

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify the office of any formal errors to 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

In the Matter of:)

Clarence Mack, et al.,)

Complainants,)

v.)

Fraternal Order of Police/
Department of Corrections)
Labor Committee,)

Respondent.)

PERB Case Nos. 94-U-24
Opinion No. 386

(Motion to Dismiss)

DECISION AND ORDER

On August 8, 1994, an Unfair Labor Practice Complaint was filed, in the above-captioned case, with the Public Employee Relations Board (Board) by Complainants Clarence E. Mack, Hazel Lee and Carlton Butler. Complainants are employed by the District of Columbia Department of Corrections (DOC) and are included in the same collective bargaining unit exclusively represented by the Respondent, the Fraternal Order of Police\DOC Labor Committee (FOP).^{1/} Complainants charge that the Respondent FOP violated the Comprehensive Merit Personnel Act (CMPA) as codified under D.C. Code § 1-618.4(b)(1) and (2) by representing members of the collective bargaining unit in an improperly disparate manner. Complainants further allege that by the same conduct the FOP has violated the rights of the Complainants as provided under D.C. Code

^{1/} Complainants Mack and Lee were the president and trustee, respectively, of Teamsters Local Union No. 1714, which was succeeded as the exclusive representative for this unit of employees following FOP's certification on January 12, 1994. See, Fraternal Order of Police/Department of Corrections Labor Committee and District of Columbia Department of Corrections and District of Columbia Department of Corrections Correctional Officers and Employees, Local Union No. 1714, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and the Alliance of Independent Corrections Employees, Inc., PERB Case No. 93-R-04, Certification No. 73 (1994).

§ 1-618.6 (Employee rights) and § 1-618.3 (Standards of conduct for labor organizations).

On August 17, 1994, FOP filed an Answer to the Complaint. FOP's Answer included a Motion to Dismiss, based on the following: the Complaint (1) alleged matters that were vague and did not constitute the asserted statutory violations and (2) did not conform with filing requirements under the Board's Rules. Pursuant to Board Rule 553, the Board's Executive Director solicited and Complainants timely filed an Opposition to FOP's Motion. ^{2/}

The Board, after reviewing the pleadings in the light most favorable to Complainants, and considering the Motion and Response thereto, hereby denies FOP's Motion to Dismiss the Complaint.

FOP requests that the Board dismiss the Complaint because the allegations are "conclusory" (sic), vague and lack the specificity required under Board Rule 520.3(d).^{3/} We do not agree that the

^{2/} In their Opposition, Complainants request that the Board consider FOP's Answer to the Complaint as an admission to the allegations set forth therein because FOP failed to "set forth a specific admission or denial of each allegation or issue in the Complaint" as required under Board Rule 520.6. (Opp. at 5.) Board Rule 520.6 also provides that a respondent shall "include a statement of any affirmative defenses, including, but not limited to, allegations that the complaint fails to allege an unfair labor practice or that the Board otherwise lacks jurisdiction over the matter." We consider FOP's Motion as a defense to the complaint in its entirety.

Moreover, Board Rule 520.6 permits a respondent to admit or deny "each allegation or issue in the Complaint". (emphasis added.) While FOP's Answer only refers specifically to the first two paragraphs of the six paragraph Complaint, FOP's Answer and Motion clearly reflect its denial of the issues raised by the Complaint. Paragraphs 3 through 6 of the Complaint contain additional allegations but no new issues not denied by FOP with respect to the alleged violations. We caution, however, that the more prudent approach is to address each allegation set forth in a Complaint.

^{3/} FOP also asserts that the Complaint failed to conform with Board Rule 520.3(a), (b) and (g). Board Rule 520.3(g) states that a complaint shall include a "copy of the collective bargaining agreement, if any." As a policy matter, however, the Board has not required complainants to comply with this filing requirement when the parties to the complaint do not have a bargaining relationship. There is no merit to FOP's contention that the Complaint does not
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Complaint allegations are so vague as to require dismissal. Complainants "are not required to prove [their] Complaint upon the pleadings as long as the complaint states a cause of action under the CMPA with respect to the alleged unfair labor practice." American Federation of Government Employees, Local Union Nos. 631, et al. v. D.C. Department of Public Works, ___ DCR ___, Slip Op. No. 306, PERB Case No. 94-U-02 and 94-U-08 (1994). In this regard, while the Complainants' pleadings do not meet the standard we impose on parties represented by counsel, the Complaint allegations present a sufficient basis to justify a hearing. ^{4/}

Based upon these pleadings, a determination cannot be made without a further development of the record, including an opportunity to present evidence establishing the respective positions of the parties. Therefore, the Complaint will be referred to a hearing examiner to make findings, conclusions and recommendations.

³(...continued)
conform with Board Rule 520.3(b) with respect to providing the name, address and telephone number of the respondent.

While Complainants have failed to fully comply with Board Rule 520.3(a) by not providing their telephone numbers, the Board did not notify Complainants of this deficiency in accordance with Board Rule 501.13. We now do so, and direct the Complainants to provide the Board, in writing, its telephone number and serve a copy on Respondent's representative within 3 days of the service of this Decision and Order.

^{4/} We have held that when a complainant proceeds pro se in an unfair labor practice proceeding before the Board, the Board will not impose upon the pleadings strict compliance with Board Rule 520.3(d). The complainant must, nevertheless, make explicit at the hearing the violations alleged. Willard G. Taylor, et al. v. University of the District of Columbia Faculty Association/NEA, ___ DCR ___, Slip Op. No. 324, PERB Case No. 90-U-24 (1992). As experienced former local union officers, we cannot view the Complainants in this proceeding as the typical pro se complainant. However, while Complainants have done so unartfully, they do allege that Respondents have unlawfully treated Complainants in a disparate manner, e.g., denying Complainants equal representation, an opportunity to participate in the operations of Respondent through democratic processes and equal access to the benefits and privileges afforded all members of the bargaining unit. Complainants have also alleged that Respondents have taken reprisals against employees with opposing views from that of Respondent's officers. These claims sufficiently allege the statutory violations.

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ORDER

IT IS HEREBY ORDERED THAT:

The Motion to Dismiss the Complaint is denied.

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

September 21, 1994

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CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 94-U-24 was faxed and/or mailed (U.S. Mail) to the following parties on the 21st day of September, 1994.

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U.S. MAIL

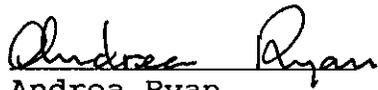
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