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

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In the Matter of	)	
	)	
	)	
Tasheanna Harris, Bernard Bryan, and Darlene Bryant	)	
	)	
Complainants	)	PERB Case No. 20-S-04
	)	
v.	)	Opinion No. 1789
	)	
Fraternal Order of Police/Department of Corrections Labor Committee	)	
	)	
Respondent	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On May 29, 2020, Complainants, *pro se*, filed a Standards of Conduct Complaint (Complaint) against the Fraternal Order of Police/Department of Corrections Labor Committee (Union).<sup>1</sup> The Complainants allege the Union violated its bylaws and D.C. Official Code § 1-617.03 by postponing a Union election scheduled for May 22, 2020, until September 11, 2020.<sup>2</sup> The Union filed a combined Answer and Motion to Dismiss (Motion) on June 16, 2020, asserting that it had postponed the election as a safety precaution related to the coronavirus (COVID-19) public health emergency.<sup>3</sup>

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<sup>1</sup> The 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 Gerald Neill, Jr. 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.

<sup>3</sup> See generally Motion.

A hearing was held on January 27 and January 28, 2021.<sup>4</sup> On May 7, 2021, the Hearing Examiner issued his Report and Recommendation (Report), finding that the Complaint should be dismissed because (1) the Union's decision to postpone the election was rational and not arbitrary or discriminatory,<sup>5</sup> (2) the Union conducted the election fairly,<sup>6</sup> and (3) the Complainants did not suffer a cognizable injury.<sup>7</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>8</sup>

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

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

On March 16, 2020, Election Committee Chairman Rufus Aderinkola issued a notice to Union members, informing them that there would be a nominations meeting for elected offices at the Union's Lodge #1 (Lodge) on April 17, 2020, and that the election for covered offices would be held on May 22, 2020, at the Lodge.<sup>9</sup> On April 16, 2020, Election Chairman Aderinkola issued a notice to the membership informing them that the nominations and the election were postponed.<sup>10</sup> The notice stated that the postponement was due to the public health emergency and the social distance policy promulgated by the D.C. Mayor and the President of the United States, along with the ordered closing of the Lodge.<sup>11</sup> The postponed election took place on September 11, 2020, at the Lodge.<sup>12</sup> Those eligible for office due to prior nomination requests, including the Complainants, appeared on the ballot.<sup>13</sup> The Complainants lost the election and incumbent Union Chairman Benjamin Olubasusi was reelected.<sup>14</sup>

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

As an initial matter, the Hearing Examiner noted that, while the Complainants expressed dissatisfaction with Chairman Benjamin Olubasusi for a variety of reasons, the gravamen of their Complaint concerned the election, which they contended Chairman Olubasusi and the Executive Board wrongfully postponed through an abuse of power.<sup>15</sup> The Complainants asserted that Chairman Olubasusi and the Executive Board unjustifiably postponed the election with the goal of prolonging their terms in office.<sup>16</sup> They also asserted that, if the election had occurred as

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<sup>4</sup> The Union filed a post-hearing brief on April 1, 2021. The Complainants did not file a post-hearing brief.

<sup>5</sup> Complaint at 33-34.

<sup>6</sup> Complaint at 34.

<sup>7</sup> Complaint at 34.

<sup>8</sup> Complaint at 15.

<sup>9</sup> Report at 5.

<sup>10</sup> Report at 6.

<sup>11</sup> Report at 6.

<sup>12</sup> Report at 34.

<sup>13</sup> Report at 6.

<sup>14</sup> Report at 7, 14. Incumbent Vice Chairman Arnold Hudson also ran for reelection but lost. None of the other individuals named as Respondents ran for office in the election.

<sup>15</sup> Report at 29-30.

<sup>16</sup> Report at 30.

originally scheduled, there would have been a larger voter turnout.<sup>17</sup> Complainants averred that a larger voter turnout would have resulted in the Complainants winning their respective positions, and Chairman Olubasusi would have lost the office of Chair.<sup>18</sup> The Complainants contended that the Lodge's closure should not have stopped the election from occurring, asserting that the election could have been held at the D.C. Armory or the Department of Corrections Training Academy, as occasionally done in past years.<sup>19</sup> In support of their position, the Complainants noted that the D.C. Democratic Party held its primary elections around the same time the Union election was originally supposed to take place.<sup>20</sup>

Regarding the Complaint's allegation that the Union violated its bylaws, the Hearing Examiner observed that "PERB has long held that a breach of union bylaws or constitution does not, standing alone, constitute a standards of conduct violation."<sup>21</sup> He declined to evaluate the Respondent's actions under the lens of the Union's bylaws.<sup>22</sup> He noted that the Complainants had failed to show that the Union's bylaws had been violated but stated that this conclusion did not affect his recommendation.<sup>23</sup>

The Hearing Examiner began his analysis of the allegations concerning D.C. Official Code § 1-617.03 by addressing the question of whether the Complainants met their burden of establishing that the Union violated Board Rule 544.2<sup>24</sup> by postponing the election.<sup>25</sup> As the Hearing Examiner explained, the Board has held that a complainant "need not prove her case on the pleadings, but must plead or assert allegations that, if proven, would establish a statutory violation of the CMPA."<sup>26</sup> He noted that "a union's conduct must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair" for the Board to find a standards of conduct violation.<sup>27</sup>

The Hearing Examiner did not find any evidence of an arbitrary or discriminatory motive and determined that the Union postponed the election out of genuine concern for the members' wellbeing, some of whom were in high-risk demographics.<sup>28</sup> He found that the postponement was in line with the declared public health emergency.<sup>29</sup> He deemed it irrelevant that the election could have been held at an alternate location.<sup>30</sup> Additionally, he rejected Complainants' argument about

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<sup>17</sup> Report at 24, 30.

<sup>18</sup> Report at 14, 30.

<sup>19</sup> Report at 30.

<sup>20</sup> Report at 17.

<sup>21</sup> Report at 29 (citing *John Rosser and Carlton Butler v. Fraternal Order of Police/Department of Corrections Labor Committee*, 47 D.C. Reg. 3010, Slip Op. No. 608 at 3-4, PERB Case No. 99-S-07 (1999)).

<sup>22</sup> See Report at 34-35.

<sup>23</sup> See Report at 34.

<sup>24</sup> Board Rule 544.2 states, "Any individual aggrieved because a labor organization has failed to comply with the standards of conduct for labor organizations set forth in D.C. Official Code § 1-617.03(a) may file a complaint with the Board."

<sup>25</sup> Report at 33-34.

<sup>26</sup> Report at 28 (citing *Osekre v. American Federation of State, County and Municipal Employees Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623 at 2, PERB Case Nos. 99-U-15 and 99-S-04 (2000)).

<sup>27</sup> Report at 28 (citing *Renee Jackson v. Teamsters Local Union No. 639, a/w International Brotherhood of Teamsters*, 63 D.C. Reg. 7573, Slip Op. No. 1572 at 3, PERB Case No. 14-S-02 (2016)).

<sup>28</sup> Report at 33-34.

<sup>29</sup> Report at 33-34.

<sup>30</sup> Report at 33.

the D.C. Democratic primaries.<sup>31</sup> The Hearing Examiner acknowledged that the Board views the facts of a case in the light most favorable to the complainants when determining if a complaint gives rise to a violation of the CMPA<sup>32</sup> and gives liberal construction to the pleadings of *pro se* litigants.<sup>33</sup> Nonetheless, he concluded that the Complainants had failed to meet their burden of proof.<sup>34</sup> He found that “the [Union’s] decision to postpone the election was...not only rational but on some level mandated” by the unforeseen and unique circumstances of the pandemic.<sup>35</sup> Thus, he recommended that this portion of the Complaint be dismissed.<sup>36</sup>

Next, the Hearing Examiner turned to the question of whether the Union conducted the election fairly.<sup>37</sup> He mentioned that Complainant Tasheanna Harris testified that she believed the election was “fairly conducted.”<sup>38</sup> He also noted that the Complainants did not file exceptions to the election’s results.<sup>39</sup> Therefore, he found that the election was fair and concluded that this part of the Complaint should also be dismissed.<sup>40</sup>

Last, the Hearing Examiner evaluated the question of whether the Complainants had established that they were personally injured by the postponement of the election.<sup>41</sup> Under Board precedent, complainants alleging a standards of conduct violation must demonstrate that they are “aggrieved individuals” who have suffered an actual personal injury.<sup>42</sup> He determined that they had failed to meet this burden, noting that the Complainants timely submitted their nomination requests in April 2020, the election committee accepted their nominations, and those submissions placed them on the ballot for the September 11, 2020 election.<sup>43</sup> The Hearing Examiner concluded that the Complainants had not suffered a cognizable injury within the meaning of Board Rule 544.2, and recommended that the Board dismiss this final portion of the Complaint.<sup>44</sup>

### 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

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<sup>31</sup> Report at 17.

<sup>32</sup> Report at 28 (citing *Osekre v. American Federation of State, County and Municipal Employees Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623 at 3, PERB Case Nos. 99-U-15 and 99-S-04 (2000)).

<sup>33</sup> Report at 28 (citing *Thomas J. Gardner v. District of Columbia Public Schools and Washington Teachers’ Union Local 67, AFS AFL-CIO*, 49 D.C. Reg. 7763, Slip Op. No. 677 at 3, PERB Case Nos. 02-S-01 and 02-U-04 (2002)).

<sup>34</sup> Report at 33.

<sup>35</sup> Report at 33.

<sup>36</sup> Report at 33-34.

<sup>37</sup> Report at 34.

<sup>38</sup> Report at 34.

<sup>39</sup> Report at 34.

<sup>40</sup> Report at 34.

<sup>41</sup> Report at 34.

<sup>42</sup> Report at 27-29 (citing *Keith Allison et al. v. Fraternal Order of Police/Department of Corrections Labor Committee*, 61 D.C. Reg. 9085, Slip Op. No. 1482, PERB Case No. 14-S-04 (2014); *Richardson v. Fraternal Order of Police DC Dept. of Corrections Labor Committee*, 60 D.C. Reg. 16000, Slip Op. No. 1426 at 3, PERB Case No. 11-S-01 (2013) at 3-4).

<sup>43</sup> Report at 34.

<sup>44</sup> Report at 34.

finds that the Report is reasonable, supported by the record, and consistent with Board precedent.<sup>45</sup> Therefore, the Board adopts the Hearing Examiner's Report and Recommendation.

#### **IV. Conclusion**

The Board finds that the Complainants have not met their burden of proof regarding the allegations involving the postponement of the election from April 17, 2020, to September 11, 2020. Therefore, the Board dismisses the Complaint.

### **ORDER**

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

1. The Complaint 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**

By vote of Board Chairperson Douglas Warshof and Members Barbara Somson and Peter Winkler.

June 17, 2021

**Washington, D.C.**

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<sup>45</sup> *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. 1668 at 6-7, 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).