

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:)	
)	
Carlton Butler, Nila Ritemour,)	
Laurrine Ellis, Charlene Carter, Isaac Jones,)	
John Busby, Jr., and Derrick Randolph,)	
)	
Complainants,)	PERB Case No. 02-S-08
)	Opinion No. 695
)	
)	MOTION FOR PRELIMINARY
)	RELIEF
v.)	
)	
)	
Fraternal Order of Police/Department of)	
Corrections Labor Committee,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On August 23, 2002, the Complainants filed a Standards of Conduct Complaint and Motion for Preliminary Relief, in the above referenced case.¹ The Complainants allege that the Fraternal Order of Police/Department of Corrections Labor Committee ("FOP" or "Respondent") violated D.C. Code §1-617.03(a)(1) and (4) (2001 ed.) and D.C. Code § 1-617.04(a)(1),(2),(3) and (4) (2001 ed.) by: (a) failing to hold a special election in August 2001; (b) appointing Luis White to serve as chairman of the election committee; and (c) failing to comply with FOP's by-laws. In addition, the Complainants assert that numerous other violations were committed by FOP regarding the election

¹ The Complainants also filed a document titled "Complainants' Motion for Default Judgement and Response to Respondent's Answer." In view of our disposition of the Motion for Preliminary Relief, it is not necessary to consider the Complainants' Motion for Default Judgement.

Decision and Order on
Motion for Preliminary Relief
PERB Case No. 02-S-08
Page 2

held in May 2002. The Complainants are asking the Board to: (1) grant their request for preliminary relief; (2) order FOP to comply with its by-laws; (3) order FOP to cease and desist from violating the Comprehensive Merit Personnel Act; and (4) void FOP's May 2002 elections. Also, the Complainants are requesting that the Board order a new supervised election.

FOP filed an answer to the Standards of Conduct Complaint denying all the substantive charges in the Complaint. In addition, FOP filed a response opposing the Complainants' Motion for Preliminary Relief. In its response, FOP asserts that the allegations contained in the Complaint do not satisfy the criteria for granting preliminary relief. As a result, FOP argues that the Motion for Preliminary Relief should be denied.

Also, FOP claims that several of the allegations are not timely and should be dismissed because they exceed the one hundred and twenty (120) day requirement contained in Board Rule 544. 4. (Respondent's answer at p. 2)

The Complainants' Motion for Preliminary Relief is before the Board for disposition. For the reasons noted below, we find that the Complainants' request for preliminary relief does not meet the threshold criteria that the Board has adopted for granting preliminary relief. Specifically, the Complaint does not establish that there is reasonable cause to believe that the Comprehensive Merit Personnel Act ("CMPA") has been violated and that remedial purposes of the law will be served by pendente lite relief. As a result, we deny the Complainants' request for preliminary relief and direct that a hearing be scheduled in this case. Also, we have concluded that some of the Complainants' allegations are time-barred. Therefore, we are dismissing those portions of the Complaint which exceed the one-hundred and twenty (120) day requirement of Board Rule 544.4.

The Complainants claim that the Department of Corrections ("DOC") conducted a reduction-in-force ("RIF") in August 2001. As a result of this RIF, three of the five members of FOP's executive board were terminated by DOC. (Compl. at p. 4) The Complainants contend that pursuant to FOP's by-laws, a special election was required within thirty days of August 2001, in order to fill the three vacancies on the executive board. However, the Complainants assert that the executive board members who were terminated in August 2001, remained in office for more than twelve months without holding a special election. (Compl. at p. 4). Subsequently, in April 2002, Luis White was appointed as chairman of FOP's election committee. The Complainants contend that Mr. White was responsible for coordinating FOP's general election which took place in May 2002. The Complainants claim that the May 2002 elections were rampant with procedural violations and improprieties, which individually and collectively effected the outcome of the elections. (Compl. at pgs. 8-11). For example, the Complainants argue that many eligible union members were not allowed to vote and several non-members were allowed to vote. (Compl. at p. 10). In addition, the Complainants contend that ballots were not properly secured. (Compl. at p. 10). The Complainants claim that FOP's actions violate the CMPA. In light of the above, the Complainants filed a Standards of Conduct

Complaint and a Motion for Preliminary Relief.

The Complainants assert that the violations cut directly to the heart of the democratic process. Specifically, they contend that due to the numerous problems associated with the May 2002 elections, the true voice of the membership was silenced as a direct result of these election violations.² Furthermore, the Complainants argue that the union leaders elected in May 2002, can not be said to be the true choice of the membership because they were not democratically elected. As a result, the Complainants assert that these union leaders can not be allowed to stay in office. In view of the above, the Complainants contend that the result of the May 2002 elections must be declared null and void. (Compl. at p 12.). In view of the above, the Complainants argue that the Board should order a new supervised election.

The criteria the Board employs for granting preliminary relief in standards of conduct cases is prescribed under Board Rule 544.15. Board Rule 544.15 provides in pertinent part as follows:

The Board may order preliminary relief ... where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged violation is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy will be clearly inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. See, AFSCME, D.C. Council 20, et al. v. D.C. Government, et al., 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). In determining whether or not to exercise its discretion under Board Rule 544.15, the Board has adopted the standard stated in Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1971). There, the Court of Appeals - addressing the standard for granting relief before judgment under Section 10(j) of the National Labor Relations Act - held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by pendente lite relief." Id. at 1051. "In those instances where [PERB] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been] restricted to the existence of the prescribed circumstances in the provisions of Board Rule [544.15] set forth above." Clarence Mack, et al. v. FOP/DOC Labor Committee, et al., 45 DCR 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

² For example, the Complainants argue that there were five hundred and seventy five (575) eligible union members at the Central Detention Facility. However, only two hundred sixty four (264) received ballots. (Compl. at p. 10). Therefore, the Complainants claim that many union members were denied the right to vote.

In its answer to the Complaint, FOP disputes the material elements of all the allegations asserted in the Complaint. We have held that preliminary relief is not appropriate where material facts are in dispute. See, DCNA v. D.C. Health and Hospitals Public Benefit Corporation, 45 DCR 6067, Slip Op. No. 550, PERB Case Nos. 98-U-06 and 98-U-11 (1998). Whether FOP's actions occurred as the Complainants claim or whether such actions constitute violations of the CMPA, are matters best determined after the establishment of a factual record through a standards of conduct hearing.

In the present case, the Complainants' claim that FOP's actions meet the criteria of Board Rule 544.15, are little more than repetition of the allegations contained in the Complaint. Even if the allegations are ultimately found to be valid, it does not appear that any of FOP's actions constitute clear-cut or flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. FOP's actions presumably affect all bargaining unit members who participated in the May 2002 elections. However, FOP's actions stem from a single action (or at least a single series of related actions), and do not appear to be part of a pattern of repeated and potentially illegal acts. While the CMPA asserts a standards of conduct for labor organizations, the alleged violations, even if determined to be valid do not rise to the level of seriousness that would undermine public confidence in FOP's ability to comply with the CMPA. Finally, while some delay inevitably attends the carrying out of the Board's dispute resolution process, the Complainants have failed to present evidence which suggests that these processes would be compromised, or that eventual remedies would be inadequate, if preliminary relief is not granted.

Under the facts of this case, the alleged violations and their impact, do not satisfy any of the criteria prescribed by Board Rule 544.15. Therefore, we find that the circumstances presented do not appear appropriate for the granting of preliminary relief.

In conclusion, the Complainants have failed to provide evidence which demonstrates that the allegations, even if true, are such that the remedial purposes of the law would be served by pendent lite relief. Moreover, 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. In view of the above, we deny Complainants' Motion for Preliminary Relief.

In its answer to the Complaint, FOP asserts that the allegations concerning violations which took place in August 2001, are untimely. As a result, FOP argues that these allegations should be dismissed. Board Rule 544.4 provides as follows:

A complaint alleging a violation under this section shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred. (Emphasis added.).

Decision and Order on
Motion for Preliminary Relief
PERB Case No. 02-S-08
Page 5

The Board has held that “[t]his deadline date is 120 days after the date Petitioner admits he actually became aware of the event giving rise to [the] complaint allegations.” Hoggard v. DCPS and AFSCME, Council 20, Local 1959, 43 DCR 1297, Slip Op. No. 352, PERB Case No. 93-U-10 (1993). See also, American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority, 46 DCR 119, Slip Op. No. 509, PERB Case No. 97-U-07 (1997). Also, the Board has determined that “the time for filing a complaint with the Board concerning [] alleged violations [which may provide for] a statutory cause of action, commenced when the basis of those violations occurred... However, proof of the occurrence of an alleged statutory violation is not necessary to commence the time limit for initiation a cause of action before the Board. The validation, i.e. proof, of the alleged statutory violations is what proceedings before the Board are intended to determine.” Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO, 48 DCR 10959, Slip Op. No. 414, (at p. 3), PERB Case No. 95-S-01 (1995).

In the present case, the Complainants state that in August 2001, three members of the executive board were terminated. Furthermore, the Complainants claim that a special election should have been held within thirty days of August 2001. The Complainants contend that FOP’s failure to hold a special election by September 2001, violates D.C. Code § 1-617.03 (2001 ed.). In view of the above, we believe that the events giving rise to the Complaint allegations took place between August 2001 (the date the three board members were terminated) and September 2001 (the date the special election should have been held). However, the present Complaint was not filed until August 23, 2002. This filing took place one year after the Complainants’ became aware of the alleged violation. Based on the above, it is clear that the Complainants’ filing exceeded the 120 day requirement in Board Rule 544.4. Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (D.C. 1991). For the reasons noted above, the Board can not extend the time for filing a complaint. As a result, the Complainants’ claim regarding FOP’s failure to conduct a special election within thirty days of August, is not timely. Therefore, we dismiss the allegation concerning FOP’s failure to hold a special election.

For the reasons discussed above, the Board: (1) denies Complainants’ Motion for Preliminary Relief and (2) directs the development of a factual record through a standards of conduct hearing.

Decision and Order on
Motion for Preliminary Relief
PERB Case No. 02-S-08
Page 6

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainants' Motion for Preliminary Relief is denied.
2. This matter is to be scheduled for a hearing.
3. 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.

November 4, 2002