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

In the Matter of:)	
)	
Candi Peterson,)	
)	
Complainant,)	PERB Case Nos. 12-S-01
)	
v.)	Opinion No. 1596
)	
Washington Teachers' Union, Local 6)	
)	
Respondent.)	
)	

DECISION AND ORDER

This matter is before the Public Employee Relations Board (“PERB”) following the reversal and remand of an earlier PERB decision by the Superior Court of the District of Columbia.

I. Statement of the Case

On December 2, 2011, Candi Peterson, (“Peterson”) filed a standards of conduct complaint (“Complaint”) with the Public Employee Relations Board (“PERB”). The Complaint alleges that Peterson is an employee of the D.C. Public Schools and a member of the Washington Teachers’ Union, Local 6 (“Union”). The Complaint alleges that she was elected general vice president of the Union and took office December 1, 2010. On July 26, 2011, Nathan Saunders, the president of the Union, gave Peterson a letter stating that she had been removed from the Union’s payroll for failure to perform her duties.¹

Without informing Peterson, Saunders scheduled a special meeting of the Union’s Executive Board on August 4, 2011.² At the August 4, 2011 meeting, the Executive Board adopted a resolution which stated:

GVP Peterson’s status is restricted in the performance of her duties and obligations as the WTU GVP for a period of six months from the date of the adoption of this resolution, as stated below, at which

¹ Complaint ¶ 9.

² Complaint ¶¶ 10, 11.

time a review by the Executive Board will take this matter under review.

A. GVP Peterson shall retain her title as General Vice President;

B. GVP Peterson shall have no supervisory authority over field representatives or other employees;

C. GVP Peterson shall immediately resume her normal work schedule and;

D. WTU shall not continue to pay the additional compensation for the duties of General Vice President. . . .³

Peterson alleges that the Union terminated her compensation and responsibilities as general vice president of the Union in violation of the Union's constitution, its by-laws, and D.C. Official Code § 1-617.03(a)(1). The Union filed an answer and moved to dismiss the Complaint on the ground that it was not filed within 120 days from the date the alleged violation(s) occurred as required by Rule 544.4.

PERB found that the alleged standards of conduct violation occurred July 26, 2011, when Saunders hand delivered to Peterson a letter removing her from the Union payroll. Because the Complaint was filed more than 120 days after July 26, 2011, PERB granted the Union's motion to dismiss the Complaint on the ground that it was not filed within the time allowed by PERB Rule 544.4.⁴

Peterson moved for reconsideration, arguing that Saunders had no authority to discipline her on July 26, 2011. Peterson asserted that her cause of action did not arise until the Executive Board adopted its resolution on August 4, 2011. PERB denied Peterson's motion for reconsideration, stating that it was based on a "mere disagreement" with PERB's decision.⁵

On review, the Superior Court found that PERB's decision erroneously disregarded disputes in the record as to the timeliness issue, in particular, whether Saunders had authority to discipline Peterson as he purported to do in the July 26 letter and whether he or the Union actually implemented the discipline announced in the letter. The court remanded the case to PERB for an evidentiary hearing pursuant to the terms of its order.⁶

³ Complaint ¶ 15.

⁴ *Peterson v. Washington Teachers' Union*, 59 D.C. Reg. 7234, Slip Op. No. 1242 at 3, PERB Case No. 12-S-01 (2012).

⁵ *Peterson v. Washington Teachers' Union*, Slip Op. No. 1254, PERB Case No. 12-S-01 (Mar. 28, 2012).

⁶ *Peterson v. D.C. Pub. Emp. Relations Bd.*, No. 2012 CA 003140, slip op. at 17 (D.C. Super. Ct. May 26, 2015).

In accordance with the court's order, PERB vacated its prior decisions and referred this matter to a Hearing Examiner to develop a factual record and make appropriate recommendations.⁷

The Hearing Examiner conducted an evidentiary hearing December 3, 2015. In a Report and Recommendations ("Report") submitted to PERB, the Hearing Examiner set forth the issues, made findings of fact, analyzed the issues, and reached conclusions of law. The Report is attached hereto and incorporated herein. The facts of the case are well stated in the Report and will not be repeated in detail here. To the extent the facts are relevant to our ruling, they are discussed below.

The Hearing Examiner found that the Complaint was timely.⁸ He found that the Union's membership elected Peterson as the Union's general vice president and that she took office December 1, 2010.⁹ The Union's officers are elected every three years.¹⁰ The Hearing Examiner found that Peterson showed by a preponderance of the evidence that the Union violated its constitution and by-laws by suspending her pay and refusing to permit her to perform her duties as general vice president of the Union. He concluded that by this conduct the Union violated D.C. Official Code § 1-617.03(a)(1).¹¹

The Hearing Examiner recommended that PERB order the Union to (1) cease and desist from violating the Comprehensive Merit Personnel Act ("CMPA"); (2) cease and desist from failing to adopt, subscribe, or comply with the standards of conduct prescribed by the CMPA; (3) rescind both the action of the Union's president on July 26, 2011, removing Peterson from her official duties and the Union's payroll and the disciplinary resolution of its Executive Board adopted August 4, 2011, against Peterson, and reinstate her as the Union's general vice president; (4) make Peterson whole for any loss of pay and benefits she might have suffered as a result of the Executive Board's action on August 4 and the Union's termination of her leave of absence from her employment with the D.C. Public Schools; and (5) in accordance with the federal Back Pay Act¹² reimburse Peterson for her attorneys' fees.¹³

On February 26, 2016, the Union timely filed Exceptions to the Hearing Examiner's Report. Peterson timely filed her Opposition to those exceptions. The Complaint, the Report, and the Union's Exceptions are before PERB for disposition.

⁷ *Peterson v. Washington Teachers' Union*, 62 D.C. Reg. 14675, Slip Op. No. 1542, PERB Case No. 12-S-01 (2015).

⁸ Report 12.

⁹ Report 3.

¹⁰ Constitution and By-Laws of the Washington Teachers' Union Local 6, Respondent's Ex. A at 4, 12.

¹¹ Report 13.

¹² 5 U.S.C. § 5596(b)(1)(A)(ii).

¹³ Report 13.

II. Discussion

In its Exceptions, the Union objects to the Hearing Examiner's findings that the Complaint was timely and was not barred by *res judicata* as well as to "a number of other unsupported conclusions" allegedly rebutted in the Union's post-hearing brief. As the Union does not apprise us of what those other conclusions might be, the only issues properly raised in the Exceptions are the Hearing Examiner's findings on timeliness and *res judicata*. PERB has reviewed the entire record in this matter including the issues raised by the Union in its Exceptions and, to the extent consistent herewith, concurs with the Hearing Examiner's Report.

A. Timeliness

The Complaint alleges that the Union violated the standards of conduct prescribed by the CMPA by doing the following:

- A. Conducting an Executive Board meeting without appropriate notice to all members of the Executive Board;
- B. Failing to give General Vice President Peterson adequate notice that a discipline resolution would be on the agenda and depriving her of any opportunity to respond to the allegations against her. . . ;
- C. Denying General Vice President Peterson due process by permitting President Saunders to charge her with misconduct and to vote on the Resolution finding her guilty of such misconduct and imposing a penalty for the same;
- D. Disciplining her for violating the WTU Constitution and By-Laws without following the provisions of Article III governing the official filing of charges against members;
- E. Refusing to permit her to perform the duties specified in the By-Laws for her position without the filing of formal charges against her and without an opportunity to respond; and
- F. Reducing her gross salary in the mid-term of her office to punish her for alleged misconduct;
- G. Disenfranchising the voting members of the WTU who elected Ms. Peterson to her position.¹⁴

¹⁴ Complaint ¶ 22.

The Hearing Examiner found “that Ms. Peterson’s cause of action arose on August 4, when the WTU’s Executive Board promulgated its resolution disciplining General Vice President Candi Peterson, which President Saunders effectuated on September 19 by returning her to DCPS.”¹⁵ As the Complaint was filed December 2, 2011, the Hearing Examiner found that the Complaint “was timely filed, well before the expiration of the 120 day period of limitation imposed by PERB Rule 544.4.”¹⁶

In excepting to this finding, the Union points to the immediate consequences of the July 26 letter cutting Peterson’s salary.¹⁷ The immediate consequences make the case untimely because, the Union asserts, “the D.C. Superior Court ruled in this case that ‘if Saunders . . . implemented the purported discipline’ on July 26, 2011, then Peterson’s claim would be untimely.”¹⁸

The Superior Court said something very different, however. The court said that if Saunders implemented the discipline that the July 26 letter purported to impose, then that letter, even if it was *ultra vires*, “could nevertheless constitute an adverse claim that triggers the limitations period.”¹⁹ The court said that if Saunders either had the authority to discipline Peterson or actually implemented the discipline despite a lack of authority, then a cause of action could have accrued July 26. But if he neither had authority nor implemented the discipline, then no cause of action could accrue until August 4.²⁰ The court indicated that a separate adverse action took place on August 4. The Union’s Executive Board found additional offenses by Peterson that occurred after July 26. It imposed on Peterson different disciplinary measures and additional requirements.²¹ Further, the court stated that “Ms. Peterson’s Complaint plainly asserts that the adverse action at issue is the August 4 Resolution, as implemented by the Executive Board separate and apart from Mr. Saunders’ empty threat of disciplinary action in the July 26 Letter.”²²

The Hearing Examiner’s findings are consistent with the Court’s observations. He found that neither the president nor the Executive Board had authority to discipline Peterson, and he found that the sanctions imposed by the Executive Board’s August 4 resolution were different in character and in stringency than those stated in Saunders’s July 26 letter.²³ While Saunders had told Peterson “you will not be paid until you meet with me and this situation is rectified,”²⁴ the punishment imposed on August 4 was unconditional. “[T]he Executive Board’s edict,” the Hearing Examiner wrote, “did not provide Ms. Peterson any leeway to escape the discipline

¹⁵ Report 12.

¹⁶ Report 12.

¹⁷ Respondent’s Exceptions 2.

¹⁸ Respondent’s Exceptions 2.

¹⁹ *Peterson v. D.C. Pub. Emp. Relations Bd.*, No. 2012 CA 003140, slip op. at 14 (D.C. Super. Ct. May 26, 2015).

²⁰ *Id.* at 14-15

²¹ *Id.* at 15-16.

²² *Id.* at 16.

²³ Report 10-11.

²⁴ Report 4.

imposed.”²⁵ In addition, he found that the discipline imposed on August 4 was substantially harsher than the discipline imposed July 26. The Hearing Examiner found that Saunders implemented the discipline September 19, 2011, the date on which he ended Peterson’s leave of absence from the D.C. Public Schools.²⁶ Based on the foregoing, the Hearing Examiner found that Peterson’s cause of action arose August 4 and her Complaint was timely filed less than 120 days later.²⁷

As the Superior Court observed, the Complaint alleges that a standards of conduct violation occurred August 4.²⁸ Thus, the Complaint was filed within 120 days “from the date the alleged violation(s) occurred” as provided in Rule 544.4. Peterson’s timely filing concerning the August 4 violation does not become untimely because she might also have had a cause of action for events that occurred July 26, 2011, if had she filed a complaint within 120 days of that date. A complaint untimely as to one action taken against a complainant may be timely as to another taken at a later stage of proceedings against the complainant.²⁹ The Hearing Examiner’s finding that the Complaint was timely as it was filed within 120 days of August 4, 2011, is reasonable, supported by the record, and consistent with PERB’s precedent.

One of the Hearing Examiner’s recommendations, however, is not consistent with these findings. Although the Hearing Examiner found that the cause of action arose August 4, he recommended that PERB order the Union to rescind not only the August 4 resolution but also the Union president’s July 26 action removing Peterson as general vice president from her official duties and from the payroll.³⁰ As there is no finding that a cause of action arose July 26 and was timely presented to PERB, we do not adopt the latter recommendation.

B. Claim Preclusion

1. Hearing Examiner’s Report and Recommendations

The Hearing Examiner took notice of an arbitration between the parties to this case on a related contractual issue. The compensation agreement for Peterson adopted by the Executive Board (“Agreement”) provides, “Any disputes concerning compensation shall be arbitrable using the American Arbitration Association.”³¹ Peterson filed a demand for arbitration with the American Arbitration Association the same day she filed the instant complaint. Peterson alleged that the Union violated the Agreement, and the Arbitrator agreed. The Arbitrator awarded

²⁵ Report 11.

²⁶ Report 11-12.

²⁷ Report 12.

²⁸ Paragraph 22 of the Complaint, particularly subparagraphs (A), (B), and (C), (*supra* p. 4) directly addresses the Executive Board meeting held August 4.

²⁹ See *AFGE Local 1403 v. D.C. Hous. Auth.*, 60 D.C. Reg. 12085, Slip Op. No. 1404, PERB Case No. 13-U-16 (2013).

³⁰ Report 13 ¶ 3.

³¹ Respondent’s Ex. B ¶ 8.

Peterson \$71,065.82, the total amount he determined that she lost from July 26, 2011, to the date of the trial of the arbitration, which took place August 24 and 30, 2012.³²

The Hearing Examiner stated, “It is well settled that an arbitration award is conclusive not only as to the substance of the grievance but also as to underlying material issues resolved along with the grievance. Elkouri & Elkouri, *How Arbitration Works*, Sixth Edition, 2003, at pp. 577-78.”³³ The Union objects that the Hearing Examiner treats the award as conclusive of the material issues but not of the substance of the grievance. The Hearing Examiner concurred with the Arbitrator’s finding that neither Saunders nor the Executive Board had authority for the actions they took against Peterson.³⁴ But he did not find that Peterson’s claim in this matter was *res judicata* as a result of the Award:

Ms. Peterson in the instant proceeding is seeking relief under a remedial statute governing the Union’s treatment of individual members such as the Complainant. General Vice President Peterson[’s] Complain[t] seeks a remedy that extends beyond her pecuniary loss covered in the arbitration award. Accordingly, I find that the instant case is not barred by the doctrine of *res judicata*.³⁵

In the Union’s view, this conclusion of the Hearing Examiner contradicts his finding that the Award establishes critical facts. “Either the arbitration award has a preclusive effect, or it does not,” the Union argues.³⁶ The Union contends that the Award precludes Peterson’s claim for the relief she seeks in the present case—lost compensation from 2012 to 2013—because she could have sought that relief in the arbitration, as the Superior Court held in a third case that Peterson brought against the Union.³⁷

The doctrine of *res judicata* or claim preclusion prevents relitigation of the same claim between the same parties. It bars not only claims that were raised in the first action but also claims arising out of the same transaction that could have been raised in the first action.³⁸

The Hearing Examiner seems to be saying that the claims in the arbitration and in the instant case are not the same because the instant case is brought under the CMPA, which affords Peterson remedies “beyond her pecuniary loss covered in the arbitration award.” His recommendations include remedies beyond her pecuniary loss, i.e., cease and desist orders,

³² Joint Ex. F at 4, 16, 28.

³³ Report 9.

³⁴ Report 9.

³⁵ Report 12.

³⁶ Respondent’s Exceptions 4.

³⁷ *Peterson v. Washington Teachers’ Union*, Civ. Action No. 2015 CA 09629, slip op. at 6 (D.C. Super. Ct. Feb. 4, 2016) (granting motion to dismiss), *appeal docketed*, No. 16-CV-143 (D.C. Feb. 13, 2016).

³⁸ *Calomiris v. Calomiris*, 3 A.3d 1186, 1190 (D.C. 2010).

rescission of adverse actions, and reinstatement. However, he also recommends a remedy for Peterson's pecuniary loss already covered in the award:

WTU shall make Candi Peterson whole for any loss of pay and benefits she may have suffered as a result of WTU's Executive Board's action on August 4, and WTU's termination of her leave of absence from her employment at the District of Columbia Public Schools effective September 19, 2011.³⁹

As the Union correctly points out, "the fact that Peterson is now suing under a statute rather than a contract, may allow her to seek various forms of statutory relief not available under her already-litigated contract claim—but does not help her recover compensation that arises solely under a contract, and which she could have sought in prior litigation."⁴⁰ The duplication under the CMPA of a remedy already awarded under the Agreement is at odds with the principle "that damages for the same injury may be recovered only once, even though recoverable under two theories or for two wrongs, for a plaintiff is not entitled to be made more than whole unless punitive damages are warranted."⁴¹

2. Prospective Wages

Peterson's position seems to be that she has not been made whole because the Arbitrator awarded her compensation for her lost pay only up to the date of the arbitration hearing and did not award her prospective wages, specifically, the wages that she would have earned after the date of the hearing. Peterson contends that she should be made whole by being paid damages of \$51,000 per annum from the start of the arbitration proceeding (August 24, 2012) to the end of her term (July 31, 2013).⁴²

Peterson claims that the Agreement did not authorize the Arbitrator to award prospective wages. Because arbitrators only have the authority that the parties agree to give them, *res judicata* does not apply to arbitrations generally and does not apply to this arbitration in particular. Peterson contends that jurisprudence on the preclusive effect of the judgments of courts is inapposite to arbitrations.

The D.C. Court of Appeals, however, has recognized that a final arbitration award is *res judicata* in a subsequent action involving the same parties and facts, adding that an arbitration award is final if it shows an intention to resolve the issues submitted and has been confirmed by the Superior Court.⁴³ Both elements of finality are present here. The Arbitrator stated that his

³⁹ Report 13.

⁴⁰ Respondent's Exceptions 3.

⁴¹ *Franklin Inv. Co. v. Smith*, 383 A.2d 355, 358 (D.C. 1978).

⁴² Opp'n to Exceptions 16.

⁴³ *Shore v. Groom Law Group*, 877 A.2d 86, 95-96 (D.C. 2005).

award resolved all claims and counterclaims of Peterson and the Union except attorneys' fees and costs,⁴⁴ which he awarded separately.⁴⁵ The Superior Court confirmed the Award.⁴⁶

The principles defining *res judicata* address Peterson's objection that the jurisdiction of an arbitrator is limited to what the parties agree to submit to him, making *res judicata* inapplicable. Limited jurisdiction is not unique to arbitrators. The Second Restatement of Judgments says that claim preclusion does not extinguish a claim in a second action for a remedy that was not available in the first action because of limitations on the subject matter jurisdiction of the court.⁴⁷ This is a specific application of the general principle that claim preclusion bars relitigation not only of claims that were previously raised but also of claims arising out of the same transaction that *could have been raised*.⁴⁸

Peterson quotes from paragraph 12 of the Agreement in support of her contention that the parties did not agree to arbitrate any issue involving prospective wages.⁴⁹ Paragraph 12 states, "Non-payment of compensation will accrue as a WTU liability and is not waived. Non-payment of compensation shall create a priority wage lien due in full at the end of Peterson'[s] term."⁵⁰ In addition, Peterson argues that she could not have raised a claim for prospective wages because such a claim was not ripe.⁵¹ Neither of those two arguments leads to the conclusion that a claim for prospective wages could not have been presented to the Arbitrator.

First, the parties agreed in paragraph 8 of the Agreement that "[a]ny disputes concerning compensation shall be arbitrable using the American Arbitration Association."⁵² Agreeing with Peterson, who had argued in her pre-hearing memorandum that "any disputes concerning compensation" should be broadly construed,⁵³ the Arbitrator emphatically stated, "The arbitration broadly covers '**any disputes concerning compensation.**' The operative word is 'any.'"⁵⁴ He did not say that paragraph 12 makes an exception to the Agreement's broad coverage of any disputes concerning compensation. Nothing in the text of paragraph 12 suggests that it does. It may also be noted that the claim Peterson submitted to the Arbitrator was no narrower than the claim she submitted to PERB. In her Statement of Claim she requested that the Arbitrator "[d]irect the WTU to pay General Vice President Peterson the salary and benefits unlawfully withheld from her under the Compensation Resolution, with interest."⁵⁵ The wording

⁴⁴ Joint Ex. F at 29.

⁴⁵ Joint Ex. G.

⁴⁶ Joint Ex. E.

⁴⁷ Restatement (Second) of Judgments § 26(1)(c) (2016).

⁴⁸ *Henley v. D.C. Dep't of Emp't Servs.*, 49 A.3d 1195, 1207 (D.C. 2012).

⁴⁹ Opp'n to Respondent's Exceptions 12.

⁵⁰ Respondent's Ex. B at 2.

⁵¹ Opp'n to Respondent's Exceptions 15.

⁵² Respondent's Ex. B at 1.

⁵³ Respondent's Ex. G at 5.

⁵⁴ Joint Ex. F at 20.

⁵⁵ Respondent's Ex. F at 6.

of her request to PERB is identical except for the omission of the words “under the Compensation Resolution.”⁵⁶

Second, a claim for prospective wages would have been ripe at the arbitration. The measure of an employee’s damages in an action against his employer for breach of an employment agreement includes the compensation that would have been paid to the employee during the remainder of the term of employment discounted to present value and reduced by any income the employee received in a substitute job.⁵⁷

The Arbitrator did not say that a claim for prospective wages was unripe or beyond his authority. He said that his award “resolves all claims and counterclaims submitted by Peterson and the WTU to arbitration except Peterson’s pending claim for attorneys’ fees and costs.”⁵⁸

The adjudication of a claim for identical relief arising out of the same transaction precludes Peterson from recovering on that claim again in this forum.

C. Restoration of Powers and Duties Established for the General Vice President

The Hearing Examiner recommended that Peterson be reinstated as the Union’s general vice president.⁵⁹ Peterson did not request that PERB order her reinstatement, and such a request would be moot at this time anyway because, as Peterson acknowledges, her term ended in 2013.⁶⁰ Peterson requested that PERB direct the Union “to restore the full range of duties and powers established for the General Vice President in the WTU Constitution and By-Laws.”⁶¹ An order that the Union adhere to the provisions of the Union’s constitution and by-laws concerning the full range of duties and powers established therein for the office of general vice president is an appropriate remedy for the Union’s violation.

D. The Back Pay Act

The Hearing Examiner also recommended that PERB order the Union to reimburse Peterson for her attorneys’ fees in accordance with the Federal Back Pay Act (“the Act”). The Act provides in pertinent part:

An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective

⁵⁶ Complaint at p. 6.

⁵⁷ *Washington Welfare Ass’n v. Wheeler*, 496 A.2d 613, 617 (D.C. 1985); *D.C. v. Jones*, 442 A.2d 512, 524 (D.C. 1982).

⁵⁸ Joint Ex. F at 29.

⁵⁹ Report 13.

⁶⁰ Opp’n to Respondent’s Exceptions 16

⁶¹ Complaint at p. 6.

bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee--

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect . . .

(ii) reasonable attorney fees related to the personnel action. . . .⁶²

Peterson is not entitled to attorneys' fees pursuant to the Act. The Act defines "agency" to include the government of the District of Columbia.⁶³ It does not define "agency" to include a labor union. Peterson was not an employee of an agency for purposes of the Act and for purposes of this action because as general vice president of the Union she was not engaged in the performance of a function of the District government or subject to the supervision of an appointing authority of the District government.⁶⁴

III. Conclusion

For the reasons set forth above, we do not accept the Hearing Examiner's recommendations that PERB order the Union to rescind the actions of July 26, 2011, to make Peterson whole for any loss of pay and benefits, to reinstate her as general vice president, or to reimburse her for her attorneys' fees in this case. Pursuant to D.C. Official Code § 1-605.2(9) and Board Rule 544.14, PERB has reviewed the findings, conclusions, and recommendations of the Hearing Examiner and finds them, in all other respects, to be reasonable, persuasive and supported by the record. We therefore adopt the Hearing Examiner's recommendations to the extent consistent with this Decision and Order.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant's Standards of Conduct Complaint is granted.
2. The Union and its officers and agents shall cease and desist from violating D.C. Code § 1-617.03(a)(1) by denying fair and equal treatment under the governing rules of the Union and fair process in disciplinary proceedings to the Complainant and to other members of the Union by bringing disciplinary charges against them, removing them from membership in the Union, or from elective office in the Union, or by terminating their pay and benefits as elective officers of the Union without complying with the Union's constitution and by-laws, or by otherwise

⁶² 5 U.S.C. § 5596(b)(1)

⁶³ 5 U.S.C. § 5596(a)(5).

⁶⁴ *Cf. Lambert v. United States*, 4 Cl. Ct. 303, 305 (1984).

violating the CMPA's standards of conduct for labor organizations as codified in D.C. Official Code 1-617.03(a)(1).

3. The Union and its officers and agents shall cease and desist from failing to adopt, subscribe, or comply with the standards of conduct for labor organizations prescribed under the CMPA in any like or related manner.
4. The Union shall immediately rescind the disciplinary resolution of its Executive Board adopted on August 4, 2011, against Peterson.
6. The Union shall adhere to the provisions of the Union's current constitution and by-laws concerning the full range of duties and powers established therein for the general vice president.
7. The Union shall conspicuously post a notice that the Board will furnish to the Union. The notice shall be posted where the Union's notices to its members are normally posted. The notice shall be posted within ten (10) days from Respondent's receipt of the notice and shall remain posted for thirty (30) consecutive days.
8. The Union shall notify PERB, in writing, within fourteen (14) days from the issuance of this Decision and Order that this Order has been complied with and that the notice has been posted as ordered.
9. 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.

October 20, 2016

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order with attachment in PERB Case No. 12-S-01 was transmitted via File & ServeXpress to the following parties on this the 10th day of November 2016.

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/s/ Najibah Almahdi
Program Analyst

HEARING EXAMINER'S REPORT AND RECOMMENDATIONS

I Procedural Statement of the Case

This case arises from a Verified Standards of Conduct Complaint and a Verified Request for Preliminary Relief filed on December 2, 2011¹ by Candi Peterson, the Complainant, against the Washington Teachers' Union, referred to below as "WTU,"² alleging that on August 4, WTU violated D.C. Code § 1-617.03 (a)(1) which states:

- (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.

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."

On December 22, WTU filed a response to Ms. Peterson's complaint which included a motion to dismiss the complaint on the ground that it was time barred under PERB Rule 544.4³ as it was filed more than 120 days after the action for which she was seeking relief. On February 6, 2012, PERB granted WTU's motion in *Peterson v. Washington Teachers Union*, 59 D.C. Reg. 7234, Slip Op. No. 1242, PERB Case No. 12-S-01 (2012). In this decision, PERB found that the 120-day limitations period applicable to standards of conduct complaints began to run on July 26 and that Ms. Peterson filed her complaint more 120 days after that date.⁴

On February 17, 2012, Ms. Peterson filed a Motion for Reconsideration with PERB. Respondent's Opposition followed on March 9, 2012. The Board denied the Complainant's Motion for Reconsideration on March 28, 2012. *Peterson v. Washington Teachers Union*, Slip Op. No. 1254, PERB Case No. 12-S-01 (2012).

Ms. Peterson filed a Petition for Review of PERB's decision in the Superior Court of the District of Columbia Civil Division on April 9, 2012. On May 26, 2015, Superior Court Judge

¹ Unless otherwise stated, henceforth all dates occurred in 2011.

² The Complainant and the Respondent, collectively, are referred to below as the "Parties."

³ PERB Rule 544.4 provides: "A complaint alleging a violation under this 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."

⁴ *Id.* at 3

Erik P. Christian ordered “that the case is remanded to Respondent the District of Columbia Public Employee Relations Board for an evidentiary hearing pursuant to the terms of this order.” *Peterson v. D.C. Pub. Emp. Relations Bd.*, No. 2012 CA 003140, Slip Op. at 17 (2015).

As PERB recognized in its Decision and Order on Remand, *Peterson v. Washington Teachers Union*, 62 D.C. Reg. 14675, Slip Op. 1254, at page 2, PERB Case No. 12-S-01 (2015):

The court found that the record reflected that there was a factual issue as to whether [WTU President Saunders] had authority to discipline Ms. Peterson on July 26 and, regardless of the scope of his authority, there was a factual issue as to whether Saunders implemented the July 26 letter by removing Ms. Peterson from the Union’s payroll or by preventing her from working for the Union. The court also questioned whether the discipline invoked by [WTU’s] executive board on August 4 differed from the discipline allegedly imposed by Saunders on July 26.

In this Decision and Order on Remand, PERB vacated its earlier decisions in Opinions Nos. 1242 and 1254 and referred this matter to a hearing examiner for a hearing pursuant to the terms of the court’s order and Board Rule 544.9⁵ On June 29, 2015, the Board issued a Notice of Hearing designating December 3, 2015, as the date for the hearing in this case.

I held a hearing in this case on December 3, 2015, 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 the Parties’ respective post-hearing briefs are set forth below.

II. Findings of Fact

A. Background

Ms. Peterson’s employment in the District of Columbia Public Schools (“DCPS”) began in 1992 as a social worker. At all times material to this case, Ms. Peterson has been a social worker in DCPS, and a member of WTU, the PERB certified exclusive collective-bargaining representative for teachers and other DCPS employees.

In December 2010, WTU’s membership elected Ms. Peterson as WTU’s General Vice President and Nathan Saunders as WTU’s President. Under Article V, Section 2A, of WTU’s By-Laws. (Respondent’s Exhibit “A”) both the President and the General Vice President are members of WTU’s Executive Board.

Ms. Peterson took office as WTU’s General Vice President on December 1, 2010. (Respondent’s Exhibit D, at Page 1) As of December 1, 2010, Ms. Peterson began a paid leave of

⁵ In pertinent part, PERB Rule 544.9 states: “If the investigation [of a standard of conduct complaint] reveals that the pleadings present an issue of fact warranting a hearing, the Board shall issue a Notice of Hearing and serve it upon the parties.”

absence from the District of Columbia Public Schools (DCPS). (Joint Exhibit D, at pages 1 and 2) (See also Respondent's Exhibit H, the Memorandum of Agreement between DCPS and WTU, dated May 24.) Under the Memorandum of Agreement, WTU agreed to reimburse DCPS annually for the latter's portion of the compensation Peterson would receive as General Vice President of the Union. (*Id.* at page 1)

On December 4, 2010, WTU's Executive Board by resolution set out in a document entitled "Compensation for Candi L. Peterson, WTU General Vice President" (Respondent's Exhibit B) her annual salary and benefits as General Vice President of WTU. In paragraph 8, the proposed agreement stated (Respondent's Exhibit B, at page 1; Joint Exhibit F, at pages 2 and 11): "Any disputes concerning compensation shall be arbitrable using the American Arbitration Association."

Ms. Peterson accepted the terms of the proposed agreement and wrote at the top of the document that her annual salary would be \$151,000 (Respondent's Exhibit B, at page 1; Joint Exhibit F, at pages 2 and 10). This salary included Ms. Peterson's annual \$100,000 salary as class-room teacher and \$51,000 per year earned as WTU's General Vice President. On December 4, 2010, WTU's Executive Board, including President Saunders and General Vice President Peterson, voted unanimously to accept the agreement. (Joint Exhibit F, at page 11.)

B .General Vice President Peterson's Termination

Late on the morning of July 26, President Saunders, General Vice President Peterson and a group of WTU field representatives held a meeting to discuss how field representatives should deal with discharged teachers. During the discussion, Saunders and Peterson argued heatedly about who was in charge of this matter. They raised their voices while contesting the issue. Peterson thought Saunders was acting disrespectfully toward her and she quickly got up and left the meeting. After the meeting had concluded, Saunders contact Peterson and instructed her to meet with him as soon as possible to discuss their problem. Peterson declined to meet with Saunders, believing that a cooling off period was necessary. (Joint Ex. F, at page 12)

Irked by Peterson's response which he considered to be insubordination, President Saunders, later on July 26, hand-delivered to General Vice President Peterson a letter stating that: "effective today, July 26, 2011, at 11:50 a.m., you have been removed from the WTU payroll for failure to perform the duties associated with your position. To be clear, you will not be paid until you meet with me and this situation is rectified" (*Ibid.*). At the conclusion of his letter, Saunders notified Peterson that, "Until this time, you may not perform any duties on behalf of [WTU] without my explicit consent and written approval" (*Id.* at page 12). "Thus, by the stroke of his pen, Saunders sought to take away from Peterson her duties as General Vice President and the compensation which they previously had agreed upon" (*Id.* at page 12).

In accordance with Saunders' letter of July 26, WTU cut Peterson's pay, effective that date, the \$51,000 per annum, which WTU agreed to pay her for her service as General Vice President (Joint Ex. F, at page 13, footnote 2).

Saunders also prevented Peterson from performing her duties as General Vice President. When Peterson sought to return to work on August 1, she found that her computer was shut down and incoming phone calls to her had been diverted. (*Id.* at page 13).

On August 4, Saunders scheduled a special meeting of WTU's Executive Board to be held at 5:30 p.m. that same day for the purpose of taking formal disciplinary action against Peterson. President Saunders did not inform General Vice President Peterson of the meeting. Peterson learned of the meeting from another source and also understood that its purpose was to discipline her.

At 3:13 p.m. on August 4, Peterson emailed the WTU Executive Board members, including President Saunders, requesting postponement of the meeting to allow her to prepare a defense to the accusations against her. Ms. Peterson's email pointed out that she was entitled to due process; that she and her attorney had not been notified of the planned meeting, and she requested a postponement to "a mutually agreeable date that [her] attorney would be able to attend." (Joint Ex. F, at page 15.)

Saunders refused to postpone the Executive Board meeting and presented a resolution he had drafted. Saunders' resolution recited his version of Ms. Peterson's alleged misconduct, including acting toward him in a "belligerent manner," and being "insubordinate" to him. President Saunders' resolution also complained that she "slandered" him and that Ms. Peterson had used her blog improperly to injure WTU. (*Id.*, at page 14.) Ms. Peterson did not attend the meeting. Saunders did not provide her with a copy of his resolution.

In addition to these charges, President Saunders set out his proposals' for disciplinary actions to be imposed upon General Vice President Peterson. First, he proposed that her status be restricted in the performance of the duties of her office and her obligations as the Union's General Vice President for the six months following adoption of his resolution. (*Id.*, at page 14) Saunders specified that during the six month period, Peterson would have no supervisory authority over either field representatives or other employees. (Joint Ex. F, at page 14.) Saunders further proposed that WTU discontinue paying the \$51,000 compensation provided in her agreement with WTU. (*Ibid.*) The Executive Board adopted President Saunders' resolution in its entirety. (Joint Ex. F, at page 14 and Respondent's Exhibit D.)

Article III of WTU's By-Laws in Sections 3, 4, and 5 sets forth procedure for disciplining a Union member for 11 offenses, including willful violation of WTU's Constitution and By-Laws and revealing to non-members of the Union "confidential internal discussions by WTU officers and staff." (Respondent's Exhibit A, at page 7.) Section 4 prescribes procedure for disciplining a member, including a requirement that allegations of misconduct must be in writing and brought to the Executive Board's attention by two or more members with documentation. The same Section requires that at a hearing on the charges before the Executive Board "the

accused member shall have the right to examine and question the charges and be represented by a person of his or her choice.” (Ibid.)

On August 12, President Saunders directed General Vice President Peterson to refrain from scheduling any meetings between 9:00 a.m. and 5:00 p.m. outside of WTU’s office without his prior approval. (Joint Ex. F, at page 15.) Further, on September 12, Saunders ordered Ms. Peterson not to communicate with any WTU members without his specific authorization. (*Id.* At pages 15 and 16.) At this point, President Saunders and WTU’s Executive Board had stripped General Vice President Peterson of her duties, her salary of \$51,000 and the other benefits to which she was entitled under her agreement with WTU. Thus, she retained only her title. (*Id.* at page 16.) However, WTU’s disciplinary action against Ms. Peterson required one more step.

On September 6, Saunders notified the District of Columbia Public Schools that he was returning General Vice President Peterson “to the classroom.” (Complainant’s Ex. E, and Joint Ex. F, at page 16.) Eight days later DCPS cancelled Peterson’s leave to serve as WTU’s General Vice President and restored her to employment at DCPS. (*Ibid.*) On Monday, September 19, President Saunders by email to the Union’s executive Board, announced that as of that date Ms. Peterson was “back to the classroom.” (Complainant Exhibit C.) Thus did WTU essentially erase Peterson’s tenure as WTU’s General Vice President. (Joint Ex. F, at page 16.)

In a letter dated September 21, President Saunders informed WTU’s members on the “issues involving General Vice President Candi Peterson.” (Complainant’s Exhibit D, at pages 1 and 2.) Saunders’ explanation begins: “Here are the facts.” (*Id.*, at page 1.) Continuing, he explained:

The GVP was not fired, terminated, nor ousted, and she continues to receive a salary. She was returned to the classroom consistent with provisions in the WTU Collective Bargaining Agreement (CBA) (Article 17.9) and remains the WTU GVP, a WTU officer, and a WTU member. Her return to the classroom, however is the latest of unfortunate but necessary steps taken by WTU to protect itself and its members and an attempt to minimize what have been disruptive and unproductive actions by her.

Turning to WTU’s Constitution and By-Laws (Respondent’s Exhibit A), I find the duties of the President set out in Article VIII of the By-Laws. That article’s Section 1 designates the President as the Union Chief Executive Officer, charged with the duty to administer all the affairs and policies of the union “as determined by the membership and the Executive Board.”(*Id.* At page 1.) Article VIII, Section 1. F. authorizes the President to: “Supervise all employees of the organization. (*Ibid.*) However, neither the Constitution nor the By-Laws empowered President Saunders to terminate any employee’s pay or employment. Nor did either of those documents authorize the President to cancel the pay or remove the duties and authority of any elected WTU official such as the elected General Vice President.

According to Article V of the Union’s By-Laws, Section 2.A. (1), the Union’s Executive Board has “sole authority to hire and terminate employees, upon the recommendation of the President.” (Respondent’s Exhibit. A, at page 9.) The last sentence of this provision excludes “elected officers of the Union” from that authority. (*Ibid.*) Thus, neither Saunders, on July 26,

nor the Executive Board, on August 4, had authority under the WTU Constitution and By-Laws to remove General Vice President Peterson from the duties of her office and terminate her wages and benefits as set out in her agreement with WTU. (Respondent's Ex. B.)

Article IX of WTU's Constitution provides a recall procedure for "any officer or other elected person ...in accord with the provisions set forth in the By-Laws of this organization." (Respondent's A, at page 5.) WTU's By-Laws' Article IX, Section 1 states:

Petition for the recall of any officer for violation of obligations of their office shall be initiated by a recall petition clearly stating the specific charges and signed by not fewer than thirty percent (30%) of members in good standing. Bases for recall may include neglecting duties of the office as defined by the By-Laws, willful failure to work for objectives of the Union and entering into unauthorized commitments of the Union. (*Id.*, at page 18.)

Under Article IX of the Union's Constitution, the "recall process shall be the right of the concerned members when there is evidence that such a recall may be justified." (*Id.*) Here, neither President Saunders nor any member of the Executive Board, nor any Union member ever filed a recall petition against General Vice President Peterson.

On December 2, the same day on which she filed the instant complaint with PERB, Candi Peterson filed a demand for arbitration with the American Arbitration Association (AAA). (Joint Ex. F, at page 2.) At first, Ms. Peterson alleged that WTU's action against her violated her agreement with the Union, the Union's Constitution and By-Laws and the Standards of Conduct for labor organizations stated in D.C. Code§1-617.03 (a)(1), set out above, at page 2. (Respondent's Ex. F, at pages 4-6.) At a conference between WTU and Ms. Peterson, which Arbitrator Stanley Mazaroff conducted, Ms. Peterson narrowed her claim, asserting that the basic issue was whether WTU had violated the contractual provisions of the Compensation Agreement. (*Ibid.*)

Arbitrator Mazaroff issued his Interim Award in *Candi Peterson v. Washington Teachers' Union*, AAA Case No 16 166 00724 11, on September 24, 2012. At page 27 of his decision (Joint Exhibit F), Arbitrator Mazaroff held that:

[N]either the letter, nor the spirit of the WTU's Constitution and By-Laws permitted Saunders or the WTU's Executive Board to summarily revoke, without a hearing or due process, the compensation that Peterson was entitled to receive under the terms of the Compensation Agreement.

The arbitrator awarded \$71, 065.82 to General Vice President Peterson covering her claim that WTU breached her Compensation Agreement. (Joint Ex. F, at page 28.) The award also made provision for a subsequent award to satisfy Ms. Peterson's claim for attorneys under paragraph 9 of that agreement. (*Id.* At page 29.) On October 10, 2013, the Superior Court of the District of Columbia, Civil Division confirmed this award in *Candi Peterson v. Washington Teachers' Union* Civil Case No 2012CA 007674 B.

III. Analysis and Conclusions

The Complaint alleges that WTU's removal of Ms. Peterson from her position as General Vice President violated D.C. Code § 1-617.03(a)(1), the provision of CMPA entitled "Standards of conduct for labor organizations," which states:

(a) Recognition shall be accorded only to a labor organization that corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board 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.

Under D.C. Code § 1-617 (c), PERB "shall prescribe the rules and regulations needed to effect this section. Any complaint of a violation of this section shall be filed with [PERB]."

According to Ms. Peterson the record evidence leaves little doubt that, as Arbitrator Mazaroff found at page 27 of his Interim Award, neither WTU's President Saunders nor the Union's Executive Board had authority to summarily remove her from her elected Union office of General Vice President or to reduce her salary. Further, Ms. Peterson contends that WTU disciplined her under Article III, Section 4 of the Union's By-Laws without according her the due process required by that Section. Further, noting that Arbitrator Stanley Mazaroff, at page 21 of his Interim Award, (Joint Exhibit F), and continuing to page 28 considered whether the Union's Constitution and By-Laws authorized either President Saunders or the Union's Executive Board to terminate Ms. Peterson's compensation, the Complainant contends that as her Verified Complaint raised the same issue, the principle of collateral estoppel requires PERB to adopt the Arbitrator's finding, given that these cases concern the same parties and the same facts.

WTU contends that the Complainant has failed to sustain the burden of proving by a preponderance of the evidence⁶ in this proceeding that her complaint was timely filed or that WTU violated DC Code § 1-617.03(a)(1) by refusing to permit her to fulfill her duties as the Union's General Vice President, by terminating her salary and other benefits to which she was entitled under the Compensation Agreement adopted by the Union on December 4, 2010, and by failing to satisfy the due process which the Union's By-Law Article III required in pursuit of these disciplinary actions. The Union also contends that Candi Peterson's cause of action in this case arose on July 26, when President Saunders announced to her that he had removed her from WTU's payroll and stripped her of her duties as General Vice President of the Union. Finally, the Union urges that its Constitution and By-Laws afforded President Saunders, and the WTU's Executive Board full authority to impose the disciplinary action against her on July 26, the

⁶ Under PERB Rule 544.11 "The party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence."

disciplinary resolution which the Executive Board imposed upon Ms. Peterson on August 4, and Saunders' rescission of his authorization of Ms. Peterson's leave of absence from her position in the District of Columbia Public Schools.

As PERB recognized in *Candi Peterson v. Washington Teachers' Union*, PERB Case Nos.12-S-01 slip op.1542, 62 DC Reg. 14675 (September 22, 2015), at page 2, in remanding this case to PERB, the DC Superior Court, in *Peterson v. D.C. Pub. Emp. Relations Bd.*, No 2012 CA003140 slip op. at 17(May 26, 2015), designated the issues to be litigated as follows:

The court found that the record reflected that there was a factual issue as to whether [WTU President Saunders] had authority to discipline Ms. Peterson on July 26 and, regardless of the scope of his authority, there was a factual issue as to whether Saunders implemented the July 26 letter by removing Ms. Peterson from the Union's payroll or by preventing her from working for the Union. The court also questioned whether the discipline invoked by [WTU's] executive board on August 4 differed from the discipline allegedly imposed by Saunders on July 26.

The Complainant asserts that these issues were before Arbitrator Stanley Mazaroff in the arbitration proceedings in *Candi Peterson v. Washington Teachers' Union*, American Arbitration Association Case No. 161660072411(September 24, 2012). Further, Complainant argues that the parties are foreclosed from litigating these issues anew, here, by the principle of collateral estoppel. WTU insists that Ms. Peterson has failed to show by a preponderance of the evidence, as required under PERB Rule 544.11, that she filed her complaint not more than 120 days "from the date the alleged violations occurred" and thus satisfied the time limit imposed by PERB Rule 544.4⁷ Arbitrator Mazaroff found that General Vice President Peterson's Verified Complaint was timely filed in accordance with PERB Rule 544.11. I concur and find that the Parties and PERB are bound by Arbitrator Mazaroff's findings in his Interim Award as urged by Complainant.

It is well settled that an arbitration award is conclusive not only as to the substance of the grievance but also as to underlying material issues resolved along with the grievance. Elkouri & Elkouri, *How Arbitration Works*, Sixth Edition, 2003, atpp.577-578. Arbitrator Mazaroff's Interim Award involved a contractual dispute growing out of WTU's President Saunders' and Executive Board's stripping Ms. Peterson of her authority as the Union's General Vice President, terminating her salary and benefits under the Parties' compensation agreement, and finally returning her to her daily employment as DCPS class-room social worker. Arbitrator Mazaroff's determination after an evidentiary hearing(Joint Exhibit F, at page 4) that WTU, President Saunders and WTU's Executive Board violated that agreement required that he resolve the underlying material issue of whether Saunders and the Executive Board had authority under the Union Constitution and By-Laws to impose that punishment on Ms. Peterson. (*Id.* At pages 21 and 22.)

⁷ PERB Rule 544.4 states: "A complaint alleging a violation under this 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."

The instant case presents the same issues. Also, the same facts and the same parties confronting Arbitrator Mazaroff are present in the instant proceeding. Finally the Parties in both proceedings have enjoyed ample opportunity to fully litigate the issue of whether WTU's Constitution and By-Laws afforded President Saunders and the Executive Board authority to discipline Ms. Peterson. Not only are the Parties precluded from obtaining a different result as parties to a conclusive arbitration proceeding, but also by the principle of collateral estoppel. *San Remo Hotel v. San Francisco*, 545 U. S.323, fn. 16 (2005); *Allen v McCurry*, 449 U.S. 90, 94-96 (1980).

The Arbitrator found that the Union's "President does not have express authority under the Constitution or By-Laws to remove the General Vice President or other elected [Union] officers from their positions. . .or to eliminate their compensation." (Joint Exhibit F, at page 5.) Arbitrator Mazaroff also found that the Union's "Constitution and By-Laws provide only one method for removing an elected officer from his/her position. It is: 'Recall' [under Article IX of the Constitution]." (*Id.* At page 6.) Further, the Arbitrator found that Under the WTU's Constitution and By-Laws, the recall process begins with a petition "clearly stating the specific charges and signed by not fewer than thirty percent (30%) of the members in good standing." (*Ibid.*) At page 22 of his Interim Award, the Arbitrator found:

Thus, the precipitous action taken by Saunders on July 26, 2011 against Peterson in *unilaterally removing her from the WTU payroll and simultaneously ending her duties as General Vice President* was not authorized by the WTU's governing Constitution or By-Laws.

Continuing, Arbitrator Mazaroff turned his attention to the Executive Board's action against General Vice President Peterson on August 4 and found:

This legally unsupportable action taken by Saunders was not cured by the similar action orchestrated by Saunders and taken during the following week by the Executive Board. Under the Constitution and By-Laws, the Executive Board' authority to discharge or otherwise discipline employees did not extend to Union officers. Article V of the By-Laws expressly provides that the authority of the Executive Board to terminate employees 'shall not apply to officers of the Union.' (Joint Exhibit F, at page 22.)

At the hearing before me, Respondent contended that WTU's Constitution and By-Laws authorized the discipline WTU's President and Executive Board imposed upon Ms. Peterson on July 26, August 4, and on September 19. However, the Union did not point to any provision, neither at the hearing, nor in its brief, supportive of that position.

After reviewing WTU's Constitution and By-Laws, and the Arbitrator's unrebutted findings and conclusions, I find that neither the President nor the Executive Board had authority to discipline Ms. Peterson as recited above.

Article X, Section 1 of WTU's By-Laws mandate the use of *Roberts Rules of Order* for all "deliberations of each unit of organization and of all committees, except as said rules may conflict with[WTU's] Constitution and By-Laws. Arbitrator Mazaroff referring to Article X of the Union's By-Laws examined the procedure the Executive Board, led by President Saunders,

followed in disciplining Ms. Peterson. The Arbitrator concluded, based upon Chapter XX of the latest edition of *Roberts Rules of Order*, that the Union's Executive Board failed to provide Ms. Peterson with due process in disciplining her on August 4. (Joint Exhibit F, at pages 23 and 24)

Specifically, the Arbitrator found that contrary to *Roberts Rules of Order*, Chapter XX, the Executive Board did not provide an investigation by "a fair and independent committee to determine if charges were warranted. Nor did the Executive Board give Ms. Peterson formal notification of the charges pending against her. Further, the Arbitrator found that the Executive Board failed to provide Ms. Peterson with:

[A] trial during which "the evidence against the accused is presented," and during which "the accused has the right to be represented by counsel and to speak and produce witnesses in his own defense." (*Id.* At page 24)

In summary, Arbitrator Mazaroff supported his conclusion that WTU's Executive Board failed to satisfy "these basic standards" of due process with findings of fact which spelled out a violation of Article III, Section 4 of the Union's By-Laws which requires that the Union accord a member charged with an offense warranting discipline a hearing "at which the accused member shall have the right to examine and question the charges and be represented by a person of his or her choice." (Respondent's Exhibit A, at page 7) As shown above, at page 5, WTU denied Ms. Peterson's request for a postponement of the Executive Board's disciplinary hearing on President Saunders' charges against her to enable her to prepare her defense and arrange for the presence of her counsel at the hearing. Accordingly, I find that WTU's Executive Board violated Article III, Section 4 of the Union's By-Laws by failing to accord Ms. Peterson due process in its conduct of the disciplinary proceeding on August 4.

The Union contends that Ms. Peterson's cause of action in this case arose on July 26. On that day, President Saunders, by letter, told her that he was removing her from WTU's payroll and enjoining her from performing her duties as General Vice President, "until you meet with me and this situation is rectified" (Joint Exhibit D, at Page 3.) According to the WTU, Ms. Peterson untimely filed her Verified Standards of Conduct Complaint against WTU on December 2, more than 120 days after Saunders' action.

However, on August 4, the Union's Executive Board, at Saunders' insistence, imposed further sanctions upon Ms. Peterson. The Board restricted Ms. Peterson in the performance of her duties as General Vice President for six months from August 4, during which time she would have no supervisory authority over the Union's field representatives or other Union employees. Unlike President Saunders' letter of July 26, the Executive Board's edict did not provide Ms. Peterson any leeway to escape the discipline imposed. It was unconditional, for six months..

Finally, the Board decided unconditionally that "WTU shall not continue to pay the additional compensation for the duties of General Vice President above the DCPS portion of her paycheck." (Joint Exhibit F, at page 14.) President Saunders did not implement this final portion of the Executive Board's decision until September 6, when he signed the Memorandum of Agreement cancelling Ms. Peterson's leave of absence from her DCPS position. (*Id.* At page 16.) The cancellation was effective on Monday, September 19, (Complainant's Exhibit E) As Arbitrator Mazaroff found: "This eliminated any real or

apparent authority of Peterson to serve as WTU's General Vice President and prevented her from completing her three-year term of office." (Join Exhibit F, at page 16.)

In sum, the discipline which the Executive Board invoked on August 4 was substantially harsher than that contained in President Saunders' letter of July 26 to Ms. Peterson. From the foregoing facts, I find that Ms. Peterson's cause of action in the instant case arose on August 4, when the WTU's Executive Board promulgated its resolution disciplining General Vice President Candi Peterson, which President Saunders effectuated on September 19 by returning her to DCPS. Therefore, I further find that her Verified Complaint was timely filed, well before the expiration of the 120 day period of limitation imposed by PERB Rule 544.4.

The Respondent contends that:

Peterson does not allege that the WTU violated any of her rights as a member. Rather, Peterson alleges that WTUY violated a contractual obligation with respect to Peterson's role as an officer. No precedent supports her claim that the WTU's actions constituted a statutory violation. (WTU's Brief, at page 10)

I find, to the contrary that Candi Peterson in her Verified Standards of Conduct Complaint alleged that WTU violated D.C. Code § 1-617.03(a)(1) by failing to give her notice of the Executive Board's special meeting of August 4; failing to give Ms. Peterson notice that a disciplinary resolution against her would be on the agenda of that meeting; failing to grant her request for a postponement of the August 4 special Executive Board meeting in order to prepare a defense to President Saunders' proposed removal action against her and to arrange for the presence of her attorney at the postponed meeting; reducing Ms. Peterson's salary, and prohibiting her from performing her duties as General Vice President without complying with By-Law Articles III or IX. (Joint Exhibit at pages 3 -6)

Accordingly, I find that Ms. Peterson has alleged that, by the foregoing conduct, WTU violated its duty under D.C. Code § 1-617.03(a)(1)⁸ to accord her "fair and equal treatment under the governing rules of the organization" and "fair process in disciplinary proceedings." Thus, Ms. Peterson has raised a cause of action under D.C. Code § 1-605.2(9)⁹. *Clarence E. Mack et al and Ellowese Barganier v. FOP/Dept. of Corrections Labor Committee*, PERB Cases No. 95-S-03 and 95-S-02, Opinion No. 507, 46 DC Reg. 110 (1999).

I also disagree with the Union's contention that the cause of action in this case arises from a breach of contract and thus is "foreclosed by *res judicata*." (WTU's Brief, at page 5.) As shown in the paragraph immediately above, Ms. Peterson in the instant proceeding is seeking relief under a remedial statute governing the Union's treatment of individual members such as the Complainant. General Vice President Peterson Verified Standards of Conduct Complain seeks a remedy that extends beyond her pecuniary loss covered in the arbitration award. Accordingly, I find that the instant case is not barred by the doctrine of *res judicata*.

⁸ D.C. Code § 1-617.03(a)(1) was formerly codified as D.C. Code § 1-618.3(a)(1).

⁹ Quoted above, at page 2: 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."

I find that Candi Peterson has shown by a preponderance of the evidence recited above that WTU violated its Constitution and By-Laws by suspending her pay and refusing to permit her to perform her duties as General Vice President of the Union. Accordingly, I further find that by this conduct the Respondent, Washington Teachers' Union has violated D.C. Code § 1-617.03(a)(1).

IV. Recommendations

Based upon my findings of fact and conclusions of law, I recommend the following remedy:

The Respondent, Washington Teachers' Union (WTU), and its officers and agents, should be ordered to:

1. Cease and desist from violating D.C. Code § 1-617.03(a)(1) by denying fair and equal treatment under the governing rules of the WTU and fair process in disciplinary proceedings to Complainant Candi Peterson and other members of the WTU by bringing disciplinary charges against them, removing them from membership in the WTU, or from elective office in the WTU, or by terminating their pay and benefits as elective officers of the WTU without complying with WTU's Constitution and By-Laws, or by otherwise violating the Comprehensive Merit Personnel Act (CMPA) standards of conduct for labor organizations as codified under D.C. Code § 1-617.03(a)(1).

2. Cease and desist from failing to adopt, subscribe, or comply with the standards of conduct for labor organizations prescribed under the CMPA in any like or related manner.

3. WTU shall immediately rescind both the action of its President, Nathan Saunders on July 26 removing Candi Peterson as General Vice President from here official duties and from WTU's payroll and the disciplinary resolution of its Executive Board adopted on August 4, 2011, against Candi Peterson and reinstate her as WTU's General Vice President.

4. WTU shall make Candi Peterson whole for any loss of pay and benefits she may have suffered as a result of WTU's Executive Board's' action on August 4, and WTU's termination of her leave of absence from her employment at the District of Columbia Public Schools effective September 19, 2011.

5. WTU shall reimburse Candi Peterson for her attorneys' fees in this case, in accordance with the federal Back Pay Act, 5 U.S.C. § 5596(b)(1)(A)(ii) as enforced in *District of Columbia Department of Consumer and Regulatory Affairs v. AFG Local 2725*, Slip Op. No. 992, PERB Case No. 09-A-03, 59 DC Reg. 5502 (2009).

6. WTU shall post conspicuously for thirty (30) days, where notices to its members are normally posted, a notice to its members stating that it has violated D.C. Code § 1-617.03(a)(1), that it shall cease and desist from further violations of the D.C. Code, and announcing that it has rescinded the discipline which WTU imposed upon General Vice President Candi Peterson and made her whole by payment to her of the back pay and benefits due to her because of WTU's failure to comply with its Constitution and By-Laws when it terminated her from her duties as General Vice President without according her the due process they required.

Respectfully submitted,



Leonard M. Wagman

Hearing Examiner

February 10, 2016