

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 formal 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**

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In the Matter of:	)	
	)	
	)	
	)	
	)	
Teretha Spain, Carlton Butler, Ernest Durant and Deon Jones	)	
	)	
and	)	PERB Case Nos. 98-S-01 and 98-S-03
	)	
Ellowese Barganier,	)	Opinion No. 596
	)	
Complainants,	)	
	)	
v.	)	<i>Motion for Reconsideration</i>
	)	
Fraternal Order of Police/ Department of Corrections Labor Committee, et al.,	)	
	)	
	)	
Respondents.	)	
	)	

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**DECISION AND ORDER**

The issues presented by these cases are set forth in Opinion No. 581. In that Opinion the Board issued a Decision and Order dismissing the Complaints in PERB Case Nos. 98-S-01 and 98-S-03.<sup>1/</sup> The Board also directed Complainants pay Respondent its reasonable costs incurred in this proceeding within ten (10) days after the Board determined the amount of those reasonable costs.

The Board's Decision and Order was issued on February 9, 1999. On February 19, 1999, Mr. Carlton Butler, on behalf of the

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<sup>1/</sup> The Hearing Examiner found that Respondent FOP's conduct in suspending Complainants Teretha Spain and Carlton Butler from office; expelling Ms. Spain from office for non-payment of dues; failing to furnish Ms. Spain and Mr. Butler with keys, office space and other union resources; failing to conduct a recall referendum; and removing Complainant Barganier from office as chief shop steward, did not violate the standards of conduct for labor organizations as codified under D.C. Code Sec. 1-618.3(a)(1). The Board Adopted these findings.

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Complainants in PERB Case No. 99-S-01 (hereinafter Complainants) filed this "Reconsideration Motion" of the Board's Decision and Order pursuant to Board Rule 559.2. Respondent's "Opposition to Reconsideration Motion" was filed on February 24, 1999.

On February 22, 1999, Complainants filed a document styled "Application of Issuance of a Subpoena", requesting that the Executive Director issue a subpoena duces tecum for comprehensive financial documents and records and other evidence to establish FOP's costs in these proceedings. Pursuant to the Board's Order, on February 24, 1999, FOP submitted a Statement of Costs, with copies of invoices and a list of its in defending against Complainants' charges. "Complainants' Exception Motion to Respondents' Statement of Costs and Request for Production of Documents and Complainants' Motion Request for Extension of Time" responded to FOP's submission. This filing questioned the adequacy of FOP's documentation of its costs and requested additional time to respond to additional documentation.

On March 3, 1999, FOP filed an "Opposition to Motion for Extension of Time and to Discovery Application." FOP's opposition is essentially a motion to quash the Complainants' request for additional financial documents as overly broad. FOP further avers that the documents its has submitted are adequate. On March 5, 1999, the Complainants filed a documents entitled "Complainants' Amended Exception to Respondent Statement of Cost."<sup>2/</sup> FOP filed a Response to this submission on March 15, 1999. A final submission was made by the Complainants on March 18, 1999, responding to FOP's Response.

The Complainants request that we reconsider our Order directing the Complainants to pay FOP's costs in this proceeding. In Opinion No. 585, we found the Complainants' Exceptions to the Hearing Examiner's Report and Recommendation were untimely and granted FOP's Motion to strike them. The Complainants cannot challenge by Motion for Reconsideration what it could not by

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<sup>2/</sup> However, the document contains scarcely any additional arguments or contentions concerning FOP's Statement of Costs. Rather, the "Amended Exception" is a rambling narrative that goes far afield of issues of costs (over 20 pages) and reiterates the history of the dispute involving these parties that have been addressed by Board Decisions in the instant and past cases.

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Exceptions.<sup>3/</sup>

In view of the above, the Complainants' Motion contains no properly raised grounds for reconsideration. Therefore, the Complainants' Motion for Reconsideration of our Decision and Order in Opinion No. 581 is denied.

Turning to FOP's Statement of Costs, we find the expense items for which FOP seeks reimbursement are the kind of costs that are ordinarily incurred in proceedings before the Board. However, with the exception of invoices that document transcript costs, FOP's prepared list lacks documentation. On the other hand, Complainants' requests for additional documentation of FOP's costs is clearly overly broad and unreasonable.

FOP is directed to provide an affidavit explaining how it calculated its costs or other documentary evidence verifying these other costs. We further note that FOP's single biggest expense is its copying costs. FOP seeks reimbursement at a rate of .20¢ a page. It is our practice to reimburse copying at .10¢ a page in the absence of proof that higher cost were actually incurred.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Motion for Reconsideration is denied.
2. The Respondent shall submit to the PERB and the

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<sup>3/</sup> The Complainants challenge the Hearing Examiner's findings of fact we referenced in our Decision to support our Order according costs. Complainants assert that the findings are based on false and/or unreliable evidence. We concluded in Opinion No. 581 that his findings of fact was supported by the evidence in the record. The veracity and probative value of the record evidence is for the Hearing Examiner to determine.

We note that in the Complainants' stricken Exceptions—which were actually submitted in response to (not simultaneously with) FOP's Exceptions—the Complainants did not take issue with the evidence it now challenges or FOP's request for costs. The Complainants also assert new allegations with respect to certain acts and conduct by FOP that are outside the purview of the instant Complainants and this proceeding.

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Complainants, within fourteen (14) days from the date of this Order, an affidavit and/or other documentary evidence verifying the costs items set forth in its Statement of Costs.

3. The Complainants Carlton Butler, Teretha Spain and Ellowese Barganier shall pay the Respondent, the costs so verified in paragraph 2, within thirty (30) days from service of the verification upon it, unless the parties mutually agree to provide otherwise.

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

June 18, 1999

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Cases Nos. 98-S-01 and 98-S-03 was mailed (U.S. Mail) to the following parties on this the 18<sup>th</sup> day of June, 1999.

Carlton Butler  
Vice Chairperson  
FOP/DOC Labor Committee  
715 8th Street, S.E.  
Washington, D.C. 20003  
U.S. MAIL

Teretha Spain  
Recording Secretary  
FOP/DOC Labor Committee  
715 8th Street, S.E.  
Washington, D.C. 20003  
U.S. MAIL

Ernest Durant  
7249 Bragg Lane  
Manassas, VA 20110  
U.S. Mail

Deon Jones  
1610 Whist Place  
Capitol Heights, MD 30743  
U.S. Mail

Ellowese Barganier  
2919 S. Dakota Avenue, N.E.  
Washington, D.C. 20018  
U.S. Mail

Arthur L. Fox, II, Esq.  
Lobel, Novins & Lamont  
1275 K Street, N.W., Suite 770  
Washington, D.C. 20005  
U.S. MAIL

Courtesy Copies:

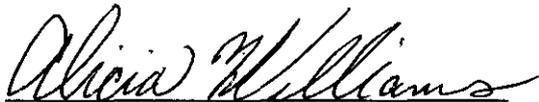
Dalton Howard, Esq.  
Brooks and Howard  
6701 16<sup>th</sup> Street, N.W.  
Washington, D.C. 20012  
U.S. Mail

Clarence Mack  
Chairperson  
FOP/DOC Labor Committee  
715 8th Street, S.E.  
Washington, D.C. 20003  
U.S. MAIL

**Certificate of Service**  
**PERB Cases Nos. 98-S-01**  
**and 98-S-03**  
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James Conway  
Hearing Examiner  
10906 Thimbleberry Lane  
Great Falls VA 22066

U.S. MAIL



Alicia Williams  
Intern

In view of the above, the Complainants application for subpoenas should be denied. There is some question concerning the appropriateness of subpoena requests at this phase of these proceedings. If the Board found additional documentation necessary to any further disposition of an existing Order, the Board could so direct in an order upon a parties' request to the Board. The Complainants' Exception Motion to Respondent's Statement of Costs (such that it is) and Request for Production of Documents and Extension of Time should be granted to the very limited and circumscribed extent directed by the Board in its Decision and Order on these Motions. The Board may want to provide some guidance as to what it would find sufficient documentation of the costs outlined in FOP's Statement of costs.