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

In the Matter of:)	
)	
William H. Dupree,)	
)	
Complainant,)	PERB Case Nos. 98-S-08
)	and 98-U-23
)	Opinion No. 568
v.)	
)	
Fraternal Order of Police/ Department of Corrections Labor Committee,)	(Request for Preliminary Relief)
)	
Respondent.)	
)	

DECISION AND ORDER

On June 18, 1998, Complainant William H. Dupree filed two documents styled "Unfair Labor Practice Standards of Conduct Complaint" and "Memorandum of Law in Support of Complainant's Request for Preliminary Relief", in the above captioned case. The Complainant claims that FOP Chairperson Clarence Mack has violated the Comprehensive Merit Personnel Act's (CMPA) standards of conduct for labor organizations as codified under D.C. Code Sec. 1-618.3(a) (1), (4) and (5).

Specifically, the Complainant alleges that Chairperson Mack violated FOP by-laws and election rules for the election of executive board positions by: (1) denying the Complainant and his slate of candidates their right to seek elected office by concealing notices of regular membership and nomination meetings; (2) directing a mail ballot election over the will of a majority of FOP members to have an on-site election; (3) disbursing union funds to finance the mail ballot election without due authorization; (4) holding the dual role of chairperson and candidate when implementing terms of election procedures that favored his candidacy; (5) failing to disseminate the election rules in accordance with FOP by-laws; and (6) denying the Complainant and his slate of candidates their right to seek office in retaliation for the Complainant's successful unfair labor practice complaint filed against the Respondent in PERB Case No. 96-U-05. The Complainant asserts that by these acts and conduct, FOP has also breached its duty of fair

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representation and thereby has committed unfair labor practices in violation of the CMPA, as codified under D.C. Code Sec. 1-618.4(b)(1).

On June 26, 1998, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) filed an Answer to the Complaint and an Opposition to Complainant's request for preliminary relief.

The Complainant seeks by way of preliminary relief a status quo ante remedy that restores conditions that existed prior to the May 1998 election pending the final resolution of the Complaint allegations by setting aside the election. (Mem. at 6.). FOP requests that we deny preliminary relief based on the following: (1) the manner in which an internal union election was held did not contravene the CMPA and hence neither law or public interest would be advanced by granting preliminary relief; (2) the preliminary relief request would alter not preserve the status quo; (3) the Complainant failed to support his request for preliminary relief with affidavits as required under Board Rules; and (4) FOP disputes, by affidavits, facts material to establishing the alleged violations. Based on the above, FOP states that the Complainant has failed to demonstrate a violation of the CMPA or meet any of the criteria under Board Rule 544.8 for granting such relief.

As a threshold matter, the sufficiency of the Unfair Labor Practice Complaint (PERB Case No. 98-U-23) merit our consideration. We have held that "a breach by an exclusive representative of the duty to fairly represent its employees ... does not concomitantly constitute a breach of the standards of conduct, and vice versa." Charles Bagenstose v. Washington Teachers Union, Local 6, 43 DCR 1397, Slip Op. No. 355, PERB Case No. 90-S-01 and 90-U-02 (1993). The CMPA's standards of conduct for labor organizations address standards that apply to the internal operation of the union and union members participation in such affairs. An unfair labor practice alleging a breach of a union's duty of fair representation, concerns infringements by the union of employees statutory collective bargaining rights under the CMPA.

The rights to be fairly represented, however, arise from the unions role as the employee's collective bargaining representative. See, D.C. Code Sec. 1-618.6. The alleged acts and conduct of FOP do not implicate obligations with respect to FOP's duty to fairly represent employees in a collective bargaining context. Rather they go to the rights of FOP members' rights to participate in the affairs of FOP consistent with the

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CMPA's prescribed standards of conduct for labor organizations. Therefore, by the acts and conduct alleged, we find that the Complaint has failed to state a cause of action that FOP has committed unfair labor practice by the asserted standards of conduct violations.

The Complaint, however, contains one asserted unfair labor practice claim that merits further discussion. The Complainant alleges that FOP's failure to adhere to certain FOP bylaws and election rules to deny him and his slate of candidates their right to seek office was in retaliation for his prior successful unfair labor practice complaint (PERB Case No. 96-U-05) against FOP. In PERB Case 96-U-05, we found that FOP violated its duty to fairly represent the Complainant by its decision not to arbitrate his grievance. Complainant's claim that he was the target of retaliation by FOP because he pursued his statutory right to grieve implicates conduct prohibited under D.C. Code § 1-618.4(b)(1).

However, to state a cause of action, a complaint must contain allegation(s) that if proven would establish a nexus between the right or protected activity and the asserted reprisal or retaliation. Ulysses Goodine v. FOP/DOC Labor Committee, 43 DCR 5163, Slip Op. No. 476, PERB Case No. 96-U-16 (1996). The Complainant alleges no act or conduct that connects FOP's alleged violations of its election bylaws in early 1998 (which affected several FOP members) and the Complainant's successful unfair labor practice complaint in PERB Case No. 96-U-05 decided in March 1997. Absent such allegations, the asserted violation rests merely upon the conclusory belief of the Complainant. In view of the above, the Complainant has failed to state a cause with respect to the asserted unfair labor practice violations.

We now turn to Complainant's Request for preliminary relief. For the reasons discussed below, we find that the Complainant's request for preliminary relief fails to meet the threshold criteria we adopted for granting such relief, i.e., "that the Complaint establish that there is reasonable cause to believe that the [CMPA] has been violated, and that remedial purposes of the law will be served by pendente lite relief." " AFSCME D.C. Council 20, et al. v. D.C. Gov't. et al., Slip Op. No. 330 at 4, PERB Case No. 92-U-24, citing Automobile Workers v. NLRB, 449 F.2d 1046 at 1051 (CA DC 1971). Moreover, notwithstanding the existence of this criteria, the Board's authority to grant preliminary relief is discretionary. Board Rule 544.8. We do not find the circumstances presented warrant such relief.

Contrary to FOP's assertions, the Complainant's preliminary

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relief request was accompanied by "affidavits or other evidence" as is required under Board Rule 544.8.^{1/} However, the affidavits --identical in form and content-- address only a limited part of the Complaint allegations. In sum, the FOP members state that they were: (1) not aware of the March 31, 1998 "Regular Membership/Nomination Meeting" until the day before; (2) as a consequence of this lack of notice, "prevented ... from attending and participating in the nomination process"; and (3) "denied [] the same benefits and privileges afforded to other members." (Affid. 1-23.)

The affiants do not indicate what benefits or privileges they were denied or how their absence from the meeting effected the Complainant's candidacy, specifically, or the resulting nominations in general.^{2/} The affidavits and other attached documents do not address or provide support for any of the other acts or conduct alleged as violations. Moreover, FOP disputes material elements of the alleged standards of conduct violations with affidavits of its own. Based on these pleadings, the uncontroverted evidence does not provide a reasonable basis to believe that a violation has occurred. Therefore, we find the Complainant has not met the standard for according preliminary relief.

Notwithstanding the evidence presented, we find preliminary

^{1/} Several affidavits by FOP members were attached to the Complainant's Memorandum of Law in Support of Complainant's Request for Preliminary Relief.

^{2/} In a related case we found with respect to the alleged failure to conduct an internal on-site union election that FOP bylaws afforded the election committee with the authority to "conduct[] all regular and special elections, including...certifying eligible candidates... ." Ernest Durant, et al. v. FOP/DOC Labor Committee, Slip Op. 562, PERB Case No. 98-S-06 (1998). Evidence submitted in that case supported that determinations concerning the instant election method, i.e., mail ballot, and procedures for certifying candidates that occurred at the disputed March 31, 1998 meeting were made in accordance with FOP bylaws. We concluded therefore that the Complainants in that case (FOP members) "fail[ed] to allege how the mail ballot election was not fair or failed to conform with 'democratic provisions for periodic elections' or 'the right of individual members to participate in the affairs of the organization' as these matters are 'prescribed under the governing rules of [FOP]'." See, D.C. Code Sec. 1-618.3(a)(1).

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relief unwarranted under these circumstances. We concluded under very similar circumstances involving a previous election of Respondent's executive board that "in the event of a challenged election, pending a final decision thereon... in the interim the affairs of the [labor] organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide." " Ellowese Barganier, et al. V. FOP/DOC Labor Committee, 43 DCR 2949, Slip Op. No. 464, PERB Case No. 95-S-02 (1996). (See, Title IV of the Labor-Management Reporting Disclosure Act of 1959, 29 U.S.C. § 482(a)). We find no reason not to adhere to this principle under the circumstances of this case. However, in accordance with Board Rule 501.1 and as set forth in our Order below, we shall expedite the disposition of the Complainant's statutory challenges to the disputed election, vis-a-vis, the alleged standards of conduct violations, by processing the validity of the claims as expeditiously as is feasible.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint, with respect to asserted unfair labor practice violations, is dismissed.
2. The Complainant's Request for Preliminary Relief is denied.
3. The Notice of Hearing shall issue, with respect to the alleged standards of conduct violations, seven (7) days prior to the scheduled date of the hearing.
4. Following the hearing, the designated hearing examiner shall submit a report and recommendation to the Board not later than twenty (21) days following the conclusion of closing arguments (in lieu of post-hearing briefs).
5. Parties may file exceptions and briefs in support of the exceptions not later than seven (7) days after service of the hearing examiner's report and recommendation. A response or opposition to exceptions may be filed not later than five (5) days after service of the exceptions

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

November 9, 1998

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 98-S-08 and 98-U-23 was mailed (U.S. Mail) to the following parties on this the 9th day of November 1998.

William H. Dupree
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U.S. MAIL

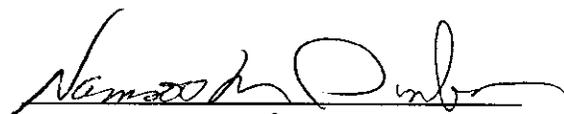
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