

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 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**

Gerald G. Neill, Jr.)
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Complainant,)
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and,)
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Fraternal Order of Police/)
Metropolitan Police Department)
Labor Committee)
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Respondent.)
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PERB Case No. 10-S-04

Slip Opinion No. 1240

DECISION AND ORDER

I. Statement of the Case

On March 15, 2010, Gerald G. Neill, Jr. (“Complainant”) filed a Standards of Conduct Complaint (“Complaint”) against the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”, “Union” or “Respondent”). The Complainant alleges a violation of the Comprehensive Merit Personnel Act (“CMPA”), D.C. Code § 1-617.03. On April 5, 2010, the FOP responded to the Complaint, and on November 10, 2010, the Union filed a Motion to Continue Hearing. On December 14, 2010, the Union filed a Motion to Quash the *Subpeona Duces Tecum*. On December 16, 2010, a Motion to Join the Motion to Quash *Subpoena Duces Tecum* was filed by non-party, Carolyn Mische-Hoeges. On December 20, 2010, the Complainant filed a Request for Extension of Time and an Opposition to Motion to Join Motion to Quash. On July 18, 2011, the Complainant filed a Motion to Compel. On July 26, 2011, the Respondent filed an Opposition to Complainant’s Motion to Compel

and a Motion to Dismiss for Untimeliness. The Complainant filed an Opposition to Dismiss for Untimeliness on July 28, 2011. The pleadings are before the Board for its disposition.

II. Discussion

Gerald G. Neill is a retired Sergeant of the Metropolitan Police Department and former Chairman of the Labor Committee. By failing to provide Neill with legal representation in defense of a lawsuit related to Neill's actions in the course of his official duties as Chairman of the Labor Committee, he alleges that the Labor Committee violated the Comprehensive Merit Personnel Act, D.C. Code §1-617.03. Pursuant to D.C. Code § 1-617.03, the Labor Committee must maintain "democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings." The Complainant alleges that his "right to participate in the affairs of the Labor Committee included certain guarantees in the Article 17.1 of the Labor Committee's bylaws which provide, in pertinent part: "every dues paying member in good standing shall receive free of charge and as a matter of right legal representation for the defense of any administrative, civil or criminal action against such officer or sergeant arising from the performance of duty, or from their status as police officers." (Complaint at p. 7).

Neill seeks affirmative relief in the form of an award of his attorney's fees incurred in the course of his defense of the lawsuit. Neill alleges the following facts:

10. Sometime prior to December 1, 2000, Neill appointed an attorney selection committee to select a new General Counsel for the Labor Committee. Neill was dissatisfied with the performance of Ted Williams, the then-General Counsel for the Labor Committee. Neill believed that his predecessor as Chairman of the Labor Committee was without capacity to contract on behalf of the Labor Committee and believed Williams's contract was invalid. Neill abstained from any further participation in the committee's selection process.

11. On March 16, 2001, the Chairman of the attorney selection committee reported to Neill that Williams would not be considered for reappointment.

12. On or about March 31, 2001, Neill, in his official capacity as Chairman of the Labor Committee, terminated William's contract with the Labor Committee.

13. Williams filed suit in D.C. Superior Court on April 16, 2001, for breach of contract and for tortious interference with contract, naming Neill and the attorney selection committee's selection as the Labor Committee's replacement General Counsel, Kenneth Bynum, as co-defendants. Williams further, without authority or consent of the Labor Committee, named the Labor Committee as a co-plaintiff.

14. The entire matter was dismissed by the Superior Court on May 23, 2001, for a failure to exhaust contractually required prerequisite remedies. Williams appealed.

15. On August 22, 2001, following a vote by the general membership in support, the Labor Committee moved to dismiss itself from the case as co-appellant. The motion was granted on August 28, 2001.

16. After a series of motions by Williams, in part challenging the authority of any other attorney to present the Labor Committee, the Labor Committee was reinstated as co-appellant.

18. On November 18, 2008, Neill's then attorney, John Berry, wrote to the present Labor Committee Chairman, Kristopher Baumann, requesting the Labor Committee provide legal representation for Neill in this case. Berry asserted that "this case revolves primarily around the central issue of the FOP Chairman's power to hire and /or fire attorneys employed by the FOP, as well as his or her power to 'enter contracts' on behalf of the FOP, which we have contended is a power granted to the FOP Chairman in the FOP Bylaws." Mr. Berry cited Article 17.1 of the Labor Committee bylaws stating *inter alia*, "Every dues paying member in good standing shall receive free of charge and as a matter of right legal representation for the defense of any administrative, civil or criminal action

against such officer or sergeant arising from the performance of duty, or from their status as police officers.” (Complainant’s Ex. A at 2.).

20. Following Berry’s letter to the Labor Committee, the Labor Committee failed to provide Neill with any legal representation in defense of William’s lawsuit.

21. Berry continued with his representation of Neill in this case until January 12, 2009, when attorney Matthew LeFande entered his appearance replacing Berry as counsel for Neill.

22. On November 13, 2009, Judge Alfred Irving dismissed with prejudice all of William’s claims against Neill and Bynum and entered judgment in their favor in this case.

23. Williams did not appeal this judgment and the time for such an appeal has expired under the Court’s rules.

(Complaint at p.).

The Complainant alleges that he is entitled to receive legal fees and other litigation costs from the Labor Committee for expenses associated with the defense of this litigation.

The Respondent denies that the Complainant sought legal representation. In addition, the Respondent alleges that the Complainant merely requested that the Union pay his attorney’s fees. Furthermore, Respondent notes that the Complaint is moot because of untimeliness and that the Complainant failed to exhaust or attempt internal remedies for the subject of the Complaint which is required under Article XIV of the by-laws. (See Respondent’s Answer to Standards of Conduct Complaint at p. 6.)

Pursuant to PERB Rule 544.4, a Standards of Conduct Complaint must be filed within “120 days from the date the alleged violation occurred.” Mr. Neill alleges that on November 18, 2008, he requested, through his then-attorney John Berry, that the Labor Committee provide him with legal representation. (See Complaint at p.4.) In the instant case the Complainant filed more than one year after the alleged violation occurred. The Board has no discretion regarding the 120 day window for filing a Standards of Conduct complaint. Therefore, the Board dismisses Mr. Neill’s Complaint as untimely.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint filed by Gerard G. Neill, Jr. is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

February 4, 2012

CERTIFICATE OF SERVICE

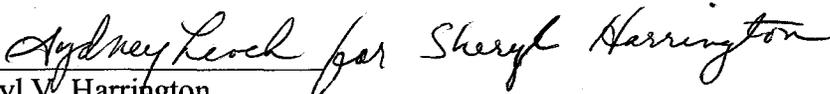
This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 10-S-04 are being transmitted via Fax and U.S. Mail to the following parties on this the 4th day of February, 2012.

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