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

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)	
In the Matter of:)	
)	
Candi Peterson,)	PERB Case No. 16-S-04
)	
Complainant,)	Opinion No. 1584
)	
v.)	
)	Motion for Preliminary Relief
Washington Teachers' Union, Local 6,)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

On May 11, 2016, Complainant Candi Peterson filed a standards of conduct complaint alleging that Respondent Washington Teachers' Union, Local 6 ("WTU Local 6") violated D.C. Official Code §§ 1-617.03(b)(1) and (4) when its President, Elizabeth Davis, willfully failed to ensure that periodic elections were timely held as required by the WTU Local 6's Bylaws.¹ On May 13, 2016, Peterson filed a Motion for Preliminary Relief alleging that Davis "does not intend to ensure the timely schedule of WTU Officer Elections for May 2016 in accordance with the WTU Bylaws." Accordingly, Peterson asks PERB to "appoint a monitor, who shall oversee and supervise the WTU Elections Committee in performing its duties of ensuring that the WTU membership list is accurate and consists of eligible voters, only, and to conducting a fair and timely election of WTU officers."² For the reasons stated more fully below, Peterson's Motion is denied.

I. Discussion

Motions for preliminary relief in standards of conduct cases are governed by PERB Rule 544.15, which in pertinent part provides:

¹ Complaint at 1-2.

² Motion for Preliminary Relief at 2.

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 may be inadequate.

The Board has held that preliminary relief is not appropriate in cases where the material facts are in dispute.³ The Board's authority to grant preliminary relief is discretionary.⁴ In determining whether to exercise its discretion under Board Rule 544.15, the Board applies the standard stated in *Automobile Workers v. Nat'l Labor Relations Bd.*, 449 F.2d 1046 (D.C. 1971).⁵ In that case, the D.C. Court of Appeals held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [the applicable statute] has been violated, and that the remedial purposes of the law will be served by *pendente lite* relief."⁶ The Court further stated that "[i]n those instances where [the Board] 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 [the Board's Rules]."⁷

Here, Peterson argues that, due to an "apparent squabble" between WTU's President and the WTU Election Committee chairperson over who in the bargaining unit is eligible to vote, WTU's elections are "not on schedule."⁸ Peterson urges PERB to grant her motion for preliminary relief and "appoint a monitor to oversee the May 2016 WTU Officer Elections and supervise the WTU Elections Committee's correction of the membership list to eliminate ineligible voters and ensure that the officer elections are held timely...."⁹ Peterson contends that preliminary relief is justified because: "the public interest favors the conducting of a timely election"; the failure to hold a timely election widely affects 4,000 WTU members; an untimely election interferes with the Board's processes under D.C. Official Code §§ 1-617.03(b)(1) and (4); and any remedy that PERB may grant in the future would be inadequate because the bargaining unit's members will soon leave on summer break.¹⁰

³ *D.C. Nurses Ass'n v. D.C. Health and Hosp. Pub. Benefit Corp.*, 45 D.C. Reg. 5067, Slip Op. No. 550, PERB Case Nos. 98-U-06 and 98-U-11 (1998) (holding that preliminary relief is not appropriate where material facts are in question).

⁴ *Am. Fed'n of State, Cnty. and Mun. Emp., Dist. Council 20, Locals 2091, 2401, 2776, 1808, 877, 709, 2092, 2087, and 1200, et. al. v. D.C. Gov't*, 59 D.C. Reg. 10782, Slip Op. No. 1292, PERB Case No. 10-U-53 (2012); see also *Am. Fed'n of State, Cnty. and Mun. Emp., Dist. Council 20, Local 2091, AFL-CIO v. D.C. Pub. Sch., et al.*, 42 D.C. Reg. 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992).

⁵ *AFSCME, et al. v. D.C. Gov't*, Slip Op. No. 1292, PERB Case No. 10-U-53.

⁶ *Automobile Workers v. Nat'l Labor Review Bd.*, 449 F.2d 1046

⁷ *Id.* (citing *Clarence Mack, Shirley Simmons, Hazel Lee and Joseph Ott v. Fraternal Order of Police/Department of Corrections Labor Committee, et al*, 45 D.C. Reg. 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997)).

⁸ Motion for Preliminary Relief at 8.

⁹ *Id.* at 9.

¹⁰ *Id.* at 8-9.

In its opposition to Peterson's motion for preliminary relief, WTU asserts that while the election process "has not gone as smoothly as would be ideal," it has "nevertheless completed many of the steps needed to conduct elections, and is working towards the final completion of elections."¹¹ WTU further asserts that all disagreements over who in the bargaining unit is eligible to vote have been resolved, and that WTU is actively working with its parent organization and the organization, TrueBallot, to ensure that ballots are sent to the eligible members soon.¹² Additionally, WTU disputes the factual conclusions that Peterson draws from the evidence she submitted from her motion.¹³

WTU's denials and assertions present material questions of fact that render preliminary relief in this matter inappropriate.¹⁴ Additionally, there is not enough evidence in the record to establish reasonable cause that WTU's alleged delay in conducting the election is a "clear-cut and flagrant" violation of D.C. Official Code §§ 1-617.03(b)(1) and (4). Accordingly, the Board finds that the remedial purposes of the law in this matter would not be served by *pendente lite* relief.¹⁵ Finally, even if, *arguendo*, the Board could grant the relief that Peterson requests, there is no evidence that doing so would ensure that the election process would move along any faster than it already is. Thus, it cannot be reasonably concluded that the Board's ultimate remedy in this matter would be inadequate.¹⁶

Based on the foregoing, Peterson's Motion for Preliminary Relief is denied.

¹¹ Answer and Opposition to Motion for Preliminary Relief at 9.

¹² *Id.* at 6-7.

¹³ *Id.* at 9.

¹⁴ *DCNA v. D.C. Health and Hosp. Pub. Benefit Corp.*, 45 D.C. Reg. 5067, Slip Op. No. 550, PERB Case Nos. 98-U-06 and 98-U-11.

¹⁵ PERB Rule 544.15; *AFSCME, et al. v. D.C. Gov't*, Slip Op. No. 1292, PERB Case No. 10-U-53.

¹⁶ PERB Rule 544.15.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant's Motion for Preliminary Relief is denied; and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, Barbara Somson, and Douglas Warshof.

June 14, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-S-04, Op. No. 1584 was sent by File and ServeXpress to the following parties on this the 30th day of June, 2016.

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