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

In the Matter of:)	
)	
)	
Elgie Morton,)	
)	
Petitioner ,)	PERB Case No. 10-U-43
)	
v.)	Opinion No. 1268
)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,)	Motion to Dismiss
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

Elgie Morton (“Complainant”) filed an Unfair Labor Practice Complaint against Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP” or “Respondent”) alleging interference, restraint, or coercion of an employee in rights guaranteed by the Comprehensive Merit Personnel Act (“CMPA”), D.C. Code § 1-617 *et seq.*. Respondent filed an Answer denying these allegations. In addition, Respondent filed a Motion to Dismiss the Complaint.

II. Discussion

In the Unfair Labor Practice Complaint, Complainant states the following:

On March 16, 2007, the PERB dismissed the complainant case due to the fact that the Fraternal Order of Police MPD Labor Committee and their lawyer James Pressler Jr., committed a malpractice in the handling of the complainant’s PERB case; case No. 07-A-03, please review. The [D]istrict of Columbia Court of

Appeals has affirmed this decision in Case No. 08-CV-1243,
please review.

(Complaint at 2).

Respondent denies statements made and raises the following affirmative defenses in its
Answer:

1. The Complainant's Unfair Labor Practice Complaint is Not
Timely Filed.

In accordance with PERB Rule 520.4, Unfair Labor Practice
Complaints before the Board must be filed within "120 days from
the date the alleged violation(s) occurred." For the following
reasons, the Unfair Labor Practice Complaint is untimely.

First and foremost, a review of the Complaint demonstrates that
the allegations that form the basis of his Unfair Labor Practice
Complaint took place no later than March, 2007, when the appeal
to the Public Employees Relations Board was dismissed. Even
giving the Complainant the benefit of the doubt, the allegations
giving rise to his Unfair Labor Practice Complaint ripened in May
of 2009. *See Complaint* at 6. The Board has held that "[t]his
deadline date is 120 days after the date Petitioner admits he
actually became aware of the event giving rise to [the] Complaint
allegations..." *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). "However, proof of the occurrence of an
alleged statutory violation is not necessary to commence the time
limit for initiating a cause of action before the Board." *Jackson
and Brown v. AFGE Local 2741, AFL-CIO*, 48 DCR 10959, Slip
Op. No. 414 at p.3, PERB Case No. 95-S-01 (1995). As such, the
Complaint for an unfair Labor Practice is significantly out of time.
Indeed, 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. *PERB v. D.C. Metropolitan Police
Department*, 593 A.2d 641 (D.C. 1991). Moreover, the Board has
held that a Complainant's "ignorance of Board Rules governing
[the Board's] jurisdiction over [Standards of Conduct] complaints
provides no exception to [the Board's] jurisdictional time limit for
filing a complaint." *Jackson and Brown v. AFGE, Local 2741,
AFL-CIO*, 48 DCR 10959, Slip Op. No. 414 at p.3, PERB Case
No. 95-S-01 (1995).

Here, it cannot be disputed that Complainant did not seek redress of his grievances before the Board until July 30, 2010; however, his Complaint, as written, ripened as of May, 2009. For the foregoing reasons, Complainant's Unfair Labor Practice allegations were well-known over 120 days prior to the filing of the instant Complaint. Consequently, the complaint is time barred.

2. The Complaint Fails to State a Claim

The Complainant has filed an "Unfair Labor Practice" Complaint against the Respondent. The law with regard to such complaints before the Board is clear, and derived from both the Rules of the Public Employees Relations Board and D.C. Code Section 1-617.04 (formerly Section 1-618.4):

(b) Employees, labor organizations, their agents, or representatives are prohibited from:

(1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter;

(2) Causing or attempting to cause the District to discriminate against an employee in violation of § 1-617.06;

(3) Refusing to bargain collectively in good faith with the District if it has been designated in accordance with this chapter as the exclusive representative of employees in an appropriate unit;

(4) Engaging in a strike, or any other form of unauthorized work stoppage or slowdown, or in the case of a labor organization, its agents, or representatives condoning any such activity by failing to take affirmative action to prevent or stop it; and

(5) Engaging in a strike or refusal to handle goods or perform services, or threatening, coercing or restraining any person with the object of forcing or requiring any person to cease, delay, or stop doing business with any other person or to force or to require an employer to recognize for recognition purposes a labor organization not recognized pursuant to the procedures set forth in § 1-617.06.

PERB Rule 5201.; See also D.C. Code Section 1-617.04. (Emphasis added). There is nothing contained within the above provisions which can be a legitimate basis for the Complainant's "Unfair Labor Practice" complaint. None of the provisions regarding "Unfair Labor Practices" have been violated in the instant situation. Indeed, the very decision to file an arbitration review request to PERB is a decision that is made by the FOP, not the Complainant. As such, this Complaint must be dismissed.

(Answer at pgs. 4, 5, 6, 7).

The Board finds that, for the reasons given by the Respondent, this Complaint is untimely filed and therefore must be dismissed. The Complainant became aware of the alleged offense no later than **March, 2007**, when the appeal to the Public Employees Relations Board was dismissed. Even giving the Complainant the benefit of the doubt, the allegations giving rise to his Unfair Labor Practice Complaint ripened in May of 2009. *See Complaint* at 6. The Board has held that "[t]his deadline date is 120 days after the date Petitioner admits he actually became aware of the event giving rise to [the] Complaint allegations..." *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 Complaint, however, was filed on July 30, 2010, well past the 120 day period.

Additionally, even if the Complaint was not time-barred, for the reasons given by the Respondent, the Complaint fails to state a cause of action articulated under D.C. Code §1-617.04(b). The Complainant fails to allege any facts that, if taken as true, establish a violation of the CMPA.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent Fraternal Order of Police/Metropolitan Police Department Labor Committee's Motion to Dismiss is granted.
2. Complainant Elgie Morton's Complaint is denied.
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.

February 23, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order and Notice in PERB Case No. 10-U-43, Slip Opinion No. 1268 is being transmitted electronically and *via* U.S. Mail to the following parties on this the 25th day of May, 2012.

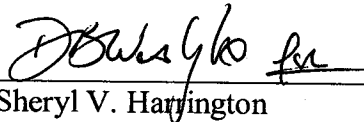
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