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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
Ernest Durant, Jr.,)	
Complainant,)	
v.)	PERB Cases No. 94-U-18
Fraternal Order of Police/ Department of Corrections Labor Committee,)	and 94-S-02
Respondent.)	Opinion No. 430
)	
)	
)	
)	

DECISION AND ORDER

The background and issues underlying this case are set out by the Hearing Examiner in his Report and Recommendation.^{1/} The Hearing Examiner found that Complainant Ernest Durant, Jr., an employee of the District of Columbia Department of Corrections (DOC), did not make a cognizable claim that the Fraternal Order of Police\DOC Labor Committee (FOP) had interfered with any right or privilege of union members. (R&R at 4.)^{2/} The Hearing Examiner

^{1/} The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion.

^{2/} The Complaint contained several allegations that the FOP had violated the standards of conduct provisions under the Comprehensive Merit Personnel Act, as codified under D.C. Code § 1-618.3, in its bylaws concerning the internal operation of the FOP and by the manner in which its officers conducted the internal affairs of the union. 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 Hearing Examiner found no allegation or evidence of any actual injury to the Complainant resulting from the alleged improprieties in FOP's
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further found that the Complainant did not establish that he was a member of FOP at any time material to the allegations contained in his Complaint. He therefore concluded that the Complainant lacked standing to protest his alleged improper treatment as a union member. (R&R at 5.)^{3/}

²(...continued)

bylaws or its handling of the election of local union officers. This conclusion was further supported by the Hearing Examiner's finding that the Complainant was not a member of FOP, and therefore could not participate in the election of local officers or be affected by the implementation of the local bylaws since as a non-member he could not participate in the internal affairs of FOP. Therefore, the alleged interference with Complainant's rights is hypothetical or potential at best. The Board does not possess the authority to grant "such broad, impersonal relief" even if the complaint allegations could be sustained. See, e.g., Charles Bagenstose v. Public Employee Relations Board, 93-MPA-29, Slip Op. at 6 (June 1994).

^{3/} Although the Complainant asserts that FOP has committed unfair labor practices as proscribed under D.C. Code § 1-618.4(b)(1) and (2), Complainant does not allege that the FOP engaged in any acts or conduct constituting the statutory violation. Rather, the Complainant makes this assertion based on the same alleged improprieties used to support his claim that the FOP violated the standards of conduct for labor organizations. We have held that "a breach by an exclusive representative of the duty to fairly represent its employees --which we have found constitutes unfair labor practices under D.C. Code § 1-618.4(b)(1) and (2)-- does not concomitantly constitute a breach of the standards of conduct, and vice versa." Charles Bagenstose v. Washington Teachers' Union, Local 6, AFT, AFL-CIO, DCR _____, Slip Op. No. 355, PERB Case Nos. 90-S-01 and 90-U-02 (1993).

We further held that:

[t]his could conceivably occur, however, when the duty to fairly represent employees results from the exclusive representative's failure to adopt, subscribe or comply with statutorily prescribed standards of conduct, which has the effect of (1) "interfering with, restraining or coercing any employee ... in the exercise of rights guaranteed by th[e Labor-Management] subchapter" of the Comprehensive Merit Personnel Act or (2) "causing or attempting to cause the District to discriminate against an employee in violation of D.C. Code Sec. 1-618.6." D.C.

(continued...)

Based on his finding, the Hearing Examiner recommended that the Complaint be dismissed. On May 30, 1995, the Complainant filed Exceptions to the Hearing Examiner's Report and Recommendation.

Complainant's Exceptions merely disagree with the Hearing Examiner's findings of fact and takes issue with his burden of proof. We therefore find no merit to Complainants' Exceptions.^{4/}

Pursuant to D.C. Code Sec. 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings and conclusion of the Hearing

³(...continued)

Code § 1-618.4(b)(1) and (2), respectively. Otherwise, an alleged unfair labor practice asserting a breach of the duty to fairly represent employees does not automatically implicate a departure from statutorily mandated standards of conduct.

In view of our disposition of the standards of conduct allegations, they provide no support for the asserted unfair labor practice charges. In so finding, we reject the Hearing Examiner's dismissal of the unfair labor practice charge based on Complainant's failure to have standing to file the charges. In any event, the alleged violation of D.C. Code § 1-618.4(b)(1) and (2) must be dismissed for the reasons here stated.

^{4/} With respect to his burden of proof, Complainant contends that the burden placed on him to establish that he was a union member was unrealistic and therefore unattainable. The only basis for this contention offered by Complainant, however, is that he had no way to prove that he provided the FOP the requisite form once he had submitted it. Given this circumstance, the Complainant takes issue with the Hearing Examiner's reliance on the only documented evidence provided, i.e., DOC's and FOP's records, over his testimony. Pursuant to Board Rule 520.11 Complainant has the burden of proving the allegations of the complaint by a preponderance of the evidence. It is well settled that the Hearing Examiner is authorized and in the best position to assess the probative value of the record evidence in reaching his findings and conclusion of fact. Charles Bagenstose, et al. v. D.C. Public Schools, 38 DCR 4154, Slip Op. No. 270, PERB Case Nos. 88-U-33 and 88-U-34 (1991).

In view of our adoption of the Hearing Examiner's conclusions that Complainant lacked standing to pursue the standards-of-conduct allegations, Complainant's remaining exception, i.e., the Hearing Examiner's failure to determine the Board's jurisdiction over the Fraternal Order of Police and Gary Hankins, is moot.

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Pursuant to D.C. Code Sec. 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings and conclusion of the Hearing Examiner and find them to be reasonable and supported by the record. We therefore adopt the recommendation of the Hearing Examiner that the Complaint be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

The consolidated Complaint is dismissed.

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

June 12, 1995

⁷(...continued)

Examiner's failure to determine the Board's jurisdiction over the Fraternal Order of Police and Gary Hankins, is moot.