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

In the Matter of:)	
)	
Carlton Butler, Nila Ritenour, Charlene Carter, Isaac Jones, John Busby, Jr., and Derrick Randolph,)	
)	
Complainants,)	PERB Case No. 02-S-08
)	
v.)	Opinion No. 797
)	
Fraternal Order of Police/Department of Corrections Labor Committee,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

Carlton Butler, *et al.*, ("Complainants") filed a Standards of Conduct Complaint and a Request for Preliminary Relief in the above-captioned matter. The Complainants alleged that the Fraternal Order of Police/Department of Corrections Labor Committee's ("Respondent" or "FOP") conduct concerning an internal election for union officers was in violation of the standards of conduct provisions of the Comprehensive Merit Personnel Act ("CMPA"). The Board denied the Complainants' Request for Preliminary Relief and referred the case to a Hearing Examiner.

A hearing was held and the Hearing Examiner issued a Report and Recommendation ("R&R"), in which she recommended that the Complaint be dismissed. The parties did not file exceptions to the R&R. However, the Respondent filed a document styled "Motion for an Award of Costs and Sanctions Against Carlton Butler" ("Motion"). The Complainants filed an Opposition asserting that: (1) they had proven their case against the Respondent; (2) PERB should rule on the facts of this case, and (3) the Request for Sanctions and Costs should be denied.

The Hearing Examiner's R&R and the Respondent's Motion for Costs and Sanctions are before the Board for disposition.

II. Background:

In August 2001, three of the five members of FOP's executive board were terminated from their employment as a result of a reduction-in-force. The Complainants argued that pursuant to FOP's by-laws, a special election was required within thirty days of August 2001, in order to fill the three vacancies on the executive board. However, the election did not occur until approximately nine months later. (Complaint at p. 4) Specifically, a general election for union officers was held on May 16, 2002. Each of the Complainants ran for various offices in the May 16, 2002 election.

On July 20, 2002, Carlton Butler, Nila Ritenour, Laurrine Ellis¹, Charlene Carter, Isaac Jones, John Busby, Jr., and Derrick Randolph filed a complaint entitled "Standards of Conduct Complaint and Request for Preliminary Relief" ("Complaint"). The Complainants alleged that FOP, through its current and former executive board, including but not limited to William Dupree, George Noble, Irving Robinson and Garfield Cunningham, violated the standards of conduct for labor organizations contained in the CMPA. Specifically, the Complainants alleged that FOP violated D.C. Code § 1-617.03(a)(1) and (4) and D.C. Code §, 1-617.04(a)(1), (2), (3) and (4)² by: (a) failing to hold a special election in August 2001; (b) appointing Luis White to serve as chairman of the election committee; and (c) failing to comply with FOP's by-laws. The Complainants also alleged that the manner in which the union officials conducted the May 2002 election for new officers was in violation of the standards of conduct.

The Complainants asked the Board to: (1) grant their request for preliminary relief; (2) order FOP to comply with its by-laws; (3) order FOP to cease and desist from violating the CMPA; and (4) void FOP's May 2002 elections. Also, the Complainants requested that the Board order a new supervised election. (*See*, Complaint at p. 12). The Respondent filed an Answer denying the allegations contained in the Complaint. In addition, the Respondent opposed the Request for Preliminary Relief and argued that the Board should dismiss the allegations concerning the special election because they were untimely.

¹Ms. Ellis testified at the hearing that she no longer wanted to be part of the Complaint.

²*See* the Hearing Examiner's R&R for the full text of the D.C. Code sections that the Complainants alleged were violated, as well as the provisions of the Union's by-laws and PERB rules. (R&R at pgs. 3-5). In summary, the Complainants alleged *inter alia* that the Respondent violated D.C. Code §1-617.03 (2001 ed.) "Standards of conduct for labor organizations"; (prior codification at D.C. Code § 1-618.3 (1981 ed.)); § 1-617.04(a) "Unfair labor practices" (prior codification at D.C. Code § 1-618.4(a) (1981 ed.)); and PERB Rules 544.2(a), 544.2(e) and 544.11. The Complainants also alleged a violation of the "By-Laws of the Fraternal Order of Police/Department of Corrections Labor Committee": Article V "Election and Appointment of Officers" and Article IX "Committees"; and also "FOP/DOC Labor Committee 2002 Election Rules," Sections 11 and 13.

On November 4, 2002, the Board issued a "Decision and Order" in this matter (Slip Op. No. 695), denying the Complainant's Request for Preliminary Relief. The Board concluded that the allegations did not satisfy the criteria required by Board Rule 544.15 for preliminary relief. Also, the Board found that the allegations regarding the special election were untimely. The remaining allegations were referred to a Hearing Examiner. Hearings were held on January 28, 2003, February 26, 2003 and March 31, 2003.

The Complainants argued before the Hearing Examiner that the May 2002 election was rampant with procedural violations and improprieties which individually and collectively affected the outcome of the election. (Complaint at pgs. 8-11). Specifically, they alleged that the election was in violation of the CMPA because, *inter alia*, a member who was not in good standing was allowed to vote; the election ballots were not properly secured; Mr. White carried some ballots from one location to another; Pamela Chase - the new incumbent president - addressed roll call on or before the date of the election; some union observers were not permitted to observe the counting of the ballots except from afar; the League of Women Voters ("League"), who conducted the election, forgot to include a box of ballots until after the initial count ended; and, the League did not give the Union any suggestions for conducting future elections, although this was part of its agreement with the Union.

III. The Hearing Examiner's Report and Recommendation:

The Hearing Examiner indicated that the Board's authority to review complaints alleging the failure of a labor organization to comply with standards of conduct mandated by D.C. Code § 1-617.03 is contained in PERB Rule 544.2. In addition, the Hearing Examiner noted that: (1) Board Rule 550.15 requires that the Complainants prove their case by a preponderance of the evidence, and (2) the Board has held that Complainants bear the burden of proof in standards of conduct cases. *See Dupree and Butler v. FOP/DOC Labor Committee*, 47 DCR 1431, Slip Op. No. 605, PERB Case Nos. 98-S-08 and 98-S-09 (1999). After a review of the evidence in the record, the Hearing Examiner determined that the Complainants did not meet their burden of proof in this matter. As a result, she recommended that the Complaint be dismissed.

Based on the pleadings and the record developed in the hearing, the Hearing Examiner concluded that at least one person was allowed to vote who should not have voted. In addition, she found that: (1) there were two people (a candidate and an observer), who could not see the ballots being counted, and (2) Ms. Chase had spoken at roll call concerning the election, as alleged. Also, she determined that there were errors in the initial tally of votes. Nonetheless, she concluded that these facts did not establish a violation of the standards of conduct. Furthermore, she found that there was no evidence establishing that the appointment of Mr. White as Chairman of the Election Committee had violated any standards of conduct.

In light of the above, the Hearing Examiner determined that the Complainants failed to establish that there was not "substantial regulation" of the 2002 election or that it was not conducted in a fair and honest manner in keeping with D.C. Code § 1-617.03(a)(1) and (4). In reaching this conclusion, the Hearing Examiner considered the fact that the League did not offer suggestions to the Union for improving future elections and determined that this did not establish a standards of conduct violation. In addition, she indicated that even if there was a breach of the Union's by-laws, and none was established in this case, the Board has held that a mere breach, standing alone, is not sufficient to find a standards of conduct violation. *Ernest Durant v. FOP/DOC Labor Committee*, 49 DCR 782, Slip Op. No. 430, PERB Case Nos. 94-U-18, 94-S-02 (1995).

Relying on *Buckley v. American Constitutional Law Foundation, Inc.*, the Hearing Examiner found that the League maintained control of the election and used safeguards to ensure the integrity of the process, "to deter fraud and diminish corruption." 527 U.S. 182, at 204-205 (1999). As a result, she concluded that the "Complainants did not establish that [the League] was biased in favor of, or controlled by the Union." (R&R at p. 11). Finally, the Hearing Examiner determined that no evidence was presented of any violation of D.C. Code § 1-617.04(a) pertaining to unfair labor practices. In view of the above, she found no violation of the CMPA and recommended that the complaint be dismissed.

The Respondent requests that the Board adopt the Hearing Examiner's findings in their entirety and impose sanctions and costs on Carlton Butler, personally. The Complainants argue in their Opposition to the Request for Sanctions and Costs that: (1) they have proven their case; and (2) the Board should set aside the Hearing Examiner's R&R and make a determination on the findings of fact in this matter. However, these arguments cannot be considered because they are untimely. Notwithstanding the fact that the Complainants' arguments are untimely, for the reasons discussed below we find that their arguments also lack merit. Pursuant to Board Rule 556.3: "Within fifteen (15) days after service of the [R&R], any party may file . . . written exceptions with the Board." In this case, the R&R was served on June 11, 2003. In the present case, the Complainants' submission was not filed until July 22, 2003. In light of this, their submission did not satisfy the filing requirements of Board Rule 556.3. Therefore, the argument that the Hearing Examiner's findings should be set aside was not timely filed and cannot be considered here.

Also, after reviewing the arguments raised by the Complainants, we find that they make no viable substantive challenges to the Hearing Examiner's report. As a result, we believe that the Complainants' arguments are nothing more than a disagreement with the Hearing Examiner's findings of fact. The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." *Doctors Council of the District of Columbia and Henry Skopek v. D.C. Commission on Mental Health Services*, 47 DCR 7568, Slip Op. No. 636 at p. 4, PERB Case No. 00-U-06 (2000). Also see *Tracey Hatton v. FOP/DOC Labor Committee*, 47 DCR 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995). Therefore, a mere disagreement with the Hearing Examiner's findings is not a sufficient ground for the Board to reject the Hearing Examiner's finding.

Pursuant to D.C. Code § 1-617.03(a)(4), labor unions must conduct fair elections. The facts presented here do not establish a lack of fairness by the Respondent when conducting the May 2002 election. Rather, the facts establish that there was substantial regulation of the election. Further, there is no evidence that there was a breach of the Union's by-laws. As a result, there is no basis to find that the Union violated the standards of conduct with regard to the May 2002 election. Therefore, we find that the Hearing Examiner's determinations that the Respondent did not violate the statutory standards of conduct is supported by the record.

Pursuant to D.C. Code § 1-617.03(a)(1) (2001 ed.) and Board Rule 544.14, we have reviewed the *findings, conclusions and recommendations* of the Hearing Examiner and we find them to be reasonable, persuasive and supported by the record. As a result, we hereby adopt the Hearing Examiner's findings and conclusions that the Respondent did not violate the Comprehensive Merit Personnel Act.

IV. Motion for Award of Costs and Sanctions Against Carlton Butler:

Concerning the Respondent's request that we sanction Mr. Butler by ordering him to pay the Respondent's reasonable costs, the Respondent did not make this motion before the Hearing Examiner. Therefore, the Hearing Examiner was unable to consider the arguments now raised by the Respondent or make findings on the factual allegations contained in the request. As a result, the Respondent is now barred from raising this issue. In view of the above, the request for sanctions and costs is denied.

ORDER

IT IS HEREBY ORDERED THAT:

- (1) The Complainants' Standards of Conduct Complaint is dismissed.
- (2) The Respondent's request for award of costs is denied.
- (3) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

August 17, 2005

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 02-S-08 was transmitted via Fax and U.S. Mail to the following parties on this the 17th day of August 2005.

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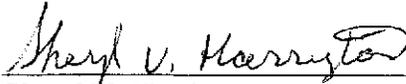
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