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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

Patricia Bush and Nathan Pugh,  
Complainants,

v.

Department of Corrections  
Correctional Employees, Local  
1714, a/w International  
Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and  
Helpers of America, AFL-CIO

and

District of Columbia  
Department of Corrections,

Respondents.

PERB Case No. 92-U-10  
Opinion No. 367

DECISION AND ORDER

On March 20, 1992, an Unfair Labor Practice Complaint was filed by Complainant Patricia Bush and her representative, Nathan Pugh, with the Public Employee Relations Board (Board).<sup>1/</sup> The

<sup>1/</sup> Complainant's representative, Nathan Pugh, is an employee of the Department of Corrections (DOC) and the Interim Vice Chairperson of the Fraternal Order of Police (FOP)/DOC Labor Committee. The DOC Labor Committee is an affiliate of the FOP

(continued...)

Complaint alleged that Respondents the Department of Corrections Correctional Employees, Local 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters) and the Department of Corrections (DOC) violated Bush's employee rights under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.6(a)(3) and (b), by violating her right to have a representative of her choosing process her grievance.<sup>2/</sup> The Teamsters and the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DOC, denied the commission of any unfair labor practice by Answers filed April 28, 1992. OLRCB also contended that the Complaint should be dismissed as untimely pursuant to Board Rule 520.4(a). In accordance with Board Rule 520.9, a hearing was held before a duly designated hearing examiner.

The Hearing Examiner, in a Report and Recommendation (R&R) issued August 16, 1993, ruled, as a threshold matter, that the Complaint was timely filed. With respect to the Complaint allegations, the Hearing Examiner concluded that both the Teamsters and DOC jointly violated D.C. Code Sec. 1-618.4(a)(1); 1-618.4(b)(1); 1-618.6(a)(3) and 1-618.6(b) by "interfering with, restraining, and coercing the Complainant in her choice of representative against her free will." (R&R at 13.)<sup>3/</sup>

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<sup>1/</sup>(...continued)

located at DOC. The DOC Labor Committee is not, however, the certified representative of the collective bargaining unit in which Complainant is included. Respondent Teamsters, Local 1714 is the certified representative of the bargaining unit that, at all times relevant to this Complaint, includes both Patricia Bush and Nathan Pugh.

<sup>2/</sup> Interference, restraint or coercion of employee rights under D.C Code Sec. 1-618.6, by a labor organization, constitutes an unfair labor practice under D.C. Code Sec. 1-618.4(b)(1). The same conduct by an agency constitutes a violation of D.C. Code Sec. 1-618.4(a)(1). The Complaint was amended at hearing to reflect these unfair labor practice provisions.

<sup>3/</sup> Although the Hearing Examiner concluded that Respondents violated Complainant's right under Section 1-618.6(a)(3) and (b), the record contains no evidence that these statutory provisions have been violated. Section 1-618.6(a)(3) accords employees the right "[t]o bargain collectively through representatives of their own choosing as provided under this subchapter." As noted in footnote 1, Respondent Teamsters was chosen and certified as the collective bargaining representative of these employees "as  
(continued...)

This matter is now before the Board on exceptions from both Respondents to the Hearing Examiner's Report and Recommendation. The history and background of this case are set out in the Hearing Examiner's Report and Recommendation, a copy of which is attached hereto.

The Board, after reviewing the entire record and applicable authority, finds, contrary to the finding of the Hearing Examiner, that the Complaint is untimely.<sup>4/</sup> Therefore, the

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<sup>3</sup>(...continued)  
provided under this subchapter", i.e., D.C. Code Sec. 1-618.10. There is no evidence that DOC interfered with, restrained or coerced these employees in the exercise of their right "[t]o bargain collectively through the representative of their own choosing", i.e., the Teamsters. On the contrary, Complainant's allegations concern an assertion that her right to choose a representative other than her certified representative, i.e., the Teamsters, was violated.

Section 1-618.6(b) accords "an individual employee" the right to "present a grievance at any time to his or her employer without the intervention of a labor organization..." (emphasis added) As set forth in the Complaint allegations and in the transcript of the hearing, however, Complainant neither pursued her grievance individually nor --as we discuss in the text-- "without the intervention of a labor organization". The Complaint allegations, therefore, do not give rise to, nor does the record support the asserted statutory violations.

<sup>4/</sup> OLRCB did not except to the Hearing Examiner's finding with respect to the timeliness of the Complaint. We have long held, however, that even in the absence of any exceptions, the Board maintains the authority to review and affirmatively decide to accept or reject the findings and conclusions contained in the hearing examiner's Report and Recommendation. See, e.g., Elaine Sessions, et. al. and The District of Columbia Nurses Association, 30 DCR 1663, Slip Op. No. 57, PERB Case No. 82-S-01 (1983); The District of Columbia Nurses Association v. The District of Columbia Department of Human Services, Bureau of Clinical Health Services, Ambulatory Health Care Administration, 32 DCR 3355, Slip Op. 112, PERB Case No. 84-U-08 (1985); Council of School Officers, Local 4, American Federation of Teachers, AFL-CIO v. District of Columbia Public Schools, 33 DCR 2389, Slip Op. No. 135, PERB Case Nos. 85-U-15 and 85-U-27 (1986) and Washington Teachers Union, Local 6, AFT v. District of Columbia Public Schools, 34 DCR 3601, Slip Op. No. 151, PERB Case No. 85-U-18 (1987).

Board lacks jurisdiction to consider the Complaint.<sup>5/</sup>

Board Rule 520.4 provides the following:

Unfair labor practice complaints shall be filed in accordance with the following requirements:

- (a) If by a labor organization or an agency, not later than ninety (90) days after the date on which the alleged violation(s) occurred; and
- (b) If by an individual(s), not later than 120 days after the date the alleged violations occurred, unless the individual(s) is assisted by a labor organization in the filing of the complaint, in which case the complaint shall be filed in accordance with Subsection 520.4(a) of these Rules.

Critical to our determination of timeliness is the status of Complainant's representative, Nathan Pugh. Pugh's assistance to Complainant in filing the Complaint is not disputed and is self evident from the Complaint. The Hearing Examiner's determination that the Complaint was not subject to Board Rule 520.4(a) turned on crediting the testimony of Officer Bargainier. According to the Hearing Examiner, Officer Bargainier "adamantly denie[d] that she [or] Officer Pugh represented themselves as being anything other than the FOP Labor Committee, a Lodge, not a Union." (R&R at 8.) <sup>6/</sup>

The proviso under Board Rule 520.4(b) clearly makes "assist[ance] by a labor organization" the basis for subjecting such complaints to the jurisdictional time limit under Board Rule 520.4(a). Neither the Complainant nor the Hearing Examiner

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<sup>5/</sup> We have ruled, and the D.C. Court of Appeals has affirmed, that the Board's rules establishing time limits for initiating an action before this agency, e.g., Board Rule 520.4, are mandatory and jurisdictional. Public Employee Relations Board v. D.C. Metropolitan Police Department, No. 88-868 (June 29, 1991).

<sup>6/</sup> Officer Ellowese Bargainier is a DOC employee and the Interim Chairperson of the FOP/DOC Labor Committee. The Complaint reflects that Complainant was also assisted by Officer Bargainier in preparing her Complaint. Officers Bargainier and Pugh appear as signatories to the Complaint and are noted in the Complaint as having assisted Complainant in the dispute which served as the basis of the Complaint allegations.

explained, nor can we discern, what significance the FOP's status as a "Lodge" has with respect to determining the DOC Labor Committee's status as a "labor organization" under Board Rule 520.4.

The Hearing Examiner included among her findings the fact that the FOP/DOC Labor Committee had "filed a Recognition Petition on March 17, 1992, the day before this complaint was filed." (emphasis added) (R&R at 5.)<sup>7/</sup> The Petition resulted in a Decision and Order in Fraternal Order of Police/Department of Corrections Labor Committee and D.C. Department of Corrections and Teamsters local 1714 a/w International Brotherhood of Teamsters, Warehousemen, Chauffeurs and Helpers of America, AFL-CIO, \_\_\_\_\_ DCR \_\_\_\_\_, Slip Op. No. 327, PERB Case No. 92-R-05 (1992), where the Board found that the FOP/DOC Labor Committee met the requirements under Board Rules, in accordance with the CMPA, D.C. Code Sec. 1-618.3 and 1-618.10, for labor organizations seeking exclusive recognition for appropriate units of employees. Id., Slip Op. at p. 2.

Officers Bargainier's and Pugh's description of the DOC Labor Committee as a "Lodge" is irrelevant to its status as a labor organization under the CMPA and Board Rules. The record fully supports the Hearing Examiner's finding that both Officers Bargainier and Pugh held themselves out as and employees were aware that they were officers of the DOC Labor Committee.<sup>8/</sup> Thus, both Officers Pugh and Bargainier are officers of a labor organization, albeit a labor organization that has not been

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<sup>7/</sup> Pugh and Bargainier, among others, filed that recognition petition as officers of the FOP/DOC Labor Committee. The Petition sought exclusive recognition of the DOC unit of employees which includes Pugh, Bargainier and Complainant.

<sup>8/</sup> Officer Bargainier testified that at all times material to this Complaint it was "well known throughout the Department" that she and Mr. Pugh were "officer[s] of the [DOC] Labor Committee" and "supporter[s] of FOP." (Tr. at p. 207.) In response to a question as to whether or not she and Mr. Pugh "were not [] representative[s] of the FOP" when they signed the Complaint, Officer Bargainier testified "absolutely not -- yes, we were... ." (Tr. at p. 213.) Two D.C. Department of Correction's Labor Committee newsletters (dated March 15 and 21, 1992) and a DOC edition of a FOP newsletter (February/March 1992 edition), submitted into evidence, clearly reflect Pugh and Bargainier as principal officers and organizers for the "FOP DCDC Labor Committee", i.e., DOC Labor Committee. (Mang. Exhs. 3, 4 and 5.)

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certified as the exclusive representative of a collective bargaining unit. <sup>9/</sup>

The proviso under Board Rule 520.4(b) subjects an individual employee's complaint to the time period contained in Board Rule 520.4(a) when the filing of that individual's complaint is "assisted by a labor organization". Assistance encompasses representing an individual employee in filing a complaint. Neither Pugh nor Bargainier can shed their status as officers of a labor organization with a local presence at DOC.<sup>10/</sup> While the assistance that Pugh and Bargainier provided Complainant in the preparation and filing of her Complaint was not as agents of the certified bargaining agent for the Complainant, their assistance, nevertheless, constituted assistance by a labor organization.<sup>11/</sup>

Based on the above, we find that Complainant was assisted by a labor organization in the filing of her Complaint and is therefore, in accordance with Board Rule 520.4(b), subject to the 90-day jurisdictional time limit under Board Rule 520.4(a). The

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<sup>9/</sup> The Board has previously ruled that the term "labor organization" under the CMPA is not limited to the certified or exclusively recognized bargaining representative for an appropriate unit of employees. See, Council of School Officers, Local 4, AFSA, AFL-CIO v. Council of School Officers, 38 DCR 836, Slip Op. No. 256, PERB Case No. 90-U-08 (1990).

<sup>10/</sup> A March 15, 1992 DOC Labor Committee newsletter provided an account of complaints made against "members of the DCDC Labor Committee" where "Chairman Bargainier and Officer Pugh [ ] were singled out...". The article went on to state, in relevant part, that in response to the situation "Chairman Bargainier and Officer Pugh ....contacted FOP President Gary Hankins for advice and assistance. (Mang. Exh. 4.)

<sup>11/</sup> Board Rule 520.4 does not turn on the intent of the complainant or the representative who provides assistance to the complainant. Our rules establishing jurisdictional time periods for initiating action with the Board turn on the existence of certain objective factors. Pugh was a principal officer in the FOP/DOC Labor Committee, an active labor organization at DOC, at the time he assisted the Complainant in filing her Complaint. Having found Pugh to be an officer for the FOP/DOC Labor Committee, the Hearing Examiner's consideration of whether or not Pugh held himself out as a union or employee representative was irrelevant to a determination of the nature of assistance provided Complainant, notwithstanding what other status Complainant accorded that assistance. (R&R at 8.)

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filing of the Complaint clearly exceeded 90 days from the occurrence of the alleged violations and therefore must be dismissed as untimely.<sup>12/</sup>

ORDER

IT IS HEREBY ORDERED THAT:

The Unfair Labor Practice Complaint is Dismissed.

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

November 23, 1993.

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<sup>12/</sup> We find the Complaint and the record developed at the hearing in this case devoid of allegations and evidence, respectively, supporting any unfair labor practices or other statutory violations against Pugh as an employee or FOP/DOC Labor Committee representative. It appears from the Complaint that Pugh's name appears in the caption as a Complainant merely to reflect his role as Complainant Bush's representative during the period of the alleged violations and in this proceeding. We therefore dismiss Pugh as a Complainant in this proceeding.