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

In the Matter of:)	
Candi Peterson)	
Complainant)	PERB Case No. 16-S-03
v.)	Opinion No. 1649
Elizabeth A. Davis, president, and Washington Teachers' Union, Local 6, AFL-CIO)	
Respondents.)	

DECISION AND ORDER

I. Statement of the Case

On December 15, 2015, the complainant Candi Peterson, (“Peterson”) filed a standards of conduct complaint (“Complaint”) against respondents Elizabeth A. Davis, president, and the Washington Teachers’ Union, Local 6, AFL-CIO (“Respondents”). On December 22, 2015, in response to a deficiency letter from the Executive Director, Peterson refiled the Complaint with revisions to its caption and format.

The Complaint alleges three counts of standards of conduct violations.

Count One: Respondent Davis, as soon as she assumed the office of president of the Washington Teachers’ Union, Local 6 (“Union”), marginalized Peterson in the affairs of the Union upon Peterson’s election as the Union’s general vice president “through a *de facto* suspension of her . . . duties and responsibilities to silence her voice of dissent without a Due Process hearing, thereby denying Petitioner Peterson to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings as provided and required by the Standards of Conduct.”¹ The Complaint alleges that Davis did this by assigning the supervisory duties of a general vice president to others in the Union’s staff.

Count Two: Davis deprived Peterson of her duty under the Union’s by-laws to convene the election committee for periodic elections by assigning those duties to others.²

¹ Complaint pp. 6, 12.

² Complaint pp. 9, 13.

Count Three: Davis paid her executive assistant, Pauline Baker, more than the \$70,000 approved by the Union's executive board. The Complaint states that "it is likely" that difference was paid unlawfully out of the account of the Voluntary Employee Beneficiary Association ("VEBA") or an operating account of the Union.³

The Respondents filed a pleading styled "Answer, Affirmative Defenses, and Motion to Dismiss." Respondents admitted that Davis assigned duties but denied that the assignments effected a suspension of Peterson or deprived her of her duties with respect to the election committee. The Respondents denied that Davis paid Baker more than was authorized and denied the Complaint's allegations regarding the source of the alleged excess payment.⁴

As affirmative defenses, the Respondents asserted that the Complaint is untimely, fails to state a claim, fails to comply with Rule 544.3(c)'s requirement that complainants specify the date of alleged violations, and joins an improper respondent. The Respondents further asserted that Peterson lacks standing to bring her claim because she was not harmed.⁵ In accordance with their affirmative defenses, the Respondents moved to dismiss the Complaint on the grounds that it is untimely or alternatively fails to identify the date of alleged violations, improperly names an individual as a respondent in a standards of conduct case, and fails to state a claim for violation of a union's standards of conduct.⁶

The matter was assigned to a Hearing Examiner, who conducted an evidentiary hearing. On February 13, 2017, the Hearing Examiner submitted a thorough Report and Recommendations ("Report").⁷ In the Report, the Hearing Examiner found that Count One was untimely and that Count Two was abandoned. Regarding Count Three, the Hearing Examiner found that the Union did not use VEBA funds to pay Baker. He further found that Peterson did not allege or prove that she was aggrieved by the Union's disposition of VEBA funds. The Hearing Examiner recommended that the Board dismiss the Complaint in its entirety. No exceptions to the Report were filed.

II. Discussion

The Report incorrectly identifies the date of filing of the Complaint as December 22, 2015. That was the date Peterson filed an amended complaint in response to the Executive Director's deficiency letter. An amended complaint filed in response to a deficiency letter relates back to the filing date of the original pleading,⁸ which in this case was December 15, 2015. The

³ Complaint pp. 11-12.

⁴ Answer, Affirmative Defenses, and Motion to Dismiss ("Answer") pp. 2-3.

⁵ Answer p. 4.

⁶ Answer pp. 5-8.

⁷ In transmitting the Report to the parties, the Executive Director wrote that due to the ill health of complainant's counsel, the case was stayed and a deadline for the filing of exceptions would not be set until a later date. The following July, the Executive Director gave the parties until September 15, 2017, to file exceptions. On that date, complainant's counsel withdrew from the case.

⁸ See *D.C. Metro. Police Dep't v. D.C. Pub. Emp. Relations Bd.*, C.A No. 98-MPA-16 (D.C. Super. Ct. Apr. 13, 1999) (reversing the Board's holding that the opportunity Rule 501.13 provides to cure a deficient pleading cannot

one-week difference between the two dates does not affect the Hearing Examiner's finding that Count One was brought over two years beyond the 120-day limit established by Rule 544.4.⁹

Otherwise, the Hearing Examiner's findings and recommendations are supported by the record, reasonable, persuasive, and consistent with Board precedent. With the foregoing modification, we adopt the Hearing Examiner's Report as set forth below.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant's Standards of Conduct Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.
January 18, 2018

extend the period of time to initiate a cause of action); *FOP/MPD Labor Comm. v. MPD*, 52 D.C. Reg. 2517, Slip Op. No. 736 at n.12, PERB Case No. 02-U-14 (2004) ("Consistent with the D.C. Superior Court's Decision in *D.C. Metropolitan Police Department v. D.C. Public Employee Relations Board*, once a deficiency is cured in a filing, the document's official filing date is its original filing date. CA No. 98-MPA-16 (1999).")

⁹ Report p. 11.

HEARING EXAMINER'S REPORT AND RECOMMENDATIONS

I. Statement of the Case

On December [15], 2015,¹ Candi Peterson (“Complainant”) filed a standards of conduct complaint (“Complaint”) with the Public Employee Relations Board (“PERB”) against the Washington Teachers Union, Local 6, AFL-CIO (“WTU” or “the Union”),² alleging that WTU had violated D.C. Code § 1-617.03 (a) (1), (4), and (5), which state:

(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to [PERB] that its operations mandate the following:

(1) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings.

...

(4) Fair Elections; and

(5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

Under D.C. Code § 1-605.02(9) the Public Employee Relations Board (PERB) has authority to “[m]ake decisions and take appropriate action on charges of failure to adopt, subscribe, or comply with the internal or national labor organization standards of conduct for labor organizations.” WTU is a labor organization certified by PERB as the exclusive collective-bargaining representative for teachers in the District of Columbia Public School System (DCPS).

I held a hearing in this case on May 4, May 26, and November 1, 2016, in Washington, D.C. My findings of fact, conclusions of law and recommendations, based upon the entire record in this proceeding, including the written transcript of the witnesses’ testimony, the exhibits received in evidence, the Parties’ respective opening statements, my observation of the witnesses’ demeanor as they testified, and WTU’s post-hearing (The Complainant did not file a post-hearing brief.) are set forth below.

¹ Unless otherwise stated, henceforth all dates occurred in 2015.

² The Complainant and WTU, collectively, are referred to below as the “Parties.”

II. Findings of Fact

[A.] Candi Peterson's WTU General Vice-Presidency

I find from Elizabeth Davis's and Candi Peterson's testimony³ that, on August 1, 2013, following a WTU membership election, WTU member Elizabeth A. Davis began a term as WTU's president, and WTU member Candi Peterson entered upon the office of WTU's general vice-president. Prior to her election as general vice-president, and thereafter, Ms. Peterson established and maintained a reputation, as an educational blogger, who freely criticized District of Columbia school administrators and WTU officers on issues involving educational and WTU policies and practices. In September of 2013, President Davis asked Ms. Peterson to sign a memorandum of agreement which included a provision requiring the general vice-president to surrender her blog. General Vice-President Peterson refused to sign the memorandum of agreement.

The duties of WTU's general vice-president are set forth in Article VIII, Section 2 of WTU's By-Laws (Joint Exhibit 1, pages 12 and 13) as follows:

Section 2. The General Vice-President shall:

- A. Perform other duties as delegated by the President or assigned by the Executive Board.
- B. Oversee and assist the building representatives in their duties.
- C. Supervise the field representatives and other employees as designated by the President.
- D. Co-sign checks and other financial documents in the absence of the President or the Treasurer and serve as a fiduciary of the Union. The General Vice-President shall be bonded and such expense shall be borne by the Union.
- E. Perform all the duties of the President in the absence of the President.
- F. Complete the un-expired term of the president should the office become vacant.
- G. Convene the Elections Committee.

Soon after President Davis and General Vice-President Peterson assumed their respective duties as officers of the Union, they disagreed as to the meaning of subsection C, Section 2, Article VIII of the WTU's By-Laws (Complaint, at page 6). According to President Davis, the WTU General Vice-President oversees the 113 building representatives elected to represent the employees at each of the District of Columbia's public schools. That oversight includes supervision and assistance. The General Vice-President has access to all 113 building representatives using a directory with their cell-phone numbers and e-mail addresses.

³ I based my findings of fact regarding Ms. Peterson's contentions about President Davis's limitations on Ms. Peterson's duties as the Union's general vice-president on their testimony and accompanying exhibits.

Throughout her tenure as WTU General Vice-President, Ms. Peterson has exercised that authority. (Transcript Vol. I, at pages 17-20)

However, contrary to Ms. Peterson's contention, President Davis has insisted that WTU's 4 field representatives do not come under the WTU General Vice-President's jurisdiction according to WTU's constitution and by-laws. As President Davis reads subsection C, Section 2, Article VIII of WTU's By-Laws, the pre-condition for the WTU General Vice-President's exercise of jurisdiction over the 4 field representatives is a specific assignment of that jurisdiction to the WTU General Vice-President by the WTU President. I find from President Davis's testimony (Transcript Vol. I, at page 18) that at all times material to this complaint, President Davis supervised the 4 field representatives. At the time of the hearing in this matter and since 2014, Ms. Peterson has served as one of the 4 WTU field representatives (Transcript Vol. I, at pages 19 and 34).

Referring to her previous three year term as general vice-president, beginning in 2010, and her earlier observations as a WTU member, Ms. Peterson testified that the supervision of field representatives customarily resided with that position (Transcript Vol. I, at pages 32-35). More important, Ms. Peterson interprets subsection C, Section 2 to specifically require President Davis to assign the supervision of WTU's field representatives to General Vice-President Peterson (Transcript Vol. I, at pages 32 and 33). However, a memorandum dated December 20, 2007, from the American Federation of Teachers (AFT), WTU's immediate parent organization, to George Parker, then WTU's President supports President Davis's view of the General Vice President's duties under "WTU's Constitution and Bylaws and well accepted principles of constitutional interpretation (WTU Exhibit 6, page 1)."

The AFT memorandum, referred to above, originating from its General Counsel, David Strom and Dan McNeil, Assistant Director of its Legal Department, had as its subject, "Request for Legal Interpretation of WTU Constitution (*Ibid.*). The first 2 paragraphs announced its purpose as follows:

The purpose of this memorandum is to answer the written questions posed by the WTU Executive Board regarding the duties, powers and authorities of the WTU governing bodies and its officers. The request from the WTU Executive Board was initiated to resolve questions concerning the authority of the WTU officers to represent the organization and limitations on such authority. This memorandum will address the governance questions of the WTU Executive Board by referring to the WTU Constitution and Bylaws and well accepted principles of constitutional interpretation.

The questions posed by the WTU Executive Board fall into the following broad categories:

- Which bodies formulate the policies of the WTU?
- Which body/officer is responsible for executing the policies of the organization?
- What is the authority of the President vis-à-vis the General Vice President and constraints on such authority?

Continuing, the memorandum discussed the WTU sources of authority to make policy, including the WTU's Representative Assembly, the WTU's membership and its Executive Board (WTU Exhibit 6, at pages 2 and 3). Regarding the roles and responsibilities of WTU's President and General Vice President, the memorandum recited their respective duties as set forth in Article VIII, Sections 1 and 2 of WTU's Bylaws (*Id.*, at pages 2, 3 and 4). At page 6 of the memorandum, Messrs. Strom and McNeil declared:

The only specific authority that is conferred on the General Vice President is to “[o]verse[e]⁴ and assist the building representatives in their duties” and to [c]onvene the Elections Committee.” These are the two responsibilities that the General Vice President has by virtue of being elected to that position.
(Bold print supplied)

Further, at page 5 of the memorandum, Messrs. Strom and McNeill in a discussion under the heading, “C. Division of Authority between the President and General Vice President,” point out that under Article VIII, Section 1(A) the WTU President “has the day-to-day responsibility to perform the business of WTU, subject to the limitations of the WTU Constitution and Bylaws and the policies set by the membership, Representative Assembly and Executive Board. **These duties include the supervision of WTU employees, including field representatives.**” (Bold print supplied)

On July 25, General Vice President Peterson made a motion at a WTU Executive Board meeting to halt President Davis's interference with Ms. Peterson's claimed authority to supervise WTU field representatives (Complainant's Exhibit 2). In her motion, Ms. Peterson proposed that the Executive Board require that “[President] Davis and/or her designee must cease and desist in the interference and obstruction of the General Vice President's prescribed duties effective July 25, 2015” (*Ibid.*). The Board adopted Ms. Peterson's motion by a vote of 4 to 3 (Transcript Volume I, at pages 45 and 46). However, the record in this case does not disclose whether there was any further action taken by Ms. Peterson or anyone else on the cease and desist requirement.

⁴ The memorandum inadvertently omitted the second “e” in “oversee” in quoting Article VIII, Section 2 B of WTU's Bylaws (See page 3, above.)

In an email addressed to Ms. Peterson dated July 30, (Joint Exhibit 2, Attachment 1) “Subject: Role General Vice-President of the WTU,” President Davis began her message with: “This is a reminder and re-affirmation of the work assignments and directions I have given you as the General Vice-President of the WTU (*Ibid.*). Continuing, President Davis listed three assigned tasks which Ms. Peterson was to continue performing. There followed two proscriptions:

4. You do not **have any responsibility to supervise or otherwise oversee the Field Representatives or any other employees of the WTU.** (Bold print supplied)

5. You do not have any responsibility or authority to speak or write officially for, or to represent the WTU, before the public, community organizations or the news media”

President Davis concluded the email by inviting General Vice-President Peterson to let her know if Ms. Peterson had any questions about these directions. The record in this case is silent as to whether Ms. Peterson responded to this memorandum.

[B.] WTU’s Elections Committee

As stated above, at page [5], under WTU’s Bylaws, Article VIII, Section 2, General Vice-President Peterson was responsible for convening WTU’s 15 member Elections Committee. Ms. Peterson did so to prepare for an election to be held in May 2015 (Transcript Vol. I, at pages 169-170 and Vol. II, at pages 34, 35, and 42).

WTU’s Bylaws, Article VII Section 1E (2) provides that “It shall be the duty of the Elections Committee to conduct all general and special elections of the organization” (Joint Exhibit 1 at page 10). In this instance, the election was for “Delegates to the convention of the American Federations of Teachers and Maryland State and District of Columbia AFL-CIO...” held biannually (*Supra*, WTU Bylaws Article VII, Section 1 (B)), as well as for the 15 members of WTU’s Elections Committee (Transcript Volume 1, at page 190).

Before preparing notices of the pending elections, the Elections Committee required data from WTU’s records showing the bargaining unit employees who are full dues paying members of the Union and thus eligible to vote in the pending elections (Transcript Vol. II, at page 36). However, in a letter, President Davis expressed concerns to AFT’s Secretary Treasurer about the election process including the release of that information to the Elections Committee because of its confidential nature (Complainant’s Exhibit 6B). AFT’s General Counsel responded to President Davis in a letter delivered to her electronically on June 5, after the scheduled date of the WTU elections. (*Ibid.*)

Also on June 5, General Vice President Peterson by email to Ann Mitchell, an assistant to AFT President Rand Weingarten, complained as follows (Complainant's Exhibit 6A and Transcript Vol. I, at page 93):

Ann

Please make sure that Randi gets this below as the election process has been thwarted by the WTU President Davis for reasons unclear. Despite numerous attempts by myself as well as the WTU Elections Chair Gillette to facilitate elections, the elections committee has been unable to perform their duties and create a ballot for voting in the 2015 WTU elections for Elections Committee, AFT Convention or AFL-CIO. Typically voting is held in May, however this did not occur and likely won't occur in June since school will shortly be out. If the WTU Elections Committee are provided the necessary documents to perform their functions, they are unable to proceed as an election committee. This violates the WTU Constitution as I know you are aware.

The WTU Elections Committee is requesting the intervention of AFT before they take the next steps. Thanks for your attention.

Candi

The record in this case does not reveal any response to Ms. Peterson's request for AFT's intervention.

In response to a second letter from President Davis dated September 15, AFT's Secretary Treasurer, Dr. Lorretta Johnson, in a letter dated September 22 provided advice regarding WTU's approaching elections (WTU Exhibit 8). Specifically, Dr. Johnson addressed the need for giving WTU members, who submitted nomination petitions, notice of their eligibility to run in those elections so that they have sufficient time to conduct meaningful campaigns (*Id.*, at page 1).

In an email to Elections Committee Chairperson Cheryl Gillette, dated October 2, General Vice President Peterson discussed her so-far unsuccessful efforts to obtain from President Davis WTU's data listing the bargaining unit employees whose dues obligations to the Union were satisfied (Complainant's Exhibit 6 and Transcript Volume I, at pages 91 -93). In the same email, Ms. Peterson encouraged Ms. Gillette and her committee to attend the WTU's ..Executive Board's October 3 meeting and enlist its support in the effort (*Ibid.*).

In accordance with AFT's advice, President Davis ultimately permitted the Elections Committee to see the WTU's membership list showing the bargaining unit employees who were full dues paying members of the Union and thus eligible to vote in the pending elections. (Transcript Volume 1, at page 100). In February 2016, WTU's Elections Committee conducted the elections originally scheduled for May 2015 (*Ibid.*).

[C.] Voluntary Employee Beneficiary Association (VEBA)

Effective July 1, 2013, WTU and the DCPS established a benefit plan in the form of a trust fund called “Option 2 VEBA” to be financed by DCPS, and administered by a board of trustees as the benefit plan’s “fiduciaries” (Complainant Exhibit 8B, at page 1), to provide supplemental benefits to unemployed WTU members and other welfare benefits and also to provide financial support to the WTU’s Teachers Center to afford DCPS teachers expanded and enhanced professional development opportunities (Complainant Exhibit 8B, at page 1, and Transcript Vol. II, at pages 48-49). DCPS’s annual contribution to VEBA is \$1.7 million (Complainant Exhibit 8 and Transcript Vol. I, at page 102).

In a letter to WTU’s President Davis dated October 17, 2014, DCPS’s Director of Human Capital, Jason Kamras, rejected WTU’s written request for the annual contribution, providing the following explanation:

Please be advised that DCPS cannot comply with the WTU’s request for payment for a number of reasons. As an initial matter, DCPS has not received a full accounting of DCPS’ most recent \$1.7 million contribution to the WTU’s Option 2 VEBA. While the WTU did provide DCPS with a partial accounting of its use of those funds, such accounting suggested that WTU distributed just under half of the \$1.7 million provided last fiscal year to persons who selected Option 2, calling into question how WTU has used the remainder of those funds. Likewise, since there are only three individuals eligible for VEBA funds this year, the WTU should have sufficient funds to cover all of this year’s VEBA costs from last year’s contribution.

I hope you will understand that as stewards of public funds, we cannot provide WTU with another \$1.7 million without a far better understanding of how these funds are being used and why DCPS’ prior contributions are insufficient to cover the teachers who are eligible for Option 2. Accordingly, by October 27, 2014, please let us know whether you will make distributions to this year’s Option 2 selectees from the \$1.7 million DCPS provided last year. If we do not hear from you by October 27, we will process each teacher’s second choice option.

I find from the testimony of WTU’s current chief-of-staff, Dorothy Egbufor that since the inception of the Option 2 VEBA benefit program, WTU’s understanding of DCPS’s obligation under a memorandum of understanding (“MOU”) was to support Option 2 VEBA by annual payments of \$1.7 million to be tendered to WTU without any requirement that the previous year’s payment to WTU be exhausted (Transcript Vol. II, at page 138). I find from Ms. Peterson’s testimony that to resolve this dispute, WTU filed a grievance against DCPS (Transcript Vol. I, at pages 198 -199).

In a notice to participants in the WTU's Option 2 VEBA, dated October 1, the fund's Board of Trustees announced the suspension of payments to "Excessed Permanent Status Teachers" (Complainant's Exhibit 8A and Transcript Vol. I, at page 199). The same notice announced:

The WTU is aggressively pursuing the funding of the Option 2 VEBA agreed to by DCPS in the MOU and an arbitration is scheduled for hearing later this month. Assuming a successful outcome or resolution and a resumption of Option 2 VEBA funding by DCPS, Benefits payable under the Plan will resume. You will be notified of the outcome or resolution when it occurs.

In negotiations with WTU, DCPS agreed, under a new MOU, to provide the funds necessary to pay the benefits required under Option 2 VEBA (Transcript Vol. I at page 199-200). Further, the same MOU requires DCPS to pay the \$1.7 million, due annually, in October (Transcript Vol. II, at pages 136-139).

On February 1, 2014, WTU's Executive Board approved President Davis's motion to hire Pauline Baker as a special assistant to the President (Complainant's Exhibit 7, Executive Session, at page 4). Prior to this Board action, WTU employed Ms. Baker as a consultant, assisting President Davis, at an annual salary of \$114,400.00 (Complainant's Exhibit 7B and Transcript Vol. II at pages 147-148). WTU's Executive Board, in approving the hiring of Ms. Baker as an employee, accorded her an annual salary of \$70,000 (Complainant's Exhibit 7, Executive Session at page 4, Transcript Vol. I at page 16, and Transcript Vol. II, at page 147).

Naomi Baker, WTU's chief of staff at the time of the Executive Board's approval of the reduced salary for Ms. Baker failed to disseminate notice of the reduction to Ms. Baker, WTU's accounting department and the firm responsible for administering WTU's payroll. (Transcript Vol. I, at page 16 and Transcript Vol. II, at pages 148-149) In June 2015, WTU chief of staff, Dorothy Egbufor discovered that Ms. Baker's annual salary had not been reduced as ordered by WTU's Executive Board (Transcript Vol. II, at pages 148-150 and 154-155)⁵.

Ms. Egbufor immediately reported the failure to implement the reduction in Ms. Baker's wage to WTU's accounting department, and to President Davis, who instructed the chief of staff to correct the situation and to notify Ms. Baker that her annual salary had been reduced to \$70,000 (Transcript Vol. II at pages 149- 150). Ms. Egbufor sent an email to Ms. Baker on June 2, which included a reminder of the reduction of Ms. Baker's annual salary from \$114,000 to \$72,000 (WTU Exhibit 10). I find from Ms. Egbufor's testimony that WTU's accounting department was the source of the dollar amounts shown on this email (Transcript Vol. II, at page 154). Ms. Baker resigned soon after receiving this news (Transcript Vol. I, at page 16 and

⁵ At page 149 of Transcript Volume II, Ms. Egbufor testified that her employment as WTU's chief of staff began in 2014. However, at page 155 of Volume II, she recalls the year of her hire as 2015. See also Transcript Vol. II, at pages 156- 158.

Transcript Vol. II, at page 155).). I find from Ms. Peterson's testimony that Pauline Baker resigned from her employment at WTU in or about May of 2015 (Transcript Vol. I, at page 202).

Candi Peterson testified, under cross-examination by WTU's counsel, that the Union's finance and building administrator, Ray Moberly, who, she asserted was at an undisclosed time a VEBA administrator, told her that WTU paid Pauline Baker's salary out of VEBA funds (Transcript Vol I, at page 200). Also, Ms. Peterson testified that Mr. Moberly gave a W-2 form to her showing that for the year 2014, WTU paid Ms. Baker wages in the amount of \$114,400.00 (*Id.* at page 201 and Complainant's Exhibit 7B).

Contrary to Ms. Peterson, Ms. Davis and Ms. Egbufor testified that WTU did not use VEBA to pay any of Pauline Baker's wages earned in WTU's employ (Transcript Vol. 1, at page 17, and Transcript Vol. II, at page 146). I have considered the circumstances of the respective witness and their respective demeanors in resolving this conflict in testimony.

Ms. Peterson's testimony on the source of Ms. Baker's WTU wages is based upon Ray Moberly's assertion to her. Mr. Moberly was not a witness at the hearing in this case and thus was not available to WTU for cross-examination. The absence of Mr. Moberly and Ms. Peterson's reluctance to answer questions posed by counsel during cross-examination at pages 194, 197 and 198 and her role here as Complainant cast some doubt on the reliability of her testimony regarding the source of Ms. Baker's wages while employed at WTU. With respect to Ms. Davis and Ms. Egbufor, I recognize that both were involved in the management of WTU at times material to this case. However, I also note that they both testified frankly and in a forthright manner. Accordingly, I have credited their testimony and find the WTU did not use VEBA funding to pay Pauline Baker.

Complainant's witness Emily Y. Washington, a WTU member, testified that at a WTU Executive Board meeting she attended on November 14 or 15, Clem Mueller, on behalf of his accounting firm, presented a financial report about the Union's VEBA account in which he stated that \$266,000 had been spent from that account for the WTU's Teacher's Center and presented an itemized account of how this amount was spent (Transcript Vol. II, at pages 12-13). According to Ms. Washington's testimony on redirect examination, Mr. Mueller also reported at this meeting, that half of WTU employee Ray Mobley's salary was also paid out of VEBA funds (Transcript Vol. II, at pages 23 and 24).

Ms. Washington also testified that in either January or February of 2016, at either a WTU representative assembly or a membership meeting, she could not remember which, Mr. Mueller revisited his earlier report and stated that the \$266,000 came from WTU's operating budget (Transcript Vol. II, at page 14). According to Ms. Washington, at a subsequent meeting she noted an expenditure of \$412,000 from the VEBA account in a WTU financial report (*Id.*, at page 25). On the same page of her testimony, Ms. Washington testified that she had notes of this last meeting. Neither Ms. Washington nor the Complainant offered said notes as evidence at the hearing in this case.

The record evidence and Mr. Mueller's full and forthright testimony, which I credit, rebut Ms. Washington's testimony. Initially, I note that the last page on WTU's general ledger (WTU Exhibit 2 and Transcript Vol. II, at pages 60-61) shows WTU expenditures from its operating account from July 1, 2013, until June 30, totaling \$266,476.84 (Transcript Vol. II, at pages 27 and 61). Further, in the middle of the 15th page of the report there is a note reporting that on April 30, a check in the amount of \$2,092.50 was issued to "Ray Mobley 50% Salary" (WTU Exhibit 2, at page 15, and Transcript Vol. II, at page 29). At the top of its first page, the financial report announces that WTU expects VEBA to reimburse WTU for the expenses shown on the report (WTU Exhibit 2, at page 1).

I find from the testimony of Clem Mueller, that the \$266,476.84 sum of expenditures shown in his financial report, which he presented to WTU's Executive Board in November 2015, was a receivable which WTU sought to collect from VEBA (Transcript Vol. II, at pages 51-52). In an email to President Davis, sent prior to that meeting, along with the draft audited financial statements constituting that report, Mr. Mueller cautioned that "the largest uncertainty relating to these statements is the future result of negotiations with DCPS relating to the \$266,000 receivable from the VEBA..." (WTU Exhibit 3, at page 2 and Transcript Vol. II at page 52).

I also find from Mr Mueller's testimony that WTU spent the receivable amount on its Teacher Center (Transcript Vol. II, at pages 53-54). WTU's current assets shown on Page 3 of the statements, referred to in Mr. Mueller's testimony, included: "Due from VEBA \$266,477" (WTU Exhibit 3, at page 3, WTU Exhibits 4, and 5, at page 9; Transcript Vol. II, at page 54-58).

I find from Mr. Mueller's testimony that at a WTU meeting in February 2016, referred to in Ms. Washington's testimony above, she remarked to him that he was changing his report about expenditures from the VEBA account (Transcript Vol. II, at page 59). In response, Mr. Mueller said that he had given the same information at the November meeting (*Ibid.*). Further, Mr. Mueller provided the sum of \$266,477, to the D.C. Office of the Inspector General, as the amount due WTU from DCPS (*Id.*, at pages 59-60).

I find from Dorothy Egbufor's testimony, that WTU and DCPS disagree about the latter's obligation under the VEBA agreement to furnish funds for WTU's Teachers' Center (Transcript Vol. II, at pages 139-140). As Ms. Egbufor notes in her testimony, the VEBA agreement supports WTU's claim (Transcript Vol. II, at pages 139-140) In reading the WTU Option 2VEBA Summary Plan Description (Complainant's Exhibit 8B, at page 1), I note that the pertinent part of Section I states: "The new benefit Plan will provide financial support to the Washington Teachers Union Teachers' Center to expand and enhance the professional development opportunities available to DCPS Teachers." Ms. Egbufor's testimony confirmed that WTU has not funded its Teachers' Center using VEBA funds (Transcript Vol. II, at page 140). Instead, WTU has used its general operating funds and accounts to fund its Teachers' Center (Transcript Vol. II, at page 141).

In 2015, DCPS paid \$576,000 to WTU's Option 2 VEBA to cover payments to beneficiaries of that fund (*Ibid.*). That payment and the underlying dispute were reflected in Note 6, on page 7, of WTU's Option 2 VEBA Financial Statements dated June 30 (WTU Exhibit 9 and Transcript Vol. II, at pages 143-145).

III. Analysis and Conclusions

Candi Peterson complains that WTU violated D.C. Code § 1-617.03 (a) (1), (4), and (5), which state:

(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to [PERB] that its operations mandate the following:

(1) The maintenance of democratic provisions for periodic elections to be conducted

subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, to fair process in disciplinary proceedings.

...

(4) Fair Elections; and

(5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

First, General Vice President Peterson's complaint, at pages 5-8, alleges that WTU's President Elizabeth Davis imposed a *de facto* suspension on Ms. Peterson by removing the powers and authority of the General Vice President to oversee WTU's field operations and supervise field representatives and other field service employees and assigned it to personnel who reported to President Davis. Further, the complaint alleges, at page 8, that President Davis also suspended Ms. Peterson's authority to convene WTU's Elections Committee.

Continuing, Ms. Peterson alleges that President Davis prevented the elections for AFT Convention Delegates, Metropolitan Washington Representatives and members of the WTU Election Committee which were scheduled initially for June 2015. According to the complaint, President Davis postponed these elections to September 22; but as of December [15], the filing date of the Standards of Conduct Complaint in this case, those elections had not been held.

Lastly, Ms. Peterson's complaint contends that WTU hired a personal friend of President Davis and paid her a salary in excess of the \$70,000 annual compensation approved by WTU's Executive Board either out of VEBA funds or from WTU's operating account. Also, the complaint suggested that WTU improperly expended VEBA funds and thereby impaired VEBA ability to provide financial assistance to terminated teachers. As noted above, Ms. Peterson did not file a post-hearing brief.

WTU contends, and I agree, that Ms. Peterson's claim that she suffered a *de facto* suspension of her responsibilities of overseeing WTU's field operations and supervising WTU field representatives is time-barred, having been filed outside the 120-day period of limitation provided by PERB Rule 544.4, as follows:

A complaint alleging a violation under this section [PERB Rules, Section 544-STANDARDS OF CONDUCT COMPLAINTS] shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred.

As WTU points out, Ms. Peterson's Complaint, at page 6, asserts that President Davis imposed the alleged *de facto* suspension "from the inception of assuming office." I find from Ms. Peterson's testimony that she and President Davis took their respective offices on August 1, 2013 (Transcript Vol. II, at page 42).

Thus, it is clear that for over 2 years and 4 months, General Vice President Peterson had been aware of the event giving rise to the complaint allegation that responsibilities for overseeing WTU's field operations and supervising WTU field representatives had been kept from her, when she filed her Complaint, on December [15], 2015, well beyond the statutory 120-day filing period. *Brown v. DC Public Schools and AFSCME Dist. Council 20, Local 1959*, PERB Case No. 10-U-34, Opinion No. 1108, at page 5, 59 DCR 6510 (August 10, 2011). . . . Accordingly, I shall recommend dismissal of this allegation. *Brown v. DC Public Schools, Supra*, at page 7.

At page 4 of its post-hearing brief, WTU asserts that Ms. Peterson conceded at the hearing that she was not claiming that President Davis had suspended her authority to convene the Union's election committee. The transcript shows that on cross-examination by WTU's counsel, when he asked Ms. Peterson if she was "claiming that Ms. Davis prevented [Ms. Peterson] from convening the election committee," Ms. Peterson first answered: "I didn't claim that she prevented me." She then testified that she did not think that was the way her claim was written and added her belief "there's some obstruction" related to "[Ms. Peterson] her doing [her] job to convene it." Ms. Peterson ended her answer by conceding that the obstruction was "probably more directed at the elections committee . . ." (Transcript Vol. I, at pages 169 and 170).

Answering further cross-examination by WTU's counsel, asking whether during her tenure she had convened the election committee, Ms. Peterson stated: "Oh, yeah, a million times" (*Id.*, at page 170). I find merit in WTU's contention that Ms. Peterson abandoned her complaint allegation that President Davis suspended the General Vice President's authority to convene the Union's election committee. Moreover, I find from the testimony of Cheryl Gillette, chairperson of WTU's elections committee that Ms. Peterson, as WTU's General Vice President, convened that committee's initial meeting (Transcript Vol./ II, at pages 33-34 and 42). I shall, therefore, recommend dismissal of that allegation.

WTU contends that Ms. Peterson lacks standing to pursue her complaint allegations regarding the VEBA and the WTU elections which were postponed from June 2015 to September 2015, and were finally held in February 2016 (WTU's post-hearing brief at pages 14 and 17). I find merit in these contentions.

Ms. Peterson's complaint alleges that WTU improperly used the VEBA funds to pay the salary of Pauline Baker, a WTU employee and to fund WTU's Teachers Center. However, Ms. Peterson's complaint does not allege that those expenditures injured her financially or otherwise. Nor did she allege in her pleading that she expects that they will harm her financially or otherwise in the future. Further, there is not record evidence showing any harmful impact on her, flowing from WTU's disposition of the VEBA funds.

In her complaint, Ms. Peterson asserts that elections for AFT Convention Delegates, Metropolitan Washington Representatives, and members of the WTU Election Committee, scheduled for June 2015, were postponed to September 2015. According to Ms. Peterson's complaint, at page 10, "no elections were held because [President] Davis refused to provide the WTU Elections Committee chair person the required membership data needed to verify petitions." However Ms. Peterson's complaint does not allege that these postponements harmed her in any way. There is no showing that she was a candidate for any of the positions involved in the proposed elections.

PERB Rule 544.2, in pertinent part states: "Any individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations may file a complaint with the Board for investigation and appropriate action." As WTU argues at page 14 of its post hearing brief, in applying that provision, PERB has recognized that its Rule 544.2 "requires that complainants not only be individuals but also 'aggrieved' individuals." *Richardson v. Fraternal Order of Police D.C. Dep't of Corrections Labor Comm.*, PERB Case No. 11-S-01, Opinion No. 1426, at page 3, 60 DC Reg. 16000 (Sept. 26, 2013). Further PERB has recognized that: "In order to state a claim that they are aggrieved, claimants must allege an actual injury." (*Ibid.*) In the instant case, Ms. Peterson has failed to allege any actual injuries that she has suffered as a result of her allegations regarding the VEBA funds and the WTU

elections scheduled for June 2015, which were held in February 2016.. I shall therefore recommend dismissal of these complaint allegations.

IV. Recommended Order

It is hereby recommended that PERB dismiss the standards of conduct complaint in its entirety.

Dated, Washington, D.C.
February 13, 2017.

Leonard M. Wagman
Hearing Examiner

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-S-03 was transmitted to the following parties on this the 31st day of January 2018.

Candi Peterson
122 Whitmoor Terrace
Silver Spring, Maryland 20901
saveourcounselors@gmail.com

U.S. Mail and E-Mail

Lee W. Jackson
Daniel M. Rosenthal
James & Hoffman, P.C.
1130 Connecticut Avenue, NW, Suite 950
Washington, DC 20036

File & ServeXpress

/s/ Sheryl V. Harrington
Administrative Assistant