

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
Ernest Durant, Jr.)	
)	
and)	PERB Case No. 98-S-06
)	Opinion No. 562
Carlton Butler,)	
)	
Complainants,)	(Request for Prelimi-
)	nary Relief and Mo-
v.)	tion to Dismiss)
)	
Fraternal Order of Police/ Department of Corrections Labor Committee,)	
)	
Respondent.)	FOR PUBLICATION
)	
)	
)	

DECISION AND ORDER

On April 17, 1998, Complainants Ernest Durant ^{1/} and Carlton

^{1/} On May 22, 1998, Co-Complainant Ernest Durant filed a document styled "Request to Withdraw Standards of Conduct Complaint PERB Case Number 98-S-06 filed April 17, 1998 Without Prejudice for Later Re-Submission". By letter dated May 26, 1998, the Executive Director issued a letter to Mr. Durant accepting his request to withdraw and closed the case. On June 1, 1998, Respondent Fraternal Order of Police/Department of Corrections Labor Committee (FOP) filed an Opposition to Complainant's Motion to Withdraw. Supplemental responses were filed by both Complainant Durant and Respondent. Board Rule 520.5 provides that "[a] complainant may withdraw a complaint without prejudice at any time prior to the filing of an answer." Although this Board Rule 520.5 is found under provision concerning unfair labor practices, we find it equally applicable to any complaint filed within our jurisdiction.
(continued...)

Butler filed two documents styled "Second Amended Complaint" and "Request for Emergency Injunctive Relief", respectively, in PERB Case No. 98-S-06. Because the allegations contained in the Second Amended Complaint were unrelated to the claims made in the initial Complaint and in the Amended Complaint (then pending disposition before the Board)^{2/}, the Executive Director treated the Second Amended Complaint as a new Complaint and assigned, along with Complainants' request for preliminary relief, the above-captioned case number. On April 21, 1998, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) filed a document entitled Motion to Dismiss Second Amended Complaint. In addition, FOP opposed Complainants' preliminary relief request.^{3/}

The Complainants claim that FOP Chairperson Clarence Mack has violated the Comprehensive Merit Personnel Act's (CMPA) standards of conduct for labor organizations as codified under D.C. Code Sec. 1-618.3(a)(1) and (4). Specifically, the Complainants allege that Chairperson Mack violated FOP election rules for the election of executive board positions by unilaterally deciding: (1) that FOP's counsel would resolve members' challenges to executive board nominees and the conduct of the election; and (2) that the method for conducting the executive board election would be by mail ballot as oppose to an on-site election. The Complainants were seeking

^{1/}(...continued)

Therefore, Complainant Durant's request to withdraw the Complaint is untimely.

Moreover, Mr. Durant's request to withdraw could have only been effective as to his further participation as a Co-Complainant in this proceeding. In any event, Co-Complainant Carlton Butler remains a viable Complainant and thereby the Complaint remained open pending disposition. Our disposition of the Complaint on the merits, obviates further consideration of FOP's opposition to Mr. Durant's attempt to withdraw the Complaint without prejudice.

^{2/} In Slip Op. No. 547, we have since dismissed the Complaint and Amended Complaint in PERB Case No. 98-S-02.

^{3/} OP's Motion was filed under PERB Case No. 98-S-02. In view of the Executive Director's administrative action noted above we shall treat the Motion and all other subsequent filings concerning the claims made in the Second Amended Complaint as PERB Case No. 98-S-06. We note, that filing a Motion to Dismiss a Complaint does not provide an automatic stay of the time provided under Board Rules for the filing of an Answer to a Complaint. However, in view of the unusual manner by which this matter became a separate case, we do not need to address the consequences of this issue.

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preliminary relief directing: (1) an immediate stay of the mail ballot election and; (2) that an election be held in accordance with the will of the general membership.

FOP requests that we dismiss the Complaint based on the following: (1) the manner in which an internal union election is held does not implicate any of the standards of conduct for labor organizations; (2) section 9.3 of the FOP by-laws authorizes the election committee, not the general membership, to make determinations concerning the certification of eligible candidates and the authority to conduct elections; and (3) the Complainants fail to allege any material conduct that, if proven, would violate the CMPA or FOP by-laws. Therefore, the request for preliminary relief should be denied and the Complaint dismissed.

Section 9.3 of FOP's by-laws afford the election committee with the authority to "conduct[] all regular and special elections, including ... certifying eligible candidates... ." Documents submitted and the affidavit of the election committee chairperson support that determinations concerning the election method, i.e., mail ballot, and procedures for certifying candidates were made accordingly. In this regard, the Complainants fail to allege how the mail ballot election was not fair or failed to conform with "democratic provisions for periodic elections" or "the right of individual members to participate in the affairs of the organization" as these matters are "prescribed under the governing rules of [FOP]." D.C. Code Sec. 1-618.3(a)(1). Nor do the Complainants state how FOP's by-laws or election rules were violated by authorizing FOP's counsel to resolve challenges to FOP executive board nominations.

In view of the existing FOP by-laws, the Complainants' asserted attempts at a meeting to have the general membership vote on what type of election to hold, in effect, was an effort to modify or amend FOP by-laws. There is no assertion that FOP by-laws requirements governing the adoption of by-law amendments were met or violated when Complainants attempted to put the matter to a vote. To the contrary, documents submitted by the Complainants in support of their Complaint reflect that 19 members were present at the March 31, 1998 meeting in question. Section 18.1 of FOP by-laws requires, among other things, that "that the quorum for such meetings shall be two hundred fifty dues paying members in good standing. This quorum requirement cannot be suspended."

We have held that in a Complaint where claims are made that the standards of conduct for labor organizations have been violated, it is not sufficient to merely assert that a labor organization has violated its internal governing rules and regulations. William Corboy, et al. v. FOP/MPD Labor Committee,

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Slip Op. No. 391, PERB Case No. 93-S-01 (1994). The Complainant must also state how the asserted breach had the proscribed effect set forth in the asserted standard. *Id.* Therefore, for the reasons discussed, the Complainants have failed to state a cause of action under the standards of conduct for labor organizations as codified under D.C. Code Sec. 1-618.3(a)(1) and (4).

The Board, after reviewing the pleadings in the light most favorable to the Complainants, hereby grants FOP's Motion to Dismiss the Complaint for failure to state a claim. Consequently, the Complainants' request for emergency injunctive relief based on the claims made in the Complaint is also dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Department of Corrections Labor Committee's (FOP) Motion to Dismiss is granted.
2. The Complaint and request for preliminary relief are dismissed.

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

September 22, 1998