Complainant in a grievance against DCPS were untimely.¹³ The Board determined that the issue of timeliness was first raised by WTU in WTU's motion to dismiss and that the Complainant had a full and fair opportunity to address this issue in the Complainant's unfair labor practice complaint and amended complaint.¹⁴ The Board found that the Complainant knew or should have known that WTU was not going to represent the Complainant at the latest, on or about November 30, 2018, and that the complaint's filing date of April 15, 2019, was beyond the Board's 120-day filing deadline.¹⁵ Further, in Opinion No. 1723, the Board found that the Complainant did not provide a reason for the complaint's untimely filing.¹⁶ In the current matter, the Complainant has filed an unfair labor practice complaint on the same grievance. Accordingly, the Board finds that the Executive Director's determination that the doctrine of collateral estoppel bars the Complainant from re-litigating the Board's prior decision is reasonable and supported by Board precedent.

IV. Conclusion

The Motion for Reconsideration does not provide any authority to compel overturning the Executive Director's dismissal. Additionally, the Board finds that the Executive Director's decision is reasonable and supported by Board precedent. Therefore, the Complainant's Motion is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's Motion for Reconsideration is denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

¹¹ Mot. at 1-4; *Andebrhan Berhe v. Wash. Teachers' Union*, Slip Op. No. 1723, PERB Case No. 19-U-08 (Sept. 16, 2019).

¹² *Washington Teachers' Union v. D.C. Pub. Sch.*, 38 D.C. Reg. 2650, Slip Op. No. 258 at 2, PERB Case No. 90-U-13 (1991) (citing *NLRB v. United Technologies Corp.*, 706 F.2d 1254, 1260 (C.A. 2, 1983)).

¹³ *Berhe*, Slip Op. No. 1723 at 3-4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

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

Washington, D.C.

May 28, 2020

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 19-U-20, Opinion No. 1746 was sent by File and ServeXpress to the following parties on this the 4th day of June 2020.

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