

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:)	
)	
Michael Thomas Moore,)	
)	
Complainant,)	PERB Case Nos. 12-S-03
)	
v.)	Opinion No. 1290
)	
Fraternal Order of Police/ Department of Youth Rehabilitation Services Labor Committee,)	Standards of Conduct Complaint
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case:

Michael Thomas Moore (“Complainant”) filed a standards of conduct complaint, and amended standards of conduct complaint (“Complaint”) against the Fraternal Order of Police/Department of Youth Rehabilitation Services Labor Committee (“FOP”, “Respondent” or “Union”). The Complainant asserts that FOP has violated § 1-617.03 of the Comprehensive Merit Personnel Act (“CMPA”).¹

The FOP filed an answer denying violation of the CMPA and asserting that the Complaint is both untimely and fails to state a cause of action.

The Complainant’s Complaint and the Respondent’s Answer are before the Board for disposition.

¹ The Complainant actually cites to the previous codification of D.C. Code Section 1-618.3.

II. Background

Complainant filed a grievance with the Department of Youth Rehabilitation Services asserting that the Department had failed to pay the Complainant his appropriate wage rate and that it had failed to promote him to a higher grade based upon his work duties. (See Complaint at p. 2). On April 20, 2010, the grievance progressed to Step 3 under the terms of the collective bargaining agreement between the Union and the Department. (See Complaint at p. 2). Following the Step 3 portion of the grievance, a series of communications transpired between the Complainant, the Union Chair Tasha Williams and the Union's attorney, Kelly Burchell. (See Complaint at p. 2).

Complainant contends that on November 30, 2011, he was informed by the Ms. Williams that arbitration was not pending concerning his grievance and that any subsequent action would need to take place in January of 2012 when a new Union "Board" would convene. (See Complaint at p. 2).

III. Discussion

As a threshold matter, it is necessary to determine whether the Complaint is timely. Board Rule 544.4 provides that a complaint alleging a standards of conduct violation shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred. In the instant case, the Complainant asserts that the basis for his Complaint centers on the information he received on November 30, 2011; that his grievance had not proceeded to arbitration.

The Board has held that "the time for filing a complaint with the Board concerning [alleged standards of conduct] violations as a statutory cause of action commenced when the basis of those violations occurred.... However, proof of the occurrence of an alleged statutory violation is not necessary to commence the time limit for initiating a cause of action before the Board. The validation, *i.e.* proof, of the alleged statutory violations 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, PERB Case No. 95-S-01 (1995). In light of the above, it is clear that on November 30, 2011, the Complainant became aware that the Union had not made plans to pursue his grievance through arbitration. Therefore, the time for filing a complaint with the Board concerning the Union's alleged violation commenced when the basis of that violation occurred (namely, November 30, 2011). However, the Complaint was not filed with the Board until April 4, 2012. This filing date was one hundred and twenty-six (126) days after the alleged violation occurred. Thus, the filing exceeded the 120 days noted in Board Rule 544.4.

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. *Public Employee Relations Board v. D.C.*

Metropolitan Police Department, 593 A.2d 641 (1991). Moreover, the Board has held that a complainant's "ignorance of Board Rules governing [the Board's] jurisdiction over standards of conduct complaints provides no exception to [the Board's] jurisdictional time limit for filing a complaint." *Jackson and Brown v. American Federation of Government Employee, Local 2741*, AFL-CIO, Slip Op. No. 414, PERB Case No. 95-S-01 (1995).

Whereas the Board finds that this matter was not filed within the 120 days proscribed by Board Rule 544.4, the Complaint is dismissed as untimely.²

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed as untimely.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

May 30, 2012

² Whereas the Board has determined the Complaint to be untimely, no determination on the merits is necessary.

CERTIFICATE OF SERVICE

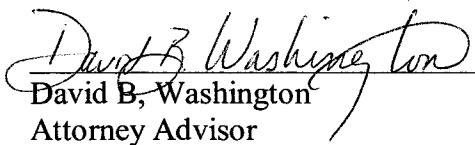
This is to certify that the attached Decision and Order and Notice in PERB Case No. 12-S-03, Slip Opinion No. 1290 is being transmitted *via* U.S. Mail to the following parties on this the 28th day of June, 2012.

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