

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**

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In the Matter of:)	
)	
Janet Hill,)	
)	
Complainant,)	PERB Case No. 08-U-74
)	
v.)	Opinion No. 1322
)	
National Union of Hospital and)	
Healthcare Employees, American)	
Federation of State, County and Municipal)	
Employees, AFL-CIO, Local 2095,)	
)	
Respondent.)	
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DECISION AND ORDER

I. Statement of the Case

On September 11, 2008, Janet Hill (“Complainant,”) filed an Unfair Labor Practice Complaint (“Complaint”) against the National Union of Hospital and Healthcare Employees, American Federation of State, County and Municipal Employees, AFL-CIO, Local 2095 (“Respondents,” “Union” or “NUHHE”). The Complaint alleged that the Respondents: (1) violated its duty of fair representation by failing to prosecute a grievance through arbitration; and (2) acted in an arbitrary and capricious manner by failing to prosecute her grievance. (See Complaint at p. 2). The Respondent denied the allegations in a document styled Answer of Respondents to Unfair Labor Practice Complaint and Affirmative Defenses.

The Respondents also filed a Motion to Dismiss, asking that the Complaint be dismissed as untimely. The Complainant responded with an Opposition to the Motion to Dismiss. The matter proceeded to a hearing examiner and a hearing was held. The parties submitted post-hearing briefs. The hearing examiner issued a Report and Recommendation (“R&R”) which recommended that the Complaint be dismissed as untimely. In addition, the hearing examiner

concluded that the Complainant had failed to meet her burden of proof regarding the unfair labor practice allegation. (*See* R&R at pgs. 13 and 15).

The Board received no Exceptions to the Hearing Examiner's R&R. The Hearing Examiner's R&R is before the Board for disposition.

II. Discussion

The Hearing Examiner's findings of fact are summarized as follows:

The Complainant is an employee of the District of Columbia Hospital, Department of Mental Health, St. Elizabeths Hospital. The instant matter originates from a grievance that the Complainant filed on January 11, 2008. The grievance alleged that her supervisor had promised the Complainant a promotion, but that the employer had failed to promote her to the desired grade. The grievance was denied by the employer at the first three steps of the grievance procedure.¹ The Complainant filed a Step 4 Grievance with Stephen Baron, Agency Director. In accordance with the Parties' collective bargaining agreement, if the Step 4 Grievance is still unresolved, arbitration may be requested. (*See* R&R at p. 3). However, following Step 4 of the grievance, the matter was not submitted to arbitration by the Union. Instead, the Complainant attempted to initiate arbitration proceedings on her own. (*See* R&R ¶¶ 12 & 21, pgs. 5-6). On April 9 and May 1, 2008, the Union's District Office informed the Complainant that she was required to meet with the Union's District Office before a decision could be made on whether to go forward with the arbitration of the Complainant's grievance. (*See* R&R at pgs. 5-6). The parties continued to exchange correspondence in which the Union's District Office indicated that the Complainant would need to meet with the District Office in order to determine whether the Union would proceed to arbitration. (*See* R&R at pgs. 6-7).

At no time did the Complainant meet with the Union's District Office. Complainant testified that although the District Office contacted her several times and asked her to make an appointment to discuss the merits of her grievance, she did not do so and did not intend to do so, because she "had little faith" in the Union based on its prior decisions not to pursue grievances to arbitration. (*See* R&R at p. 8).

The Complainant's position is that the District Office was obligated to proceed to arbitration on her behalf and its failure to do so violated its duty to fairly represent her. (*See* R&R at p. 7). Respondent's position is that Complainant did not follow the "well-understood procedures for processing grievances, and particularly for processing them to arbitration." (R&R at p. 10). The Union argued that the District Office attempted to meet with the Complainant to discuss the merits of the case, but that the Complainant did not cooperate with the Union's representatives. (*See* R&R at p. 10).

¹ Article 19 of the Parties' collective bargaining agreement provides the grievance procedure. *See* R&R at p. 3

Timeliness of the Complaint

The Hearing Examiner recommended that the Complaint be dismissed as untimely. (See R&R at p. 13). Specifically, the Hearing Examiner determined that the Complainant was reasonably aware that by May 5, 2008, the Union would not proceed to arbitration without first meeting with the Complainant.² (See R&R at p. 13). Based upon the Complainant's assertions, the Hearing Examiner determined that the Complaint was filed more than 120 days after the Complainant became aware that the Union would not proceed to arbitration.

No exceptions were filed to the Hearing Examiner's recommendation that the Complaint be deemed untimely. Pursuant to Board Rule 520.4 - Timeliness Requirements, unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred. This Board has long held that PERB Rules establishing the time allowed to initiate a complaint is jurisdictional and mandatory. *Glendale Hoggard v. D.C. Public Schools*, 43 D.C.Reg. 1297, Slip Op. 352, PERB Case No. 93-U-10 (1993), *See also, Hoggard v. Public Employee Relations Board*, 655 A. 2d 320 (D.C. 1995); and *see Public Employee Relations Board v. D.C. Metropolitan Police Department*, 593 A.2d 641 (1991). Board Rule 520.4 requires that an unfair labor practice complaint shall be filed no later than 120 days after the date on which the Petitioner admits she actually became aware of the event giving rise to the complaint allegations. *See Hoggard*, Slip Op. 352.

In the present matter, the Complainant was aware as of May 5, 2008 that the Union would not proceed to arbitration without her first meeting with the Union's District Office. The Complaint was filed on September 11, 2008, or 138 days after the Complainant was aware of the fact that the Union would not proceed to arbitration.

A review of the record reveals that the Hearing Examiner's findings and conclusions are supported by evidence, are reasonable and consistent with Board precedent. Accordingly, pursuant to Rule 520.14, the Board adopts the Hearing Examiner's findings and recommendation to dismiss the Complaint as untimely.

Unfair Labor Practice Complaint

As stated above, the Complainant alleged that the Union violated its duty of fair representation by failing to proceed to arbitration. The Hearing Examiner recommended that the Complaint be dismissed because the Complainant did not meet her burden of proof. Specifically, the Hearing Examiner found that the Complainant had failed to provide any evidence to show that the Union acted arbitrarily, discriminatorily or in bad faith by not processing the grievance to arbitration.³

² In addition, the Complainant testified that she had no intention of meeting with the Union. (See R&R at p. 13).

³ The Board has held that a union does breach its duty of fair representation if it engages in conduct or acts that are either arbitrary, discriminatory or done in bad faith. *See, Owens v. AFSCME, Local 2095 and National Union of Hospital and Healthcare Employees, District 1199*, 52 D.C. Reg. 1645, Slip Op. No. 750, PERB Case No. 02-U-27 (2004).

No exceptions were filed to the Hearing Examiner's recommendation that the Complaint be dismissed. Pursuant to D.C. Code § 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the hearing examiner and the entire record. A review of the record reveals that the Hearing Examiner's findings and conclusions are supported by evidence, are reasonable and consistent with Board precedent. Accordingly, pursuant to Rule 520.14 we adopt the Hearing Examiner's findings and recommendations and dismiss the Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. Janet Hill's Unfair Labor Practice Complaint is dismissed.
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.

March 27, 2012

CERTIFICATE OF SERVICE

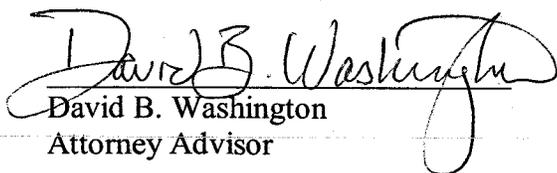
This is to certify that the attached Decision and Order and Notice in PERB Case No. 08-U-74, Slip Opinion No. 1322 is being sent *via* U.S. Mail to the following parties on this the 27th day of August, 2012.

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