GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
Clarence E. Mack,	
Complainant,	
v.	**PERB Case No. 95-U-14** **Opinion No. 467**
District of Columbia Department of Corrections,	
Respondent.	

DECISION AND ORDER

The events that gave rise to this case are set out by the Hearing Examiner in his Report and Recommendation.[1]/ The Hearing Examiner found that Complainant Clarence E. Mack, a correctional officer for the District of Columbia Department of Corrections (DOC), failed to prove that DOC committed unfair labor practices in violation of the Comprehensive Merit Personnel Act (CMPA) as codified under D.C. Code § 1-618.4(a)(1) and (2), with the exception of actions taken by one management official. [2]/

Specifically, the Hearing Examiner found that there was insufficient evidence presented to support the general charge that during an election campaign to fill an internal union office vacancy, DOC improperly assisted or otherwise favored the candidacy of another employee over that of the Complainant. As noted above, the Hearing Examiner found one instance in which a management official, contrary to DOC directives and the collective bargaining agreement covering these employees, invited Complainant's opponent

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[1]/ The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion. On July 20, 1995, the Board had issued a Decision and Order in this proceeding (Opinion No. 440), that denied Complainant's Motion for Summary Judgement and referred the matter to a hearing examiner.

[2]/ Correctional officers are part of a bargaining unit represented by the Fraternal Order of Police/Department of Corrections Labor Committee (FOP).

to address employees at roll call. The Hearing Examiner concluded that this action constituted unlawful assistance to one employee in violation of the CMPA; recommended that "the Agency be required to reiterate to its supervisors and Management personnel the requirement to be neutral during internal Union election campaigns and to post a notice to that effect, and that all of "the Complainant's other requested remedies, including monetary damages and firing Agency officials, be rejected, as unwarranted by the limited violation found herein." (R&R at 28.)

Both parties have filed exceptions to the Hearing Examiner's Report and Recommendations. After reviewing the entire record the Board finds no merit to any of the exceptions. We find the Hearing Examiner's Report to be thorough and supported by the evidence and applicable law, and we adopt his findings of fact, conclusions of law and recommended disposition and remedy.

OLRCB took exception to the one violation found by the Hearing Examiner. OLRCB asserts that there is no "compelling reason" for the Hearing Examiner's finding that the cited DOC management official knew or should have known of the candidacy of Complainant's opponent or that the management official otherwise improperly permitted Complainant's opponent to address roll call on that particular occasion. OLRCB's exception merely disagrees with the Hearing Examiner's assessment of the record evidence and the probative value and significance he accorded certain evidence over other evidence to support his conclusions. OLRCB's evidentiary contentions were specifically considered and rejected by the Hearing Examiner.

Challenges to a Hearing Examiner's findings based on competing evidence do not give rise to a proper exception where, as here, the record contains evidence supporting the Hearing Examiner's conclusion. [3]/ See, American Federation of Government Employees, Local 872 v. D.C. Dept. of Public Works, 38 DCR 6693, Slip Op. No. 266, PERB Cases Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). Issues concerning the probative value of evidence are reserved to the Hearing Examiner. See, e.g., University of the District of

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[3]/ OLRCB argues that there was no logical basis for attributing to the DOC management official, knowledge of the candidacy status of Complainant's opponent, Robert Washington, when she invited him to address the transportation unit's roll call at a facility to which he was not assigned. Among the findings of fact made by the Hearing Examiner supporting the violation was the length of time that Lt. Matthews knew Washington, i.e., 10 years. The Hearing Examiner further found that Lt. Matthew's invitation to Washington contravened known agency directives of neutrality and collective bargaining agreement provisions. (R&R at 25-26.)

Columbia Faculty Association/NEA v. University of the District of Columbia, 39 DCR 6238, Slip Op. No. 285, PERB Case No. 86-U-16 (1992) and Charles Bagenstose, et al. v. D.C. Public Schools, 38 DCR 4154, Slip Op. No. 270, PERB Cases Nos. 88-U-33 and 88-U-34 (1991). We therefore find no merit to OLRCB's exception.

Complainant's exceptions object to nearly every conclusion made by the Hearing Examiner. [4]/ Like the Respondent, Complainant base his exceptions on the probative value he would have accorded certain evidence to reach conclusions contrary to those made by the Hearing Examiner in support of his recommendation to dismiss the remaining allegations of the Complaint. [5]/ As previously stated,

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[4]/ Board Rule 556.3 provides that a "party may file precise, specific, written exceptions with the Board." Although Complainant's exceptions are neither precise nor specific, Complainant has represented himself in these proceedings, and we have held that we will not impose upon the pleadings of pro se complainants strict compliance with the clarity and preciseness requirements otherwise prescribed by our Rules. See, e.g., Clarence Mack, et al. v. FOP/DOC Labor Committee, Slip Op. No. 386, PERB Case No. 94-U-24 (1994)(pro se litigant was not required to strictly comply with Board Rule 520.3(d)).

[5]/ Complainant's exceptions are actually his assessment of the evidence to support conclusions he believes should be drawn to support his contention that: (1) Complainant, "based on past practice, as well as the current local custom, policy, and practice was denied the right to place his campaign literature at the designated union areas" and (2) "the addressing of Respondents (sic) 'roll calls' assemblies by Mr. Washington was (sic) substantive violation of the collective bargaining agreement and were (sic) a clandestine and tacit endorsement of Mr. Washington for Chairman of the F.O.P./D.O.C. Labor Committee during the special election for chairman." (Excep. at 3 and 7.) While the Hearing Examiner found instances when the literature of Complainant's rival was posted where it was not permitted, the Board has held that "mere permissiveness toward union activities in the work place does not constitute unlawful assistance or support" where "[t]here was no evidence that DOC's permissive attitude .... represented a divergence from its practice in responding to such activity... ." Teamsters, Local Union 1714, a/w IBTCWHA, AFL-CIO v. D.C. Dep't of Corrections, ___ DCR _____, Slip Op. 360 at n. 6-7, PERB Case No. 92-U-09 (1993). The Hearing Examiner found that, when discovered, DOC officials directed both Complainant and Mr. Washington to remove campaign material from improper locations. (R&R at 15-16.) With respect to roll calls, except for the one instance discussed, the Hearing Examiner concluded that there was

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we found the Hearing Examiner's conclusions to be supported by evidence in the record and accordingly such objections do not give rise to a proper exception.

In view of the above, we deny both Respondent's and Complainant's exceptions and expressly find that by its acts and conduct DOC has committed an unfair labor practice in violation of D.C. Code § 1-618.4(a)(1) and (2) to the extent found by the Hearing Examiner. We adopt the Hearing Examiner's recommended disposition and remedy as set forth in the Order below.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Department of Corrections (DOC), its agents and representatives shall cease and desist from interfering, restraining or coercing its employees by facilitating or otherwise assisting one employee's efforts over another in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.6(a).

2. DOC, its agents and representatives shall cease and desist from dominating, interfering, or assisting in the administration of the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) by facilitating or otherwise assisting one employee's campaign efforts to run for an office in FOP over another employee's efforts.

3. DOC, its agents and representatives shall cease and desist from interfering, restraining or coercing, in any like or related manner, employees represented by the FOP in the exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

4. DOC shall reiterate to its supervisors and management personnel DOC's policy that they are required to be neutral during internal union election campaigns.

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[5](...continued)
no basis for finding that DOC permitted Mr. Washington to address roll calls to further his candidacy. (R&R at 26-27.) Rather, he concluded that the other instances of Washington addressing roll call were proper in his capacity as the acting vice-chairperson of FOP. Id.

5. The remaining Complaint allegations that DOC violated D.C. Code Sec. 1-618.4(a)(1) and (2) are dismissed.

6. DOC shall, within ten (10) days from the service of this Decision and Order, post the attached Notice, dated and signed, conspicuously on all bulletin boards where notices to these bargaining-unit employees are customarily posted, for thirty (30) consecutive days.

7. DOC shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, what steps have been taken to comply with paragraphs 4 and 6 of this Order.

8. All other remedial relief requested by the Complainant is denied.

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

February 23, 1996