GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
Charles Bagenstose,	
Complainant,	PERB Case No. 90-S-01 90-U-02
v.	Opinion No. 355
Washington Teachers' Union Local 6, AFL-CIO,	
Respondent.	

DECISION AND ORDER

On October 27, 1989, Complainant Charles M. Bagenstose, an employee of District of Columbia Public Schools, filed a consolidated Unfair Labor Practice Complaint and Standards of Conduct Complaint with the Public Employee Relations Board. Complainant alleged violations of D.C. Code Sec. 1-618.3 and Sec. 1-618.4(b)(1), respectively, by Respondent Washington Teachers' Union Local 6, AFL-CIO (WTU). [1]/ The Complaints were referred

[1]/ The Complaint sets forth the same alleged acts and conduct constituting the D.C. Code Sec. 1-618.4(b)(1) violation as a general breach of WTU of the standards of conduct for labor organizations in violation of D.C. Code Sec. 1-618.3, i.e., failing to meet its duty to fairly represent Complainant by handling Complainant's grievance against District of Columbia Public Schools in an allegedly arbitrary and capricious manner. The record, however, is devoid of any evidence relevant to a breach of the latter statutory provision, which sets certain minimum standards that labor organizations must maintain with respect to its operation, practices and procedures for recognition by the Board as a labor organization under the CMPA. 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. Code Sec. 1-605.2(9). This distinction between these two statutory provisions under the CMPA concerning standards of conduct was made by the D.C. Court of

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Appeals in Fraternal Order of Police, MPD Labor Committee v. Public Employee Relations Board, 516 A. 2d 501 (1986).

The Hearing Examiner made no specific reference in her rulings to either of these standards of conduct provisions. With respect to the former, the Board determined that WTU met the a prescribed exclusive representative for Complainant's bargaining unit in Washington Teachers' Union, Local 6, AFL, AFL-CIO and District of Columbia Public Schools, 28 DCR 5104, Slip Op. No. 20, PERB Case No. 80-R-09 (1981), Certification No. 12 (1982). Complainant presented no evidence that WTU did not meet the standards set forth under Section 1-618.3 at the time we accorded WTU recognition. Therefore, this allegation must be dismissed. Cf., Fraternal Order of Police, MPD Labor Committee v. Public Employee Relations Board, 516 A. 2d 501 (1986).

As for the action the Board is authorized to take under Section 1-605.2(9) (which we believe more accurately reflects Complainant's intent), we find nothing in the record to support a failure by WTU to adopt, subscribe or comply with its "internal or national labor organization standards of conduct for labor organizations". In view of the absence of any record evidence relating to WTU's alleged failure to comply with these prescribed standards of conduct, no basis for Board Action exists. We, therefore, dismiss this charge for the want of proof.

In so doing, we note that a breach by an exclusive representative of the duty to fairly represent it employees --which we have found constitutes unfair labor practices under D.C. Code Sec. 1-618.4(b)(1) and (2) (see n.3)-- does not concomitantly constitute a breach of the standards of conduct, and vice versa. This could conceivably occur, however, when the duty to fairly represent employees results from the exclusive representative's failure to adopt, subscribe or comply with statutorily prescribed standards of conduct, which has the effect of (1) "interfering with, restraining or coercing any employee ... in the exercise of rights guaranteed by th[e Labor-Management] subchapter" of the Comprehensive Merit Personnel Act or (2) "causing or attempting to cause the District to discriminate against an employee in violation of D.C. Code Sec. 1-618.6. D.C. Code Sec. 1-618.4(b)(1) and (2), respectively. Otherwise, an alleged unfair labor practice asserting a breach of the duty to fairly represent employees does not automatically implicate a departure from statutorily mandated standards of conduct.

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to a duly designated Hearing Examiner for hearing on November 23, 1992. [2]/

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[1](...continued)
In the instant Complaint and during the hearing the Complainant does not identify or articulate any prescribed standard of conduct to which WTU failed to adopt, subscribe or comply. The failure to establish this allegation of the consolidated Complaint precludes a finding that WTU's alleged breach of its duty of fair representation resulted from such transgressions by WTU. To the extent our previous decisions have treated unfair labor practice complaints alleging a breach of the duty of fair representation as encompassed also under the standard of conduct provisions, without the existence of a nexus as discussed above, we now clarify our consideration of these distinct issues. See, e.g., Officer James A. Hairston v. Fraternal Order of Police, MPD Labor Committee and the Metropolitan Police Department, 31 DCR 2293, Slip Op. 75, PERB Case Nos. 83-U-11, 83-U-12 and 83-S-01 (1984); Irene H. Wilkins and the Washington Teachers' Union, Local 6, AFT, AFL-CIO, 34 DCR 3634, Slip Op. No. 162, PERB Case No. 88-S-01 (1989); and Carlease Madison Forbes v. International Brotherhood of Teamsters, Local Union No. 1714, 36 DCR 7107, Slip Op. No. 229, PERB Case No. 88-U-20 (1989).

[2]/ Further processing of these Complaints were held in abeyance pending the Decision and Order in Charles M. Bagenstose, et al. v. District of Columbia Public Schools, 38 DCR 4154, Slip Op. No. 270, PERB Case Nos. 88-U-33 and 88-U-34 (1991), where part of the relief sought by Complainant substantially overlapped the relief sought by Complainant in the instant Complaints. Scheduling of a hearing was further postponed on January 28, 1992, when the designated Hearing Examiner ordered the parties, at a prehearing conference, to attempt to resolve this matter through negotiations. The parties were unsuccessful in their attempt and we advanced the matter to hearing held January 6, 1993.

On October 14, 1992, WTU filed a Motion to Dismiss the Complaint. Complainant file a response on October 19, 1992. Because of the issues of fact raised by the Complaints, we declined to rule on the Motion at that time and directed WTU to present the Motion to the Hearing Examiner for the development of a complete
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In a Report and Recommendation (a copy of which is appended hereto), issued April 12, 1993, the Hearing Examiner ruled that complainant did not meet his burden of proving, as required by Board Rule 520.11, that WTU breached its duty of fair representation, or otherwise, committed an unfair labor practice in violation of the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.4(b)(1). [3]/ Specifically, the Hearing Examiner concluded that the evidence did not support a finding that WTU's decision to discontinue processing complainant's grievance, for reasons discussed in the Report and Recommendation, warranted the conclusion that WTU's reasons for its decision were arbitrary, discriminatory or made in bad faith. The Hearing Examiner further concluded that the fact that there may have been a better procedure by which WTU's decision could have been made did not render the process used by WTU arbitrary or motivated by dishonesty animus.

On May 7, 1993, Complainant filed Exceptions to the Hearing Examiner's Report and Recommendation. No exceptions were filed by WTU; however, WTU did file a one-page opposition to Complainant's exceptions, urging that the Hearing Examiner's findings and conclusions be affirmed.

Complainant's exceptions merely disagree with the Hearing Examiner's evaluation of the evidence and determination and interpretation of applicable law with respect to the Hearing Examiner's conclusion that the evidence did not support a finding that WTU did not breach the duty standard for fair representation or otherwise commit an unfair labor practice, as alleged, in violation of D.C. Code Sec. 1-618.4(b)(1). The balance of the "Exceptions" are, in our view, subjective criticism, unsubstantiated innuendos and unwarranted personal attacks concerning the Hearing Examiner's conduct of the hearing.

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record upon which a recommendation and ultimately a final ruling can be made. WTU never presented its Motion at hearing. In view of our adoption of the Hearing Examiner's recommendation to dismiss the Complaint, however, the Motion has been rendered moot.

[3]/ Although the Hearing Examiner did not cite the specific statutory provision addressed by her conclusions, we have held that a breach of the duty of fair representation with respect to a bargaining-unit employee by an exclusive representative is proscribed by both D.C. Code Sec. 1-618.4(b)(1) and (2). See, e.g., Willard G. Taylor, et al., v. University of the District of Columbia Faculty Association/NEA, ____DCR____, Slip Op. No. 324, PERB Case No. 90-U-24 (1992).

The Board, after reviewing the entire record and applicable law and authority, finds no merit to Complainant's objections to the conduct of the hearing or the findings and conclusions contained in the Hearing Examiner's Report and Recommendation. Indeed, we find Complainant's exceptions frivolous.

Complainant essentially takes exception to every aspect of the Report and Recommendation for either failing to make affirmative findings supporting a violation or making the findings that supported the conclusion that WTU did not commit the alleged unfair labor practice. In the main, Complainant's exceptions raise no more than disputes over evidence in support of factual findings and credibility determinations that were either specifically considered and rejected by the Hearing Examiner or were not accorded the probative value that the Complainant would have us believe it merited. It is a well established principle and we have held on numerous occasions that the Hearing Examiner is authorized and in the best position, to assess the veracity of a witness' testimony and other evidence presented during the proceeding. See, e.g., Charles Bagenstose, et al. v. District of Columbia Public Schools, 38 DCR 4154, Slip Op. No. 270, PERB Case Nos. 88-U-33 and 88-U-34 (1991); American Federation of Government Employees, Local 872 v. Dept. of Public Works, ____DCR____, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991); and American Federation of State, County and Municipal Employees, District Council 20, Local 2776, AFL-CIO v. Department of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990).

Based on these findings and applicable authority, the Hearing Examiner is authorized to reach conclusions of law upon which a recommendation is made to the Board. University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, ____DCR____, Slip Op. No. 285, PERB Case No. 86-U-16 (1992); American Federation of Government Employees, Local 872 v. District of Columbia Department of Public Works, 38 DCR 6693, Slip Op. No. 266 at p.3, PERB Case No. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). See also, American Federation of Government Employees, Local 872 v. District of Columbia Department of Public Works, 38 DCR 6710, Slip Op. No. 275, PERB Case No. 89-U-13 (1991) and American Federation of State, County and Municipal Employees, District Council 20, Local 2776, AFL-CIO v. District of Columbia Department of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990). We find the Hearing Examiner's analysis of the evidence, reasoning and determination of applicable law to be rational, cogent and consistent with Board precedent with respect to alleged violations of this nature under the CMPA, i.e. D.C. Code Sec. 1-618.4(b)(1). See, Willard G. Taylor, et al. v. University of the

District of Columbia Faculty Association/NEA, ____DCR____, Slip Op. No. 324, PERB Case No. 90-U-24 (1992); Carlease M. Forbes v. International Brotherhood of Teamsters, Local Union 1714, et al., 37 DCR 2570, Slip Op. No. 244, PERB Case Nos. 87-U-05 and 06 (1990) and 36 DCR 7107, Slip Op. No. 229, PERB Case No. 88-U-20 (1990); and Officer Carl Freson v. Fraternal Order of Police Metropolitan Police Department Labor Committee, 31 DCR 2290, Slip Op. 74, PERB Case No. 83-U-09 (1984).

We, therefore, adopt the Hearing Examiner's findings, conclusions and recommendation that the Unfair Labor Practice Complaint be dismissed on the basis that Complainant did not meet his burden of proving the alleged unfair labor practice violation. We further conclude, based on the record presented, that the Complainant has failed to prove that by the acts and conduct alleged, WTU failed to adopt, subscribe, or comply with the standards of conduct provisions.

ORDER

IT IS HEREBY ORDERED THAT:

The Unfair Labor Practice Complaint is dismissed; the Standard of Conduct Complaint is dismissed.

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

June 15, 1993