



FOP's duly elected shop stewards, including Complainants, and appointed new shop stewards. Complainants further assert that the internal union complaint that they filed against the acting chairperson's actions was considered and rejected by the acting chairperson. The Complainants contend that FOP's actions violate FOP bylaws and were not done "in a fair, impartial and unbiased manner." (Comp. at 5.) Finally, Complainants assert that since June 21, 1996, FOP has "failed, without reasonable cause" to appoint a vice chairperson to its executive board and, therefore, has been operating and expending FOP funds in violation of its bylaws. Id.

The Board has held that a cause of action based on a "violation of the standards of conduct provisions is not established by mere breach of a labor organization's internal by-laws or constitution." Rather, "[t]he Complainant must establish that the labor organization's action or conduct had the proscribed effect set forth in the asserted standard." William E. Corboy, et al. v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, Slip Op. 391, PERB Case No. 93-S-01 (1994). The Complainants do not allege a violation of a specific standard. However, our review of the allegations in the Complaint reveals that even if the by-laws could be interpreted as the Complainants suggests, FOP's actions fail to support a violation of any of the standards of conduct for labor organizations. Therefore, for the reasons discussed below, we dismiss the Complaint.

The Complainants' claim is essentially threefold. First, Complainants contend that the acting chairperson's removal of existing shop stewards and the appointment of new stewards violated Article V., §§ 5.2 and 5.3 of FOPs by-laws. These provisions provide for the number, placement and manner of election of stewards and chief stewards. Section 5.3 provides that such elected shop stewards are "subject to the approval and removal by the Executive Board." Therefore, while these provisions call for the election of shop stewards, they also authorize the executive board to remove duly elected shop stewards that are not approved by the board. Given this authority accorded the executive board, it cannot be found that the mere exercise of the authority constitutes a violation of any standards of conduct for labor organizations. The Complainants make no assertion that FOP's exercise of its authority under its by-laws was motivated by an intent to target Complainants or other removed shop stewards for reasons that contravene D.C. Code § 1-618.3(a). To the contrary, by removing practically all previously existing shop stewards, FOP did not discriminate in the exercise of this authority.

This leads us to Complainants' second contention. As

discussed above, FOP's by-laws accord the executive board the discretion to remove previously elected shop stewards. Thus, the removal of the shop stewards was not the act of the acting chairperson as an individual member of FOP, but rather in his official capacity as the chief officer and spokesperson on behalf of FOP's executive board. (Exh. 1.) Therefore, since the Complainants were challenging the authority of the executive board, the acting-chairperson could properly respond on behalf of the executive board in accordance with FOP by-laws.

Finally, we turn to the Complainants' contention concerning the validity of the current executive board's action which is acting without a vice-chairperson. In PERB Case No. 95-S-02 the Board ordered that FOP's most recent regular election of officers be held under the supervision of the Board. In a subsequent Order the vice-chairperson was made the acting-chairperson until the issues regarding the chairperson elect's eligibility are resolved in a related case, i.e., PERB Case No. 95-S-03. The Complainants have asserted that the resulting vacancy that has existed for the office of vice-chairperson violates FOP by-laws; consequently, all actions taken by the new executive board have been illegal. In view of the fact that this state of affairs was created by our Order in PERB Case No. 95-S-02 to remedy violations of D.C. Code § 1-618.3(a) found in that case, we cannot conclude that it constitutes a violation under the CMPA.

Furthermore, as we noted in PERB Case No. 95-S-02:

"Title IV of the Labor-Management Reporting Disclosure Act (LMRDA) of 1959, 29 U.S.C. § 482(a) provides, in our view, some applicable guidance with respect to the [legitimacy of] of actions taken by the current Chairperson when the special election results for that office have been set aside. Section 482(a) provides that in the event of a challenged election, 'pending a final decision thereon... in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.' We shall follow this principle as a matter of common sense."

Ellowese Barganier, et al. v. FOP/DOC Labor Committee, Slip Op. No. 472, at p. 7, PERB Case No. 95-S-02 (1996).

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ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

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

December 5, 1996