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

In the Matter of:

Dancy Simpson, Edwin Hull and Tyrone
Jenkins,

Complainants,

v.

Fraternal Order of Police/Department of
Corrections Labor Committee and Election
Committee,

Respondent.

PERB Case No. 08-S-02

Opinion No. 989

Motion for Preliminary Relief

DECISION AND ORDER

I. Statement of the Case:

On September 16, 2008, Danny Simpson, Edwin Hull and Tyrone Jenkins (“Complainants”) filed a document styled “Motion for Preliminary Injunctive Relief and Standards of Conduct Complaint” (“Motion”)¹ against the Fraternal Order of Police/Department of Corrections Labor Committee and Election Committee (“FOP” or “Respondents”). The Complainants assert that the FOP has violated the Comprehensive Merit Personnel Act (“CMPA”), as codified under D.C. Code § “1-618-03(A)(D)(E)”². (Motion at p. 1). The Complainants claim

¹ The Board acknowledges that the Complainants’ submission incorporates both a Motion for Preliminary Injunctive Relief and a Standards of Conduct Complaint, but will refer to this dual filing as “Motion” for purposes of this Decision and Order.

² Correctly codified at D.C. § 1-617.03(a)(1), (4) and (5) (2001 ed.), Standards of conduct for labor organizations, which provides:

- (a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following:

that the violations are clear cut and flagrant. (See Motion at p. 1). In light of the above, the Complainants request that the Board: (a) grant its request for preliminary relief under PERB Rule 544.15; (b) order that the September 17, 2008 election for shop steward and chief shop steward be postponed; (c) suspend the election committee for violating the CMPA; (d) find that the Complainants are eligible to run for the positions of shop steward and chief shop steward; (e) order the Respondent to hold elections at the Central Detention Facility; and (f) order the Respondent to compensate the Complainants for being discriminated against by Respondent. (See Motion at p. 8).

The FOP filed two documents styled: (1) "Respondent's Opposition to Complainants' Motion for Preliminary Injunctive Relief" ("Opposition"); and (2) "Respondent's Answer to Complainants' Standards of Conduct Complaint" ("Answer"). In their Opposition and Answer, the FOP denies any violation of the Union's by-laws or the CMPA and contends that the Complainants have failed to satisfy the requirements for preliminary relief. (See Answer at pgs. 5-11).

The Complainants' Motion is before the Board for disposition.

II. Discussion

The Complainants state that on August 27, 2008, nominations for the positions of shop steward and chief shop steward were held by the Union labor committee. (See Motion at p. 2). The election for the positions of shop steward and chief shop steward were to take place on September 17, 2008. Complainants claim that on May 12, 2008, Nila Rittenour, chairperson of the election committee appointed James Powell to be the new election committee chairperson, replacing Betty Wofford (who had been the chairperson for the Union labor committee). (See Motion at p. 2). The Complainants contend that on July 27, 2009, James Powell "unlawfully made new election nomination rules": (a) increasing from six (6) months to twelve (12) months, the required time for nominees for the position of shop steward to qualify as members in good-standing; and (b) that "only current active shop steward or chief shop steward for the past 12 months would be eligible for nomination." (Motion at pgs. 3-4). The Complainants contend that this action discriminates against the Complainants and members previously eligible for nomination to the positions of shop steward and chief shop steward because these changes made union

(1) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(4) Fair elections; and

(5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

members in good standing no longer eligible for nomination to the positions of shop steward and chief shop steward. (See Motion at pgs 2-4).

In addition, the Complainants assert that the election committee and the FOP: (1) "continue to make unlawfully unethical choices that violate[] the CMPA"; (2) that their unethical behavior impacts the membership [of the union] in a very negative manner"; and (3) their unethical behavior undermines and diminishes public confidence in the labor organization and [the District of Columbia] Government's ability to protect society." (Motion at p. 2). The Complainants argue that the Respondent did not have the authority to amend or change the union by-laws with respect to nominations and did so without the required votes of the union membership. (See Motion at p. 5). These actions, the Complainants claim, were subject to corrupt influences, undermine public confidence in the union and that these actions discriminated against the Complainants in violation of the Union by-laws and the CMPA. (See Motion at pgs. 2-7). The Complainants also allege: (1) that the labor committee has refused to provide financial documents to the Complainants regarding how membership dues are being spent; and (2) that unlawful and unethical reasons resulted in changes to "membership hours and meeting location" [which did] "not allow full participation by [the Union] membership to vote on key issues [a]ffecting the membership." (Motion at pgs. 3-6).

The Complainants contend that by the conduct described above, FOP has violated the CMPA. As a result, the Complainants request that their Motion for Preliminary relief be granted because the Respondent's actions are clear cut and flagrant and that these actions have resulted in irreparable harm. (See Motion pgs. 1 and 7).

The Complainants request that the Board stop the September 17, 2008 election of the chief shop steward.³ The Complainants' Motion was filed on September 16, 2008, one day before the September 17, 2008 election proceedings. In addition, the motion was served via first-class mail on September 16, 2008. Pursuant to Board Rule 501.4⁴, the Opposition to the Motion was due no later than September 26, 2008. In light of the above, the Board could not consider the Complainants' Motion prior to the September 17, 2008 election. In accordance with Board Rule 553.2, the Respondent's response to the Complainants' Motion was due within five (5) days of service of the motion. For the reasons discussed above, we find that the Complainants' request

³ The Board notes that it was unable to hold a meeting on September 16, 2008, because the Board did not have the three members necessary to "constitute a quorum for the transaction of business." (D.C. Code § 1-605.01(1)). From May 2008, the Board was without a quorum and unable to hold meetings and issue rulings on Motions. The Complainant's Unfair Labor Practice Complaint (and motion for preliminary relief) was served by first-class mail on June 6, 2008. In June of 2009, new Board members were appointed. The Council of the District of Columbia approved and confirmed the appointment of board members Johnine Barnes, John Isa, Mary Oates Walker, Jennifer Chung, and Donald Wasserman on June 16, 2009, at Legislation No.'s PR18-0228 (Johnine Barnes), PR18-0229 (John Isa), PR18-0230 (Mary Oates Walker), PR18-0231 (Jennifer Chung), and PR18-0329 (Donald Wasserman). Subsequently, on July 13, 2009, the Board held its first regular meeting since May 2008. In light of the above, the Board could not consider the Complainant's Motion before the September 17, 2008 election.

⁴ Board Rule 501.4 - Computation - Mail Service, provides: - Whenever a period of time is measured from the service of a pleading and service is by mail, five (5) days shall be added to the prescribed period.

for preliminary relief is moot since the Board could not consider the Complainants' request before the union election on September 17, 2008.⁵

In view of the above, we: (1) find the Complainants' request for preliminary relief is moot; and (2) pursuant to Board Rule 544.9, direct the development of a factual record through a standards of conduct hearing.⁶

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainants' Motion for Preliminary Relief is moot.
2. The Board's Executive Director shall refer the standards of conduct complaint to a Hearing Examiner utilizing an expedited hearing schedule. Therefore, the Hearing Examiner shall issue the report and recommendation within twenty-one (21) days after the closing arguments or the submission of briefs. Exceptions are due within ten (10) days after service of the report and recommendation and oppositions to the exception are due within five (5) days after service of the exceptions.
3. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
4. 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.

September 30, 2009

⁵ Should violations be found in the present case, the relief requested can be accorded with no real prejudice to the Complainants following a full hearing.

⁶ Board Rule 544.9 - Notice of Hearing, provides:

If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board shall issue a Notice of Hearing and serve it upon the parties. All parties shall be given at least fifteen (15) days notice of the hearing, except where the Board determines that this notice period should be abbreviated.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-S-02 was transmitted via U.S. Mail to the following parties on this the 30th day of September 2009.

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Certificate of Service
PERB Case No. 08-S-02
Page 2

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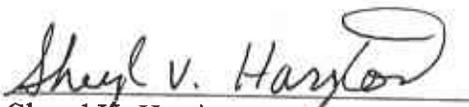
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