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

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In the Matter of	)	
	)	
	)	
Edwin Hull, Darlene Bryant, Julia Broadus, Bernard Bryan, and Tasheanna Harris	)	
	)	
Complainants	)	PERB Case No. 20-S-02
	)	
v.	)	Opinion No. 1787
	)	
Fraternal Order of Police/Department of Corrections Labor Committee	)	
	)	
Respondent	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On March 10, 2020, *pro se* Complainants filed a standards of conduct complaint (Complaint) against the Fraternal Order of Police/Department of Corrections Labor Committee (Union).<sup>1</sup> The Complainants alleged the Union had violated its bylaws and the D.C. Official Code § 1-617.03(a).<sup>2</sup> The allegations related to (1) a special Union election for the positions of Chairman and Vice-Chairman on July 9, 2019,<sup>3</sup> (2) reimbursement checks written to newly

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<sup>1</sup> Complainants also named the following individuals as Respondents: Benjamin Olubasusi, Laurrine Ellis, Jannease Johnson, Arnold Hudson, Rufus Aderinkola, Chastity Jones, Chidozie Uwalaka, Kevin Lewis, DeBorah Smith-Hill, and Robert Barretta. However, the Board has held that “the CMPA’s prescribed standards of conduct for labor organizations, as codified under D.C. Code § 1-618.3, are standards that a labor organization must certify are mandated by its operation. A claimed failure to adopt, subscribe or comply with said standards constitutes a cause of action with respect to the labor organizations, not individual employees. To the extent individual union officers are named as respondents in a standards of conduct complaint, any statutory claims that accrue to them or their actions are not in their personal capacity but rather in their representative capacity as officers and/or agents of FOP.” *Clarence E. Mack, et al. and Ellowese Barganier, et al v. FOP/DOC Labor Comm.*, 46 D.C. Reg. 110, Slip Op. No. 507, PERB Case Nos. 95-S-03 and 95-S-02 (1999)(citations omitted). Accordingly, the Union is the only respondent named in the caption.

<sup>2</sup> See generally Complaint. D.C. Official Code § 1-617.03(a)(5) requires labor organizations to certify to the Board that their operations mandate “[t]he maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.”

<sup>3</sup> Complaint at 5-6.

elected Union Chairman, Benjamin Olubasusi, on or about August 2, 2019, for certain expenses related to the July 9, 2019 election,<sup>4</sup> and (3) a series of Union actions between November 15, 2019, and January 7, 2020.<sup>5</sup> The Union filed its Answer and a Motion to Dismiss on June 2, 2020, arguing that (1) service of the Complaint was improper,<sup>6</sup> (2) the Complaint was untimely filed,<sup>7</sup> and (3) the Complaint failed to state a claim for which relief could be granted.<sup>8</sup>

A hearing was held over a course of two days, November 30, 2020, and December 1, 2020.<sup>9</sup> The Hearing Examiner issued his Report and Recommendation (Report) on March 25, 2021, finding that (1) any contentions concerning the service of the Complaint were not grounds for dismissal,<sup>10</sup> (2) the portion of the Complaint related to the day of the Special Election was untimely filed,<sup>11</sup> and (3) there was no standards of conduct violation meriting remedial relief.<sup>12</sup> Neither party filed Exceptions.

For the following reasons, the Board adopts the Hearing Examiner's Report and Recommendation, finding that the Union did not commit the standards of conduct violations alleged.<sup>13</sup>

## **II. Hearing Examiner's Report and Recommendation**

### **A. Pre-hearing Conference**

According to the Hearing Examiner, at the October 13, 2020 pre-hearing conference, the parties agreed to limit the hearing to the events surrounding the July 9, 2019 election and the August 2, 2019 reimbursement checks for election-related expenses.<sup>14</sup> The Complainants' allegations concerning the Union's actions between November 15, 2019, and January 7, 2020, were not included in the agreed-upon issues for the hearing.<sup>15</sup>

### **B. Hearing Examiner's Findings**

In May 2019, former Union Chair Andra Parker resigned, and a Special Election was set for July 9, 2019, for the positions of Union Chairman and Vice-Chairman.<sup>16</sup> On June 4, 2019, then Union Vice-Chairman Benjamin Olubasusi submitted a letter to the Union's Election Committee, resigning from his Vice-Chairman position effective July 9, 2019, and expressing his intent to run in the Special Election for the position of Union Chairman.<sup>17</sup>

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<sup>4</sup> Complaint at 6-8.

<sup>5</sup> Complaint at 9-12.

<sup>6</sup> Answer and Mot. to Dismiss at 8-9.

<sup>7</sup> Answer and Mot. to Dismiss at 4-5.

<sup>8</sup> Answer and Mot. to Dismiss at 5-7.

<sup>9</sup> The Union filed a post-hearing brief on March 1, 2021. The Complainants did not file a post-hearing brief.

<sup>10</sup> Report at 9-10.

<sup>11</sup> Report at 10-11.

<sup>12</sup> Report at 11-14.

<sup>13</sup> Complaint at 15.

<sup>14</sup> Report at 2.

<sup>15</sup> Report at 14.

<sup>16</sup> Report at 3.

<sup>17</sup> Report at 3. One of the Complainants also ran as a candidate for the Chairman position. Report at 5.

On July 9, 2019, the Union held a Special Election.<sup>18</sup> Prior to the start of the election, Mr. Olubasusi, the Election Committee Chairman, and another member of the Election Committee brought the empty ballot box into the election site poll room.<sup>19</sup> According to witnesses, Mr. Olubasusi repeatedly entered the election site building and poll site on the day of the election over the protest of one of the candidates for Vice-Chairman.<sup>20</sup> Individuals involved in the election process testified that there were no poll monitors at the election site and a company called “True Ballot” counted the ballots after the election ended.<sup>21</sup> Mr. Olubasusi was elected as the new Chairman.<sup>22</sup>

The Union was responsible for compensating the Election Committee members for their work facilitating the election, as well as their election site parking fees and the cost of their lunch.<sup>23</sup> Mr. Olubasusi used his personal credit card to cover those costs, as well as the purchase of the ballot box, with the understanding that the Union would reimburse him.<sup>24</sup> After the election, Chairman Olubasusi submitted receipts to the Union for the ballot box, as well as for the Election Committee members’ pay, work lunch, and parking fees.<sup>25</sup> According to the Complaint, the Union reimbursed him on or about August 2, 2019.<sup>26</sup>

### **C. Hearing Examiner’s Recommendation**

As an initial matter, the Hearing Examiner concluded that any contentions the Respondents had regarding service of the Complaint were not grounds for dismissal.<sup>27</sup> He found that PERB sent a letter to the parties on May 14, 2020, stating that, due to Respondent’s concerns regarding proper mail service and due to pandemic operating procedures, PERB would allow the Complainants to serve the Complaint and the accompanying exhibits via email.<sup>28</sup> The Complainants sent the Complaint to the Respondent via e-mail on May 19, 2020.<sup>29</sup> The Respondent alleges that no exhibits were attached to the Complaint.<sup>30</sup> However, the Hearing Examiner noted that the exhibits which were intended to accompany the Complaint were discussed at the pre-hearing conference and at the hearing itself.<sup>31</sup> The Hearing Examiner concluded that any contentions the Respondents had regarding the Complaint’s service were not grounds for dismissal because (1) the Respondent received a copy of the Complaint and all documentary exhibits relevant to this case, (2) the Respondent had sufficient information to answer the Complaint paragraph by paragraph and to fully litigate the Union’s defenses, and (3)

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<sup>18</sup> Report at 5.

<sup>19</sup> Report at 5.

<sup>20</sup> Report at 6.

<sup>21</sup> Report at 5-6.

<sup>22</sup> Report at 5.

<sup>23</sup> Report at 12.

<sup>24</sup> Report at 12.

<sup>25</sup> Report at 12.

<sup>26</sup> Report at 2,12.

<sup>27</sup> Report at 9.

<sup>28</sup> This was an exception to PERB Rule 502.6, which provides, “An initial pleading must be served on the respondent or respondents by personal delivery, commercial delivery, or U.S. mail.”

<sup>29</sup> Report at 9.

<sup>30</sup> Answer and Mot. to Dismiss at 8.

<sup>31</sup> Report at 10.

the Respondent failed to show that the Union was disadvantaged due to any technical issues with the service of the Complaint and its attached exhibits.<sup>32</sup>

Further, the Hearing Examiner found Complainants' allegations regarding the events surrounding the July 9, 2019 Special Election untimely filed.<sup>33</sup> Relying on Board Rule 544.4's 120-day filing deadline from when the Complainants knew or should have known of the alleged violation, the Hearing Examiner found that the record failed to show that any of the election-day matters were hidden from the Complainants in a manner that would excuse the timely filing of their Complaint.<sup>34</sup> PERB did not receive the Complaint until March 10, 2020, which was eight months after the election. Under Board Rule 544.4, the deadline to file a Complaint regarding the election-day events was in November 2019.<sup>35</sup> Therefore, the Hearing Examiner concluded that the Complainants' claims concerning the events surrounding the Special Election were untimely.

Regarding the reimbursement checks, the Hearing Examiner found that the allegation was timely filed.<sup>36</sup> Complainants did not learn of the checks until November or December 2019,<sup>37</sup> meaning that the Complaint was filed less than 120 days after the date the Complainants knew of the alleged violation, in accordance with Board Rule 544.4.<sup>38</sup> Nonetheless, the Hearing Examiner found that the Complainants failed to meet the preponderance of the evidence standard described in Board Rule 550.1.<sup>39</sup> The Hearing Examiner concluded that "the record does not [demonstrate] that the Union did not maintain fiscal integrity.... Rather the record showed that for a limited period of time, the Union...relied on one of the election candidates to use his personal funds for several election day expenses which were later reimbursed to him."<sup>40</sup> He further noted that "[a]n alleged violation of Union by-laws does not, standing alone, normally amount to a violation of the Standards of Conduct under D.C. Official Code Section 1-617.03."<sup>41</sup> He also stated that "not all alleged violations of the Standards of Conduct rise to the level of seriousness that would undermine public confidence in the Board's ability to enforce compliance with the CMPA such as to violate Section 1-617.03 of the D.C. Official Code."<sup>42</sup> For these reasons, the Hearing Examiner concluded that the check reimbursements did not constitute a standards of conduct violation meriting remedial relief.<sup>43</sup>

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<sup>32</sup> Report at 9-10.

<sup>33</sup> Report at 10-11.

<sup>34</sup> Report at 11.

<sup>35</sup> Report at 11.

<sup>36</sup> Report at 11.

<sup>37</sup> Report at 12.

<sup>38</sup> Report at 12.

<sup>39</sup> Report at 14.

<sup>40</sup> Report at 13.

<sup>41</sup> Report at 13 (citing *In the Matter of: John Rosser and Carlton Butler, v. Fraternal Order of Police/ Department of Corrections Labor Committee*, 47 D.C. Reg. 3010, Slip Op. No. 608, PERB Case Nos. 99-S-07 and 99-U-39 (2000); *In the Matter of: Virginia H. Dade, v. National Association of Government Employees, Service Employees International Union, Local R3-006, AFL-CIO, PERB*, 46 D.C. Reg. 6876, Slip Op. No. 491, PERB Case No. 96-U-22 (1999); *In the Matter of: William E. Corboy, et al., v. Fraternal Order of Police, Metropolitan Police Department Labor Committee*, Slip Op. No. 391, PERB Case No. 93-S-01 (1994)).

<sup>42</sup> Report at 13 (citing *Jenkins et al. v. Fraternal Order of Police/Department of Corrections Labor Committee*, 59 D.C. Reg. 4637, Slip Op. No. 496, PERB Case No. 08-S-01 (2012)).

<sup>43</sup> Report at 14.

### **III. Discussion**

The parties did not file Exceptions to the Hearing Examiner's Report and Recommendation. Upon review of the record and the Hearing Examiner's findings and recommendations, the Board finds that the Hearing Examiner's "Report and Recommendation" is reasonable, supported by the record, and consistent with Board precedent.<sup>44</sup> Therefore, the Board adopts the Hearing Examiner's Report and Recommendation.

### **IV. Conclusion**

The Board finds that the Complainants' allegations concerning the July 9, 2019, Special Election are untimely and that the Complainants have not met their burden of proof regarding the allegations involving the check reimbursements. Therefore, the Board dismisses the Complaint.

## **ORDER**

### **IT IS HEREBY ORDERED THAT:**

1. The Complaint is dismissed.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By vote of Board Chairperson Douglas Warshof and Members Barbara Somson, Mary Anne Gibbons, and Peter Winkler.

May 20, 2021

**Washington, D.C.**

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<sup>44</sup> *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. 1668 at 6, PERB Case No. 15-U-28 (2018); *See AFGE, Local 1403 v. D.C. Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012).

### **APPEAL RIGHTS**

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration within fourteen (14) days, requesting the Board to reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides thirty (30) days after a Board decision is issued to file an appeal.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 20-S-02, Opinion No. 1787 was sent to the following parties on this the 21<sup>st</sup> day of May 2021.

**Via Email**

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Public Employee Relations Board