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**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of: ) ) Adjeley Osekre, ) ) Complainant, ) ) v. ) ) American Federation of Government Employees, ) Local 383, ) ) Respondent. )	PERB Case Nos.10-S-06 and 10-U-31  Opinion No. 1028  <b>Motion for Reconsideration</b>
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**DECISION AND ORDER**

**I. Statement of the Case:**

On April 9, 2010, an unfair labor practice complaint was filed by Adjeley Osekre (“Complainant”) against the American Federation of Government Employees, Local 383 (“Respondent” or “Union”). The Complainant alleged that the Respondent violated D.C. Code § 1-618.3.<sup>1</sup> By letter dated April 27, 2010, the Executive Director administratively dismissed the complaint as untimely filed. On May 11, 2010, the Complainant filed an Appeal (“Motion for Reconsideration”) of the Executive Director’s determination requesting that the Board reverse

<sup>1</sup> Currently codified at D.C. Code § 1-617.03(a)(3)(2001 ed.). This section provides as follows:

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:

- (3) The prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members.

the dismissal of her complaint. AFGE filed an Opposition supporting the Executive Director's dismissal of the Complaint.

The Executive Director's April 27, 2010 Letter, the Complainant's Motion for Reconsideration, and AFGE's Opposition are before the Board for consideration.

In her complaint, the Complainant alleged that AFGE violated the CMPA by hiring supervisor Marilyn Riley to serve as a part time employee of AFGE. She alleged that AFGE's hiring of Ms. Riley constitutes a conflict of interest because, when the Complainant filed complaints against Marilyn Riley, Ms. Riley blocked her complaints. The Complainant also alleged that Ms. Riley misused her position as a manager to remove the Complainant from the union. (See April 27, 2010 Letter at p. 1; Compl. pgs.3-4)

The Executive Director noted that "[t]he Complainant alleged that AFGE committed an unfair labor practice when it: (1) removed [her] from the Union because [she] filed a complaint against the Union; (2) failed to represent [her] when [she was] terminated on November 13, 2001; and (3) failed to represent [her] in 1998 when [she] complained about illegal actions taken against [her] by [her] supervisor. (See Compl. at pgs. 1-2)." The Executive Director found that these allegations failed to allege that AFGE violated any of the statutory provision that delineate unfair labor practices by a labor organization. However, he believed that the Complainant was attempting to assert that AFGE violated D.C. Code § 1-617.04(b) (2001 ed.) by failing to provide her with representation.<sup>2</sup>

However, the Executive Director also determined that the complaint in this matter was untimely filed, as it did not meet the filing deadline set forth in the Board's rules. He stated that Board Rule 520.4 and 544.4 provide as follows:

**520.4 - Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred. (emphasis added).**

**544.4 - A complaint alleging a violation under this section shall be filed not later than 120 days from the date the alleged violation(s) occurred. (emphasis added).**

(April 27, 2010 Letter at p. 2).

The Executive Director noted that the Complainant alleged that she was illegally terminated on November 13, 2001 and AFGE failed to represent her. She also alleged that

<sup>2</sup> When considering the pleadings of a *pro se* complainant, the Board construes the claims liberally to determine whether a proper cause of action has been alleged. See *Beeton v. D.C. Dep't of Corrections and FOP/DOC Labor Committee*, 45 DCR 2078, Slip Op. No. 538, PERB Case No. 97-U-25 (1998).

AFGE failed to represent her in 1998 when she complained of illegal actions taken by her supervisor, and that, on November 16, 1998, she requested full refund of her union dues, without response from the Union. The Executive Director determined, however, that the Complaint in this matter was not filed until April 9, 2010, approximately eight (8) years after the November 13, 2001 termination, and twelve years after AFGE's alleged failure to represent her in 1998. (See, April 27, 2010 Letter at p. 3). With regard to the standards of conduct allegations concerning the Complainant's removal from the Union and Ms. Riley's conflict of interest, the Executive Director determined that all dates noted in the Complaint involve incidents that occurred between calendar year 1998 and calendar year 2008. The April 9, 2010 filing occurred approximately twelve years after the alleged violations in 1998 and two years after the 2008 violations. (See, April 27, 2010 Letter at p. 3). Finally, the Complainant alleged that on November 23, 2009, the Office of Employee Appeals ("OEA") issued a final decision concerning a matter she filed with that office. In light of OEA's decision, the Complainant argued that the Board's statute of limitations does not apply in this case because court cases are still pending. The Executive Director stated, "[h]owever, you fail to provide any legal authority to support your assertion that the Board's 120 day period should be tolled. Therefore, your argument lacks merit." (April 27, 2010 Letter at p. 3). He noted that the Board cannot extend the time for filing a complaint, and he dismissed the complaint in this matter.

## II. Complainant's Motion for Reconsideration and AFGE's Opposition

The Complainant argues in her Appeal that:

1. "[She] never received a personnel action regarding removal."
2. "[She] filed pending [the] exhaustion of all administrative remedies."
3. "OEA failed to mention or report [in their decision]... Supervisor Riley blocking Petitioner's access to union representation or how the blocking of Petitioner's access to union representation affected their decisions in violation of D.C. Code Title 1-618.01 - As a matter of public policy, each employee of the District [is] encouraged to report ... any violation of a law or rule or misuse of government resources, as soon as employee becomes aware of violation or misuse of resources. See *NLRB v. Drywall*, 874 F.2d 1000, 1004 (8<sup>th</sup> Cir. 1992); *c.f. Delaware State College v. Ricks*, 449 U.S. 250, 258 (1980) []."
4. "OEA did not make a final decision until November 23, 2009 and only per court order in Civil Action Case No. 2009 CA 004529."

(Appeal at pgs. 1-2).

The Complainant requests that the Board reverse the Executive Director's decision and rule in her favor. (Appeal at p. 2).

AFGE stated in its response that the Board should deny the Complainant's Appeal and dismiss her claims with prejudice. AFGE asserts that the arguments raised by the Complainant were considered and properly rejected by the Executive Director. AFGE contends that the allegations raised, the most recent of which occurred in 2009, were "grossly untimely." However, regardless of the timeliness issue, AFGE claims that the Complainant "fails to state a claim against Local 383 or Gage, who is the President of the AFGE National Union." (Opposition at p. 1).

AFGE relies on several arguments. First, AFGE maintains that even if the complaint were timely filed, "[the] [C]omplainant fails to state a claim because she does not allege any facts from which a breach of the duty of fair representation or the standards of conduct could be found. For example, in order for [her] to plead a facially sufficient claim that a union breached its duty of fair representation [she] must show that the union's failure or refusal to act was arbitrary, discriminatory, or in bad faith.... A mere failure to act or refusal to pursue a grievance to arbitration standing alone does not state a claim for a breach of the duty of fair representation. Here, [the] Complainant does not provide any genuine and plausible factual allegations tending to [prove her allegations of breach of duty of fair representation or the standards of conduct]." (Opposition at p. 4).

AFGE states that the Complainant's "1998 claims against the union appear to be barred by the doctrine of collateral estoppel, and possibly by *res judicata* as well. [Citing] *Osekre v. AFSCME, District Council 20, Local 2401*, 47 DCR 7191, Slip Op. No. 623, PERB Case No. 99-U-15 and 99-S-04 (2000), where the Complainant raised claims before the Board. Also, AFGE asserts that Mr. Gage is the National President of AFGE and is therefore not certified as the exclusive representative of the Local 383 bargaining unit. Therefore, based on *Felicia A. Thomas v. AFGE, Local 1975*, 45 DCR 6712, Slip Op. No. 554, PERB Case No. 98-S-04 (1998), he could not have breached that duty of fair representation." (See Opposition at p. 5).

### III. Discussion

The Board has held that the deadline for filing a complaint is "120 days after the date Petitioner admits he actually became aware of the event giving rise to [the] complaint allegations." *Glendale Hoggard v. DCPS and AFSCME, Council 20, Local 1959*, 43 DCR 1297, Slip Op. No. 352 at p. 3, PERB Case No. 93-U-10 (1993). See also, *American Federation of Government Employees, Local 2715, AFL-CIO v. District of Columbia Housing Authority*, 46 DCR 119, Slip Op. No. 509, PERB Case No. 97-U-07 (1997). Also, the Board has noted that "the time for filing a complaint with the Board concerning [] alleged violations [which may provide for] ... statutory causes of action, commence when the basis of those violation occurred.... However, proof of the occurrence of a alleged a statutory violation is not necessary to commence the time limit for initiation of a cause of action before the Board. The validation,

i.e. proof, of the alleged statutory violation is what proceedings before the Board are intended to determine.” *Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO*, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. See, *Glendale Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995) and *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641,643 (D.C. 1991). Moreover, the Board has held that a Complainant’s “ignorance of Board Rules governing [the Board’s] jurisdiction over [unfair labor practice] complaints provides no exception to [the Board’s] jurisdictional time limit for filing a complaint.” *Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO*, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

In the present case, the Complainant raised factual allegations occurring in 1998, 2001, and November 23, 2009. The complaint was filed on April 9, 2010, more than two weeks outside of the 120-day filing period. Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory, therefore, we find that the Executive Director properly determined that these allegations were untimely filed.

Upon review of the pleadings in a light most favorable to the Complainant, and taking all the allegations as true, we find, for the reasons stated in the Executive Director’s April 27, 2010 letter, that the Complaint was untimely filed. Therefore, no basis exists for disturbing the Executive Director’s administrative dismissal. The Board hereby affirms the Executive Director’s dismissal of the complaint in its entirety.<sup>3</sup>

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<sup>3</sup> The Complainant alleges that “OEA failed to mention or report ... Supervisor Riley blocking Petitioner’s access to union representation in their decision or how the blocking of Petitioner’s access to union representation affected their decisions in violation of D.C. Code Title 1-618.01 - As a matter of public policy, each employee of the District [is] encouraged to report ... any violation of a law or rule or misuse of government resources, as soon as employee becomes aware of violation or misuse of resources.” However, the Board notes that unfair labor practices are found at D.C. Code § 1-617.04(a) and (b), thus, the Complainant has failed to allege an unfair labor practice.

We believe that the Complainant is attempting to make a continuing violation argument when she cites *NLRB v. Drywall*, 974 F.2d 1000, 1004 (8<sup>th</sup> Cir. 1992), concerning a case that she filed at OEA. However, *NLRB v. Drywall* addresses the issue of whether there is a continuing violation after one of the parties has unequivocally repudiated the collective bargaining agreement, and is not applicable to the facts of this case.

The Complainant also cited *Delaware State College v. Ricks* (“*Ricks*”), 449 U.S. 250, 258 (1980). *Ricks* is a Title VII discrimination case where a Librarian alleged that he was denied tenure but filed his law suit against the college upon the expiration of a one-year (extended) terminal contract. The District Court for the Third Circuit dismissed the case as untimely. The Court of Appeals reversed. The Supreme Court granted certiorari and held that the Complainant did **not** meet the filing deadline. The Court reasoned that the action complained of had commenced when the Complainant received notice that his tenure was denied, not when a one-year (extended)

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Complainant's request that we reverse the administrative dismissal of the Complaint is denied.
2. The Complaint is dismissed with prejudice.
3. Pursuant to Board Rule 559.3, this decision is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**  
Washington, D.C.

August 5, 2011

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terminal contract ended. Thus, the *Ricks* case neither supports the Complainant's position that the complaint in the present case is timely filed, nor the claim that the facts of the present case constitute a continuing violation.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case Nos. 10-S-06 and 10-U-31 was transmitted via Fax and U.S. Mail to the following parties on this the 5<sup>th</sup> day of August 2011.

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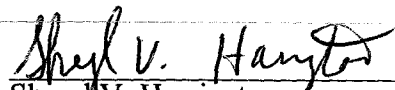
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