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

In the Matter of:)	
)	
John Rosser and Laurine Ellis)	
)	
Complainants)	PERB Case No. 23-S-01
)	
v.)	Opinion No. 1859
)	
Fraternal Order of Police Department)	
of Corrections Labor Committee and Executive)	
Board Members Joseph Alexander and)	
Adedeji Adebisi)	
)	
Respondents)	

DECISION AND ORDER

I. Statement of the Case

On January 13, 2023, Complainants John Rosser and Laurine Ellis (Complainants) filed a standards of conduct Complaint against the Fraternal Order of Police Department of Corrections Labor Committee Executive Board members Joseph Alexander and Adedeji Adebisi (Respondents). The Complainants allege that the Union infringed on their rights to due process during the Union’s investigation of financial misconduct charges against the Complainants, in violation of Union Bylaws and D.C. Official Code § 1–617.03(a)(1) and (4). On January 24, 2023, the Respondents filed an Answer to the Complaint. PERB held a hearing, after which the Hearing Examiner issued a Report and Recommendations (Report). The Complainants filed Exceptions to the Report.

For the reasons stated herein, the Complaint is dismissed.

II. Hearing Examiner's Report and Recommendations

A. Background

The Hearing Examiner made the following factual findings. Complainant Rosser served as the Executive Vice Chairman of the Union from January 2022 to June 2022.¹ In May 2022, the Union held an internal election, during which Respondents Joseph Alexander and Adedeji Adebisi were elected as incoming Executive Chairman and Executive Vice Chairman.² Shortly after taking office, the new Executive Board conducted an audit of the Union's finances.

The Executive Board distributed an Audit Report during a general membership meeting in June 2022. Based on the Audit Report, Executive Vice Chairman Adebisi submitted charges of financial misconduct against Complainant Rosser and several other Union members to the Union's Executive Secretary.³ The Executive Board then submitted the charges to the Judiciary Committee for disposition.⁴

On July 27, 2022, the Union's Executive Secretary served the charges on Complainant Rosser.⁵ On August 8, 2022, the Chairman of the Judiciary Committee invited Complainant Rosser to appear virtually before a Judiciary Committee Hearing Panel on August 10, 2022, to explain or defend himself against the charges.⁶ Complainant Rosser responded the same day, requesting to know the makeup of the Hearing Panel and requesting to bring a recorder to the hearing.⁷ Complainant Rosser further asserted that a virtual hearing would "impinge [on]" his rights.⁸ In response to Complainant Rosser's request, the Chairman of the Judiciary Committee identified the Hearing Panel members as "Corporal R. Nwankwo, Corporal D. Thomas and Corporal I. Uloma," and stated that Complainant Rosser could use a portable recorder at the Hearing.⁹

On August 9, 2022, Complainant Rosser notified the Chairman of the Judiciary Committee of his unavailability on August 10, 2022, due to a scheduled medical procedure.¹⁰ Complainant Rosser asserted that he had a "7-day time period simply to challenge a member of [the Hearing Panel]."¹¹ However, the Hearing Examiner found that Complainant Rosser did not challenge the Hearing Panel members.¹² On August 10, 2022, the Chairman of the Judiciary Committee responded to Complainant Rosser, noting that Complainant Rosser may challenge any member of

¹ Respondents' Exhibit 5(1) at 1.

² Respondent's Answer at 1.

³ Report at 4.

⁴ Report at 4, 8; Respondent's Answer at 2.

⁵ Report at 8.

⁶ Report at 8.

⁷ Report at 8.

⁸ Report at 8.

⁹ Report at 8.

¹⁰ Report at 8.

¹¹ Report at 8-9.

¹² Report at 9.

the Hearing Panel in writing, or alternatively attach all the necessary receipts or exhibits Complainant Rosser intended to use in challenging the alleged financial misconduct.¹³ The Hearing Examiner found that Complainant Rosser did not appear at the August 10, 2022, Hearing Panel hearing.¹⁴

On August 29, 2022, the Hearing Panel notified Complainant Rosser of its decision, finding Complainant Rosser guilty of all charges.¹⁵ The Hearing Panel determined that Complainant Rosser's reimbursements were unjustified.¹⁶ The Hearing Panel notified Complainant Rosser that he was disqualified from holding office, and that he must pay back \$3025.84 to the Union within 90 days.¹⁷

On September 6, 2022, Complainant Rosser appealed the Hearing Panel decision to the Executive Board.¹⁸ On September 12, 2022, the Executive Board sitting as an Appeal Board, heard Complainant Rosser's appeal.¹⁹ The Hearing Examiner found that Complainant Rosser submitted receipts to the Appeal Board.²⁰

On September 14, 2022, the Union's Executive Secretary notified Complainant Rosser in writing that, after reviewing all the receipts he presented, the Executive Board concluded that Complainant Rosser did "not have enough evidence to justify the money he received."²¹ However, the Executive Board found that, after close review of the receipts, "he is entitled for \$2353.11 [reimbursement]," but that he must pay back \$672.73 and further, that he would be suspended for two years from running for any Union post.²²

On January 16, 2023, the Complainants filed this standards of conduct Complaint with the Board, challenging the due process of the discipline imposed by the Union.²³

B. Hearing Examiner's Recommendations

The Complainants alleged before the Hearing Examiner that the Union violated its standards of conduct under D.C. Official Code § 1-617.03(a)(1) and (4).²⁴ The Complainants assert that the Respondents infringed on their rights to due process by (1) failing to submit properly formatted, specific and "sufficient" charges; (2) failing to ensure proper notification of charges

¹³ Report at 9.

¹⁴ Report at 9.

¹⁵ Report at 9.

¹⁶ Report at 9.

¹⁷ Report at 9.

¹⁸ Report at 9.

¹⁹ Report at 9.

²⁰ Report at 9.

²¹ Report at 9.

²² Report at 9-10.

²³ Report at 10. The Complainants submitted no exhibits or testimony regarding the Complainant Laurine Ellis' discipline by the FOP/DOC Executive Board into the record. Report at 10.

²⁴ Report at 10; Complainants' Post Hearing Brief at 1.

prior to hearing; (3) failing to abide by Union Bylaws on plaintiffs' right ("at least seven days") to challenge the hearing panel's composition; (4) failing to have the Executive Vice Chairman of the Union recuse himself during the appeal process and votes; (5) forum shopping the composition of the hearing panel; and (6) imposing sanctions.²⁵

As remedy, the Complainants request the removal of all sanctions taken against them arising out of the Executive Board's actions; a cease-and-desist order prohibiting retaliation by the Respondents; a posting of the violations in the manner usually proscribed by the Board; and a rerun of the internal Union elections in which the Complainants were deprived of participation in November 2022 and January 2023.²⁶ The Complainants also argue as their requested remedy that they should not be barred from participation in any Union election activity or be fined.²⁷

The Hearing Examiner found that, to the extent individual Union officers, Joseph Alexander and Adedeji Adebisi, are named as Respondents in this standards of conduct Complaint, the claims against them do not accrue to them or their actions in their personal capacity.²⁸ Rather, the claims against them accrue to only their representative capacity as officers and/or agents of Union.²⁹

The Hearing Examiner noted that Complainant Ellis did not appear at either the pre-hearing conference or at the hearing.³⁰ He further noted that Complainant Rosser introduced no evidence, exhibits or testimony regarding the Union's discipline of Complainant Ellis or on Complainant Ellis' behalf.³¹ Consequently, the Hearing Examiner found that there is no record evidence supporting Complainant Ellis' standards of conduct Complaint against the Union, and recommended dismissal with prejudice.³²

The Hearing Examiner found that the charges against Complainant Rosser were "clear and specific, and provided him with sufficient information to form a defense to the charges."³³ The Hearing Examiner also found persuasive Complainant Rosser's submitted response in rebuttal to the charges, which the Hearing Examiner found "demonstrates he understood the charges and was fully informed to the extent that he could respond to the substance of the charges."³⁴ For these

²⁵ Report at 10-11; Complainants' Post Hearing Brief at 1.

²⁶ Report at 12.

²⁷ Report at 12.

²⁸ Report at 16.

²⁹ Report at 16 (citing *Clarence E. Mack, et al., and Ellowese Barganier, et al. v. Fraternal Order of Police/Department of Corrections Labor Committee, et al.*, Slip Op. No. 507, PERB Case No. 95-S-03 and 95-S-02 (1997)).

³⁰ Report at 17.

³¹ Report at 17.

³² Report at 17.

³³ Report at 18.

³⁴ Report at 18.

reasons, the Hearing Examiner found that the Complainants' assertion that the charges were not properly formatted, specific, and sufficient is without merit.³⁵

The Hearing Examiner further found that the Union's failure to provide Complainant Rosser with a seven-day notice of the hearing standing alone does not constitute a due process violation because the Union offered Complainant Rosser the opportunity to challenge the membership of the Hearing Panel before the hearing.³⁶ The Hearing Examiner noted that Complainant Rosser knew the makeup of the Hearing Panel in advance of the hearing date and had the opportunity to challenge any member serving on the Hearing Panel but failed to do so.³⁷ The Hearing Examiner further noted that Complainant Rosser could have requested a rescheduling of the Hearing Panel hearing to accommodate his medical appointment, which conflicted with the hearing but failed to do so.³⁸ For these reasons, the Hearing Examiner determined that there was no evidence in the record that the Union's failure to provide Complainant Rosser with seven days to challenge the membership of the Hearing Panel ultimately denied him the ability to defend himself against the charges of misappropriation of Union funds. The Hearing Examiner found that the Complainants failed to provide evidence of any impact on Complainant Rosser's ability to defend himself that resulted from the alleged violation.³⁹

Finally, the Hearing Examiner dismissed the Complainants' allegations that the Union violated their due process rights by not recusing the Executive Vice Chairman from the appeals process, and by imposing sanctions on the Complainants as discipline, as unsupported by record evidence.⁴⁰ For these reasons, the Hearing Examiner found that the Complainants have failed to carry the burden of proof to show that the Union committed a due process violation.⁴¹ Therefore, the Hearing Examiner held that the Complaint must be dismissed with prejudice.⁴²

III. Discussion

The Board will adopt a Hearing Examiner's Report and Recommendation if it is reasonable, supported by the record, and consistent with Board precedent.⁴³

The Complainants filed Exceptions to the Hearing Examiner's Report. In the Exceptions, the Complainants first argue that the Hearing Examiner erred in his factual finding that

³⁵ Report at 18.

³⁶ Report at 19.

³⁷ Report at 19-20.

³⁸ Report at 20.

³⁹ Report at 22.

⁴⁰ Report at 21-23.

⁴¹ Report at 23.

⁴² Report at 23.

⁴³ *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. 1668 at 6-7, PERB Case No. 15-U-28 (2018). See *AFGE, Local 1403 v. D.C. Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05- UC-01 (2012).

Complainant Rosser submitted receipts to the Appeals Panel.⁴⁴ The Complainants assert that Complainant Rosser submitted any receipts he had to the Union “in real time with the request for reimbursement,” and did not have any receipt remaining in his possession after leaving office in May 2022.⁴⁵ The Complainants argue that the charges by the first Hearing Panel were based on “no receipts,” despite evidence to the contrary, and that the receipts were only considered for the first time by the Appeals Panel.⁴⁶ The Complainants argue that the Hearing Examiner chose to ignore this fact in his Report.⁴⁷ The Board finds that the Complainants’ Exceptions are supported by the record and that the Hearing Examiner’s factual findings on this issue are unreasonable. There is no evidence in the record that the Complainant submitted receipts to the Appeals Panel.

The Complainants also argue that the Hearing Examiner erred in his determination that Complainant Rosser knew about the Hearing Panel and had sufficient time to challenge its makeup.⁴⁸ The Complainants maintain that Complainant Rosser was not informed about Hearing Panel’s composition and “only found out about the newly reconstituted panel when [he] received their verdict.”⁴⁹ The Board finds that the Complainants’ Exceptions are supported by the record and that the factual findings of the hearing examiner are unreasonable. The record shows that two of the three members on the first Hearing Panel were replaced after Complainant Rosser submitted evidence, and Complainant Rosser was further not provided with an opportunity to challenge the panel’s makeup.⁵⁰ The Hearing Examiner’s findings on both issues were unreasonable and unsupported by the record. Therefore, the Board sets aside these findings.

Nevertheless, the Hearing Examiner’s determination that the Appeal Board fully and fairly considered Rosser’s appeal is reasonable, supported by the record and consistent with Board precedent. The Board has held that a mere breach of a union’s internal bylaws or constitution does not establish a cause of action under the Board’s standards of conduct jurisdiction.⁵¹ Based on the record, there is no evidence that the change in the first Hearing Panel’s membership, or its consideration of evidence, negatively affected Complainant Rosser’s appeal before the Appeal Board.⁵² The record shows that the membership of the Appeal Board was consistent with the Union’s Bylaws.⁵³ The record also reflects that the Appeal Board considered Complainant

⁴⁴ Exceptions Brief at 1-2.

⁴⁵ Exceptions Brief at 2.

⁴⁶ Exceptions Brief at 2.

⁴⁷ Exceptions Brief at 2.

⁴⁸ Exceptions Brief at 2.

⁴⁹ Exceptions Brief at 2.

⁵⁰ Complainant Rosser agreed to submit a written response to the allegations in lieu of appearing before the panel. Exceptions Brief at 4.

⁵¹ *Butler, et al. v. FOP/DOC Labor Comm.*, 46 D.C. Reg. 4409, Slip Op. No. 580 at 3, PERB Case No. 99-S-02 (1999) (citing *Corboy, et al. v. FOP/MPD Labor Comm.*, Slip Op. No. 391, PERB Case No. 93-S-01 (1994)).

⁵² See Union’s Bylaws 12.12 (“No penalty imposed by a panel shall take effect until the expiration of the appeal period if no appeal is noted or the appeal is heard and determined by the Board”).

⁵³ See FOP/DOC Bylaw 12.9.

Rosser's receipts and significantly mitigated the Hearing Panel's penalty on the merits.⁵⁴ For these reasons, the Board finds that the Complainants have not met their burden of proof to show that the Union committed a due process violation against Complainant Rosser or violated its standards of conduct under the CMPA.

IV. Conclusion

The Complainants have not met their burden of proof to establish a standards of conduct violation under the CMPA. Therefore, the Board dismisses the Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed with prejudice; and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

February 22, 2024

Washington, D.C.

⁵⁴ Report at 22.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration within fourteen (14) days, requesting the Board to reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provide thirty (30) days after a Board decision is issued to file an appeal.