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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
Wendell Cunningham,)	
)	
Complainant,)	PERB Case Nos. 01-U-04
)	and 01-S-01
)	
)	Opinion No. 693
v.)	
)	
Fraternal Order of Police/Metropolitan,)	
Police Department Labor Committee,)	
)	
Respondent.)	
)	

DECISION AND ORDER

In this case the Complainant filed a Consolidated Unfair Labor Practice and Standards of Conduct Complaint ("Complaint"). The Complaint alleged that the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union") violated D.C. Code § 1-617.04(b) (2001 ed.) and D.C. Code § 1-617.03(a)(1) and (4) (2001 ed.) by failing to: (1) permit the Complainant to be nominated for the position of Chief Shop Steward of the Special Operations Division (SOD); (2) permit the Complainant's name to be placed on the ballot for the position of Chief Shop Steward of SOD; (3) count write-in ballots cast for the Complainant in FOP's 2000 election of officers; and (4) conduct a new election for the position of Chief Shop Steward of SOD as directed by the general membership.

In Slip Opinion Number 682, the Board found that FOP violated D.C. Code § 1-617.03 (a)(1) and (4) (2001 ed.). As a result, the Board directed that prior to its next election, FOP must issue a notice regarding the nomination requirements and provide information concerning the

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nomination meeting to each eligible FOP member. In addition, the Board ordered FOP to post a notice acknowledging that they violated D.C. Code § 1-617.03 (a)(1) and (4) of the Comprehensive Merit Personnel Act (CMPA).

In his Complaint, Mr. Cunningham did not request that the Board award reasonable costs. However, after the Board issued Slip Opinion Number 682, the Complainant filed a motion seeking reasonable costs. FOP opposes the motion. The Complainant's motion for reasonable costs is before the Board for disposition.

The Board first addressed the circumstances under which the awarding of costs to a party may be warranted in AFSCME, D.C. Council 20, Local 2776 v. D.C. Dept. of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990). In that case the Board observed:

Just what characteristics of a case will warrant the finding that an award of costs will be in the interest of justice cannot be exhaustively catalogued. We do not believe it possible to elaborate in any one case a complete set of rules or earmarks to govern all cases, nor would it be wise to rule out such awards in circumstances that we cannot foresee. What we can say here is that among the situations in which such an award is appropriate are those in which the losing party's claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith, and those in which a reasonably foreseeable result of the successfully challenged conduct is the undermining of the union among the employees for whom it is the exclusive bargaining representative. Slip Op. No. 245, at p. 5.

We believe that the interest-of-justice criteria articulated in the AFSCME case, would not be served by granting the Complainant's request for reasonable costs in the present case. Specifically, the Complainant did not prevail on all of his claims. Therefore, it can not be said that FOP's claim or position was wholly without merit or that the challenged action was undertaken in bad faith. As a result, the Board does not believe that the interest-of-justice test has been met in this case.

For the above-noted reasons, the Board denies the Complainant's motion for reasonable costs.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's motion for reasonable costs is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

October 25, 2002

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Nos. 01-S-01 and 01-U-04 was transmitted via Fax and U.S. Mail to the following parties on this 25th day of October 2002.

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