

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 so 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 E. Mack, et. al,	)	
and	)	
Ellowese Barganier, et al,	)	
Complainants,	)	
v.	)	PERB Cases No. 95-S-03 and 95-S-02 Opinion No. 507
Fraternal Order of Police/ Department of Corrections Labor Committee, et al.,	)	
Respondent.	)	
	)	
	)	
	)	

---

DECISION AND ORDER

The events that gave rise to PERB Case 95-S-03 and the procedural chronology resulting in its impact upon PERB Case No. 95-S-02 are set out by the Hearing Examiner in his Report and Recommendation.<sup>1/</sup> In PERB Case No. 95-S-03, the Hearing Examiner found that the Respondent, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP), acting through its officers, improperly denied Complainant Clarence E. Mack, fair and equal treatment "by not permitting him to participate in any meaningful or otherwise appropriate manner in the internal union affairs at a June 28, 1995 membership meeting". (R&R at 22.) The Hearing Examiner found, consequently, that the subsequent disciplinary charges brought against the Complainant and his ultimate expulsion from union membership were unlawfully motivated in violation of the standards of conduct for labor organizations as codified under D.C. Code § 1-618.3(a)(1).

Based on his findings and conclusions, the Hearing Examiner recommended, among other things, that the Complainant's expulsion

---

<sup>1/</sup> The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion.

**Decision and Order**

**PERB Cases No. 95-S-03 and 95-S-02**

**Page 2**

"be immediately rescinded with all rights and benefits of full membership restored to him; and that [Complainant] be immediately installed in the position of Chairperson of the Labor Committee in accordance with the PERB's Order dated June 21, 1996 in Case 95-S-02, Opinion No. 472." (R&R at 23.)<sup>2/</sup>

Both parties have filed exceptions to the Hearing Examiner's recommended remedy. With respect to the Hearing Examiner's Report, we find it to be thorough and cogently supported by the evidence and applicable law. We, therefore, adopt his findings of fact and conclusions of law. After reviewing the entire record, the Board finds no merit to the Complainant's exception. With respect to the Respondent's exception, to the extent consistent with our discussion below, we modify the recommended remedy in view of our Order in PERB Case No. 95-S-02, Opinion No. 472. In all other respects we adopt the recommended remedy of the Hearing Examiner.

The Complainant excepts to the limited reference to FOP and Robert Washington (former FOP chairperson) as, collectively, the Respondent in his recommended remedy and proposed Order. The Complainant asserts that the Order should extend to all the individual officers named as Respondents in the Complaint.<sup>3/</sup> The Complainant refers to the Hearing Examiner's observation that he found it unnecessary to continue to refer individually to each of the former union officers as Respondents. (R&R at n. 22.)

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

---

<sup>2/</sup> In PERB Case No. 95-S-02, Opinion No. 472, the Board certified the results of a Board ordered election of FOP's executive board, with the exception of the office of Chairperson, pending the determination in PERB Case No. 95-S-03 of Complainant's eligibility to hold office. Complainant Mack, a candidate for Chairperson in that election, had prevailed in the election.

<sup>3/</sup> During the hearing there was a turnover in the administration of FOP as a result of the Board ordered election of FOP's executive board referenced in footnote 1. The Hearing Examiner permitted individuals named as Respondents in their capacity as officers during the time material to the Complaint, to intervene in the proceedings of PERB Case No. 95-S-03. Former officers that intervened were Robert Washington (former chairperson), Nathan Pugh (former vice-chairperson), and Carolyn Coppedge (former executive secretary). The remaining officers named in the Complaint who did not intervene include: Nathan Greene, Jr., (election committee chairperson); Willie Temoney, (acting treasurer); and Teretha Spain, (acting secretary).

**Decision and Order**

**PERB Cases No. 95-S-03 and 95-S-02**

**Page 3**

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. D.C. Code § 1-605.2(9). 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. As such, the FOP is the only required Respondent that needs to be named with respect to the statutory violations found and the relief afforded. Cf., Fraternal Order of Police/MPD Labor Committee and D.C. Metropolitan Police Dept., 37 DCR 2704, Slip Op. No. 242, PERB Case No. 89-U-07 (1990) (under general principles of agency, employers are liable for unfair labor practices committed by its officers acting in that capacity). Findings of fact attributing specific acts to officers that were individually named as a Respondent are clearly set forth in the Report and Recommendation.<sup>4/</sup>

Respondent also excepts to the Hearing Examiner's recommended remedy. The Respondent contends that the remedy does not ensure full compliance with the Board's Order in PERB Case No. 95-S-02, Opinion No. 472. Specifically, the Respondent asserts that the remedy does not accommodate FOP's right to exercise its by-laws to resolve internal union disputes concerning its membership, including the Complainant's membership, that have occurred since the Board-ordered election.

In PERB Case No. 95-S-02, Opinion 472, we stated in pertinent part that "[i]f Mr. Mack prevailed in PERB Case No. 95-S-03 and his expulsion from union membership is rescinded, he will be eligible to hold office and the election result for the position of chairperson will be certified." (Slip Op. at 2.) The recommended remedy, however, provides for the rescission of Complainant's expulsion and his immediate installation as chairperson. (emphasis added.) The immediate installation of Complainant Mack as chairperson exceeds the relief prescribed by our previous Order.

Upon prevailing in this case, we ordered in PERB Case No. 95-S-02 that the Respondent's acts and conduct, as alleged in the Complaint, would have no legitimate effect with respect to

---

<sup>4/</sup> Of all the former officers of FOP named as Respondents in PERB Case No. 95-S-03, our review of the record reveals specific findings made only with respect to Robert Washington, Carolyn Coppedge, Willie Temoney and Teretha Spain. There was no finding that former vice-chairperson Pugh participated in bringing charges against Complainant or the discipline imposed. As the election committee chairperson, Nathan Greene was not a member of the executive board charged with violating the standards of conduct.

**Decision and Order**

**PERB Cases No. 95-S-03 and 95-S-02**

**Page 4**

Complainant Mack's eligibility to hold office. Since the Respondent's violations were the only basis for Complainant Mack's inability to take office, we further ordered that the election results for the position of chairperson be certified upon a finding of a violation. In this limited respect, we agree with the Respondent and modify the recommended remedy accordingly.

However, to the extent that Complainant Mack, may have engaged in conduct since the election which gave rise to any action by the Respondent under its by-laws with respect to his membership and/or Chairmanship, such claims are beyond the scope of the Complaints and this proceeding.<sup>5/</sup> In all other respects, we find the recommended remedy consistent with our Order in Opinion No. 472. Moreover, we find that it does not preclude the Respondent from exercising, in a legitimate manner, its rights or by-laws with respect to administering the operation of the FOP/DOC Labor Committee.

In view of the above, we deny the Complainant's exception and grant, in part, the Respondent's exception to the extent consistent with this Decision and Order. Based on the findings and conclusions of the Hearing Examiner, we find that by its acts and conduct Respondent FOP violated the standards of conduct for labor organizations as prescribed under D.C. Code § 1-618.3(a)(1) in violation of D.C. Code § 1-605.2(9). We adopt the Hearing Examiner's recommended disposition and remedy as modified and set forth in the Order below.

---

<sup>5/</sup> The Respondent argued that "there was no evidence before the Hearing Examiner which would alert him to the fact that post-election conduct involving Clarence Mack has been found to be detrimental to the interest of the Labor Committee and, thereby disqualify Mr. Mack from being a member of the Labor Committee under the unions By-Laws". (Resp. Ex. at 3.) This claim is clearly beyond the scope of this cause of action which concerned acts and conduct by both the Respondent and Complainant Mack that predated the election. Moreover, we have held that exceptions to a hearing examiners report and recommendation based on the consideration of evidence offered after the close of the hearing presents due process problems that unfairly prejudices the other party. See, e.g., Willie E. Elliot v. the D.C. Department of Corrections, Slip Op. No. 455, PERB Case No. 95-U-09 (1996). It is worthwhile reiterating our earlier observation made in response to similar issues expressed by the Respondent that have been engendered by these proceedings: "Respondent, by virtue of its violative acts, not the relief afforded, is directly responsible for any potential internal disruption caused... ." Ellowese Barganier, et al. v. FOP/DOC Labor Committee, 43 DCR 1969, 1974, Slip Op. No. 464 at p. 6-7, PERB Case No. 95-S-02 (1996).

**Decision and Order**

**PERB Cases No. 95-S-03 and 95-S-02**

**Page 5**

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Fraternal Order of Police/Department of Corrections Labor Committee (FOP), and its officers and agents shall cease and desist from (a) denying fair and equal treatment to Complainant Clarence Mack and other members of the FOP/DOC Labor Committee by denying or interfering with their rights to participate in union membership meetings and other internal union affairs, consistent with FOP by-laws; (b) bringing disciplinary charges against Complainant Mack and other members for exercising democratic principles; and, (c) otherwise violating the Comprehensive Merit Personnel Act (CMPA) standards of conduct for labor organizations as codified under D.C. Code § 1-618.3(a)(1).

2. The FOP 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 manner.

3. Pursuant to our Order in PERB Case No. 95-S-02, Opinion No. 472, the results of the election held on April 30, 1996, for the office of chairperson is hereby certified.

4. The FOP shall immediately rescind the expulsion from membership of Complainant Clarence Mack based on the charges contained in the Complaint and restore to him all the rights enjoyed by an executive officer and other members in good standing.

5. FOP shall post conspicuously within ten (10) days from the service of this Opinion the attached Notice where FOP notices to employees are normally posted.

6. FOP shall notify the Public Employee Relations Board (PERB), in writing, within fourteen (14) days from the date of this Order that the Notice to Members have been posted accordingly and as to the steps it has taken to comply with the directives in paragraphs 3, 4 and 5 of this Order.

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

March 12, 1997



Public  
Employee  
Relations  
Board

Government of the  
District of Columbia

415 Twelfth Street, N.W.  
Washington, D.C. 20004  
[202] 727-1822/23  
Fax: [202] 727-9116



# NOTICE

TO ALL EMPLOYEES REPRESENTED BY THE FRATERNAL ORDER OF POLICE/DEPARTMENT OF CORRECTIONS LABOR COMMITTEE (FOP/DOC) AT THE DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 507, PERB CASE NO. 95-S-03.

WE HEREBY NOTIFY our bargaining unit members that the Public Employee Relations Board has found that the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) violated the standards of conduct for labor organizations and, thereby, the law, and has ordered us to post this notice.

WE WILL cease and desist from (a) denying fair and equal treatment to Clarence Mack and other members of the FOP/DOC Labor Committee by denying or interfering with their rights to participate in union membership meeting and other internal union affairs, consistent with FOP by-laws and (b) bringing disciplinary charges against Mr. Mack and other members for exercising democratic principles in violation of the Comprehensive Merit Personnel Act (CMPA) standards of conduct for labor organizations, as codified under D.C. Code § 1-618.3(a)(1).

WE WILL NOT, in any like or related manner fail to adopt, subscribe, or comply with the standards of conduct for labor organizations prescribed under the Labor-Management subchapter of CMPA.

Fraternal Order of Police/  
Department of Corrections  
Labor Committee,

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Chairperson