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

In the Matter of:)	
Rome Ledbetter, <i>et al.</i> ¹)	
Complainants,)	PERB Case Nos. 12-U-26 & 12-S-06
v.)	Opinion No. 1282
Fraternal Order of Police Jerrard F. Young Lodge 1)	
and)	
Fraternal Order of Police/ Department of Corrections Labor Committee and Election Committee,)	Motion for Preliminary Relief Unfair Labor Practice Complaint Standards of Conduct Complaint
Respondents.)	
)	

DECISION AND ORDER

I. Statement of the Case

On April 13, 2012, lead Complainant Rome Ledbetter, on behalf of the named Complainants, filed a document styled “Motion for Preliminary Injunctive Relief Temporary Restraining Order Standards of Conduct Complaint Unfair Labor Practice” (“Motion and Complaint”) against the Fraternal Order of Police Jerrard F. Young Lodge 1 and the Fraternal Order of Police/Department of Corrections Labor Committee and Election Committee (“FOP”,

¹ The named Complainants also include: Julian B. Lewis, Hosea Green, Allen W. Dexter Jr., Lesa Wellington, Trecia Watson, Andre Fortune, James Jones, Tifiny Cobbs, Bernard Bryan, Hernandaze Williams, William R. Palmer, Edward Harrington, Melissa Mills, Robert Thigpen, Lorraine Holley, Ann McGree, Carmen L. William, James Ferguson, Claytill Jenkins, Anioine Butler, Kwadwo Danso, Arnold Hudson, Olubola Oladapo, Joseph Shirmut, Wayne Taylor, Vorie Selders, Carratt Lattisaw, Gerald Rowlett, Theodore Anderson, Keith Allison, Keith Jarratt, Susaan Armstrong, Paul Murray Jr, Roshundra Lewis Holtzen, Avon Shell, Dexter W. Allen Sr, Virgil Flech, Daniel Lewis, Carol Smith, Regenalnd Wheeler, Beneto Bagley Inga Campbell.

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FOP/DOCLC & EC” or “Respondents”). The Complainants assert that the FOP has violated the Comprehensive Merit Personnel Act (“CMPA”), as codified under D.C. Code § 1-617.03(a)(1)(3)(4) and (5)² and D.C. Code § 1-617.04³.

² D.C. Code § 1-617.03, Standards of conduct for labor organizations, provides:

(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 of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) The exclusion from office in the organization of any person identified with corrupt influences;

(3) The prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members;

(4) Fair elections; and

(5) The 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.

(b) The Board may accept any of the following as evidence that a labor organization's operations meet the requirements of subsection (a) of this section:

(1) A statement in writing that the labor organization is a member of the American Federation of Labor-Congress of Industrial Organizations and is governed by and subscribes to the American Federation of Labor-Congress of Industrial Organizations Codes of Ethical Practice;

(2) A copy of the labor organization's constitution and bylaws which contain explicit provisions covering these standards;

(3) A copy of rules and regulations of the organization which have been officially adopted by the membership, which contain explicit provisions covering these standards; or

(4) An official certification in writing from a labor organization stating that the labor organization subscribes to the standards of conduct for labor organizations, as set forth in this section.

(c) The Board shall prescribe the rules and regulations needed to effect this section. Any complaint of a violation of this section shall be filed with the Board.

³ Complainants' erroneously provide the citation “D.C. Code 1-618.04. The unfair labor practices provisions are correctly cited as D.C. Code § 1-617.04, and provide:

(a) The District, its agents, and representatives are prohibited from:

(1) Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;

On April 30, 2012, the Respondents filed a motion requesting an extension of time to file an opposition to the Complainant's Motion and Complaint. This motion was administratively granted. In addition, the Respondents filed: a "Motion to Dismiss Complaint;" an "Answer to Complainant's Motion for Preliminary Relief, Temporary Restraining Order, Standards of Conduct Complaint, Unfair Labor Practice;" and an "Opposition to Complainants' Motion for Preliminary Injunctive Relief."

On May 16, 2012, Complainants filed an Amended Motion and Complaint. The Respondents filed in response its "Motion Requesting the Unopposed Motion to Dismiss Complaint be Granted."

On May 17, 2012, the Board was notified by Complainants' attorney representative that in light of the timing of the Complainants' Amended Motion and Complaint, an additional

(2) Dominating, interfering, or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to it, except that the District may permit employees to negotiate or confer with it during working hours without loss of time or pay;

(3) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, except as otherwise provided in this chapter;

(4) Discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony under this subchapter; or

(5) Refusing to bargain collectively in good faith with the exclusive representative.

(b) Employees, labor organizations, their agents, or representatives are prohibited from:

(1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter;

(2) Causing or attempting to cause the District to discriminate against an employee in violation of § 1-617.06;

(3) Refusing to bargain collectively in good faith with the District if it has been designated in accordance with this chapter as the exclusive representative of employees in an appropriate unit;

(4) Engaging in a strike, or any other form of unauthorized work stoppage or slowdown, or in the case of a labor organization, its agents, or representatives condoning any such activity by failing to take affirmative action to prevent or stop it; and

(5) Engaging in a strike or refusal to handle goods or perform services, or threatening, coercing or restraining any person with the object of forcing or requiring any person to cease, delay, or stop doing business with any other person or to force or to require an employer to recognize for recognition purposes a labor organization not recognized pursuant to the procedures set forth in § 1-617.06.

amended complaint would be filed no later than June 1, 2012.⁴ The aforementioned amended complaint was not submitted by June 1, 2012, or thereafter. Based upon the foregoing, the Board has before it the Complainants' Amended Motion and Complaint and Respondents' Motion to Dismiss Complaint, "Answer to Complainant's Motion for Preliminary Relief, Temporary Restraining Order, Standards of Conduct Complaint, Unfair Labor Practice," "Opposition to Complainants' Motion for Preliminary Injunctive Relief," and "Motion Requesting the Unopposed Motion to Dismiss Complaint be Granted."

II. Background

The instant Complaint asserts that in conjunction with an election campaign, members of the FOP/DOC Labor Committee and Election Committee acted unethically, and allegedly made slanderous and defamatory remarks against the Complainants. The Complainants also assert that the FOP Lodge 1 and the attorney representing the FOP/DOCLC shared responsibility for these remarks. In addition, the Complainants contend that the Election Committee acted irregularly with regard to the certification of candidates for the election.

III. Discussion

A. Motion for Preliminary Relief

The Complainants' Motion for Preliminary Relief was submitted to enjoin the FOP from conducting elections which were scheduled to be held on May 16, 2012. Due to deficiencies in the April 13, 2012 filing, the Complainants were directed to submit an amended pleading curing the deficiencies. The Amended Motion and Complaint was not filed until May 16, 2012. The Board was notified by the lead Complainant and the Complainants' attorney representative that an amended complaint would be provided by June 1, 2012, in light of the fact that the elections had been conducted. Because the Board did not receive this amended Complaint, the Motion for Preliminary Relief will be addressed.

The criteria the Board employs for granting preliminary relief in unfair labor practice cases are prescribed under Board Rule 544.15, which provides in pertinent part:

Board Rule 544.15 provides in pertinent part as follows:

The Board may order preliminary relief. A request for such relief shall be accompanied by affidavits or other evidence supporting the request. Such relief may be granted where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged violation is widespread; or the public interest is seriously affected;

⁴ The Complainants' Motion for Preliminary Relief was based on upcoming elections, which had been held by the time the May 16, 2012 Amended Motion and Complaint had been filed. As a result, the Complainants requested to amend its Complaint.

or the Board's processes are being interfered with, and the Board's ultimate remedy may be inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. See *AFSCME, D.C. Council 20, et al. v. D.C. Government, et al.*, 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). In determining whether or not to exercise its discretion under Board Rule 520.15, this Board has adopted the standard stated in *Automobile Workers v. NLRB*, 449 F.2d 1046 (CA DC 1971). There, the Court of Appeals - addressing the standard for granting relief before judgment under Section 10(j) of the National Labor Relations Act - held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by *pendente lite*⁵ relief." *Id.* at 1051. "In those instances where [this Board] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been] restricted to the existence of the prescribed circumstances in the provisions of Board Rule [544.15] set forth above." *Clarence Mack, et al. v. FOP/DOC Labor Committee, et al.*, 45 DCR 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

The Complainants present no allegations or argument in support of granting the motion for preliminary relief. Instead, the Complainants provide the general criteria under which it contends preliminary relief is appropriate. (Motion and Complaint at p. 1). The Complainants have failed to provide any affidavits or specifically allege any evidence supporting their Motion. Based upon the responding pleadings submitted by the Respondents', it is clear that the parties disagree on the facts in this case.

Therefore, on the record before the Board, establishing the existence of the alleged standard of conduct and unfair labor practice violations would turn on an assessment of evidence and making credibility determinations on the basis of conflicting allegations. The Board declines to do so on these pleadings alone. See *DCNA v. D.C. Health and Hospital Public Benefit Corporations*, 45 DCR 6067, Slip Op. No. 559, PERB Case Nos. 98-U-06 and 98-U-11 (1998). Furthermore, the Complainants do not allege facts that amount to clear-cut or flagrant violations of the CMPA, or that the effect of conducting the May 16, 2012, election would be widespread, affect the public interest, interfere with the Board's processing of the Complaint or that the Board's remedial authority would be inadequate.⁶ Therefore, the Board denies the Complainants' Motion for Preliminary Relief.

⁵ *Pendente lite* is a Latin phrase meaning "while the litigation is pending" which is used for court orders or legal agreements issued while a matter (such as an unfair labor practice complaint) is pending.

⁶ As stated above, elections were held on May 16, 2012, the same day the Complainants submitted the amended complaint. Consequently, the Board could not have acted on the Motion before elections were held. The Board's remedial authority, however, could direct a new election should it find violations of the CMPA supporting such action.

B. Standards of Conduct and Unfair Labor Practice Complaint

The first basis provided in the Complaint concerns allegations that the FOP/DOCLC Chairperson Nila Ritenour made slanderous remarks against a candidate slated for the May 16, 2012, election, Tyrone Jenkins. In support of this contention, the Complainants describe an alleged incident in which the Chairperson informed Union members that she was retiring and her perception of an acrimonious relationship between herself and certain unnamed members of the union. (Complaint at p. 2).

In addition, the Complaint asserts that the Respondents have made "false charges of misrepresentation maliciously calculated [to] harm [the] Complainant[s] reputation." (Complaint at p. 2). In support of this allegation, the Complainants claim that statements, which were directed at the Complainants, were printed in the FOP Lodge 1 Journal. The Complaint alleges that the FOP Chairperson indicated that certain union members were misinforming probationary employees concerning their right to vote in upcoming elections. (Complaint at p. 3).

Other allegations discerned from the Complaint contend that the Respondents had been elected by means of an improper election and that the Labor Committee was not independent from the Election Committee. (See Complaint at pgs. 3-4). The Complainants also claim that statements made in the FOP Lodge 1 Journal Simulcast were directed at the Complainants, and concerned a desire for improved communication skills from the membership. (Complaint at p. 5).

The Complainants also assert that candidates for the May 16, 2012, election were not provided certification of their candidacy by the Election Committee in a timely manner. The Complainants allege that the candidates were required to receive certification by April 6, 2012, but did not receive the certification until April 21, 2012. (Complaint at p. 6).

As stated above, the Complainants believe that FOP Lodge 1 and the Respondents' legal counsel share responsibility for the slander against the Complainants. (See Complaint at p. 7).

The Respondents argue that the Complaint should be dismissed because: (1) the Complaint should be considered a class action which is not recognized by PERB; (2) the Complaint fails to state a claim; and (3) even if there were irregularities concerning the election, internal remedies were available to the Complainants. (See Respondents' Answer at pgs. 3-6).

The Board finds that the Complaint does not specify that Respondents violated any by-laws concerning the conduct of the election which would result in a violation of the standards of conduct provisions of the CMPA. Moreover, the Complaint fails to indicate how the delay in certifying candidates for the May 16, 2012, election had the effect of violating any of the standards of conduct provisions found at D.C. Code § 1-617.03. In addition, even if the Board accepts that the Respondents made statements to the Union membership as described above, and that the statements could be ascribed to Complainants, these allegations fail to establish how the statements had the proscribed effect set forth in D.C. Code § 1-617.03.

The Board's review of the allegations in the Complaint reveals that even accepting the Complainants' allegations as true, the Complaint fails to state a cause of action under either the standards of conduct provisions in D.C. Code § 1-617.03, or the unfair labor practices provisions of D.C. Code § 1-617.04. As a result, the Board must dismiss the Complaint.

Based upon the foregoing reasons, the Board denies the Complainants Motion for Preliminary Relief and dismisses the Complaint for failure to state a cause of action.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainants' Motion for Preliminary Relief is denied.
2. The Complainants' Complaint is dismissed.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

June 12, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order and Notice in PERB Case No. 12-U-26 & 12-S-06, Slip Opinion No. 1282 is being transmitted electronically and *via* U.S. Mail to the following parties on this the 15th day of June, 2012.

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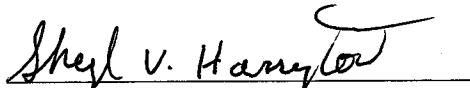
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