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Government of the District of Columbia
Public Employee Relations Board

In the Matter of: Cassie Lee, Complainant, v. American Federation of Government Employees, Local 872, Respondent.	PERB Case No. 04-S-07 Opinion No. 802

DECISION AND ORDER

I. Statement of the Case:

Cassie Lee ("Complainant") filed a standards of conduct complaint and an amended standards of conduct complaint against the American Federation of Government Employees, Local 872 ("AFGE, Local 872," "Local 872," "Union" or "Respondent"). The Complainant alleges that AFGE, Local 872 violated the Comprehensive Merit Personnel Act ("CMPA") by failing to: (1) conduct required elections; (2) pay the American Federation of Government Employees Headquarters ("AFGE Headquarters") more than $75,000.00 in dues; and (3) disclose financial information. In addition, the Complainant claims that the Respondent violated the CMPA by illegally using membership dues and having a non-union member serve as an officer of AFGE, Local 872. The Complainant is asking the Board to order AFGE, Local 872 to: (1) hold a new election; (2) make the Union's financial records available to the Complainant for review; (3) forward the Union's financial records to John Gage, National President, American Federation of Government Employees; (4) suspend all of AFGE, Local 872's current officers until a new election and audit are completed; (5) cease and desist from violating the CMPA; (6) pay attorney fees and (7) order any other remedy that the Board deems appropriate. (See Compl. at pgs. 5-6 and Amended Compl. at pgs. 6-7). Also, the Complainant is requesting that AFGE, Local 872 be directed to conduct an audit and to reimburse the local for any monies that were inappropriately spent by the local's president. (See Compl. at p. 6). The Respondent filed an answer denying all of the allegations.

This matter was referred to a Hearing Examiner. The Hearing Examiner issued a Report and Recommendation ("R & R"). In her R & R the Hearing Examiner found that the Respondent violated the standards of conduct provision of the CMPA. The parties did not file exceptions to the Hearing Examiner's R & R. The Hearing Examiner's R & R is before the Board for disposition.

II. Background

AFGE, Local 872 is a labor organization that was certified to represent a unit of employees employed by the District of Columbia Water and Sewer Authority ("WASA"). During the period of time relevant to this matter, Christopher Hawthorne has served as the president of AFGE, Local 872. The Complainant is employed as an administrative assistant with WASA and claims that since 2002 she has been a member of AFGE, Local 872.

The Complainant asserts that AFGE, Local 872 has violated the CMPA by failing to conduct elections. Specifically, she contends that AFGE, Local 872 is required to hold elections "every two or three years." (Compl. at p. 3) However, in January 2000, Jocelyn Johnson, former president of AFGE, Local 872, appointed Christopher Hawthorne to serve as the local's acting president. (Compl. at p. 3) The Complainant alleges that Mr. Hawthorne has failed to hold elections for officers.

In addition, the Complainant contends that "Mr. Hawthorne and his officers have failed to pay the AFGE Headquarters office the union's per capita requirements for the past three years. [As a result, the Complainant alleges that] Local 872 owe[s] the American Federation of Government Employees Headquarters office over seventy five thousand dollars ($75,000.00) in . . . per capita dues. ...[The Complainant asserts that this] money is unaccounted for and that there has been no financial disclosure regarding any of the local's funds. [Furthermore, the Complainant claims that] Mr. Hawthorne and his officers have failed to give financial reporting of the income and use of membership dues, including the $75,000.00 owed to AFGE [Headquarters]." (Compl. at p. 4) The Complainant alleges that on several occasions, she has requested a report concerning how much money the local has received and how the money is being spent. However, she claims that AFGE, Local 872 has failed to provide her with any financial disclosures. Also, she contends that: (1) AFGE, Local 872 is not holding monthly meetings; (2) Mr. Hawthorne and his officers are not providing the membership with any financial information concerning how members' dues are being spent; and (3) Mr. Hawthorne and his officers have illegally used membership dues for their own personal use and gain.[1]

[1]The Complainant claims that Mr. Hawthorne used members' dues to: (1) pay the salary of AFGE, Local 872's former president Jocelyn Johnson when she lost her job with SEIU; (2) pay his own salary when he was suspended by WASA for misconduct; (3) make illegal payments to Ms. Johnson and to other individuals; and(4) pay employee witnesses to testify at arbitration cases concerning WASA. (See

Finally, the Complainant asserts that Miley Jones, the current treasurer of AFGE, Local 872, is not a member of AFGE, Local 872. Specifically, the Complainant claims that Miley Jones left WASA on or about September 26, 2001. As a result, the Complainant alleges that Miley Jones has not been a member of AFGE, Local 872 since September 2001. Therefore, the Complainant contends that Miley Jones cannot serve as an officer of AFGE, Local 872. Furthermore, the Complainant notes that since Miley Jones "left the Washington [, D.C.,] metropolitan area, [t]here has been no election held for the office of treasurer." (Amended Compl. at p. 5)

In light of the above, the Complainant filed a standards of conduct complaint and an amended standards of conduct complaint with the Public Employee Relations Board ("Board"). In her submissions, the Complainant alleges that by the conduct noted above, AFGE, Local 872 has violated the standards of conduct for labor organizations contained in the CMPA. AFGE, Local 872 filed an answer denying the allegations and opposing the request for relief. In addition, AFGE, Local 872 filed a Motion to Dismiss.

III. Hearing Examiner's Report and Recommendations

As noted above, the Respondent filed a Motion to Dismiss. Therefore, the first issue to be determined by the Hearing Examiner was whether to grant the Respondent's Motion to Dismiss. In their motion, the Respondent raised two arguments. First, it claimed that the Complainant did not have standing since many of the allegations concern conduct that took place before she became a member of the Local in December 2002. After considering the pleadings and the record established at the hearing, the Hearing Examiner concluded that the Complainant did not become a member of Local 872 until December 9, 2002. As a result, she found that the Complainant lacked standing concerning any matters which took place before December 9, 2002. Therefore, the Hearing Examiner indicated that she would not consider any conduct which took place before the Complainant became a member of AFGE, Local 872 in December 2002. However, she found that the Complainant had standing concerning any conduct that took place or continued to take place after December 9, 2002.[2]

The second argument raised in the Motion to Dismiss focused on the Respondent's claim that the Complainant failed to establish any injury. Relying on Board precedent, the Hearing Examiner determined that the Complainant did establish that as a dues-paying member, the alleged denial of the right to participate and the alleged misuse of funds did cause the Complainant harm. Specifically, the Hearing Examiner noted that in "*Butler, Durant, Rosser*

Amended Compl. at pgs. 4- 5)

[2]Consistent with this finding, the Hearing Examiner indicated that she did not review payments made, cancelled checks issued or minutes of meetings held before December 9, 2002 (the date when the Complainant became a member of Local 872). (See R & R at p. 9).

and Temoney v. Fraternal Order of Police/Department of Corrections Labor Committee, [46 DCR 4409], Slip. Op. No. 580, PERB Case No. 99-S-02 (1999), the Board held that while a standards of conduct violation is not established by a 'mere breach' of a union's by-laws or constitution, a cause of action will be found if the violation 'has the proscribed effect set forth in the asserted standards of conduct.' See also, *Corboy, et al. v. FOP/MPD Labor Committee*, [48 DCR 8505,] Slip. Op. No. 391, PERB Case No. 93-S-01 (1996). [The Hearing Examiner observed that in the present case, the] Complainant's challenges, e.g., regarding lack of fair elections and fiscal integrity as required by PERB Rule 544.2, if proven, would constitute violations." (R & R at p. 9) Relying on the above-referenced cases, the Hearing Examiner concluded that the Respondent cannot prevail on the second argument raised in their motion. (See R & R at p. 9) In light of the above, the Hearing Examiner granted the Respondent's "motion in part and denied it in part." (R & R at p. 9)

We have reviewed the Hearing Examiner's ruling concerning the Respondent's Motion to Dismiss and find it to be reasonable, persuasive, supported by the record and consistent with Board precedent. As a result, we adopt this finding.

Concerning the Complainant's substantive claims, the Hearing Examiner citing Board Rule 544.11 noted that the Complainant has the burden of proving her standards of conduct allegations by a preponderance of evidence. (See R & R at p. 8). In addition, the Hearing Examiner indicated that the "Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 111, frequently utilized by the Board in assessing standards of conduct issues, has as its primary purpose to ensure that 'unions [are] democratically governed and responsive to the will of their membership.' *Finnegan v. Leu*, 456 U.S. 431, 436 (1982). It requires 'full and active participation by the rank and file in the affairs of the union.' *Musicians Federation v. Wittstein*, 379 U.S. 1713 (1964)." (R & R at p. 8)

In the present case, the Complainant raises a number of allegations which, if proven, constitute violations of D.C. Code § 1-617.03 (2001 ed.). First, the Complainant contends that AFGE, Local 872 failed to obtain approval from the membership for monthly expenditures in excess of $500.00. AFGE, Local 872 countered that the expenditures did not negatively impact on the Complainant. In addition, AFGE, Local 872 claims that it only needs approval if an individual expenditure exceeds $500.00, and that approval was obtained from members at meetings at the Bryant Street location. With regard to AFGE, Local 872's first argument, the Hearing Examiner found that if funds were improperly spent, it would negatively impact on the Complainant since her payment of dues was used improperly. (See, R & R at p. 10) As a result, the Hearing Examiner determined that AFGE, Local 872's first argument lacked merit.

AFGE, Local 872's second argument is based on Section 6(e) of the Local's Constitution. Section 6(e) provides as follows:

> Expenditures by the Executive Board in excess of $500.00 per month must have prior approval of the local's members either as authorized by the budget approved by the local or by separate vote of the local's members. All expenditures authorized by the Executive Board will be reported in writing at the next regular meeting of the local. Upon request a copy of such report will be made available to any member in good standing of the local.

The Hearing Examiner indicated that Section 6(e) "can be interpreted to mean that [either] total monthly expenditures exceeding $500.00 requir[e] approval, as [the] Complainant contends; or that individual expenditures each month that exceed $500.00 require approval, as the Local argues." (R & R at p.10) However, after reviewing a July 27, 2004 letter from the AFGE General Counsel to the National Vice President, the Hearing Examiner concluded that the correct interpretation of Section 6(e) is that unless the funds are within the annual budget, total monthly expenditures in excess of $500.00 must be approved by the membership. (See R & R at p. 10)

After determining that Section 6(e) provides that total monthly expenditures in excess of $500.00 must be approved by the membership, the Hearing Examiner focused on whether the Respondent had complied with Section 6(e). Reviewing the evidence on the record, the Hearing Examiner found that the following expenses were neither approved by the members nor were they items that appeared in the local's annual budget:

$ 125.00	Christopher Hawthorne (meal allowance) (1/4/03)
$ 450.00	Federal Mediation and Conciliation Service (1/4/03)
$ 150.00	Christopher Hawthorne (meal allowance) (2/2/03)
$ 375.00	Federal Mediation and Conciliation Service (5/5/03)
$ 400.00	Federal Mediation and Conciliation Service (8/6/03)
$ 2,221.00	Christopher Hawthorne (9/6/03)
$ 87.50	Howard Coles (meal allowance) (3/3/04)
$ 225.00	Christopher Hawthorne (meal allowance) (4/12/04)
$ 150.00	Howard Coles (meal allowance) (4/12/04)
$ 187.50	Christopher Hawthorne (meal allowance) (5/1/04)
$ 112.50	Howard Coles (meal allowance) (5/1/04)
$ 87.50	Howard Coles (meal allowance) (6/1/04)

The Hearing Examiner determined that in both January 2003 and September 2003 AFGE, Local 872's monthly expenditures exceeded $500.00. Specifically, the Hearing Examiner noted that in January 2003, $125.00 was paid to Christopher Hawthorne as a meal allowance and $450.00 was paid to the Federal Mediation and Conciliation Service ("FMCS"). The Hearing Examiner found that both of these items were neither listed in the annual budget nor approved by the members of AFGE, Local 872. The Hearing Examiner observed that although the payment

to FMCS appeared to be a legitimate expense, once it was added to another expenditure and the total exceeded $500.00, approval by the membership was required. As a result, the Hearing Examiner determined that these funds were spent without the required authorization. (See R & R at p. 11) We believe that the Hearing Examiner's finding regarding the monthly expenditures for January 2003 is reasonable and supported by the record. As a result, we adopt this finding. The Hearing Examiner's finding concerning the $2,221.00 check issued to Christopher Hawthorne, is discussed below.

As to the Respondent's alleged failure to hold meetings, the Hearing Examiner observed that AFGE, Local 872's revised By-Laws provide that regular meetings of the local shall be held on the third Thursday of each month at 4:05 p.m. at the Bryant Street location, and on the third Friday at 5:15 p.m. at the First Street location. (See R & R at p. 9). The Hearing Examiner noted that the Complainant and her witnesses testified that regular meetings were not held at the First Street location. In addition, the Hearing Examiner indicated that Local 872 did not present evidence to contradict this fact. Also, the Hearing Examiner determined that records of the regular meetings were limited to the meetings at the Bryant Street location. Furthermore, the Hearing Examiner found that the Complainant and her witnesses presented credible testimony that although they may not have attended every meeting, they did attend many meetings and meetings were not scheduled on a monthly basis. The Hearing Examiner concluded that the "failure of Local [872] to allow full participation by all members, not only the [union] members employed at the Bryant Street location, is harmful [to all members] and violates the standards of conduct required of the Local." (R & R at p. 13) In view of the above, the Hearing Examiner concluded that Local 872 violated D.C. Code §1-617.03 by failing to hold monthly meetings at both the First Street and Bryant Street locations.

As noted above, Section 2 of the revised by-laws provides that regular meetings of the local shall be held on the third Thursday of each month at 4:05 p.m. at the Bryant Street location, and on the third Friday of each month at 5:15 p.m. at the First Street location. In addition, Section 7 of the revised by-laws provides in pertinent part that [u]nless otherwise specified by law. . . or by [the] constitution, all questions before the local will be decided by a vote of the members present. . . . [In addition,] *[m]embers shall not vote on the same issue at both the third Thursday and third Friday meetings.* (Emphasis in original.) Therefore, we concur with the Hearing Examiner's finding that Local 872 violated their revised by-laws by not holding successive meetings on the third Thursday and the third Friday of each month at both the Bryant Street and First Street locations. We have previously considered the question of whether a breach of a labor organization's by-laws or constitution constitutes a standards of conduct violation under the CMPA. "We have held that the mere breach of union by-laws or constitution is not, standing alone, sufficient to find a standards of conduct violation." Dupree and Butler v. FOP/DOC Labor Committee, Slip Op. No. 605 at p. 6, PERB Case Nos. 98-S-08 and 98-S-09 (1999). Moreover, in order to establish a violation, the "Complainant must establish that the labor organization's action or conduct had the prescribed effect set forth in the asserted standard." Corboy, et al. v. FOP/MPD Labor Committee, Slip Op. No. 391 at n. 3, PERB Case

No. 93-S-01 (1994). Furthermore, we have stated that to find a standards of conduct violation, "there must be evidence of actual injury resulting from the alleged impropriety. . .". Dupree and Butler v. FOP/DOC Labor Committee, *supra.* We find that the record in this case clearly supports the Hearing Examiners findings and conclusions that Local 872's failure to hold monthly meetings at both the Bryant Street and First Street locations, prevented full participation by all members, was harmful to all members and violates the standards of conduct required of the union pursuant to D.C. Code §1-617.03. Therefore, we adopt this finding.

Also, the evidence introduced at the hearing revealed that in September 2003 Mr. Hawthorne received a loan in the amount of $2,221.00. The Hearing Examiner noted that while the Complainant may rightfully question the appropriateness of a loan to an officer of the local, the evidence presented established that members at the Bryant Street location approved the loan. As a result, the Hearing Examiner concluded that the $2,221.00 loan to Christopher Hawthorne did not violate the standards of conduct. (See R & R at p. 11) We disagree with this finding. As discussed above, the "failure of Local [872] to allow full participation by all members, not only the [union] members employed at the Bryant Street location, is harmful [to all members] and violates the standards of conduct required of the Local." As noted above, Section 2 of the revised by-laws provides that regular meetings of the local shall be held on the third Thursday of each month at 4:05 p.m. at the Bryant Street location, and on the third Friday of each month at 5:15 p.m. at the First Street location. In addition, Section 7 of the revised by-laws provides in pertinent part that [u]nless otherwise specified by law. . . or by [the] constitution, all questions before the local will be decided by a vote of the members present. . . [In addition,] *[m]embers shall not vote on the same issue at both the third Thursday and third Friday meetings.* (Emphasis in original.) We believe that reading Sections 2 and 7 together, clearly indicates the intent of the by-laws that separate successive votes should be taken on the same issue by the membership at each of the regular monthly meetings held at the Bryant Street and First Street locations. In addition, the members can only vote once on a particular issue. Therefore, by limiting only members at the Bryant Street location to vote on the question of whether or not a loan should be made to the president of the local, the Respondent denied dues paying members at the First Street Location, the right to participate in a decision concerning whether their union dues could be used to make such a loan. We believe that by not allowing union members at the First Street Location to participate in a decision concerning the use of union funds, Local 872 caused harm to those dues paying members and violated D.C. Code §1-617.03. For the reasons discussed above, we reject the Hearing Examiner's finding regarding the loan to Mr. Hawthorne.

In her submissions, the Complainant also challenged payments to Jocelynn Johnson. Specifically, the Complainant asserted that Ms. Johnson continued to receive payments after she left her position as president of Local 872 and after she left WASA. The Hearing Examiner found that the cancelled checks presented established that payments to Ms. Johnson did not exceed $500.00 for the months that the cancelled checks were presented. Therefore, the Hearing Examiner concluded that approval by the members was not required. Also, the Hearing Examiner notes that Section 20 of AFGE, Local 872's "Revised By-Laws, authorizes the Local

President to hire and pay for a Local Representative or Business Agent at the discretion of the Local President, with expenses reimbursed by the Local. [The Hearing Examiner indicated that] Ms. Johnson testified, and the evidence supports the conclusion that Ms. Johnson acted as a Local Representative." (R & R at p. 11). In light of the above, the Hearing Examiner determined that the Complainant did not meet her burden of proof regarding this charge. Therefore, she concluded that the payments made to Ms. Johnson did not violate the CMPA. With respect to the Hearing Examiner's finding that this allegation should be dismissed, we have reviewed the issues of fact with respect to the relative weight attributed to certain evidence in support of the Hearing Examiner's conclusion that no standards of conduct violation had been committed by the Respondent concerning this allegation. We believe that the Hearing Examiner fully considered all relevant issues of fact in her Report and Recommendations in reaching this conclusion which we find fully supported by the record. Moreover, we "have previously stated that the relative weight and veracity accorded both testimonial and documentary evidence are for the Hearing Examiner to decide." *American Federation of Government Employees, Local 872*, Slip Op. No. 266 at p. 3, PERB Case Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). Also see, *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 39 DCR 6238, Slip Op. No. 285, PERB Case Nos. 88-U-33 and 88-U-34 (1991). Furthermore, we have held that a Hearing Examiner's findings based on competing evidence does not give rise to a proper exception where as here, the record contains evidence supporting the Hearing Examiner's finding. See, *Clarence Mack v. D.C. Department of Corrections*, 43 DCR 5136, Slip Op. No. 467 at p. 2, PERB Case No. 95-U-14. In light of the above, we adopt the Hearing Examiner's recommendation that this allegation should be dismissed.

Next, the Hearing Examiner considered the Complainant's claim concerning AFGE's alleged failure to produce financial records to the Complainant upon request. The Hearing Examiner noted that "fiscal integrity requires that 'accounting and financial controls and regular financial reports or summaries' be available to members. Similarly [she indicated that] Article VIII, Section 3 of the Local's Constitution requires that a copy of a report of expenditures authorized by the Executive Board 'be made available to any member in good standing of the local'." (R & R at p.12). The Hearing Examiner found that the Complainant is harmed if she is required to pay dues, but is not permitted to find out how her money is being used. Furthermore, the Hearing Examiner determined that the Complainant established, through her own testimony and the testimony of her witnesses, that numerous good faith efforts were made to obtain this information, and that the leadership of Local 872 was not responsive. Moreover, the Hearing Examiner found that the only documents received by the Complainant were received in response to the *subpoenas* issued in preparation for the hearing in this case. In view of the above, the Hearing Examiner concluded that the Complainant met her burden of proof regarding this allegation. As noted above, we "have previously stated that the relative weight and veracity accorded both testimonial and documentary evidence are for the Hearing Examiner to decide." *American Federation of Government Employees, Local 872, supra.* Also see, *University of the*

District of Columbia Faculty Association/NEA v. University of the District of Columbia, supra. Furthermore, we have held that a Hearing Examiner's findings based on competing evidence does not give rise to a proper exception where as here, the record contains evidence supporting the Hearing Examiner's finding. See, *Clarence Mack v. D.C. Department of Corrections, supra.* In light of the above, we believe that the Hearing Examiner's finding concerning this allegation is reasonable and supported by the record. As a result, we adopt the Hearing Examiner's finding that by failing to produce financial documents Local 872 violated D.C. Code § 1-617.03(5).

Concerning the Complainant's allegation that officers of Local 872 issued checks without obtaining two signatures, the Hearing Examiner observed that "Article V of the Local By-Laws require that checks be signed by the Treasurer and President and if one cannot sign, another officer may sign." (R & R 12). Also, the Hearing Examiner acknowledged that the Complainant presented checks that were signed by only one officer; however, the Hearing Examiner notes that the Complainant did not allege that the failure to obtain two signatures caused any harm. Therefore, the Hearing Examiner found that the failure to have two signatures constitutes a technical violation of the By-laws. Nonetheless, she concluded that under the circumstances presented, this technical violation does not violate the standards of conduct required of Local 872. It is clear from the record that the Respondent has not complied with the requirements of Article 5 of Local 872's by-laws. As previously noted, a violation of the standards of conduct provision is not established by the mere breach of a labor organization's internal by-laws or constitution. Specifically, the "Complainant must establish that the labor organization's action or conduct had the prescribed effect set forth in the asserted standard." Corboy, et al. v. FOP/MPD Labor Committee, *supra.* We believe that the record clearly supports the Hearing Examiner's findings and conclusions that AFGE, Local 872's conduct did not contravene any of the alleged standards of conduct for labor organizations. Therefore, we adopt this finding.

The Hearing Examiner next focused on the Complainant's allegation that the Local owed AFGE Headquarters more than $75,000.00. The Respondent argued that "a decision was made that since Headquarters staff was not being responsive to the Local's request for assistance, particularly at a time when Local membership was being drastically reduced due to a RIF, the Local had decided to forego that payment and instead [decided to] pay legal fees to the attorneys who were assisting the Local with these issues. (R & R at p.12) The Hearing Examiner concluded that this decision appears to have been made in the best interest of the members. In addition, the Complainant has submitted no evidence to indicate that the issue of Local 872's financial obligation to the national union (AFGE Headquarters), is anything other than a matter between those two bodies. Accordingly, we agree with the conclusion reached by the Hearing Examiner that there was no evidence that the decision violated the standards of conduct provision of the CMPA.

Regarding the Complainant's claim that AFGE, Local 872 failed to hold elections, the Respondent acknowledged that an election was not held in 2003 as required. However, it

contends that it could not hold an election until it either had members serving on the election committee or assistance from the international. The Hearing Examiner notes that the Complainant did not contradict the Respondent's assertion that it was not until 2004 that it received the necessary assistance, and that the election was then held. In light of the above, the Hearing Examiner found that the failure to conduct the election may be a technical violation. Nonetheless, the Hearing Examiner opined that the reasons offered appeared valid and mitigate the violation. As a result, the Hearing Examiner concluded that the Respondent's failure to conduct an election in 2003 did not violate the standards of conduct provisions of the CMPA. We believe that the record clearly supports the Hearing Examiner's findings and conclusions regarding this finding. Therefore, we adopt the Hearing Examiner's finding that this allegation should be dismissed.

In her submissions, the Complainant claims that Mylie Jones improperly served as Treasurer after her retirement. The Respondent denied this allegation. The Hearing Examiner observed that the Local's position was unclear since Ms. Jones testified that she stopped being an officer in May 2003, but also that she continued to act as Treasurer by signing checks in order to assist Mr. Hawthorne until new officers were appointed. In addition, the Hearing Examiner noted that there was no testimony presented by Ms. Jones regarding her retirement. Also, the Hearing Examiner indicated that neither party cited to the Local's Constitution or By-laws to support their positions regarding whether Ms. Jones could continue to serve as Treasurer. The Hearing Examiner noted that since new officers were not appointed until the 2004 elections, "it appears that Ms. Jones continued to hold the office of treasurer." (R & R 13) Relying on the language contained in Section 22 of Local 872's revised by-laws, the Hearing Examiner opined that "Section 22 of the Local's Revised By-Laws permits retired members to continue paying dues. [Therefore, the Hearing Examiner concluded that] in the absence of explicit language to the contrary, it appears that this provision [of the by-laws] allows retired employees to remain active members [and] are not prohibited from serving as Local officers." (R & R 13). In light of the above, the Hearing Examiner concluded that the Complainant did not meet her burden of proof regarding this charge. As a result, the Hearing Examiner is recommending that this allegation be dismissed. We find that this finding is reasonable and is supported by the record. As a result, we adopt this finding.

Pursuant to D.C. Code § 1-605.02(9) and Board Rule 544.14, we have reviewed the findings, conclusions and recommendations of the Hearing Examiner and find them to be reasonable, persuasive and supported by the record. As a result, we adopt the Hearing Examiner's findings with the modifications noted above. Therefore, we find that AFGE, Local 872 violated the Comprehensive Merit Personnel Act by failing to: (1) obtain prior approval for monthly unbudgeted expenditures exceeding $500.00; (2) hold regular monthly meetings at both the Bryant Street and First Street locations; (3) provide financial disclosure requested by the Complainant; and (4) allow members at the First Street location to participate in a decision concerning the use of union funds to make a loan of $2,221.00 to Christopher Hawthorne.

With respect to the Hearing Examiner's findings that the other allegations should be dismissed, we have reviewed the issues of fact with respect to the relative weight attributed to certain evidence in support of the Hearing Examiner's conclusion that no standards of conduct violation had been committed by the Respondent concerning these allegations. We believe that the Hearing Examiner fully considered all relevant issues of fact in her Report and Recommendations in reaching this conclusion and believe that these findings are fully supported by the record. Therefore, we adopt the Hearing Examiner's recommendation that the other allegations should be dismissed.

IV. Remedy

Having determined that Local 872's violations caused the Complainant "actual injury," the Hearing Examiner focused on what is the appropriate remedy in this case. After considering this question, the Hearing Examiner recommends that the Board require Local 872 to post notices regarding these violations. In addition, the Hearing Examiner recommends that Local 872 be directed to comply with the standards of conduct requirements of the CMPA by: (1) holding monthly meetings at both the Bryant Street and First Street locations; (2) obtaining prior approval of unbudgeted monthly expenditures exceeding $500.00, and (3) providing financial information upon request to members. (See R & R at p. 14)

Concerning the posting of a notice, we adopt the Hearing Examiner's remedy requiring that Local 872 post a notice acknowledging that they have violated the CMPA. The Board has previously noted that, "the overriding purpose and policy of relief afforded under the CMPA, for [conduct which] violates employee rights, is the protection of rights that inure to all employees". *Charles Bagentose v. D.C. Public Schools*, 41 DCR 1493, Slip Op. No. 283 at p. 3, PERB Case No. 88-U-33 (1991). Moreover, "it is the furtherance of this end, i.e., the protection of employee rights,...[that] underlies [the Board's] remedy requiring the posting of a notice to all employees concerning the violation found and the relief afforded. . . " Id. Therefore, we believe that it is appropriate to require Local 872 to post a notice. Specifically, if Local 872 is not required to post a notice, the CMPA's policy and purpose of guaranteeing the rights of all employees is undermined. Moreover, those employees who are most aware of Local 872's illegal conduct and thereby affected by it, would not know that exercising their rights under the CMPA is indeed fully protected. Also, a notice posting requirement serves as a strong warning against future violations. Furthermore, Local 872 has not presented a compelling reason for removing the notice posting requirement recommended by the Hearing Examiner.

In her submissions, the Complainant requests that the Board award: (1) attorney fees and (2) any other remedy that it deems appropriate. (See Amended Standards of Conduct Complaint at p. 7) In her Report and Recommendation, the Hearing Examiner did not address the issue of attorney fees and did not indicate whether any other remedy was appropriate. We believe that the Hearing Examiner's failure to address these two issues may have been an oversight on her part. As a result, we will address these two issues.

The Complainant, a pro se litigant, without providing any support for such a request, has requested attorney fees. The Board's case law has not provided for attorney fees. See, *International Brotherhood of Police Officers, Local 1446, AFL-CIO v. District of Columbia General Hospital*, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); and *University of the District of Columbia Faculty Association, NEA v. University of the District of Columbia*, 38 DCR 2463, Slip Op. 272, PERB Case No. 91-U-10 (1991). Therefore, the Complainant's request for attorney fees is denied.

As noted above, the Complainant requested that the Board award any other remedy it deemed appropriate. Therefore, pursuant to D.C. Code §1-617.13(d), we will consider whether the Complainant should be awarded reasonable costs in this case. The Board first addressed the circumstances under which the awarding of costs to a party may be warranted in *AFSCME, D.C. Council 20, Local 2776 v. D.C. Dept. of Finance and Revenue*, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990). In that case, the Board concluded that it could, under certain circumstances, award reasonable costs.[3] Specifically, the Board observed:

> . . . First, any such award of costs necessarily assumes that the party to whom the payment is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part. Second, it is clear on the face of the statute that it is only those costs that are "reasonable" that may be ordered reimbursed. . . . Last, and this is the nub of the matter, we believe such an award must be shown to be in the interest of justice.
>
> Just what characteristics of a case will warrant the finding that an award of costs will be in the interest of justice cannot be exhaustively cataloged. We do not believe it possible to elaborate in any one case a complete set of rules or earmarks to govern all cases, nor would it be wise to rule out such awards in circumstances that we cannot foresee. What we can say here is that among the situations in which such an award is appropriate are those in which the losing party's claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith, and those in which a reasonably foreseeable result of the successfully challenged action is the

[3] The Board has made it clear that attorney fees are not a cost.

> undermining of the union among the employees for whom it is the exclusive bargaining representative. *Id.* at pgs. 4-5.

In the present case, it is clear from the record that the Complainant made numerous requests for financial records and financial reports, and that AFGE, Local 872 did not comply with the Complainant's requests. Moreover, the only documents provided to the Complainant by AFGE, Local 872, were provided after the Complainant filed her standards of conduct complaint and in response to the *subpoenas* issued in preparation for the hearing in this case. Furthermore, Local 872 offered no legitimate explanation as to why it did not provide the financial records and financial reports requested by the Complainant. As a result, we concur with the Hearing Examiner's finding that Local 872 violated the CMPA by not providing the Complainant with the requested financial records and financial reports. In light of the above, we find that Local 872's position concerning this allegation was wholly without merit. Therefore, we believe that awarding costs in this case is in the interest of justice and consistent with our holding in *AFSCME, Council 20, Id.* (See also, *Teamsters Local 639 and 670, International Brotherhood of Teamsters v. District of Columbia Public Schools*, Slip Op. No. 804, PERB Case No. 02-U-16 (2005). In light of the above, we are awarding the Complainant reasonable costs.

Consistent with the above discussion, the Hearing Examiner's recommended remedy is modified.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 872 ("AFGE, Local 872"), its officers and agents shall cease and desist from failing to maintain recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization under the governing rules of AFGE, Local 872 in accordance with basic democratic principles, as codified under D.C. Code §1-605.02 (9) (2001 ed.).

2. AFGE, Local 872, its officers and agents shall cease and desist from failing to maintain fiscal integrity in the conduct of the affairs of/the organization, by failing to provide regular financial reports or summaries to members in violation of the Comprehensive Merit Personnel Act ("CMPA") standards of conduct for labor organization as codified under D.C. Code §1-617.03(a)(5) (2001 ed.).

3. AFGE, Local 872, its officers and agents shall cease and desist from failing to adopt, subscribe, or comply with the standards of conduct for labor organizations prescribed under the CMPA in any like or related matter.

4. AFGE, Local 872 shall adhere to its by-laws with respect to holding monthly meetings at both the Bryant Street and First Street locations, and presenting issues for votes at both locations.

5. AFGE, Local 872 shall adhere to the standards of conduct for labor organization prescribed under the CMPA by providing financial information upon request to union members as required by D.C. Code §1-617-03(a)(5). Within ten (10) days from the service of this Decision and Order, AFGE, Local 872 shall turn over to the Complainant all records she requested prior to the filing of her Complaint.

6. AFGE, Local 872 shall adhere to its by-laws by obtaining prior approval from members at both locations for unbudgeted monthly expenditures that total in excess of $500.00.

7. Since the loan to the president of AFGE, Local 872 and unbudgeted expenditures that total in excess $500.00 have not been considered by the local's membership at properly constituted membership meetings, AFGE, Local 872 shall within thirty (30) days of the service of this Decision and Order submit these matters to such properly constituted membership meetings where the membership shall take such action as the members deem appropriate.

8. AFGE, Local 872 shall post conspicuously, within ten (10) days from the service of this Decision and Order, the attached Notice where notices to bargaining-unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days.

9. The Complainant shall submit to the Board within fourteen (14) days from the date of this Decision and Order, a statement of actual costs incurred processing this action. The statement of costs shall be filed together with supporting documentation. Local 872 may file a response to the statement within fourteen (14) days from service of the statement upon it.

10. Local 872 shall pay the Complainant the reasonable costs incurred in this proceeding within ten (10) days from the determination by the Board or its designee as to the amount of the reasonable costs.

11. Within fourteen (14) days from the issuance of this Decision and Order, AFGE, Local 872 shall notify the Public Employee Relations Board ("Board"), in writing, that the Notice has been posted accordingly. Also, AFGE, Local 872 shall notify the Board of the steps it has taken to comply with paragraphs 5, 7 and 8 of this Order.

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

February 9, 2006

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No.04-S-07 was transmitted via Fax and U.S. Mail to the following parties on this 9th day on February 2006.

Ms. Cassie Lee
809 N. Stonestreet, Avenue
Rockville, MD 20850

FAX &U.S. MAIL

Mark Vinson, Esq.
American Federation of Government Employees
80 F Street, N.W.
11th Floor
Washington, D.C. 20001

FAX &U.S. MAIL

Courtesy Copies:

Christopher Hawthorne
AFGE, Local 872
1922 Valley Terrace, S.E.
Washington, D.C. 20032

U.S. MAIL

Jonathan Shanks, Vice President
AFGE, Local 872
1016 Urell Place, N.E.
Washington, D.C. 20017

U.S. MAIL

Lois Hochhauser, Hearing Examiner

U.S. MAIL

Sheryl V. Harrington
Secretary

PERB
Public Employee Relations Board
Government of the District of Columbia

Public Employee Relations Board
717 14th Street, N.W.
Suite 1150
Washington, D.C. 20005
[202] 727-1822/23
Fax: [202] 727-9116

NOTICE

TO ALL BARGAINING UNIT MEMBERS OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 872, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 802, PERB CASE NO. 04-S-07 (February 9, 2006).

WE HEREBY NOTIFY our members that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.03 (2001 ed.) by the actions and conduct set forth in Slip Opinion No. 802.

WE WILL cease and desist from refusing to provide financial information upon request to union members as required by D.C. Code § 1-617.03(a)(5) (2001 ed.).

WE WILL cease and desist from applying our by-laws and otherwise operating the labor organization in a manner that fails to define and secure the rights of individual members to participate in the affairs of the organization in accordance with basic democratic principles, as codified under D.C. Code § 1-617.03 (2001 ed.).

WE WILL NOT, in any like or related manner, interfere, restrain or coerce, employees in their exercise of rights guaranteed by the Labor-Management subchapter of the District of Columbia Comprehensive Merit Personnel Act.

American Federation of Government Employees, Local 872

Date:_____ By:_____
President

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have may questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 717 14th Street, N.W., Suite 1150, Washington, D.C. 20005. Phone: (202) 727-1822.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BEFORE THE

PUBLIC EMPLOYEE RELATIONS BOARD

In the matter of:	
CASSIE LEE Complainant	PERB Case No. 04-S-07
v.	
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 872 Respondent	

Appearances:

For Complainant: Cassie Lee, *Pro Se*
For Respondent: Mark Vinson, Esq.

REPORT AND RECOMMENDATION

I. **PROCEDURAL HISTORY**

On April 21, 2004, Cassie Lee, Complainant, filed a standard of conducts complaint with the Public Employee Relations Board (PERB). The complaint was amended in its entirety on or about May 3, 2004. Complainant alleged that Respondent, American Federation of Government Employees, Local 872 (AFGE or Local herein) violated the standards of conduct for labor organizations contained in the District of Columbia Comprehensive Merit Personnel Act (CMPA) by failing to conduct required elections, failing to pay AFGE Headquarters more than $75,000.00 in dues, failing to disclose financial information, illegally using membership dues, and having an officer who was not a member of Local 872. (Amended Standard of Conducts Complaint, pp. 3-5). As remedy, Complainant sought a new election of officers, disclosure of the financial records, a financial audit, reimbursement of funds improperly spent by officers, and full participation by membership in Local affairs. The Local filed its response on or about May 24, 2004, denying the allegations and opposing the request for relief.

The parties were given full opportunity to, and did in fact, present testimonial and documentary evidence at the proceeding which

took place on November 4, 2004.[1] The following individuals were present at the proceeding: Cassie Lee, Complainant; Mark Vinson, Esq., Local 872 counsel; Christopher Hawthorne, Local president, and Lee Clark, observer. Kevin Jenkins, Carmen Gibson, Tammy Banks and Cassie Lee testified on behalf of Complainant. Christopher Hawthorne, Jocelynn Johnson, Jonathan Shanks, Miley Jones, and Howard Coles, II testified on behalf of Respondent. At the proceeding, Respondent moved to dismiss the complaint, alleging that Complainant lacked standing with regard to some of the allegations contending that since she became a member of the Local on December 9, 2002, she could not raise matters that allegedly took place prior to her membership taking effect. (Tr, p. 10). The motion was denied without prejudice, and Respondent was directed to file its written motion following the hearing. Respondent did so and the motion is addressed in this "Report and Recommendation".

The parties agreed to submit written closing arguments thirty calendar days after receipt of notification of the availability of the transcript. The notice was issued on November 30, 2004. By *Order* issued January 5, 2005, the Hearing Examiner granted Complainant's unopposed request for an extension for filing until January 14, 2005. The parties filed timely submissions and the record closed on that day.

II. PERTINENT PROVISIONS OF LAWS, RULES, BY-LAWS AND CONTRACTS

A. Comprehensive Merit Personnel Act (CMPA) (in pertinent part)

§1-618.3 Standards of conduct for labor organizations.
(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following:

(1) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right

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[1] The transcript of the proceeding is referred to as "Tr" and is followed by the page number(s). Exhibits are identified as "Ex" followed by the party introducing the document and the number of the exhibit. Parties are identified as: "C" for Complainant and "U" for Union, followed by the exhibit number. Documents not submitted into evidence at the proceeding, but attached to Respondent's post-hearing submission were not considered in reaching this decision. Similarly, Complainant's "Motion to Dismiss Documents Not in the Evidentiary Record", submitted on February 8, 2005, after the record was closed, was not considered.