

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

In the Matter of:)
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)
 Clarence Mack, Shirley Simmons,)
 Hazel Lee and Joseph Ott)
)
 Complainants,)
)
)
 v.)
)
 Fraternal Order of Police/)
 Department of Corrections)
 Labor Committee,)
)
 Respondent.)
)

PERB Case No. 97-S-01
Opinion No. 521

MOTION FOR RECONSIDERATION

DECISION AND ORDER

On May 16, 1997, the Board, upon consideration of alleged violation of the Comprehensive Merit Personnel Act's (CMPA) standards of conduct for labor organizations, issued a Decision and Order (Slip Opinion No. 516) in the above-captioned case granting the Complainants' request for preliminary relief against the Fraternal Order of Police/Department of Corrections Labor Committee (FOP). The preliminary relief enjoined FOP from preventing Complainant Clarence Mack from assuming his duly elected executive board office of chairperson and reinstated Complainants Shirley Simmons and Hazel Lee to their respective executive board offices of executive secretary and treasurer, respectively. On June 2, 1997, the Respondent filed a Motion for Reconsideration, requesting that the Board vacate its Order granting preliminary relief. Complainants filed a Response on June 9, 1997.^{1/}

^{1/} Following a failed attempt to implement the Order, the Complainants requested that the Board seek enforcement of the Order in Superior Court. Complainants were informed to petition for enforcement pursuant to Board Rule 560. On May 20, 1997, the Complainants filed a Petition for Enforcement wherein they maintain their earlier contention that notwithstanding the filing of their Petition, the enforcement of the Board's preliminary relief order was not subject to the formal pleading requirements of Board Rule 560. Before the Board could rule on the Petition,

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FOP's Motion relies mainly on the first-time affidavits and related evidence to support its contention that procedural bylaws were properly followed in processing and deciding the disputed charges against the Complainants that resulted in their removal and ineligibility to hold office. When we determined that the alleged violations met our criteria for finding preliminary relief appropriate, our decision to grant the relief turned largely on FOP's failure to provide any evidence to support its denial that its actions violated the standards of conduct or its bylaws. On the other hand, the allegations underlying the Complainants' request for relief were fully supported by affidavits and related documentary evidence as required under Board Rule 520.15.

In granting preliminary relief we found "[t]he irregularities leading to the removal of Complainants Mack, Simmons and Lee from their respective offices appear clear cut and flagrant." Slip Op. No. 516 at 5. However, our granting of preliminary relief turned not only upon FOP's alleged failure to fairly adjudicate charges against the Complainants, but also upon findings that the charges FOP executive board officers brought against the Complainants were a pretense to preclude them from maintaining or assuming their respective offices on the executive board. Third-party documents from the Department of Corrections support Complainants' contention that the charges brought by FOP were actually motivated by a falling out between the parties due to a conflict over union business. Slip Op. at n 6. Actions taken to undermine an individual union member's right to fairly participate in the affairs of the organization violate the standards of conduct for labor organizations.

Furthermore, with respect to Complainant Mack, that "by rushing to judgement new disciplinary charges before the Board determined the validity of previous charges" FOP took advantage of the time necessary to render our decision on the previous

¹(...continued)
the Complainants sought a temporary restraining order (TRO) from the D.C. Superior Court. That request was granted without the Board as a party. Clarence Mack, et al. vs. Fraternal Order of Police/Department of Corrections Labor Committee, et al., Case No. CA 0003891-97 (May 23, 1997). Following a special meeting of the Board on May 28, 1997, the Board decided to intervene in the Superior Court proceeding. The Court granted the Board's request at a status conference held on May 30, 1997. Also, the Superior Court directed the Board's counsel to file a Petition for Enforcement of the Board's Order.

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charges in a related matter, i.e., PERB Case 99-S-03, Slip Op. No. 507. Slip Op. 516 at 6. We therefore concluded that "the advantage taken by the [then] current FOP executive board of the time necessary to render our decision to disregard required democratic procedures afforded an executive officer, constitutes interference with the Board's processes as prescribed under Board Rule 520.15."

In view of the above, the request of the former administration of Respondent that we vacate our Order granting interim preliminary relief is denied. Moreover, we will not permit evidence presented for the first time in a motion for reconsideration to serve as a basis for reconsidering our decision and order when the respondent failed to provide any evidence at the afforded time. However, since our Order is interim and preliminary in nature, any evidence these individuals now wish to offer may be properly presented at the hearing that we also directed in our Order granting preliminary relief. Also, we recognize that as a result of the implementation of our Order, the Respondent officers charged with violating the standards of conduct for labor organizations no longer comprise a controlling segment of FOP's executive board. The Complainants now occupy that position. Therefore, on our own motion, we shall permit any officer(s) or former officer(s) of FOP that are the subject of the alleged violations in the Complaint to collectively intervene in this proceeding for the limited purpose of defending their actions at the ordered hearing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration of the Board's Decision and Order in Opinion 516 is denied.
2. The officers or former officers of FOP's executive board that are the subject of the alleged violations in the Complaint may collectively intervene in this proceeding for the limited purpose of defending their actions at the ordered hearing, pending a final decision and order in this case.

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

June 12, 1997