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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
)	
)	
Ronald Robertson,)	
)	
Complainant,)	PERB Case No. 00-U-37
)	
v.)	Opinion No. 637
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee,)	
)	CORRECTED COPY
Respondent.)	
)	
)	
)	
)	

DECISION AND ORDER ON REQUEST FOR PRELIMINARY RELIEF

On August 24, 2000, Ronald Robertson (Complainant) filed an Unfair Labor Practice Complaint and Motion for Preliminary Relief, in the above-referenced case. The Complaint alleges that the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP or union) has violated D.C. Code Sec. 1-618.4(b)(1) by "not permitting [the Complainant] (a dues paying union member) to run for election." (Comp. at par. 10). The Complainant is asking the Board to grant his request for preliminary relief ordering FOP to postpone the August 30, 2000 election.^{1/} (Mot. at par. 9).

FOP opposes the Complainant's Motion for Preliminary Relief, arguing that the allegations contained in the Complaint do not satisfy the criteria for granting preliminary relief.

The Complainant is a police officer employed by the Metropolitan Police Department (MPD). He claims that the events in question, relate to an incident which took place in 1998. Specifically,

^{1/} The Complainant's motion was filed on August 24th. As a result, FOP's response was not due until August 31th. (See Board Rule 553.2). Therefore, the Board could not consider the motion prior to the August 30th election.

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on February 25, 1998, a local television station aired an investigative report that contained video footage of a bachelor party attended by MPD officers. The officers were seen interacting with strippers at the bachelor party. At the time of this report, the Complainant was Chairman of the FOP.^{2/}

FOP alleges that comments made by the Complainant during the interview, were used by the MPD against officers who were disciplined. Also, FOP asserts that one of the officers who was disciplined, filed an internal union complaint against the Complainant. Subsequently, FOP held a hearing on April 5, 1999.^{3/} The hearing panel found Complainant's statement detrimental to the purpose of the union. As a result, FOP contends that the Complainant was expelled from the union.^{4/} (Opp. at p. 7). The Complaint alleges that on July 14, 2000, the Complainant "was nominated for the position of Chairman of the Union." (Mot. at par. 1). However, on July 18, 2000, he was informed by the union "that he would not be placed on the ballot for Chairman because he was not a dues paying member in good standing and has not been since April 1999." (Mot. at par. 2).

FOP admits that it denied the Complainant's request to be nominated and placed on the ballot for the office of FOP Chairman. However, FOP contends that it has not engaged in any conduct which violates the Comprehensive Merit Personnel Act (CMPA). In addition, FOP asserts that the Complaint should be dismissed for failure to state a cause of action. (Ans. at p. 1). Also, FOP alleges that the allegations are not timely. In light of the above, FOP argues that the Complainant's Motion should be denied.

The Complainant admits that charges were brought against him. In addition, he concedes that the election committee informed him that he could not run for union office because of the April 1999 expulsion. (Comp. at par. 7). However, he argues that FOP never advised MPD that he had been expelled by the union. As a result, the Complainant claims that he continued to pay full union dues.^{5/} Therefore, he "assumed that he was still a member of the union, eligible to run for office" Id. Furthermore, the Complainant claims that he informed "the Union that full union dues were still

^{2/} The Complainant was one of several individuals who were interviewed concerning this incident.

^{3/} FOP contends that the Complainant was granted several continuances. However, the Complainant's last request for a continuance was denied and the hearing took place on April 5th. As a result, the Complainant did not participate in the hearing.

^{4/} FOP claims that the Complainant failed to appeal his expulsion. (Opp. at p. 11).

^{5/} The Complainant claims that union members pay bi-weekly dues in the amount of \$13.43. However, non-members pay bi-weekly service fees in the amount of \$11.90. The Complainant asserts that he has continued to pay the member fee and not the non-member fee.

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being deducted from his salary and that he was therefore eligible to compete in the election.” Id.

The Motion for Preliminary Relief is before the Board for disposition. For the reasons discussed below, we find that the Complainant’s request for preliminary relief does not meet the threshold criteria that the Board has adopted for granting preliminary relief.

The criteria the Board employs for granting preliminary relief is prescribed under Rule 520.15. Board Rule 520.15 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 unfair labor practice 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 clearly inadequate.

The Board has held that its authority under Board Rule 520.15 is discretionary. 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 this rule, the Board has adopted the standard stated in Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1071). There, the Court of Appeals – addressing the standard for granting relief before judgement 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 executing its discretion has been met, the bases for such relief were restricted to the existence of the prescribed circumstances in the provisions of Board Rule 520.15 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).

Upon reviewing the pleadings in a light most favorable to the Complainant and taking all of the allegations as true, we find that the Complainant has failed to state a cause of action against the FOP. In this case, it does not appear that FOP failed to provide the Complainant with fair and equal treatment under the governing rules of the FOP. Specifically, the parties acknowledge that the union brought charges against the Complainant and that the Complainant was afforded an opportunity to challenge those charges. As a result, the Complainant was provided with due process. Therefore, the Complainant has failed to state a statutory cause of action under the Comprehensive Merit Personnel Act. We are concerned; however, that the Complainant has been paying dues. Therefore, we will retain jurisdiction for sixty days. During this sixty day period, we direct the FOP to notify the Metropolitan Police Department that the: (1) Complainant is no longer a member of the FOP; and (2) Complainant’s bi-weekly deductions should be adjusted to reflect this change. In addition, we direct the FOP to refund the Complainant the difference between the union dues he actually paid and the non-union service fees which should have been deducted. This refund should cover the period

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from April 1999 (the date the Complainant was expelled) until the date that MPD makes the adjustment to the Complainant's status. Once we receive evidence that the Complainant has received the refund, we will dismiss the Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's Motion for Preliminary Relief is denied.
2. This matter will be held in abeyance for sixty days.
3. The Fraternal Order of Police Metropolitan Police Department/Labor Committee (FOP) shall notify the Metropolitan Police Department (MPD) that the: (1) Complainant is no longer a member of the FOP; and (2) Complainant's bi-weekly deductions should be adjusted to reflect this change.
4. FOP shall refund the Complainant the difference between the union dues paid by the Complainant and the non-union service fee he should have paid. This refund shall cover the period from April 1999 (the date the Complainant was expelled) until the date that MPD makes the adjustment to the Complainant's status.
5. FOP shall provide evidence to the Public Employee Relations Board, that the Complainant's status has been changed and that he has received a refund from the FOP.

By Order of the Public Employee Relations Board
Washington, D.C.

November 9, 2000

CERTIFICATE OF SERVICE

This is to certify that the attached corrected copy of the Decision and Order in PERB Case No. 00-U-37 was transmitted via Fax and /or U.S. Mail to the following parties on this 16th day of November 2000.

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