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

In the Matter of:)	
)	
Darlene Bryant, et al. ¹)	
)	
Complainants)	PERB Case No. 22-S-05
)	
v.)	Opinion No. 1850
)	
Fraternal Order of Police/Department of Corrections Labor Committee ²)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Statement of the Case

On July 27, 2022, Complainants Darlene Bryant, et al., *pro se* (Complainants), filed a Standards of Conduct Complaint (Complaint) against the Fraternal Order of Police/Department of Corrections Labor Committee (Respondent). The Complainants allege that the Respondent violated its by-laws and Section 1-617.03(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA) by: (1) dispersing fraudulent reimbursements to certain Executive Committee members; (2) failing to remove Executive Committee members who received fraudulent reimbursements; (3) failing to act on a general membership vote to remove the Treasurer from the Executive Committee; and (4) failing to obtain complete, unbiased financial audits as required by FOP by-laws.³ The Respondent filed a document styled “Response to Complaint” (Answer) on September 9, 2022.

On January 13, 2023, the parties appeared for a pre-hearing conference, and agreed to schedule the hearing for February 16, 2023.⁴ Only the Complainants appeared on the date of the

¹ The Complaint also named the following individuals as Complainants: Tasheanna Harris, Bernard Bryan, Edwin Hull, Julia Broadus, Arnold Hudson and Anthony Dyson.

² The Complaint individually named the following Executive Committee members and shop stewards as Respondents: Chairman Joseph Alexander, Vice Chairman Adebisi Adedeji, Executive Secretary Cherno Mballow, Recording Secretary Muritala Sheu, Treasurer Naomi Namata, Chief Shop Stewards Laurrine Ellis and Harcourt Masi, former Chairman Livinus Nwaizugbo and former Vice Chairman John Rosser. In addition, the Complaint named the Fraternal Order of Police Lodge #1 and its President Michael Murphy as Respondents.

³ Complaint at 4, 10-11.

⁴ Report at 2.

hearing. The Respondent did not appear. The Hearing Examiner proceeded with the hearing and accepted uncontested evidence from the Complainants and their witnesses.⁵

On May 25, 2023, the Hearing Examiner issued his Report and Recommendations (Report), finding that the Respondent violated D.C. Official Code § 1-617.03(a)(5).

Upon consideration of the Hearing Examiner's Report, applicable law, and the record presented by the parties, the Board finds that the Respondent violated the standards of conduct for labor organizations.

II. Hearing Examiner's Report and Recommendations

A. Hearing Examiner's Factual Findings

The Hearing Examiner accepted the Complainants' undisputed facts as follows:

1. On June 1, 2022, the current Executive Committee began its term;⁶
2. On June 27, 2022,⁷ the Executive Committee held a general membership meeting, during which the Treasurer presented an Audit Report for the period of January 2022 through June 2022,⁸ revealing financial misconduct;⁹
3. The Audit Report showed that the Executive Committee failed to properly track payments and regularly reimbursed Executive Committee members without appropriate documentation or receipts;¹⁰
4. The Chairman refused to entertain a motion from the general membership to impeach the Treasurer and ruled the motion out of order.¹¹

Based on the Audit Report, the Hearing Examiner found that Executive Committee members received \$22,769.62 in reimbursements for improper expenditures that lacked appropriate receipts and justification.¹² The Hearing Examiner further found that the Executive Committee had improperly spent over \$81,000.00 on legal fees for two different law firms¹³ without explanation and/or with un-itemized receipts in violation of FOP by-laws.¹⁴

⁵ Report at 2.

⁶ Answer at 1.

⁷ The evidentiary record includes claims that the meeting occurred on June 27 or June 28, 2022. Report at 4, 14. While the Hearing Examiner states June 27, 2022, as the date in the initial "Undisputed Facts" section of the Report, he uses June 28, 2022, as the date in calculating the timeliness of the Complaint. Report at 4, 21.

⁸ Report at 4, 5, 9, and 11.

⁹ Report at 4.

¹⁰ Report at 4.

¹¹ Report at 33-34.

¹² Report at 4-12, 27-31.

¹³ Lauckland Nicholas, Esq. and the Thatcher law firm. Report at 11.

¹⁴ Report at 35.

B. Issues and Recommendations

a. Procedural Issues

As a preliminary issue, the Hearing Examiner first addressed the Respondents named in the Complaint. The Hearing Examiner noted that the standards of conduct established by the CMPA apply only to labor organizations recognized under D.C. Official Code § 1-617.03.¹⁵ The Hearing Examiner concluded that the Complaint failed to state grounds for violations of D.C. Official Code § 1-617.03 against Lodge #1 or its President and that Lodge #1 is not a labor organization over which the Board has jurisdiction.¹⁶ The Hearing Examiner therefore recommended dismissing Lodge #1 and its President as parties.¹⁷ Secondly, the Hearing Examiner addressed the individually named Executive Committee members, noting that the CMPA standards of conduct claims against individual union employees accrue only to those individuals' representative capacity as officers and/or agents of a labor organization, rather than their personal capacities.¹⁸ The Hearing Examiner further noted that two individual Executive Committee members named as Respondents had no evidence or exhibits to support claims against them presented in the record and recommended dismissing those officers as parties.¹⁹ The Hearing Examiner then addressed the alleged standards of conduct violations committed by the remaining individually named Respondents acting in their official capacities.²⁰

b. Alleged Standards of Conduct and FOP By-Law Violations

The Complainants alleged that: (1) the Chairman failed to safeguard union funds by refusing to remove the Treasurer based on a floor motion at the June 27, 2022 general membership meeting;²¹ (2) the Chairman failed to provide a good faith reason for hiring two law firms or minutes showing the Executive Committee's approval for additional legal expenses in violation of FOP by-laws;²² (3) the Chairman "hand-picked and controlled the auditors and removed [Complainant] Darlene Bryant...as an auditor [*sic*]",²³ and (4) Executive Committee members "turned a blind eye to the misuse of Labor Committee funds, because each had their self-interest in mind."²⁴

In its Answer, the Respondent asserts that the Executive Committee requested an audit shortly after taking office and presented the findings to the general membership.²⁵ The Respondent argues that the Chairman rejected the general membership's motion to remove the Treasurer as

¹⁵ Report at 20-21.

¹⁶ Report at 20.

¹⁷ Report at 20.

¹⁸ Report at 20-21.

¹⁹ Report at 21.

²⁰ Report at 26-30, 32-35.

²¹ Report at 11.

²² Report at 12.

²³ Report at 12.

²⁴ Report at 12.

²⁵ Report at 13-14.

out of order in violation of FOP by-laws.²⁶ The Respondent further asserts that on June 29, 2022, it forwarded the Audit Report, which showed “gross mismanagement of union funds,” to the Judiciary Committee to investigate and adjudicate the matter.²⁷

The Hearing Examiner confirmed that the financial misappropriation occurred primarily through fraudulent reimbursements.²⁸ The Hearing Examiner found that the Executive Committee violated the standards of conduct by receiving \$22,769.62 in reimbursements and expending more than \$81,000 in legal fees.

Conversely, the Hearing Examiner found that the record did not support the allegations that the Chairman improperly “hand-picked” and/or removed auditors from the Audit Committee.²⁹ The Hearing Examiner also determined that the Chairman upheld FOP by-law 7.6 in rejecting the floor motion to remove the Treasurer at the June 27, 2022 general membership meeting.³⁰

c. Hearing Examiner’s Recommended Remedies

The Hearing Examiner noted that the instant Complaint comes in the wake of a previous standards of conduct proceeding before the Board.³¹ In that case, *Bryan v. Fraternal Order of Police/Department of Corrections Labor Comm.*, the Board found that the Executive Committee violated the fiscal integrity requirements of D.C. Official Code § 1-617.03(5).³² The Hearing Examiner explained that the previous case “provide[s] historical context and background ... [that] raise the inference that the standards of conduct violations by the Labor Committee’s leadership are ongoing and have evolved to an extraordinary and egregious level.”³³

Beyond the standard recommendations of orders to cease and desist prohibited conduct and post notices to employees, the Hearing Examiner recommended that the Board “petition the D.C. Superior Court for the appointment of a Special Master to manage FOP/DOC financial affairs until the Special Master, with the PERB concurrence, finds that the conduct of the FOP/DOC financial

²⁶ Report at 14.

²⁷ Report at 14.

²⁸ Report at 27-31, 34-35.

²⁹ Report at 35.

³⁰ Report at 34. FOP by-law 7.6 states, in pertinent part, that “[t]he Executive Board shall hear all complaints of members or against members pursuant to Article XII. It shall also hear impeachment proceedings against any officer; provided, however, that if the Board votes to impeach any officer, then such decision must be by a two-thirds (2/3) vote of the Board, thereafter, ratified by two-thirds (2/3) of the membership present at a regular or special general membership meeting called for that purpose. Such a vote shall be held no later than thirty (30) days following the Board’s impeachment vote.” Respondent Exh. 2 at 8.

³¹ Report at 3.

³² Report at 22 (citing *Bernard Bryan et al. v. FOP/DOC Labor Committee, et al.*, 67 D.C. Reg. 8546, Slip Op. No. 1750 at 2, PERB Case No. 19-S-02 (2020) (holding that the Respondent’s reimbursement of inflated travel expenditures, failure to have signatories on bank accounts bonded and insured, failure to conduct audits, and failure to have annual budgets violated the CMPA’s requirement for labor organizations to maintain fiscal integrity and caused injury to bargaining unit members to a degree that supported a finding of violations of the standards of conduct for labor organizations)).

³³ Report at 3-4.

affairs comports with generally acceptable accounting principles, FOP by-laws, the CMPA and PERB rules.”³⁴

III. Discussion

Consistent with Board Rule 550.1, the party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.³⁵ The Board has held that “issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner.”³⁶ The Board will adopt a Hearing Examiner’s Report and Recommendations if it is reasonable, supported by the record, and consistent with Board precedent.³⁷

A. Procedural Issues

The Board has held that *pro se* litigants generally lack the same level of expertise and experience as attorneys and that the Board does not hold *pro se* parties to the same standard required of parties represented by counsel.³⁸ The Hearing Examiner acknowledged that both parties in this case are *pro se* and endeavored to make allowances for the parties’ lack of legal expertise in his analysis. As a result, a wide array of pleadings and testimony entered the record.

The Hearing Examiner included remedies for violations not asserted in the original Complaint.³⁹ The Hearing Examiner credited testimony and provided remedies against the Department of Corrections (DOC) and one of its management representatives. The DOC is a non-party in this matter; therefore, the Board finds the Hearing Examiner’s proposed remedies regarding DOC and its management representative were unreasonable and inconsistent with precedent.⁴⁰

Conversely, Board precedent supports the Hearing Examiner’s dismissal of Lodge #1, as well as dismissal of all individually named Respondents. The District of Columbia Court of Appeals has held that the Board’s authority to enforce standards of conduct violations under the

³⁴ Report at 36.

³⁵ *Bernard Bryan*, Slip Op. No. 1750 at 5 (citing Board Rule 544.11 (2020)).

³⁶ *Id.* (citing *WTU, Local #6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. No. 1668 at 5, PERB Case No. 15-U-28 (2018)).

³⁷ *Id.*

³⁸ *Anitha L. Davis v. AFSCME Local 2921, AFSCME Council 20 and AFSCME Int’l*, 64 D.C. Reg. 9307, Slip Op. No. 1633 at 4, PERB Case No. 15-S-01 (2017).

³⁹ Report at 36.

⁴⁰ After the Hearing Examiner submitted his report on May 25, 2023, several individuals named in the Complaint filed exceptions. Further, a management representative to whom the Hearing Examiner attributed potential unfair labor practice violations, filed a request for intervention and motion to strike allegations and DOC filed a motion for intervention and exceptions to the Report. The Complainants then filed a response and opposition to DOC’s Exceptions. Finally, two individually named Respondents, via newly retained counsel, requested a show cause hearing. However, the Board has dismissed, *supra*, all individually named Respondents and rejects, *infra*, any findings against DOC or its management representative, non-parties to the Complaint. Therefore, motions requesting to intervene or requesting a show cause hearing filed subsequent to the Report are moot.

CMPA is limited to District agency employees' exclusive bargaining representatives.⁴¹ Therefore, the Board dismisses all individually named Respondents; as the Labor Committee itself is a Respondent, individually named officials are extraneous as additional Respondents.

Moreover, standards of conduct violations do not accrue against union officers in their individual capacities, but rather in their official capacities.⁴² Further, when violations accrue against union officers in their official capacities in cases against a labor organization, the complaint need only name the labor organization itself as a respondent.⁴³

B. Standards of Conduct Violations

Under D.C. Official Code § 1-617.03(a)(5), labor organizations are required to maintain fiscal integrity while conducting the affairs of the organization.⁴⁴ The Board has held that a mere breach of a union's internal by-laws or constitution does not establish a standards of conduct violation.⁴⁵ The Complainants must establish that the labor organization's actions or conduct had the proscribed effect set forth in the asserted standard.⁴⁶ Under Board Rule 550.1, the party with the burden of proof must carry that burden by a preponderance of the evidence.⁴⁷ Board Rule 550.18 allows the hearing examiner to recommend a ruling against a defaulting party. The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner."⁴⁸ The Board will review a Hearing Examiner's report and recommendations even if no exceptions are filed to determine whether the analysis and conclusions are reasonable, supported by the record, and consistent with precedent.⁴⁹

The Hearing Examiner determined that the Respondent's expenditures of union funds violated FOP by-laws, Board rules and the CMPA to "an extraordinary level."⁵⁰ The Hearing Examiner relied primarily on the testimony of the Complainants' witnesses and the Audit Report to find violations by the Executive Committee involving both improper and/or fraudulent reimbursements to individual union officials and un-itemized, allegedly duplicative spending of union funds on legal fees and services.⁵¹

The Hearing Examiner's findings that the Respondent grossly misappropriated union funds through improper and/or fraudulent financial reimbursements, thereby causing significant injury to all bargaining unit members, are reasonable, supported by the record, and consistent with Board

⁴¹ *AFGE National Office v. D.C. PERB*, 237 A.3d 81 at 87 (D.C. 2020) (holding that the AFGE National union is not a labor organization under D.C. Official Code § 1-617.03).

⁴² *Clarence E. Mack, et al. and Ellowese Barganier, et al. v. FOP/DOC Labor Comm.*, 46 D.C. Reg. 110, Slip Op. No. 507 at 3, PERB Case Nos. 95-S-03 and 95-S-02 (1999).

⁴³ *Id.*

⁴⁴ See D.C. Official Code § 1-617.03(a)(5).

⁴⁵ See, e.g., *Bernard Bryan*, Slip Op. No. 1750 at 6.

⁴⁶ *Id.*

⁴⁷ *WTU, Local #6*, Slip Op. No. 1668 at 7 (citing Board Rule 520.11 (2018)).

⁴⁸ *Id.*

⁴⁹ *AFGE, Local 631 and WASA*, Slip Op. No. 1648 at 5.

⁵⁰ Report at 26.

⁵¹ See, generally, Report.

precedent.⁵² The Hearing Examiner based his findings on the evidentiary record and undisputed testimony presented at the hearing. The Hearing Examiner acknowledged and addressed the limited responses provided in the Answer, including finding in favor of the Respondent on issues adequately addressed by the Respondent.⁵³ The Hearing Examiner conducted a thorough and measured analysis of the evidence provided to him on this issue. The evidentiary record shows extensive, ongoing financial misappropriation in violation of previous Board orders and FOP by-laws, well beyond the threshold needed to establish violations of the standards of conduct for labor organizations.

Conversely, the Hearing Examiner's findings regarding the expenditure of over \$81,000 on legal expenses are unreasonable and unsupported by the record.⁵⁴ While the Respondent's Answer did not respond to the assertions regarding duplicative legal expenses, these facts alone do not on their face constitute a standards of conduct violation. The Board has long held that a mere breach of a union's internal by-laws or constitution does not establish a cause of action under PERB's standards of conduct jurisdiction.⁵⁵ Although the FOP by-laws require the Executive Board to authorize and enter minutes for all contracts or obligations involving payment,⁵⁶ the Respondent's failure to produce such minutes does not prove by a preponderance of the evidence that the Executive Board violated its by-laws in hiring the two law firms.⁵⁷ Hiring multiple law firms does not inherently suggest impropriety or misappropriation by the Executive Board. Further, the legal expenses at issue were in fact included in the Audit Report, and witness testimony provided explanations for the expenses, including the appeal of an arbitration award.⁵⁸ Unlike the egregious fraudulent reimbursements proven by the Complainants' evidence, the Executive Board's hiring of these law firms, as well as the failure to produce minutes showing a resolution to do so, do not prove by a preponderance of the evidence a violation of FOP by-laws that had the effects proscribed by the CMPA.

⁵² See *Bernard Bryan*, Slip Op. No. 1750 at 6-7.

⁵³ Report at 33-34.

⁵⁴ Report at 34-35. See *AFGE, Local 1403 v. D.C. Dep't of Health*, 66 D.C. Reg. 8011, Slip Op. No. 1709 at 5-6, PERB Case No. 18-U-02 (2019) (holding that the hearing examiner's finding that the agency's performance review calibration process was a negotiable subject that made material, substantive changes to the parties' collective bargaining agreement was unsupported by the record and inconsistent with Board precedent). See also, *U.S. Dep't of the Air Force Randolph Air Force Base San Antonio, Texas and AFGE, Local 1840*, 65 FLRA 61, 61 (2010) (holding that the Federal Labor Relations Authority reviews judges' factual findings and credibility determinations using a preponderance of the evidence standard).

⁵⁵ *One Hundred and Nineteen Members of FOP/MPD Labor Comm. v. FOP/MPD Labor Comm.*, 70 D.C. Reg. 144, Slip Op. No. 1827 at 9, PERB Case No. 22-S-01 (2022).

⁵⁶ See *By-Laws of Fraternal Order of Police – Department of Corrections Labor Committee*, Article X. Budgets, Contracts, Funds, 10.2, which states, in relevant part, “[n]o agreements, contract, or obligation involving the payment of money, or the credit or liability of the Labor Committee shall be made unless the same is authorized or directed by resolution of the Executive Board and [duly] entered in the Minutes thereof.”

⁵⁷ *Id.*

⁵⁸ Transcript 72:21-73:8, 46:12-50:9, 50:10-51:11.

IV. Conclusion

At this time, the Board rejects the Hearing Examiner's recommendation to petition the District of Columbia Superior Court for the appointment of a Special Master to manage the financial affairs of the Fraternal Order of Police/Department of Corrections Labor Committee.

The Board finds that the Hearing Examiner's determinations regarding the Respondent's financial misappropriation of \$22,769.62 of union funds through improper and/or fraudulent reimbursements to individual members of the Executive Committee are reasonable, supported by the record and consistent with Board precedent. Therefore, the Board concludes that the Fraternal Order of Police/Department of Corrections Labor Committee violated D.C. Official Code § 1-617.03(a)(5).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainants' Motion for Preliminary Relief is hereby denied;
2. The Fraternal Order of Police/Department of Corrections Labor Committee shall cease and desist from violating its by-laws, constitution, and the CMPA by failing to conduct required financial audits, failing to issue appropriate reimbursements with proper receipts, failing to have signatories on bank accounts be bonded and insured, or failing to prepare and ratify an annual budget;
3. The Fraternal Order of Police/Department of Corrections Labor Committee shall cease and desist from failing to adopt, subscribe, or comply with the standards of conduct for labor organizations prescribed under the Comprehensive Merit Personnel Act and Board rules in any manner;
4. The Fraternal Order of Police/Department of Corrections Labor Committee shall conspicuously post, within fourteen (14) calendar days of the service of this decision and order, the attached Notice detailing its violations of the CMPA at all places where notices to bargaining unit employees are customarily posted. The Notice shall be posted for thirty (30) consecutive days;
5. The Fraternal Order of Police/Department of Corrections Labor Committee shall provide the attached Notice by email, within fourteen (14) calendar days of the service of this decision and order, to all bargaining unit members for which it has an email address;

6. The Fraternal Order of Police/Department of Corrections Labor Committee shall, within twenty-one (21) calendar days of the service of this decision and order, notify the Board in writing that the Notice has been posted and emailed as ordered;
7. A hearing will be held approximately thirty (30) days from the date of service of this decision and order to determine whether the Fraternal Order of Police/Department of Corrections Labor Committee has complied with the fiscal integrity standards of conduct for labor organizations. If the Board determines such compliance is insufficient, the Board may initiate a process of revoking the Fraternal Order of Police/Department of Corrections Labor Committee's status as an exclusive representative or take any other actions the Board deems appropriate, pursuant to D.C. Official Code § 1-605.02; and
8. 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 Mary Anne Gibbons.

October 19, 2023

Washington, D.C.



NOTICE

TO ALL EMPLOYEES REPRESENTED BY THE FRATERNAL ORDER OF POLICE/DEPARTMENT OF CORRECTIONS LABOR COMMITTEE: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO THE DECISION AND ORDER IN SLIP OPINION NO. 1850, PERB CASE NO. 22-S-05.

WE HEREBY NOTIFY the bargaining unit that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from violating our by-laws, constitution, and the CMPA by failing to conduct required financial audits, failing to issue appropriate reimbursements with proper receipts, failing to have signatories on bank accounts be bonded and insured, or failing to prepare and ratify an annual budget.

WE WILL NOT, in any like or related manner, fail to maintain the fiscal integrity of the labor organization.

WE WILL adopt, subscribe, or comply with the Standards of Conduct for labor organizations prescribed under the CMPA.

Fraternal Order of Police/Department of Corrections Labor Committee

Date: _____ By: _____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If bargaining unit members have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the D.C. Public Employee Relations Board by email at perb@dc.gov, by mail at 1100 4th Street, SW, Suite E630: Washington, D.C. 20024, or by phone at (202) 727-1822.

APPEAL RIGHTS

A final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.