GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: Clarence E. Mack, I, Hazel Lee and Carlton Butler, Complainants, v. Fraternal Order of Police/ Department of Corrections Labor Committee, Respondent.	PERB Case No. 94-U-24 Opinion No. 421

DECISION AND ORDER

The history and issues underlying the posture of this case are thoroughly set out by the Hearing Examiner in her Report and Recommendation.[1]/ The Hearing Examiner found that Complainants Clarence E. Mack, I, Hazel Lee and Carlton Butler, employees of the District of Columbia Department of Correction, "have not proceeded with diligence and have failed to prosecute this matter as required." Based on her finding, the Hearing Examiner recommended that Respondent's Motion to Dismiss, made at the last scheduled hearing on March 9, 1995, be granted. On April 17, 1995, Complainants filed Exceptions to the Hearing Examiner's Report and Recommendation.

Complainants' Exceptions consists of a series of reassessments and evaluations of the record facts. Based on their assessment, Complainants assert the record does not support the Hearing Examiner's recommendation that the matter be dismissed. Such exceptions raise no more than disputes over the evidence in support of factual findings that were either specifically considered and rejected by the Hearing Examiner or were not accorded the probative

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[1]/ The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion.

value that Complainants would attribute to it. It is well settled that the Hearing Examiner is authorized and in the best position (as a neutral trier of facts) to decide such evidentiary matters. Charles Bagenstose, et al. v. D.C. Public Schools, 38 DCR 4154, Slip Op. No. 270, PERB Case Nos. 88-U-33 and 88-U-34 (1991). We therefore find no merit to Complainants' Exceptions.[2]/

Pursuant to D.C. Code Sec. 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings and conclusion of the Hearing Examiner and find them to be cogent, reasonable and supported by the record. We therefore adopt the recommendation of the Hearing Examiner that the Complaint be dismissed for Complainants' failure to cooperate or otherwise comply with the Board's processes, for the reasons stated in her Report. By their acts and conduct, Complainants have failed to meet the burden of proving that the FOP has committed unfair labor practices as prescribed under the Comprehensive Merit Personnel Act (CMPA) and required under Board rule 520.11. Accordingly, we dismiss the Complaint.[3]/

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[2]/ For example, Complainants assert that they were not afforded an opportunity to provide "any input" on the rescheduling of the March 1, 1995 hearing to February 28, 1995, when Respondent representative notified the Board's staff that he was unavailable on March 1. (Ex. at 8.) This assertion, however, fails to take into consideration that it was Complainants' unpreparedness or inability to go forward in two prior hearings with issues that they had raised that resulted in the scheduling of the March 1 hearing. As noted by the Hearing Examiner, the notice of the rescheduled hearing was never returned to the PERB by the U.S. Postal Service nor did the Board's staff receive any communication from Complainants objecting to the February 28 hearing date. Moreover, notwithstanding Complainants' asserted lack of input in the rescheduled February 28 hearing, the hearing was rescheduled yet again for March 9, 1995, to no avail. It was upon the totality of the particular facts and circumstances that the Hearing Examiner based her recommendation to dismiss the Complaint. (R&R at 9.) It is on this same basis that we adopt that recommendation.

[3]/ Complainants filed four motions following the Hearing Examiner's issuance of her Report and Recommendation. They included motions for summary judgment; to strike all pleadings and appearances by Respondent counsel since February 11, 1995; for mandatory recusal of Respondent's counsel, and to amend the remedy requested in the Complaint. In view of our disposition of this case, these motions, which raise issues that had been before the Hearing Examiner, are moot. In any event, Complainants' motion for summary judgment is inappropriate in view of the many issues of fact that were in dispute that served as the basis for referring

(continued...)

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

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

May 18, 1995

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[3](...continued)
this matter to a hearing. It was the Complainants' failure to cooperate in this proceeding, among other factors noted in the Hearing Examiner's Report, which served as the basis for our adoption of the Hearing Examiner's recommendation to dismiss the Complaint.

Respondent has also filed a motion for sanctions and attorney fees. We have held that the CMPA does not provide for attorney fees as part of any remedial relief or sanction. University of the District of Columbia Faculty Association v. University of the District of Columbia, 38 DCR 2463, Slip Op. 272, PERB Case No. 90-U-10 (1991). In our view, absent findings on the merits, we do not believe it would further or effectuate the purposes of the CMPA or be in the interests of justice to impose any other sanctions, e.g., costs, beyond the adoption of the recommended disposition of the Hearing Examiner, i.e., the dismissal of the Complaint. 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). Therefore, we deny Respondent's motion.