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

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In the Matter of:)
)
Yonah Bromberg Gaber, et al.)
)
Complainants) PER B Case No. 23-S-03
)
v.) Opinion No. 1857
)
American Federation of State, County)
and Municipal Employees, Local 1808)
)
Respondent)
-----)

DECISION AND ORDER

I. Statement of the Case

On March 24, 2023, fourteen District of Columbia Public Library employees (Complainants) filed a standards of conduct complaint (Complaint) against their Union, the American Federation of State, County and Municipal Employees, Local 1808 (AFSCME). The Complaint alleged that AFSCME failed to provide appropriate notice and a reasonable opportunity for all members to vote in a representative election, thereby violating the Comprehensive Merit Personnel Act (CMPA)¹ and AFSCME's Constitution.² The Complaint requested preliminary relief in the form of an order to delay the impending election scheduled for March 30, 2023, and an order compelling AFSCME to cease and desist from holding unfair elections.³ The Complaint further requested an order from the Board directing AFSCME to hold a new election.⁴

On March 30, 2023, the election proceeded as scheduled.⁵ However, AFSCME determined that the results of the election were invalid, due to a "discrepancy between the number of people who arrived to vote, and the number of ballots cast."⁶ AFSCME held a rerun election on May 18, 2023, and certified the results that day.⁷

¹ D.C. Official Code § 1-617.03(a)(1) and (4).

² Complaint at 2-3.

³ Complaint at 4.

⁴ Complaint at 5.

⁵ Report at 4.

⁶ Report at 4.

⁷ Motion at 2.

In its Answer and Motion to Dismiss, AFSCME argues that the Complainants failed to state a claim or allege any personal harm resulting from the asserted violations.⁸ AFSCME argued that the March 30th election complied with AFSCME's Constitution, and asserted that the Complaint was moot because of the revote election.⁹ Additionally, AFSCME argued that the Complaint was moot because the alternative relief requested therein was granted in the form of a new election.¹⁰ The Complainants filed an Opposition to the Motion, asserting that the basis of the Complaint remained unresolved, as AFSCME conducted the second election in the same manner as the first.¹¹

The case was assigned to a Hearing Examiner, who determined that the May 18th election did not resolve the Complainants' allegations concerning AFSCME's election practices.¹² Accordingly, the Hearing Examiner denied AFSCME's Motion.

PERB held a hearing on October 5, 2023. On December 12, 2023, the Hearing Examiner issued his Report and Recommendations (Report), finding that AFSCME violated its Constitution by failing to provide the Complainants with sufficient notice of the May 18th election, and by failing to provide the Complainants with a reasonable opportunity to vote in that election.¹³ The Hearing Examiner recommended that the Board order AFSCME to improve its election processes and pay the Complainants' litigation costs.¹⁴

AFSCME filed exceptions. Among other arguments, AFSCME asserts that the Board should dismiss the Complaint for lack of jurisdiction because the Complaint only concerns the March 30th election, not the May 18th election.¹⁵ The Complainants filed a response, stating that the allegations concerning the first election apply equally to the second election, as both were conducted in the same manner.¹⁶

II. Discussion

The Board has consistently held that a hearing examiner's analysis must be limited to the facts alleged in the complaint.¹⁷ A hearing examiner cannot properly find a violation based on a set of facts which were not raised in the complaint, even if the legal basis is the same.¹⁸ Allegations

⁸ Answer at 2.

⁹ Answer at 2-3. Additionally, the Answer argued that PERB should deny the request for preliminary relief because the Complainants failed to meet the evidentiary requirements set forth in Board Rule 544.9. Answer at 1. Board Rule 544.9 provides that "[a] request for preliminary relief must be accompanied by affidavits or other evidence supporting the request."

¹⁰ Motion at 2.

¹¹ Opposition at 1, 4.

¹² Order Denying Motion to Dismiss Complaint as Moot at 2.

¹³ Report at 21-22.

¹⁴ Report 23-25.

¹⁵ AFSCME Exceptions at 1-10.

¹⁶ Complainant's Response at 1-3.

¹⁷ *FOP/MPD Labor Comm. v. MPD*, 62 D.C. Reg. 3544, Slip Op. No. 1506 at 10-11, PERB Case No. 11-U-50 (2015) (citing *FOP/MPD Labor Comm. v. MPD*, 61 D.C. Reg. 8003, Slip Op. No. 1316 at 5-8, PERB Case 09-U-50 (2014)).

¹⁸ *FOP/MPD Labor Comm.*, Slip Op. No. 1506 at 9.

which fall outside the scope of the complaint are not properly before the hearing examiner or the Board,¹⁹ and the Board will not render a decision on them.²⁰

In the present case, the Complaint exclusively concerns the March 30th election. However, the Report only discusses the Complainants' subsequent assertions regarding the May 18th election. Previously, where complainants have raised allegations concerning an election which occurred after the initial complaint was filed, the Board has declined to consider those claims and has solely evaluated the contentions contained in the complaint.²¹ Here, the Board finds that the same course of action is appropriate and has determined that further analysis from the Hearing Examiner is required to achieve that end.

III. Conclusion

The Board remands this matter to the Hearing Examiner for further findings concerning the Complainants' allegation that AFSCME conducted the March 30th election in a manner which violated AFSCME's Constitution and D.C. Official Code § 1-617.03(a)(1) and (4) of the CMPA.

ORDER

IT IS HEREBY ORDERED THAT:

1. This matter is remanded to the Hearing Examiner for further findings concerning the Complainants' allegation that AFSCME conducted the March 30th election in a manner which violated AFSCME's Constitution and D.C. Official Code § 1-617.03(a)(1) and (4) of the CMPA.
2. The Hearing Examiner shall submit those findings no later than February 29, 2024.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 18, 2024

Washington, D.C.

¹⁹ See *FOP/MPD Labor Comm.*, Slip Op. No. 1316 at 7.

²⁰ *Alesia Hamilton v. AFSCME*, 63 D.C. Reg. 4598, Slip Op. No. 1564 at 3, PER B Case No. 16-S-01 (2016) (citing *FOP/MPD Labor Comm.*, Slip Op. No. 1316 at 5-6).

²¹ See *Keith Allison, et al. v. FOP/D OC Labor Comm.*, 61 D.C. Reg. 9085, Slip Op. No. 1482 at 2, 4, PER B Case No. 14-S-04 (2014).