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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Alfreda Johnson,	PERB Case No. 13-U-34
Complainant,	Opinion No. 1420
v.	
Washington Teacher's Union, Local 6,	
and	Decision and Order
Nathan Saunders, President, Washington Teachers Union, Local 6,	
and	
Nadine Evans, Deputy Chief of Staff, Washington Teacher's Union, Local 6,	
and	
Donielle Powe, Field Services Specialist, Washington Teacher's Union, Local 6,	
Respondents.	

DECISION AND ORDER

I. Statement of the Case

Complainant Alfreda Johnson ("Complainant" or "Ms. Johnson") filed a *pro se* Amended Unfair Labor Practice Complaint[1] ("Complaint") against the Washington Teacher's Union, Local 6 ("WTU" or "Union"), WTU President Nathan Saunders ("Mr. Saunders"), WTU Deputy Chief of Staff Nadine Evans ("Ms. Evans"), and WTU Field Services Specialist Donielle Powe ("Ms. Powe") (collectively, "Respondents"), alleging they violated D.C. Code §§ 1-617.04(b) *et seq.*[2] and 1-617.18 of the Comprehensive Merit Personnel Act ("CMPA"), in addition to multiple sections of the Federal Labor Relations Authority as codified in the Civil Service Reform Act of 1978, 5 U.S.C. §§ 7101 *et seq.* ("FLRA"), and multiple sections of the Collective Bargaining Agreement ("CBA") between WTU and District of Columbia Public Schools ("DCPS"), when they "consistently" discriminated against her "through arbitrary, perfunctory and in one instance bad faith behavior" by: 1) ignoring and failing to investigate a "potentially meritorious" grievance; 2) failing to provide "any reasons for any of their actions"; 3) not filing or participating in "a meritorious grievance against DCPS"; and 4) negotiating as part of the current CBA the "IMPACT evaluation instrument and process". (Complaint, at 1-19). Ms. Johnson filed two (2) subsequent motions to amend her complaint to: 1) add the allegation that Respondents' Answer and Motion to Dismiss, filed on July 10, 2013, attempted to cause the Board to discriminate against her in violation of D.C. Code § 1-617.04(b)(2)[3]; and 2) withdraw all of her claims in the Complaint under the FLRA and to instead assert them under the Educational Employment Relations Act ("EERA"), CAL. GOV'T CODE § 3544.9 (West 2013), a California state statute.[4]

In their Answer, Respondents denied Ms. Johnson's allegations and legal conclusions. (Answer, at 1- 6). In addition, Respondents filed a Motion to Dismiss Ms. Johnson's Complaint arguing that: 1) Ms. Johnson lacked standing to bring the Complaint; 2) the Complaint was

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[1] Ms. Johnson's original Complaint, filed on June 21, 2013, was deficient in that it was filed without Ms. Johnson having signed it, and because Ms. Johnson failed to provide a copy of the applicable collective bargaining agreement. On June 24, 2013, Ms. Johnson filed an Amended Complaint curing these deficiencies.

[2] Throughout the Complaint, Ms. Johnson consistently cited this section as "D.C. Code § 1-618.4 (2012.2a)." Consistent with *Charles Bagenstose v. Washington Teachers' Union, Local No. 6*, 59 D.C. Reg. 3808, Slip Op. No. 894 at p. 3, PERB Case No. 06-U-37 (2007) and *Mack v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 49 D.C. Reg. 1149, Slip Op No. 443 at p. 2, PERB Case No. 95-U-16 (1995), in which the Board held that a *pro se* litigant is entitled to a liberal construction of his/her pleadings and must be given a reasonable opportunity to present his/her case without undue focus on technical flaws or imperfections, the Board will assume that Ms. Johnson intended to cite D.C. Code § 1-617.04(b), which is the current citation for unfair labor practice complaints applicable to labor unions under the CMPA, and which was formerly D.C. Code § 1-618.4(b).

[3] Ms. Johnson sought this proposed amendment via numerous filings submitted between July 15-17, 2013.

[4] Ms. Johnson sought this proposed amendment via numerous filings submitted on July 27, 2013.

untimely, and 3) Ms. Johnson failed to state a claim upon which relief may be granted.[5] (Motion to Dismiss, at 7-9).

Ms. Johnson later filed a Motion to Strike Respondents' Motions to Dismiss and further moved for a partial decision on the pleadings.[6]

II. Background

In August 2009, Ms. Johnson was hired by DCPS as a reading teacher for Kramer Middle School. (Complaint, at 3). In June 2010, she was excessed in accordance with the CBA. *Id.* In August 2010, she was terminated from DCPS as a result of being excessed and was not able to fill any other positions under the CBA because she had been a "probationary" employee and also because she scored a "minimally effective" rating on her IMPACT evaluation. *Id.* Ms. Johnson alleged that WTU's negotiation of the "IMPACT evaluation instrument and process" preceding the execution of the CBA in 2007 was prohibited under D.C. Code § 1-617.18, which states: "during the fiscal year 2006 and each succeeding fiscal year the evaluation process and instruments for evaluating District of Columbia Public Schools employees shall be a non-negotiable item for collective bargaining purposes." *Id.*, at 3-4. On August 30, 2010, WTU filed a Step 2 grievance on behalf of Ms. Johnson challenging her IMPACT rating. *Id.*, at 4.

On October 12, 2011, Mr. Saunders sent a letter on behalf of WTU to Ms. Johnson asking her sign and return a "Permission to Release Employment Information" form in preparation for "Arbitration Case No 16 390 00819 10" ("Arbitration Case"), which she did. *Id.*; Exhibit 6. Ms. Johnson claimed that Respondents never responded to her inquiries about whether she was part of that case, or if it is still ongoing. *Id.*, at 4-5, 7.

In March and April 2013, Ms. Johnson requested a verification form from DCPS in preparation for applying for a job with Prince Georges County Schools, and discovered that her position with DCPS in 2009-10 had been classified as "mathematics."[7] *Id.*, at 5. Ms. Johnson notified WTU of the error and exchanged correspondence with Mr. Saunders and Ms. Powe discussing the issue. *Id.*, at 5-7. On April 18, 2013, Ms. Powe sent Ms. Johnson a letter ("April 18, 2013, Letter") via email stating:

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[5] Respondents filed another Answer and Motion to Dismiss on July 26, 2013, in response to Ms. Johnson's July 15-17 motion to amend her Complaint. Respondents did not file a response to Ms. Johnson's July 27 motion to amend the Complaint, although there is evidence to suggest that Ms. Johnson may not have served said motion on Respondents electronically via File & ServeXpress™ as required by PERB Rules 501 *et seq.* and 561 *et seq.*

[6] Ms. Johnson sought these actions via numerous filings submitted between July 31 and August 16, 2013.

[7] Ms. Johnson admitted that this misclassification also appeared on her paystubs, but she alleged that she never noticed it because she "was not trained on what information was kept on your paystub and had no knowledge that [her] teacher position was listed on [her] paystub." (Complaint, at 5).

> The [WTU] has investigated your matter concerning your termination from DCPS that you believe is in error. ...
>
> When a teacher is terminated from DC Public Schools, s/he may challenge that decision through one of the following processes: i. Upon termination, a teacher may file a grievance within fourteen (14) school days of the effective date of the termination; or ii. Upon termination, a teacher may file an appeal with the Office of Employee Appeals (OEA) within thirty (30) calendar days of the effective date of termination.
>
> If a teacher fails to invoke either of these processes, the WTU cannot assist them beyond the timeframe outlined above. Since you did not invoke the grievance procedure within 14 school days of the incident occurring and you did not file an appeal with OEA within 30 calendar days, the WTU cannot assist you with a claim at this time. Unfortunately, you did not contact the WTU regarding this matter until April 2013, almost three years after this incident occurred. Therefore, even if this were a grievable issue, it is untimely.
>
> Upon further investigation by the WTU, DC Public Schools did not commit any procedural error when you were terminated. Based on the evidence you presented, it appears that DC Public Schools only had your title in the system incorrectly, which you indicated is being corrected by DC Public Schools. Therefore, the WTU will not proceed on this matter. WTU considers this matter closed.

Id., at 7; and Exhibits 13a and 13b. Ms. Johnson alleged that this April 18, 2013, Letter evidenced that "Ms. Powe was arbitrary and perfunctory by not investigating the excess procedures and rules for excessing under the [CBA]." *Id.*, at 7. She further alleged that the Letter indicated that Ms. Powe "[was focused] on proving that [she] deserved to be terminated" and demonstrated that Ms. Powe "never investigated the misclassification or the excessing of [Ms. Johnson's] position." *Id.*, at 8. Ms. Johnson contended that the Letter failed to provide an answer from WTU as to whether her misclassification was within the scope of the Arbitration Case, and failed to provide a reason for WTU's unwillingness to file a grievance on her behalf. *Id.* Ms. Johnson contended that "[b]y not referring to the CBA, ignoring and not investigating the misclassification and excess under the CBA, and lying about investigating my termination [to justify not pursuing a potential grievance and to coerce me into believing that I didn't have grounds for a grievance or that, even if I had, it would be untimely], Ms. Powe was [discriminatory, perfunctory, and arbitrary]." *Id.*, at 8-10.

On April 29, 2013, Ms. Johnson, acting upon the advice of her attorney, Kerry Davidson ("Mr. Davidson"), filed a new grievance ("April 29, 2013, Grievance") challenging her misclassification, excess, and termination with DCPS. *Id.*, at 9; and Exhibits 14a1-3 and 14b1-7. Ms. Johnson contended that said Grievance was "meritorious". *Id.*, at 10-15.

On May 13, 2013, Ms. Johnson again contacted Mr. Saunders to ask for assistance with her April 29, 2013, Grievance, which she claimed was "quickly approaching the end of Step 1 Stage 3", because they "needed the WTU to designate [her attorney as an agent of WTU] or represent [her] themselves if [it ended up being necessary] to continue to Step 2." *Id.*. at 15; and Exhibit 16. Ms. Johnson asserted that Article 6.4.2.2[8] of the CBA dictates that grievances can only proceed to Step 2 (before the DCPS Chancellor) at the discretion of WTU, which means that WTU either had to represent Ms. Johnson or it had to designate Mr. Davidson as its agent in order for Ms. Johnson to advance her Grievance to Step 2,. *Id.*, at 15-16.

On May 15, 2013, WTU Deputy Chief of Staff, Nadine Evans ("Ms. Evans") sent Ms. Johnson an email ("May 15, 2013, Email") in response to Ms. Johnson's May 13, 2013, request, stating:

> At this time, the WTU will not be appointing Mr. Kerry Davidson as an agent of WTU in order to pursue your grievance. Pursuant to Article 6.3.1 of the [CBA], 'either an employee or the WTU may raise a grievance, and, if raised by the employee, the WTU *may* associate itself with the grievance....'
>
> In this instance, you have invoked the grievance procedure on your own and, after careful review and consideration, the WTU has declined to associate with your grievance. The WTU is not a party to the grievance you recently filed with DCPS.
>
> Since the WTU has made the decision not to pursue a grievance in your case, the WTU will not be submitting your issue to voluntary mediation under Article 6.4.1.3.2 of the CBA.
>
> If DCPS agrees to mediate this matter with you and Mr. Kerry that is a decision that DCPS has to make outside of the WTU-DCPS CBA. Any decision or agreement reached from that mediation will

[8] Article 6.4.2.2 of the CBA reads: "The Chancellor, or his/her designee, and those he/she may further name, shall meet with the representatives of the WTU, and with the persons referred to in Step I, within ten school days of such submission, and the Chancellor or designee shall render a decision, in writing, within ten days of such meeting. This meeting shall take the form of a hearing, before a neutral hearing officer during the course of which all parties are afforded the opportunity to present evidence, witnesses, and arguments in support of their respective position(s). The hearing officers shall submit his/her decision to the parties and the decision is binding absent a request for arbitration by either party."

> not bind WTU, since the union is not a party to the grievance at issue.

Id., at 16-17; and Exhibit 17a (emphasis in original).

On May 22, 2013, Erin Pitts ("Ms. Pitts"), Director of Labor Management & Employee Relations ("LMER") in DCPS' office of Human Resources, issued DCPS' response to Ms. Johnson's Grievance via email ("May 22, 2013, Grievance Response") stating:

> Under the Contract, '[n]o matter shall be entertained as a grievance, unless it has been raised with the other party within ten (10) school days after the Teacher or the WTU first learned of its cause.' Section 6.5.1. Additionally, the contract provided that a teacher has **14** school days to file a written grievance after first learning of its cause, Section 6.4.1.1.1, and that no grievance may be raised more than thirty days after the teacher or the WTU learned of the event giving rise to the grievance, Section 6.5.3. Thus, from the outset, DCPS must determine whether Ms. Johnson's grievance filed on April 29, 2013, more than two and a half years after the alleged infraction occurred, is timely.
>
> DCPS uses a Human Resources Information Systems platform called PeopleSoft to store certain employee information and to generate documents such as personnel actions (SF-50s) and pay stubs. These documents are automatically populated with information stored on the platform, including the employee's job title.
>
> DCPS concedes that Ms. Johnson's title has been improperly coded in PeopleSoft as that of a math teacher, since August 17, 2009. As a result of the improper coding, DCPS generated a number of documents that contained the math teacher designation, including personnel actions and pay stubs. To be sure, the PeopleSoft error caused the employment verification DCPS prepared on March 27, 2013, to list her position as that of a math teacher. However, March 27th was not the first time that Ms. Johnson knew or should have known of her improper designation. Ms. Johnson's final personnel action and pay stubs from 2010 also erroneously stated that Ms. Johnson worked as a math teacher. Therefore, Ms. Johnson was on notice that there was a coding error prior to, and immediately following, her separation in 2010. Mr. Johnson's grievance is denied as untimely.

> Without waiving the timeliness argument, DCPS looked into the substance of Ms. Johnson's complaint—that she was excessed as a math teacher and not as a reading teacher and that her title was changed to effectuate her excessing. As explained above, Ms. Johnson has been improperly designated as a math teacher in PeopleSoft since August 17, 2009. Additionally, internal documents list Ms. Johnson as a reading teacher for purposes of the 2009-10 excessing. Thus, DCPS cannot credit the claim that Ms. Johnson's position was artificially changed so that she would be subject to excessing. Here, the evidence shows that Ms. Johnson was treated as a reading teacher at the school level and for purposes of her 2010 excessing. Therefore, DCPS concludes that Ms. Johnson's excessing was proper.
>
> With this correspondence, LMER is closing its review of Ms. Johnson's grievance.

Id., Exhibits 18a and 18b1-2 (emphasis in original). In the body of the email in which this May 22, 2013, Grievance Response was attached, Ms. Pitts stated further: "If you wish to proceed with the grievance, please notify us within ten school days and we'll notify the general counsel's office that a hearing is requested." *Id.*, Exhibit 18a.

On June 7, 2013, Ms. Johnson emailed Ms. Pitts contending that DCPS waived the right to invoke its timeliness argument when it advanced her April 29, 2013, Grievance from Step 1 to Step 1 Stage 3. *Id.*, Exhibit 18c2-4. Ms. Johnson did not, however, request a hearing or state that she was requesting to advance her Grievance to Step 2. *Id.* On June 10, 2013, Ms. Pitts responded by email stating: "[i]t appears we have a disagreement on the timeliness matter, but we did look into the substance of your grievance as well" and that "[t]hose findings were an independent basis for our denial of your grievance." *Id.*, Exhibit 18c2. Later on June 10, 2013, Ms. Johnson again emailed Ms. Pitts stating that she still disagreed with Ms. Pitts' interpretation of the timeliness issue and her analysis of the substance of her grievance. Ms. Johnson then stated: "[a]lthough I denied your offer of a hearing, I do appreciate the offer and I am very appreciative of your admission of misclassification." She further stated: "[i]t is unfortunate that we could not resolve this issue through mediation but it is what it is and I'm at peace with that." *Id.*, Exhibit 18c-18c2. On June 11, 2013, Ms. Pitts responded by email stating: "I'll be sure that this communication is added to our file on this this matter" and that "I hope you understand that I won't be providing any additional substantive responses, given your decision not to pursue further administrative remedies with DCPS." *Id.*, Exhibit 18c. Later on June 11, 2013, Ms. Johnson responded to Ms. Pitts' email, stating: "I understand and thank you!" *Id.*

In the Complaint, Ms. Johnson alleged that Respondents' refusal to designate Mr. Kerry as WTU's agent for the purpose of advancing her grievance was arbitrary, discriminatory, restraining, and a repudiation of her rights because it caused the procedure of her April 29 Grievance to be halted after Step 1 Stage 3 due to "not having the required representation of [WTU] for Step 2 which would have been a meeting with the Chancellor in the form of a hearing." *Id.*, at 17-19. Ms. Johnson further contended that her grievance was "meritorious" and "had it not been for the discriminating, arbitrary, and perfunctory behavior of the [WTU], I had the potential to win at the hearing that [Ms. Pitts] offered me." *Id.*, at 19.

In their Answer, filed on July 10, 2013, Respondents denied Ms. Johnson's allegations and legal conclusions. (Answer, at 1- 6). In addition, Respondents simultaneously filed a Motion to Dismiss Ms. Johnson's Complaint arguing that: 1) Ms. Johnson lacked standing to bring the Complaint because she "is not a member of WTU and has not been a member since 2010" and because she "is not employed by DCPS and has not been an employee since 2010"; 2) the Complaint was untimely because it was filed more than 120 days after the date on which the alleged violations occurred per PERB Rule 520.4, and 3) the Complaint failed to state a claim upon which relief may be granted because the FLRA authority Ms. Johnson cited is only applicable to federal government employees. (Motion to Dismiss, at 7-9).

On July 15-17, 2013, Ms. Johnson filed multiple documents seeking leave to amend her Complaint to add the allegation that Respondents' July 10, 2013, Answer and Motion to Dismiss attempted to cause the Board to discriminate against her in violation of D.C. Code § 1-617.04(b)(2). (First Motion to Amend Complaint).

On July 26, 2013, Respondents filed another Answer and Motion to Dismiss in response to Ms. Johnson's July 15-17 motion to amend her Complaint, in which they denied Ms. Johnson's new assertion that their Answer and Motion to Dismiss constituted a violation of D.C. Code § 1-617.04(b)(2). (Answer to Proposed Amended Complaint, at 6).

On July 27, 2013, Ms. Johnson filed multiple documents seeking leave to amend her Complaint again, this time to withdraw all of her claims under the FLRA and to instead assert them under California's EERA, *supra*. (Second Motion to Amend Complaint).

On July 31-August 16, 2013, Ms. Johnson filed multiple documents in which she moved to strike Respondents' Motions to Dismiss and further moved for a partial decision on the pleadings. (Motion to Strike and for Partial Decision On the Pleadings).

No other pleadings having been filed in this matter, Ms. Johnson's Complaint and the parties' motions are now before the Board for disposition.

III. Discussion

PERB Rule 520.4 states that: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." PERB does not have jurisdiction to consider unfair labor practice complaints filed outside of the 120 days prescribed by the Rule. *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995) ("[T]ime limits for filing appeals with administrative adjudicative agencies...are mandatory and jurisdictional"). The 120-day period for filing a complaint begins when the complainant first knew or should have known about the acts giving rise to the alleged violation. *Charles E. Pitt v. District of Columbia Department of Corrections*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009).

While a complainant does not need to prove his/her case on the pleadings, he/she must plead or assert allegations that, if proven, would establish a statutory violation of the CMPA. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department, et al.*, 59 D.C. Reg. 5427, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09 (2009) (citing *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees Local 631 and District of Columbia Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994)); see also *Ulysses S. Goodine v. Fraternal Order of Police/Department of Corrections Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996). If the record demonstrates that the allegations do concern a violation of the CMPA, then the Board has jurisdiction over the matter and can grant relief accordingly. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 9212, Slip Op. No. 1391 at p. 22, PERB Case Nos. 09-U-52 and 09-U-53 (2013) (citing *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks*, 50 D.C. Reg. 5049, Slip Op. No. 697 at p. 6, PERB Case No. 00-U-22 (2002)).

Notwithstanding, the Board lacks the authority to interpret the terms of the parties' contract in order to determine if there has been a violation of the CMPA. *Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO v. District of Columbia Public Schools*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 9, PERB Case No. 92-U-08 (2010); see also *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia*, 60 D.C. Reg. 2585, Slip Op. No. 1360 at 5-7, PERB Case No. 12-U-31 (2013). In such cases, the Board defers the resolution of the issues and the interpretation of contractual questions to the grievance and arbitration processes established in the parties' contract. *Fraternal Order of Police/Metropolitan Police Department Labor Committee v.*

District of Columbia, et al, 59 D.C. Reg. 6039, Slip Op. No. 1007 at p. 8, PERB Case No. 08-U-41 (2009) (citing *AFSCME, D.C. Council 20, Local 2921 v. D.C. Public Schools*, 42 D.C. Reg. 5685, Slip Op. No. 339 at n. 6, PERB Case No. 92-U-08 (1995)).

Under the CMPA, unions have a duty to fairly represent their members. *Bagenstose v. WTU, supra*, Slip Op. No. 894 at p. 7-8, PERB Case No. 06-U-37. A union breaches its duty of fair representation if it engages in conduct that is arbitrary, discriminatory, or in bad faith. *Id.* (citing *Rebecca Owens v. AFSCME, Local 2095 and National Union of Hospital and Healthcare Employees, District 1199*, 52 D.C. Reg. 1645, Slip Op 750, PERB Case No. 02-U-27 (2004); and D.C. Code § 1-617.03(a)(1)[9]). However, the union's duty does not require it to pursue every grievance to arbitration insofar as it provides the member with a rational basis for its refusal to do so. *Stanley O. Roberts and American Federation of Government Employees, Local 2725*, 36 D.C. Reg. 3631, Slip Op. No. 203 at p. 3, PERB Case No. 88-S-01 (1989). A complainant who alleges that the union has breached its duty by refusing to advance a grievance to arbitration must allege in the pleadings the existence of some evidence beyond mere conclusory statements or beliefs that, if proven, would tie the union's actions to the alleged violation of the CMPA. *Goodine v. FOP, supra*, Slip Op. No. 476 at p. 3-4, PERB Case No. 96-U-16.

Last, *pro se* litigants are entitled to a liberal construction of their pleadings and must be given a reasonable opportunity to present their case without undue focus on technical flaws or imperfections. *Bagenstose v. WTU, supra*, Slip Op. No. 894 at p. 3, PERB Case No. 06-U-37. When considering a dismissal, the Board views the contested facts in the light most favorable to the Complainant. *Osekre v. American Federation of State, County, and Municipal Employees, Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (1998) (citing *Doctor's Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 D.C. Reg. 1237, Slip Op. No. 437, PERB Case No. 95-U-10 (1995); and *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 24*, 40 D.C. Reg. 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992)).

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[9] D.C. Code § 1-617.03(a)(1): "(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 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...."

A. <u>Failure to Investigate Grievance; Failure to Provide Reasons for Actions; and Failure to File or Participate in Grievance</u>

In the instant case, Ms. Johnson alleges that Respondents violated D.C. Code § 1-617.04(b)[10] by ignoring and failing to investigate her "potentially meritorious" grievance, failing to give her any reasons for any of their actions, and failing to file or participate in her April 29, 2013, Grievance. (Complaint, at 1-19). In order to determine whether Respondents violated the CMPA by these actions, the Board would first need to determine whether Ms. Johnson's claims and Grievance were, indeed, "meritorious" under the CBA between WTU and DCPS. Likewise, the Board would have to interpret the CBA in order to determine whether Ms. Johnson is correct in her assessment that her Grievance could not have advanced to Step 2 without WTU's involvement. The Board finds that, consistent with PERB precedent, it does not have the authority to interpret the terms of a party's CBA in order to determine if there has been a violation of the CMPA. *Council of School Officers, Local 4, American Federation of School Administrators v. DCPS, supra*, Slip Op. No. 1016 at p. 9, PERB Case No. 92-U-08. Ms. Johnson's allegations on these fronts are therefore dismissed with prejudice.[11]

The Board notes, however, that even if it relied on DCPS' May 22, 2013, Grievance Response as WTU's and DCPS' official interpretation of the CBA on the question of whether Ms. Johnson's April 29, 2013, Grievance was meritorious, the Board still would not have been able to find that Respondents violated the CMPA because PERB precedent would require the Board to defer to said interpretation which determined that Ms. Johnson's claim was not "meritorious" in regard to both its timeliness and substance. (Complaint, Exhibits 18a and 18b1-2): and *FOP v. MPD, et al., supra*, Slip Op. No. 1007 at p. 8, PERB Case No. 08-U-41.

Furthermore, the Board notes that Ms. Johnson's allegations would also likely fail because the record shows that Respondents did not ignore her claims, but rather that they did investigate them, and that they did provide her with a rational basis why they elected, in WTU's discretion, not to participate in or file her Grievance. Ms. Powe's April 18, 2013, Letter and Ms. Evans' May 15, 2013, Email each demonstrated that Respondents appropriately investigated and

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[10] See Footnote 2 above.

[11] Even viewing these allegations in the light most favorable to the Complainant would not change the fact that PERB does not have jurisdiction to address them. *Osekre v. AFCSME, Council 20, Local 2401, supra*, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04. Nevertheless, by noting that Complainant would still likely not prevail even if her allegations were addressed on the merits, PERB has fulfilled its obligations to view the allegations in the light most favorable to the Complainant, and to give Complainant a reasonable opportunity to present her case without undue focus on the technical flaws or imperfections of her pleadings. *Bagenstose v. WTU, supra*, Slip Op. No. 894 at p. 3, PERB Case No. 06-U-37.

considered Ms. Johnson's requests, and each adequately[12] articulated WTU's decisions and the rationales and legal authorities upon which said determinations were based. (Complaint, Exhibits 13a-b, 17a); and *Roberts and AFGE, supra*, Slip Op. No. 203 at p. 3, PERB Case No. 88-S-01 (holding that a union's duty of fair representation does not require it to pursue every grievance to arbitration insofar as it provides the member with a rational basis for its refusal to do so). An indication that Respondents' assessments of the merits of Ms. Johnson's Grievance were rational and justified is evidenced by the fact that DCPS' May 22, 2013, denial of Ms. Johnson's Grievance was based on the exact same two (2) rationales that Ms. Powe articulated in her April 18, 2013, Letter to Ms. Johnson; that the Grievance was untimely, and that, substantively, DCPS did not commit any procedural error when it terminated Ms. Johnson (Complaint, Exhibits 13a-b, 18a, 18b1-2).

Additionally, there is no evidence to support Ms. Johnson's conclusory statements that she could not have advanced her Grievance to Step 2 without WTU's involvement. *Goodine v. FOP, supra*, Slip Op. No. 476 at p. 3-4, PERB Case No. 96-U-16. On the contrary, Ms. Pitts stated in the body of the email in which her May 22, 2013, Grievance Response was attached that Ms. Johnson had ten (10) school days to "request a hearing"[13] if "[she wished] to proceed with the grievance", which seemed to indicate that DCPS would have allowed her to advance her Grievance to Step 2 if she wanted, even without WTU's involvement. (Complaint, Exhibit 18a). Despite this invitation, Ms. Johnson elected not to "request a hearing" in order to "proceed with the grievance," and instead stated that she "understood" when Ms. Pitts expressed that "[DCPS would not] be providing any additional substantive responses, given [her] decision not to pursue further administrative remedies with DCPS." (Complaint, Exhibits 18a, 18c, 18c2-4). Without some evidence beyond mere conclusory statements to show that Ms. Johnson was barred from advancing her Grievance because of Respondents' actions, the Board would not be able to find that Respondents violated the CMPA as Ms. Johnson alleged. *Goodine v. FOP, supra*, Slip Op. No. 476 at p. 3-4, PERB Case No. 96-U-16.

B. <u>IMPACT Negotiations and 2010 Arbitration Case</u>

Ms. Johnson's allegation that WTU's negotiation of the "IMPACT evaluation instrument and process" during the bargaining process leading up to the execution of the current CBA between DCPS and WTU in 2007 was prohibited under D.C. Code § 1-617.18, is untimely. (Complaint, at 3-4). As a DCPS employee who was excessed and terminated in 2010 in part

[12] This is especially true in consideration of the facts that Ms. Johnson was not a member of WTU or an employee of DCPS and had not been in nearly three (3) years.
[13] Article 6.4.2.2 of the CBA provides that a Step 2 Grievance would consist of a "hearing" before the DCPS Chancellor or his/her designee. See Footnote 8 above.

because of the score she received under the "IMPACT evaluation instrument and process" described in the CBA, Ms. Johnson knew or should have known about the terms and requirements of that process at the very latest on the date she was terminated in 2010. *Id.*; and *Pitt v. DCDC, supra,* Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06. As a result, the time period prescribed by PERB Rule 520.4 for Ms. Johnson to challenge WTU's negotiation of the "IMPACT evaluation instrument and process" as an unfair labor practice began to run on that date and expired 120 days later. *Hoggard v. PERB, supra.* Ms. Johnson did not raise her allegation until she filed her Complaint nearly three (3) years later on June 21, 2013. (Complaint, at 1). Therefore, because Ms. Johnson's allegation is untimely, it is dismissed with prejudice.[14] *Hoggard v. PERB, supra.*

Ms. Johnson's claim that Respondents never responded to her inquiries about whether she was included in the 2010 Arbitration Case is similarly untimely. (Complaint, at 4-5, 7). Ms. Johnson signed the "Permission to Release Employment Information" form in October 2011, and was therefore placed on notice then regarding her potential involvement. *Id.*; and *Pitt v. DCDC, supra,* Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06. Notwithstanding, she did not raise her allegation until approximately a year and a half later. (Complaint, at 1). As a result, in accordance with PERB Rule 520.4, the Board finds that Ms. Johnson's assertion that Respondents failed to provide her with information regarding the 2010 Arbitration Case is untimely and is therefore dismissed with prejudice. *Hoggard v. PERB, supra.*

C. Remaining Issues and Motions

As a result of the Board's dismissal of Ms. Johnson's Complaint, it is not necessary to address her subsequent motions to amend the Complaint to: 1) add the allegation that Respondents' Answers and Motions to Dismiss attempted to cause the Board to discriminate

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[14] Even viewing this allegation in the light most favorable to Complainant would not overcome the jurisdictional requirement that complaints be filed within 120 days of the date the complainant knew or should have known of the event giving rise to the alleged violation. *Osekre v. AFCSME, Council 20, Local 2401, supra,* Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04. In this instance, the Board viewed the facts in the light most favorable to the Complainant by applying the latest possible date—the day she was terminated—to its determination as to when Ms. Johnson should have known that WTU's negotiations regarding the "IMPACT evaluation instrument and process" possibly* violated D.C. Code § 1-617.18. An argument could be made that she actually should have known much sooner, i.e. the date she was hired or the date she received her first IMPACT evaluation. *Id.* *(NOTE: the Board is not addressing the merits of Ms. Johnson's allegation, nor is it opining on even the *possible* merits of her allegation. The Board is simply saying, as with any other untimely allegation brought under PERB Rule 520 *et seq.*, that Complainant had 120 days to raise her allegation and failed to do so.

against her in violation of D.C. Code § 1-617.04(b)(2), and 2) withdraw all of her claims under the FLRA and to assert them instead under California's EERA, *supra*.[15]

Similarly, it is not necessary to address Respondents' affirmative defenses, Respondents' Motions to Dismiss, Ms. Johnson's Motions to Strike, or Ms. Johnson's Motions for Partial Decision on the Pleadings.

ORDER

IT IS HEREBY ORDERED THAT:

1. The 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

September 3, 2013

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[15] The Board notes that, even if Ms. Johnson's motions to amend the Complaint were granted, it would not change the outcome. For example, there is no evidence beyond Ms. Johnson's conclusory statements that Respondents' mere denial of the allegations raised in the Complaint and their filing of a motion to dismiss the Complaint, either individually or collectively, should be construed as an attempt to cause the Board to discriminate against Ms. Johnson in violation of D.C. Code § 1-617.04(b)(2). *Goodine v. FOP*, *supra*, Slip Op. No. 476 at p. 3-4, PERB Case No. 96-U-16. Similarly, California's EERA, *supra*, is only applicable and binding in the state of California and has no force or effect on PERB or any other agency in the District of Columbia. PERB's authority stems from and is authorized by the CMPA. Therefore, PERB only has jurisdiction to address allegations that, if proven, would establish a statutory violation of the CMPA. *FOP v. MPD, et al.*, *supra*, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09.

CERTIFICATE OF SERVICE

This is to certify that the attached Corrected Copy of the Decision and Order in PERB Case No. 13-U-34, Slip Op. No. 1420, was transmitted via File & ServeXpress™ and e-mail to the following parties on this the 24th day of September, 2013.

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