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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: )

William Dupree, )

Complainant, )

v. )

Fraternal Order of Police/  
Department of Corrections  
Labor Committee, )

Respondent. )

PERB Case No. 96-U-05  
Opinion No. 465

(Motion to Dismiss)

DECISION AND ORDER

On December 12, 1995, Complainant William Dupree filed an Unfair Labor Practice Complaint against the Respondent, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP). Complainant is an employee of the Department of Corrections and a member of the collective bargaining unit exclusively represented by FOP.

The Complainant alleges that FOP violated its duty of fair representation by basing its decision not to take his grievance to arbitration on alleged unlawful reasons, i.e., Complainant's previous affiliation with and current support of FOP's predecessor, Teamsters, Local Union No. 1714.<sup>1/</sup> Complainant asserts that FOP's action violates the Comprehensive Merit Personnel Act (CMPA) as codified under D.C. Code § 1-618.4(b)(1). Complainant further asserts that by this same act, FOP has violated the standards of conduct for labor organizations under the CMPA, as codified under D.C. Code § 1-618.3(a)(1).

<sup>1/</sup> Complainant had held the offices of Secretary-Treasurer and Principal Executive Officer for FOP's predecessor, Teamsters Local Union No. 1714 a/w IBTCWHA. (Comp. at para. 11.) On January 12, 1994, FOP was certified as the exclusive representative of this collective bargaining unit and succeeded the Teamsters. PERB Case No. 93-R-04, Certification No. 73.

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On January 2, 1996, FOP filed an Answer to the Complaint and Motion to Dismiss. Complainant filed an Opposition to the Motion on January 16, 1996.

The Board, after reviewing the pleadings in the light most favorable to Complainant, hereby denies FOP's Motion to Dismiss the Complaint.

FOP's Motion raises four affirmative defenses. Each of the defenses disputes the allegations of the Complaint and asserts Respondent's version of the events. We have held that a complainant is "not required to prove [the] complaint upon the pleadings as long as the complaint states a cause of action under the CMPA with respect to the alleged unfair labor practice." American Federation of Government Employees, Local Union Nos. 631, et al. v. D.C. Department of Public Works, \_\_\_ DCR \_\_\_, Slip Op. No. 306, PERB Cases No. 94-U-02 and 94-U-08 (1994). We find that the allegations made in the Complaint would, if proved, establish the asserted statutory unfair labor practice violation. See, e.g., Tracy Hatton v. Fraternal Order of Police/Department of Corrections Labor Committee, Slip Op. No. 451, PERB Case No. 95-U-02 (1995).

However, the Complaint is devoid of any contention that FOP failed to adopt, subscribe or comply with any of the prescribed standards of conduct. We have held that a breach by an exclusive representative of its duty to fairly represent its employees does not concomitantly constitute a breach of the standards of conduct for labor organizations.<sup>2/</sup> See, Charles Bagenstose v. Washington

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<sup>2/</sup> Board Rule 544.2 provides for the filing of a complaint by "[a]ny individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations... ." (emphasis added) The standards of conduct provision Complainant alleges as violated, D.C. Code § 1-618.3(a)(1), requires of labor organizations "[t]he maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in the disciplinary proceedings." (emphasis added)

While the Complainant is a member of the bargaining unit, there is no indication in the Complaint that he is a member of FOP. If not a member of FOP, he could not participate in the internal affairs of FOP and therefore could not be aggrieved by FOP's alleged failure to comply with the standards of conduct for labor organizations, and would lack standing to allege such a violation

(continued...)

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Teachers' Union, Local 6, AFL-CIO, Slip Op. No. 355 at n. 1, PERB Cases No. 90-S-01 and 90-U-02 (1993) and Michael Tipps v. Fraternal Order of Police/ Department of Corrections Labor Committee, Slip Op. No. 405, PERB Case No. 94-U-19 (1994). As there is no basis for this cause of action, it must be dismissed. Id.

The pleadings do, however, present a sufficient basis to justify a hearing on the alleged unfair labor practice violation by FOP. Whether there has been a violation of the CMPA cannot be determined without a further development of the record, including an opportunity to present evidence establishing the respective positions of the parties. Therefore, the Complaint will be referred to a hearing examiner to make findings, conclusions and recommendations.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

The Motion to Dismiss the Unfair Labor Practice Complaint is denied; the charge that the Respondent violated the standards of conduct for labor organization is dismissed.

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

February 20, 1996

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<sup>2</sup>(...continued)  
by FOP. See, Earnest Durant, Jr. v. Fraternal Order of Police/ Department of Corrections Labor Committee, Slip Op. No. 430, PERB Case No. 94-U-18 (1995).