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

In the Matter of:)	
Alesia Hamilton)	
Complainant,)	PERB Case No. 16-S-01
v.)	Opinion No. 1564
American Federation of State, County and Municipal Employees, District Council 20)	Motion for Reconsideration
Respondent.)	
)	

MOTION FOR RECONSIDERATION

DECISION AND ORDER

I. Statement of the Case

Pursuant to Board Rule 500.4, Alesia Hamilton (“Complainant”), on a Motion for Reconsideration (“Motion”), appeals an Executive Director’s Administrative Dismissal (“Administrative Dismissal”) of an amended standards of conduct complaint (“Complaint”).¹ The Executive Director dismissed the Complaint for untimeliness and for a failure to state a claim upon which relief could be granted. AFSCME District Council 20 (“Union”) opposes the Motion. Complainant filed a reply to AFSCME’s opposition (“Reply”).

For the following reasons, the Board denies the Motion for Reconsideration and dismisses the Complaint.

¹ On October 21, 2015, Complainant filed a standards of conduct complaint. Complainant amended her initial filing on October 28, 2015, prior to the submission of the Union’s Answer.

II. Discussion

A. Timeliness of the Complaint

According to Board Rule 544.4, a complaint alleging a standards of conduct violation “shall be filed not later than one hundred twenty (120) days from the date the alleged violation occurred.” The Complaint contained numerous allegations that occurred between November 17, 2011, and October 20, 2014. Complainant filed her Complaint on October 21, 2015 – more than 120 days from the dates of the alleged violations. Therefore, the Complaint is untimely.

Complainant does not contest the Executive Director’s calculations that the Complaint was filed more than 120 days after the last event complained of. Instead, Complainant provides a number of reasons why she filed the Complaint untimely.² In her Motion and Reply, Complainant requests that the Board accept jurisdiction over her Complaint, but does not assert that the Complaint is timely.³

The CMPA and Board rules governing the initiation of actions before the Board are jurisdictional and mandatory.⁴ The Board has no discretion nor does the statute or the Board rules provide for extending the deadline for initiating an action for any reason.⁵ Therefore, the Board finds that Complainant has not asserted any legal grounds for overturning the Administrative Dismissal, and that the Executive Director did not err in her application of the Board’s precedents to the case.

B. Failure to State a Claim

Complainant has moved for reconsideration of the Executive Director’s determination that the Complaint failed to state a claim upon which the Board may grant relief. In her Motion, Complainant does not assert any legal argument for overturning the Executive Director’s determination, but rather provides more factual information for her allegations that the Union negligently handled her case.

Although Complainant initially alleged standards of conduct violations, Complainant also raises for the first time a duty of fair representation allegation in her Motion for Reconsideration. The crux of Complainant’s argument for both claims is that the Union did not adequately handle her case.

² Motion at 3.

³ Motion at 2.

⁴ See *D.C. Public Employee Relations Bd. v. D.C. Metropolitan Police Dept.*, 593 A.2d 641 (D.C. 1991) (“The time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters.”). See also *Michael Thomas Moore v. FOP/Dep’t of Youth Rehabilitation Services/Labor Committee*, Slip Op. No. 1290, PERB Case No. 12-S-03 (2012)(dismissing a standards of conduct complaint for failing to meet Board Rule 544.4’s 120-day time period for filing as jurisdictional and mandatory).

⁵ See *Hoggard v. Public Employee Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995).

The Executive Director correctly determined that Complainant failed to state a claim of a standards of conduct violation. D.C. Official Code § 1-617.03(a) sets certain minimum standards that labor organizations must maintain with respect to its operation, practice and procedures for recognition by the Board as a labor organization under the CMPA.⁶ The CMPA's standards of conduct for labor organizations address standards that apply to the internal operation of the union and union members' participation in such affairs.⁷ Upon review of the record, the Complainant failed to allege any internal Union operations in her Complaint. Thus, Complainant has failed to state a claim for a standards of conduct violation.

Complainant asserts that the Union committed an unfair labor practice by breaching the duty of fair representation for the first time in her Motion for Reconsideration.⁸ The Board may not rule on allegations that are not properly before it.⁹ Complainant's unfair labor practice allegations are not properly before the Board, as they were not raised in the Complaint. Even if the Board were to consider the unfair labor practice allegations, Complainant's duty of fair representation claim would fail. In considering an allegation that a union has breached its duty of fair representation, the Board has repeatedly held that the test is not the competence of the Union, but rather whether the Union's representation was in good faith and its actions motivated by honesty of purpose.¹⁰ The Board analyzes this test by determining whether the Union engaged in any conduct that was arbitrary, discriminatory, or in bad faith, or was based on considerations that are irrelevant, invidious or unfair.¹¹ Complainant does not allege that the Union's actions were arbitrary, discriminatory, or taken in bad faith, nor does she set forth any facts that would support such an allegation.¹² Complainant has failed to state a claim for breach of the duty of fair representation.

III. Conclusion

The Board finds that the Complaint is untimely and fails to state a claim for which the Board may grant relief. Therefore, the Board concludes that Complainant's Motion for Reconsideration lacks merit. The Board denies the Motion for Reconsideration and dismisses the Amended Complaint.

⁶ *Charles Bagenstose v. WTU, Local 6*, 40 D.C. Reg. 1397, Slip Op. No. 355, PERB Case Nos. 90-S-01 & 09-U-02 (1996)(noting that the Board's authority to "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" is prescribed by D.C. Official Code § 1-605.2(9)).

⁷ *William Dupree v. FOP/DOC Labor Committee*, 46 D.C. Reg. 4031, Slip Op. No. 568, PERB Case Nos. 98-S-08 & 98-U-28 (1999).

⁸ MFR at 2.

⁹ *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 61 D.C. Reg. 8003 (2014), Slip Op. No. 1316 at 5-6, PERB Case No. 09-U-50 (2012). See, e.g., *FOP/Dept. of Corrections Labor Committee v. Dept. of Corrections*, 49 D.C. Reg. 8933, Slip Op. No. 679, PERB Case Nos. 00-U-36 and 00-U-40 (May 17, 2002)

¹⁰ *Stanley O. Roberts v. American Federation of Government Employees, Local 2725*, 36 D.C. Reg. 1590, Slip Op. No. 203 at 3, PERB Case No. 88-S-01(1989).

¹¹ *Id.*

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant's Motion for Reconsideration is denied.
2. The Amended Complaint is dismissed with prejudice.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, and Member Ann Hoffman. Member Keith Washington was not present.

Washington, D.C.

January 21, 2016

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-S-01 was served to the following parties on this the 4th day of February 2016:

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