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

_____)	
In the Matter of:)	
)	
Yonah Bromberg Gaber, et al.)	
)	PERB Case No. 23-S-03
Complainants)	
)	Opinion No. 1870
v.)	
)	
American Federation of State, County and Municipal Employees, Local 1808)	
)	
Respondent)	
_____)	

DECISION AND ORDER

I. Statement of the Case

On March 24, 2023, fourteen District of Columbia Public Library employees (Complainants) filed a standards of conduct complaint (Complaint) against their Union, the American Federation of State, County and Municipal Employees, Local 1808 (AFSCME). The Complaint alleged that AFSCME failed to provide a reasonable opportunity for all members to vote in an internal union election, thereby violating the Comprehensive Merit Personnel Act (CMPA)¹ and AFSCME’s Constitution.² The Complaint requested preliminary relief in the form of an order to delay the impending election scheduled for March 30, 2023, and an order compelling AFSCME to cease and desist from holding unfair elections.³ The Complaint further requested an order from the Board directing AFSCME to hold a new election.⁴

On March 30, 2023, the election proceeded as scheduled.⁵ However, AFSCME voided the election results for unrelated reasons.⁶ AFSCME held a rerun election on May 18, 2023, and certified the results that day.⁷ On September 18, 2023, AFSCME filed a Motion to Dismiss this

¹ D.C. Official Code § 1-617.03(a)(1) and (4).
² Complaint at 2-3.
³ Complaint at 4.
⁴ Complaint at 5.
⁵ Report at 4.
⁶ Report at 4.
⁷ Motion to Dismiss at 2.

case as moot due to the revote election.⁸ The Complainants opposed, arguing that the Complaint remained unresolved, as AFSCME conducted the second election in the same manner as the first.⁹

PERB assigned the case to a Hearing Examiner who denied the Motion to Dismiss, finding that the May 18th election did not resolve the Complainants' allegations concerning AFSCME's election practices.¹⁰ On December 12, 2023, the Hearing Examiner issued a Report and Recommendations (Report). The Report concluded that AFSCME violated its Constitution by failing to provide the Complainants with a reasonable opportunity to vote in the May 18th election, and by failing to provide the Complainants with sufficient notice of that election.¹¹ The Report recommended that the Board order AFSCME to make several improvements to its election processes; hold a new election; and pay the Complainants' litigation costs.¹²

AFSCME filed exceptions to the Report, urging the Board to dismiss the matter for lack of jurisdiction because the Complaint solely concerned the March 30th election, while the Report only included legal analysis regarding the May 18th election.¹³ The Complainants filed a response, arguing that the allegations concerning the first election applied equally to the second election because both were conducted in the same manner.¹⁴

On January 29, 2024, the Board issued Opinion No. 1857 in this case, establishing that a hearing examiner's analysis must be limited to the facts alleged in the complaint.¹⁵ The Board held that a hearing examiner cannot properly find a violation based on a set of facts which were not raised in the complaint, even if the legal basis is the same.¹⁶ The Board established that it would not render a decision based on allegations which fell outside the scope of the Complaint,¹⁷ as those allegations were not properly before the Hearing Examiner or the Board.¹⁸ Finding that the Report only contained legal analysis regarding the May 18th election,¹⁹ the Board remanded this matter to the Hearing Examiner for further findings concerning the allegation that AFSCME conducted the March 30th election in a manner which violated AFSCME's Constitution and D.C. Official Code § 1-617.03(a)(1) and (4) of the CMPA.²⁰

On February 21, 2024, the Hearing Examiner issued a Report and Recommendations on Remand (Report on Remand), finding that the March 30th and May 18th elections both violated the

⁸ Answer at 2-3.

⁹ Opposition at 1, 4.

¹⁰ Order Denying Motion to Dismiss Complaint as Moot at 2.

¹¹ Report at 21-22.

¹² Report at 23-25.

¹³ AFSCME Exceptions at 1-10.

¹⁴ Complainant's Response at 1-3.

¹⁵ *FOP/MPD Labor Comm. v. MPD*, 62 D.C. Reg. 3544, Slip Op. No. 1506 at 10-11, PERB Case No. 11-U-50 (2015) (citing *FOP/MPD Labor Comm. v. MPD*, 61 D.C. Reg. 8003, Slip Op. No. 1316 at 5-8, PERB Case 09-U-50 (2014)).

¹⁶ *FOP/MPD Labor Comm.*, Slip Op. No. 1506 at 9.

¹⁷ *Hamilton v. AFSCME*, 63 D.C. Reg. 4598, Slip Op. No. 1564 at 3, PERB Case No. 16-S-01 (2016) (citing *FOP/MPD Labor Comm.*, Slip Op. No. 1316 at 5-6).

¹⁸ See *FOP/MPD Labor Comm.*, Slip Op. No. 1316 at 7.

¹⁹ *Bromberg Gaber, et al. v. AFSCME, Local 1808*, Slip Op. No. 1857 at 3, PERB Case No. 23-S-03 (2024).

²⁰ *Bromberg Gaber, et al.*, Slip Op. No. 1857 at 3.

CMPA and AFSCME's Constitution.²¹ In the Report on Remand, the Hearing Examiner reaffirmed his previous recommendations.²² On February 26, 2024, AFSCME filed Exceptions to the Report on Remand.

For the Reasons stated herein, the Board declines to adopt the Report on Remand, and dismisses the Complaint.

II. Hearing Examiner's Report and Recommendations

A. Hearing Examiner's Factual Findings

The Hearing Examiner made the following factual findings.²³ On March 20, 2023, the President of AFSCME, Local 1808 emailed some of its members, informing them that a Delegate election would be held on Thursday, March 30, 2023 at the Woodridge Library.²⁴ In his email, the President announced that nominations were scheduled to commence at 9:30 a.m., followed by in-person voting until 11:00 a.m.²⁵ The email advised members to make arrangements with their managers to vote if scheduled to work during the voting period.²⁶

In the email, Local 1808 further informed its members that it sent an election notice by mail to their home address.²⁷ However, some members did not receive a notice by mail, and the Recording Secretary for Local 1808 credibly testified that he was not aware of any efforts to update the member address list prior to the March 30th election and knew of at least one member whose name was not on the list as of the March 30th election.²⁸

The Hearing Examiner concluded that the Woodridge Library was the furthest District library from a Metro station.²⁹ Prior to the March 30th election, an AFSCME member with an electric wheelchair emailed the Local 1808 President and members of the Board, asking if "there were...ways to participate in the election other than personal appearance, for example, online voting."³⁰ She worried that her wheelchair battery pack could not carry her from the Metro station to the Woodridge Library, and also expressed concern about missing her job responsibilities.³¹ She did not receive an accommodation.³²

²¹ Report on Remand at 11 (citing D.C. Official Code § 1-617.03(a)(1) and (4)).

²² Report on Remand at 12.

²³ Both the Report and the Report on Remand included factual findings regarding the March 30th election. Report at 4-14; Report on Remand at 7-11.

²⁴ Report at 4.

²⁵ Report at 4.

²⁶ Report at 4.

²⁷ Report at 4.

²⁸ Report on Remand at 9.

²⁹ Report at 8.

³⁰ Report at 5.

³¹ Report at 5.

³² Report at 5.

The March 30th election proceeded as scheduled and a total of 55 ballots were cast, indicating that 18.33% of the 300-member unit voted.³³ However, the results of the March 30th election were subsequently invalidated due to “a discrepancy between the number of people who arrived to vote, and the number of ballots cast.”³⁴ A revote was scheduled for May 18, 2023.³⁵ The window to vote was extended by 30 minutes and the location was changed to the more central Fitzgerald Library.³⁶ Some members did not receive a mailed notice of the election,³⁷ and the Recording Secretary credibly testified that he was not aware of any efforts to update the member address list prior to the May 18th election.³⁸ As with the previous election, the participation rate was 18.33%.³⁹

B. Hearing Examiner’s Recommendations on Remand

At the Board’s request, the Hearing Examiner’s Report on Remand addressed the Complainants’ allegation that the March 30th election violated the standards of conduct established in the CMPA.⁴⁰ Contrary to the Board’s holding in Opinion No. 1857, the Report on Remand also found that the dispute regarding the May 18th election was properly before the Hearing Examiner.⁴¹ The Report on Remand reasoned that the Complaint encompassed elections beyond March 30th because it requested a cease and desist order prohibiting future unfair elections.⁴² Additionally, the Report on Remand reasoned that both parties were consistently aware of the Complainants’ continuing dissatisfaction with AFSCME’s election procedures.⁴³ The Hearing Examiner concluded that although the Complainants should ideally have amended their Complaint to specifically address the May 18th election,⁴⁴ AFSCME had ample “opportunity to answer the claims...with respect to the revote of May 18, 2023.”⁴⁵

Based on the 18.33% participation rate for the March 30th election, the Hearing Examiner concluded that the members of AFSCME, Local 1808 were not afforded a reasonable opportunity to vote, in violation of D.C. Official Code § 1-617.03 of the CMPA.⁴⁶ The Hearing Examiner further concluded that the relatively low participation rate created an inference that the March 30th election “was not conducted subject to recognized safeguards and provisions defining and securing a right of individual members to participate in the affairs of the organization as required under [D.C. Official Code § 1-617.03].”⁴⁷ The Hearing Examiner determined that the voting period was

³³ Report on Remand at 7.

³⁴ Report at 4.

³⁵ Report at 4.

³⁶ Report on Remand at 10.

³⁷ Report on Remand at 10.

³⁸ Report at 6.

³⁹ Report at 22.

⁴⁰ D.C. Official Code § 1-617.03(a)(1) and (4).

⁴¹ Report on Remand at 2-6.

⁴² Report on Remand at 2-3, 6-7.

⁴³ Report on Remand at 2-7.

⁴⁴ Report on Remand at 3.

⁴⁵ Report on Remand at 5.

⁴⁶ Report on Remand at 7-8.

⁴⁷ Report on Remand at 8.

unduly brief and observed that the election inconveniently overlapped with working hours.⁴⁸ The Hearing Examiner also determined that the location of the election was problematic for members with mobility limitations.⁴⁹ Additionally, the Hearing Examiner found that AFSCME failed to mail notice of the election to the members 15 days beforehand, thereby violating Article VI, Section 4 of the AFSCME, Local 1808 Constitution; Appendix D, Section 2(d) of the AFSCME 2022 International Constitution; and Section 452.99 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).⁵⁰

The Hearing Examiner found that the identified issues with the March 30th election persisted into the May 18th election, despite the relocation and extended voting window.⁵¹ The Hearing Examiner observed that the home address list was not verified or updated between elections and several members did not receive a mailed notice for either election.⁵² The Hearing Examiner noted that the 18.33% voter turnout for the elections was abnormally low, as most local District 20 elections have a turnout of approximately 50%.⁵³ Thus, the Hearing Examiner concluded that the May 18th election also violated D.C. Official Code § 1-617.03 of the CMPA.⁵⁴

The Hearing Examiner determined that “the Complainants have yet to be afforded the relief they sought in their original Complaint,” i.e. a new representative election.⁵⁵ Thus, the Hearing Examiner restated his previous recommendations regarding relief.⁵⁶

III. Discussion

Pursuant to Board Rule 544.11, “[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.” The Board has held that “issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner.”⁵⁷ The Board will adopt a hearing examiner’s recommendations where those recommendations are reasonable, supported by the record, and consistent with Board precedent.⁵⁸ The Hearing Examiner’s findings are inconsistent with the record. The record shows that the Complainants lacked standing to bring the Complaint, as they did not demonstrate an actual personal injury.

⁴⁸ Report on Remand at 7-8.

⁴⁹ Report on Remand at 8.

⁵⁰ Report on Remand at 8.

⁵¹ Report on Remand at 10.

⁵² Report on Remand at 10.

⁵³ Report on Remand at 10-11.

⁵⁴ Report on Remand at 11.

⁵⁵ Report on Remand at 11-12.

⁵⁶ Report on Remand at 12.

⁵⁷ *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. No. 1668 at 5, PERB Case No. 15-U-28 (2018); *See Council of Sch. Officers, Local 4 v. DCPS*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at 6, PERB Case No. 09-U-08 (2010).

⁵⁸ *WTU*, Slip Op. 1668 at 6-7; *AFGE, Local 1403 v. OAG*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012).

The Board has held that to prevail on a standards of conduct claim, a complainant must demonstrate that they are an aggrieved individual who has suffered an actual injury.⁵⁹ The instant Complaint alleges that AFSCME failed to provide its members with a reasonable opportunity to vote in the March 30th election because the election was held at an inconvenient time and place.⁶⁰ The Board has previously established that allegations of inconvenient meeting times and places leading to low turnout are insufficient to establish an actual personal injury for purposes of a standards of conduct claim.⁶¹ The Board has further held that an election is not unfair simply because it would have had a higher turnout at a different location or at a different time.⁶²

The Hearing Examiner found that the location “was particularly problematic for union members with mobility limitations.”⁶³ Contrary to the Report on Remand, the record does not show that the March 30th election was held at an inconvenient time or place. The March 30th election occurred on a Thursday morning, a time when nearly all D.C. branch libraries are closed.⁶⁴ By scheduling the election on a Thursday morning, AFSCME minimized potential conflicts with employees’ working hours. The Woodridge Library (where the March 30th election was held) is not the furthest branch from a Metro station, and the location was accessible to all members by Metro bus.⁶⁵ The Hearing Examiner’s findings are inconsistent with the record. The record shows that the Complainants lacked standing to bring the Complaint, as they did not demonstrate an actual personal injury.

Separately, in its Exceptions, AFSCME urges the Board to reject the Report on Remand, asserting that the absence of citations to Board precedent therein indicates that the Hearing Examiner harbored anti-union bias.⁶⁶ Under Board Rule 550.13, hearing examiners are required to conduct fair and impartial hearings. The Board will find that a Hearing Examiner exhibited bias only where the Hearing Examiner’s “temperament or opinions expressed during the hearing exceeded the authority accorded him or precluded the Respondent from being afforded a fair hearing.”⁶⁷ In the matter at hand, the Board finds no evidence that the Hearing Examiner exceeded

⁵⁹ *Allison et al. v. FOP/DOC Labor Comm.*, 61 D.C. Reg. 9085, Slip Op. No. 1482 at 3-4, PERB Case No. 14-S-04 (2014).

⁶⁰ Complaint at 3-4. At the Hearing, the Complainants further alleged that AFSCME failed to provide its members with proper notice of the March 30th election and failed to grant its members a reasonable opportunity to vote in the May 18th election. Report on Remand at 8-10. The Board will not render a decision on those allegations, as they are not included in the Complaint. *Hamilton v. AFSCME*, Slip Op. No. 1564 at 3 (citing *FOP/MPD Labor Comm.*, Slip Op. No. 1316 at 5-6).

⁶¹ Exceptions to Report on Remand at 5 (citing *Richardson v. FOP/DOC Labor Comm.*, 60 D.C. Reg. 16000, Slip Op. No. 1426 at 3-4, PERB Case No. 11-S-01 (2013)).

⁶² Exceptions to Report on Remand at 5 (citing *Harris, et al., v. FOP/DOC Labor Comm.*, Slip Op. No. 1789 at 2-3, PERB Case No. 20-S-04 (2021); *Simpson, et al. v FOP/DOC Labor Comm.*, Slip Op. No. 1601 at 4, PERB Case Nos. 10-S-05, 10-S-07, 10-S-08, 10-S-09 (2016)).

⁶³ Report on Remand at 8.

⁶⁴ *Plan a Visit*, DC Public Library, <https://www.dclibrary.org/plan-visit>.

⁶⁵ Hearing Transcript at 57-58, 208. The Woodridge Library is less than 1.5 miles from the Rhode Island Ave-Brentwood and Brookland-CUA Metro stations, while the Palisades Library is more than 2.5 miles from the nearest Metro station, Tenleytown -AU.

⁶⁶ AFSCME Exceptions at 11-12.

⁶⁷ *D.C. Nurses Ass’n v. D.C. Health and Hospitals Public Benefit Corp., D.C. General Hospital*, 46 D.C. Reg. 245, Slip Op. No. 560 at 2-3, fn. 2, PERB Case No. 97-U-16 (1999).

his authority or precluded AFSCME from a fair hearing. Thus, the Board's rejection of the Report on Remand is not based on AFSCME's allegations of bias.

IV. Conclusion

For the reasons stated, the Board declines to adopt the Report on Remand and dismisses the Complaint in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. This Complaint is dismissed in its entirety.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser and Peter Winkler.

April 18, 2024

Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration within fourteen (14) days, requesting the Board to reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1605.2(12) and 1-617.13(c), which provide thirty (30) days after a Board decision is issued to file an appeal.