

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<b>CANDI PETERSON,</b>	*	
	*	
<b>Plaintiff</b>	*	Civil Case No. 2011 CA 006840 B
	*	Calendar II
<b>v.</b>	*	Judge John M. Mott
	*	
<b>WASHINGTON TEACHERS UNION,</b>	*	
	*	
<b>Defendant</b>	*	

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**ORDER**

This matter is before the court on defendant Washington Teachers' Union's ("WTU's") Motion to Dismiss, or Alternatively, to Compel Arbitration, plaintiff's opposition, and defendant's reply thereto. Defendant argues that while this dispute is framed as a common law breach of contract claim, the dispute really amounts to a claim that defendant violated labor organization standards of conduct, which is governed by the District of Columbia Comprehensive Merit Personnel Act ("CMPA") and, therefore, plaintiff should have filed her claim with the Public Employee Relations Board ("PERB") before filing the present lawsuit in this court. Because this court finds that plaintiff has failed to exhaust her administrative remedies, and no exceptional circumstances exist to warrant this court hearing this case prior to such exhaustion, this court finds that it lacks jurisdiction over this case and, therefore, dismissal is appropriate.

**Background**

Plaintiff is the general vice president of the WTU. On August 4, 2011, defendant voted that plaintiff had acted improperly during a discussion with WTU's president and disciplined her by reducing her duties and eliminating her pay and benefits that WTU had been paying. On August 24, 2011, plaintiff filed the present lawsuit, claiming that WTU had breached its

constitution and by-laws by failing to give proper notice to plaintiff and its members before the August 4, 2011 meeting; failing to give plaintiff an adequate opportunity to respond to the allegations made against her; failing to follow the provisions of the by-laws, which requires board members to file official charges against its members for wrongdoing; and failing to follow the proper procedures before reducing her duties and pay. Therefore, plaintiff claimed that the defendant was unlawfully withholding pay and benefits from her.

### **Standard of Review**

This court must dismiss a case if this court lacks subject matter jurisdiction over the claim. D.C. Super. Ct. R. Civ. Proc. 12(b)(1). This court has broad subject matter jurisdiction, which extends to nearly all civil actions brought in the District of Columbia. D.C. Code § 11-921. However, the District of Columbia Court of Appeals has made it clear that a party should exhaust available administrative remedies before bringing a case in this court. *District of Columbia Metropolitan Police Dept. v. Fraternal Order of Police/Metropolitan Police Dept. Labor Comm.*, 997 A.2d 65, 81 (D.C. 2010) (stating that the exhaustion requirement is a judge-made policy that serves an important function and a court should only depart from that policy in exceptional circumstances).

### **Analysis**

The defendant argues that this case involves a claim that the labor organization's standard of conduct was breached by the defendant, which falls under the CMPA. Therefore, defendant argues, that plaintiff should have exhausted her administrative remedies with PERB before she filed this lawsuit.<sup>1</sup>

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<sup>1</sup> Plaintiff filed a "Response to Defendant's Motion to Dismiss, or Alternatively, to Compel Arbitration." However, the plaintiff's response does not address defendant's request that the case be dismissed. The plaintiff's opposition addresses only the request to compel arbitration. Plaintiff states in her response that she believes "it is premature and an unnecessary waste of resources to brief and address Defendant's allegations regarding jurisdictional issue

D.C. Code § 1-617.03 states that labor organizations, in conducting their affairs, must abide by certain rules and processes established by that labor organization, including fair elections, protecting the rights of individuals to participate in the affairs of the organization, and fair processes for disciplinary actions, among others. PERB was established to resolve certain disputes involving labor organizations. D.C. Code § 1-605.02. One of PERB’s duties is to “[m]ake decisions and 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.” D.C. Code § 1-605.02(9). Plaintiff’s claim is that the defendant did not follow the procedures set out in the organization’s constitution and by-laws. This amounts to a claim that the organization failed to “comply with the internal ... organization standards of conduct.” The District of Columbia Court of Appeals has found that complaints of a violation of the standards of conduct are to be filed with PERB. *Fraternal Order of Police, MPD Labor Committee v. Public Employee Relations Board*, 516 A.2d 501, 505 (D.C. 1986). Further, the Court of Appeals has held that,

[W]here PERB has jurisdiction over a claim, a litigant cannot bypass PERB’s jurisdiction by bringing the same action as a common law claim .... “[T]he benefits of CMPA’s administrative procedures coupled with [later] judicial review are substantial,” so that, overall, litigants are not disadvantaged by PERB having exclusive jurisdiction over claims arising out of the employment relationship.

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[sic] at this time.” Because this court cannot preside over cases in which it lacks jurisdiction, this court does not understand plaintiff’s assertion that jurisdictional issues are premature. Because plaintiff has failed, in essence, to respond to the defendant’s Motion to Dismiss, this court could, under Civil Rule 12-I(e) treat the motion as conceded. However, because this court prefers, at the urging of the District of Columbia Court of Appeals, to adjudicate cases based on the merits of the case, *Bond v. Wilson*, 398 A.2d 21 (1979), this court will decide the issue based on the merits.

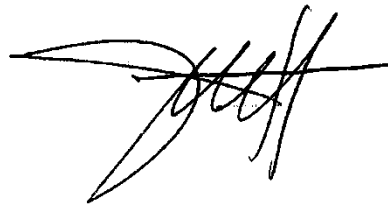
This court finds that PERB is the proper forum for plaintiff to bring her claim, and plaintiff should exhaust such administrative remedies before bringing this suit with this court.

Therefore, it is this 30<sup>th</sup> day of **January, 2012**, hereby

**ORDERED** that the defendant's Motion to Dismiss, or Alternatively, to Compel Arbitration is **GRANTED IN PART**; and it is further

**ORDERED** that this case is **DISMISSED WITHOUT PREJUDICE**; and it is further

**ORDERED** that the other pending motions in the case: defendant's Motion for Enlargement of Time to Respond to Plaintiff's Motion to Compel Arbitration; plaintiff's Motion to Compel Arbitration; and defendant's Emergency Countermotion to Stay Arbitration are **DENIED AS MOOT**.

A handwritten signature in black ink, appearing to read 'J. Mott', written over a horizontal line.

**The Honorable John M. Mott**  
Associate Judge  
(Signed in Chambers)

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