



advised that key IBPO representatives could not be available at the suggested meeting times or in the immediate future.

When FOP protested the continued IBPO course of action or non-action to the Board by letter of October 20, 1981, and requested that the Board proceed to schedule an election, IBPO then took the position that it was under no obligation to proceed further except as directed by the Board.

More recently, IBPO has advised the Board that it considers an election improper until the Board rules on a complaint that has been made by IBPO that FOP's internal rules and procedures constitute racial and sexual discrimination. (81-S-02)

Finally, IBPO has informed the Board that it will not proceed to an election until a Board ruling is issued regarding its claim that the FOP Chairman of the Labor Committee is a confidential employee of the Police Department and therefore not properly included in the bargaining unit. (81-R-09)

The Office of Labor Relations and Collective Bargaining (OLRCB), representing the employer, has filed a letter with the Board under date of October 23, 1981, which states that the OLRCB does "not take a position for or against either union," and that it supports in effect the IBPO position. The October 23, 1981 letter mis-states the facts regarding the procedure the Board is following, and after referring to the FOP letter of October 20, it suggests that "precipitous action (by the Board) can have serious adverse implications concerning the role of the (Executive Director of the Board) and the future role of the PERB in this case", if the Board takes the action demanded in the October 20, 1981, letter.

The Board has investigated the circumstances of the IBPO allegations regarding FOP race and sex discrimination and the FOP Labor Committee Chairman's non-bargaining-unit status to determine whether these allegations warrant IBPO's refusal to proceed to an election. They do not.

The race and sex discrimination charge was made in a "Standard of Conduct" complaint filed with the Board by the IBPO President on August 28, 1981. It is repeated in a "Motion to Dismiss/Representation Petition Or in the Alternative to Stay Decision and Order of Election" document filed October 26, 1981. These filings have been docketed by the Board as Case No. 81-S-02.

Although this is the first time the procedural issue involved in this case has come before the Board it has been dealt with repeatedly by the National Labor Relations Board (NLRB). The question presented is whether a charge of internal union misconduct should be ruled upon in connection with a representation and election proceeding. The NLRB has ruled consistently that it should not be; that to do so would

hold up the proceeding needlessly; and that the time for such a charge, if it is pressed seriously, is after a union has been determined to have majority status and it can be shown that the union in fact acts discriminatorily in a manner prejudicing or threatening to prejudice bargaining unit members' interests. IBPO, in its pleadings, recognizes this long-standing NLRB rule, but asks that the Board not adopt it.

PERB Rule 108.2 in effect adopts the NLRB rule, and good reason supports it. This reason is confirmed by what is attempted in the present case. In the present case, the complaint is not supported by an allegation that there is an aggrieved person as provided in Rule 108.2. The filing of the complaint at this time is premature. Further the allegations and evidence submitted in the complaint do not present a sufficient case of prejudicial discrimination against bargaining unit members' interest.

If FOP wins the election that has been ordered and if a discrimination charge is subsequently filed by an "interested party" and if the complaint then meets the requirement of showing reasonable basis for considering this charge, the Board will then consider the case on its merits and make a finding. The discrimination issue is a serious one, and could lead to adverse action against a union. The Board has in no way acted on the merits of that charge here, because there is neither an aggrieved party nor a violation of the law or of the Board's rules.

The second issue concerning IBPO's protest that the Chairman of the FOP Labor Committee is a confidential employee of the Metropolitan Police Department was first registered in a Petition for Clarification filed September 2, 1981 and is repeated in the October 26, 1981, Motion referred to above. The matter has been docketed as Case No. 81-R-09.

An investigation by the Board discloses that the individual involved is currently in a position that could in no way be considered confidential or managerial, and that the status of other individuals in this same position is not being challenged so far as inclusion in the bargaining unit is concerned. In view of this finding, IBPO's contention that the election should be postponed until a further bargaining unit determination is made has no legitimate basis whatsoever. The Board hereby denies IBPO's request (81-R-09).

The real issue in these proceedings is whether the representation and election procedures established in the Comprehensive Merit Personnel Act of 1978 are to be respected. These procedures are essential to establishment of the right of District employees to organize and to bargain collectively. Like all laws in a free society they depend

largely on voluntary compliance with them, and with determinations made under them. Like all such laws they are vulnerable to delaying tactics that can defeat their purpose. Regardless of how the rules affect a party's position in a particular case, there is in the long run a common interest in making them work.

The interest in voluntary compliance prompts one more effort by the Board to obtain it here. The next regularly scheduled Board meeting is on November 16, 1981. The parties are instructed to meet together within three working days of receipt of this Decision and to make arrangements for the prompt holding of this election. The parties are further instructed to continue meeting until such arrangements are completed, and to advise the Board offices in writing no later than Thursday, November 12, 1981, as to the status of this matter.

ORDER

Case No. 81-R-05

It is ordered that the parties proceed immediately in accordance with the last paragraph of Opinion No. 23.

Case No. 81-S-02/No. 81-R-05

The Complaint filed on August 28, 1981 and the "Motion to Dismiss/Representation Petition or in the Alternative to Stay Decision and Order of Election" filed on October 26, 1981, are hereby dismissed and denied, respectively.

Case No. 81-R-09/No. 81-R-05

The Complaint filed on September 2, 1981, and the "Motion to Dismiss/Representation Petition or in the Alternative to Stay Decision and Order of Election" filed on October 26, 1981, are denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

November 4, 1981