

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:)	
)	
David Brooks)	
)	PERB Case No. 13-S-01
Complainant)	
)	Opinion No. 1489
v.)	
)	
American Federation of Government)	
Employees Local 2741)	
)	
Respondent)	
_____)	

DECISION AND ORDER

I. Statement of the Case

On July 11, 2013, David Brooks (“Complainant”) filed a Standards of Conduct Complaint (“Complaint”) against the American Federation of Government Employees Local 2741 (“Union” or “Respondent”), asserting that the Union violated D.C. Official Code § 1-617.03(a)(1) by denying Brooks with representation for grievances concerning discipline Brooks had received. The Complaint contained deficiencies, which were cured.

On October 22, 2013, the Union filed a “Response to Standard of Conduct Complaint” (“Answer”), denying the Complainant’s allegations and disputing the Complainant’s facts. On November 1, 2013, the Complainant filed a “Response to Repondent (sic) Answer to Standard of Conduct Complaint” (“Response to Answer”), denying the Answer’s allegations.

On November 11, 2013, the Union filed a Motion to Dismiss, requesting the Board to dismiss the Complaint on the grounds that the Complainant did not show that he was denied

representation. (Motion to Dismiss at 2).

The Board finds that the complaint should be dismissed, because several of the allegations were untimely filed and the remaining allegations fail to state a claim for which the Board may grant relief.

II. Background

Complainant was a member in good standing of the Union, and employed at the Department of Parks and Recreation (“DPR”). On October 26, 2012, Complainant alleges that he emailed AFGE Local 2741 President Ben Butler, regarding a Letter of Admonition and an Absent Without Leave (“AWOL”) charge that Brooks had received from DPR. Brooks also requested representation by the Union in the disciplinary matter. (Complaint at 2). Complainant alleges that Butler denied Brooks representation, and recommended that Brooks accept the discipline. *Id.*

Complainant alleges that, in January of 2013, he represented himself in a meeting with various DPR managers. *Id.* Complainant asserts that, as a result of the meeting, the AWOL charge was removed from his record and he was compensated for the time. *Id.* Complainant alleges that the remaining three disciplinary charges were to be addressed at a Step 3 Grievance proceeding on January 11, 2013. *Id.* At the time of the Complaint, Complainant asserts he had not received a decision on the grievance proceeding. *Id.*

On June 11, 2013, Complainant requested the Union’s assistance to invoke arbitration. (Complaint at 3, Reply to Answer at Exhibit 2). On the same day, the Union declined to take Complainant’s disciplinary matter to arbitration. *Id.*

III. Discussion

Complainants do not need to prove their case on the pleadings, but they must plead or assert allegations that, if proven, would establish a statutory violation of the CMPA. *Osekre v. American Federation of State, County, and Municipal Employees, District Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (1998). The Board views contested facts in the light most favorable to the complainant in determining whether the complaint gives rise to a violation of the CMPA. *Id.* Complainant is a *pro se* litigant, who is entitled to a liberal construction of his pleadings when determining whether a proper cause of action has been alleged. *Thomas J. Gardner v. District of Columbia Public Schools and Washington Teachers’ Union, Local 67, AFT AFL-CIO*, 49 D.C. Reg. 7763, Slip Op. No. 677, PERB Case Nos. 02-S-01 and 02-U-04 (2002).

A. Position of the Parties

Complainant’s allegations are that the Union violated D.C. Official Code § 1-617.03(a)(1) by denying Brooks representation in the Step 3 Grievance proceeding and by failing to proceed to arbitration, concerning the Letter of Admonition that Brooks had received.

(Complaint at 3-4). Complainant does not allege that Respondent interfered with, restrained, or coerced Complainant, in violation of any of his employee rights under D.C. Official Code § 1-617.06(a) and (b), as protected by D.C. Official Code § 1-617.04(b)(1).

The Union denies not representing Complainant when Brooks first received the Letter of Admonition and AWOL. (Answer at 1). Further, the Union asserts that Complainant did not seek representation for the Step 3 Grievance. *Id.* The Union filed a Motion to Dismiss based on these grounds.

B. Timeliness of the ULP allegations

Board Rule 544.4 provides: “A complaint alleging a violation under this section shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred.” The Board’s Rules proscribing time limits for filing appeals are mandatory and jurisdictional matters. *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.”).

The Complaint was filed on July 11, 2013. The Board has authority to consider only allegations that occurred 120 days prior to the complaint’s filing, meaning allegations that occurred prior to March 13, 2013 would be untimely. Several allegations are asserted to have occurred in January 2013. These allegations are untimely, and cannot be considered by the Board.

C. Standards of Conduct violations

Complainant’s remaining allegation concerns the Union’s refusal to invoke arbitration. This allegation does not meet the requisite elements for finding a standards of conduct violation. Specifically, “[u]nder D.C. Code Section [1-617.03 (2001 ed.)], a member of the bargaining unit is entitled to ‘fair and equal treatment under the governing rules of the [labor] organization’. As [the] Board has observed: ‘[the union as the statutory representative of the employee is subject always to complete good faith and honesty of purpose in the exercise of its discretion regarding the handling of union members’ interest’.” *Dr. Judy A Christian v. University of the District of Columbia Faculty Association/National Education Association*, Slip Op. No. 700, PERB Case No. 02-S-05 (2003). The Board has determined that “the applicable standard in cases [like this], is not the competence of the union, but rather whether its representation was in good faith and its actions motivated by honesty of purpose....[Furthermore,] ‘in order to breach this duty of fair representation, a union’s conduct must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair’.” *Id.*

In addition, the Board has found that “[r]egardless of the effectiveness of a union’s representation in the handling or processing of a bargaining unit employee’s grievance, such matters are within the discretion of the union or the bargaining unit’s exclusive bargaining representative.” *Id.* The Board has held that “judgmental acts of discretion in the handling of a grievance, do not constitute the requisite arbitrary, discriminatory or bad faith element [needed to

find a violation of the CMPA].” *Brenda Beeton v. D.C. Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, 45 D.C. Reg. 2078, Slip Op. No. 538, PERB Case No. 97-U-26 (1998).

Complainant has not asserted any allegation of arbitrary, discriminatory or bad faith conduct by the Union’s decision not to invoke arbitration over Complainant’s disciplinary matter. As a result, Complainant has not stated a claim for which the Board may grant relief.

IV. Conclusion

The Board finds that the complaint fails to state a claim. Therefore, the Board dismisses the Standards of Conduct Complaint with prejudice. As the Board finds that Complainant has failed to state a claim, the Board declines to address the merits of the Union’s Motion to Dismiss, as it has been rendered moot.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Standards of Conduct 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

By unanimous vote of Board Chairperson Charles Murphy, Member Donald Wasserman, and Member Keith Washington

Washington, D.C.

September 25, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-S-01 was transmitted to the following Parties on the 26th of September, 2014.

Benjamin Butler, AFGE Local 2741
Union President
P.O. Box 64026
Washington, DC 20029

via File&ServeXpress

David Brooks
1741 28th Street, SE Apt. 203
Washington, DC 20020

via U.S. Mail



Adessa Barker
Public Employee Relations Board
1100 4th Street, S.W.
Suite E630
Washington, D.C. 20024
Telephone: (202) 727-1822
Facsimile: (202) 727-9116