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

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In the Matter of: )

Clarence Mack, Shirley Simmons, )  
Hazel Lee and Joseph Ott, )

Complainants, )

v. )

District of Columbia )  
Department of Corrections and )  
Office of Labor Relations and )  
Collective Bargaining, )

Respondents. )

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PERB Case No. 97-U-14  
Opinion No. 512

**DECISION AND ORDER**

On March 20, 1997, Clarence Mack, Shirley Simmons, Hazel Lee and Joseph Ott, (Complainants), filed an Unfair Labor Practice Complaint against the Department of Corrections (DOC) and its representative, the Office of Labor Relations and Collective Bargaining (OLRCB; together with DOC referred to as Respondents). The Complaint was accompanied by a Motion for Emergency Interim Relief. Complainants charged that Respondents have committed unfair labor practices in violation of the Comprehensive Merit Personnel Act, as codified under D.C. Code § 1-618.4(a)(1), (2) and (5).<sup>1/</sup> Specifically, the Complainants allege that Respondents have

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<sup>1/</sup> D.C. Code § 1-618.4(a)(1), (2) and (5) make unfair labor practices the following:

- (1) Interfering, restraining or coercing any employee in the exercise of rights guaranteed by this subchapter;
- (2) Dominating, interfering or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to it ... (emphasis added)

(continued...)

failed and refused to recognize Complainant Mack as the Chairperson of the Fraternal Order of Police/Department of Corrections Labor Committee (FOP). Respondents filed an Answer to the Complaint and Motion denying that the allegations constitute unfair labor practices.

After reviewing the pleadings, attachments, applicable statutes and Board precedent, we find that the material facts underlying the alleged violations are not genuinely in dispute. Therefore, pursuant to D.C. Code § 1-605.2(3) and Board Rule 520.10, we conclude that a hearing is not necessary for disposition of this case.

Following protracted Board proceedings precipitated by internal conflict within the FOP, the Board ordered, in relevant part, the certification of the results of a Board-ordered election of FOP executive board officers. Clarence Mack, et al. v. FOP/DOC Labor Committee, et al., Slip Op. 507, PERB Case No. 95-S-03 and PERB Case No. 95-S-02 (1997) and Ellowese Barganier, et al. v. FOP/DOC Labor Committee, Slip Op. 472, PERB Case No. 95-S-02 (1996). Complainants Mack, Lee, and Simmons were among the prevailing candidates for the offices of Chairperson, Treasurer and Secretary, respectively. Complainant Ott joins this Complaint as a FOP member who voted in that election for Complainant Mack.

The recognition rights that the Complainants allege were violated by the Respondents are accorded to the exclusive representative of bargaining unit employees, i.e., FOP, and not individual officers. While officers of a recognized union may act on behalf of the union and be extended recognition as such, this recognition is based on their status as authorized agents of the union. See, Clarence Mack, et al. v. FOP/DOC Labor Committee, et al., supra, at p. 3. However, FOP is not named as a party Complainant in the Complaint, nor do Complainants assert that this action is brought on behalf of FOP. Moreover, the Complainants do not allege that the Respondents have failed to recognize FOP as the certified exclusive representative of the DOC bargaining unit. The Respondents failure or refusal to recognize the Complainants, independent of FOP, is not a violation of the CMPA.

With respect to Section 1-618.4(a)(1), there is no contention that the Respondents interfered, restrained or coerced employees

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<sup>1</sup>(...continued)

(5) Refusing to bargain collectively in good faith with the exclusive representative. (emphasis added.)

with respect to their rights under D.C. Code § 1-618.6(a) to organize, form, assist, refrain from assisting, or bargain through the representative of their choice, i.e., FOP. Rather, Complainants allege a violation by Respondents' failure and refusal to recognize their status as officers of FOP. Under the CMPA, there exists no employee right to hold union office. Therefore, an alleged unfair labor practice limited to a failure to recognize a particular employee's disputed status as a union officer does not state a cause of action under Section 1-618.4(a)(1).<sup>2/</sup>

Similarly, there can be no violation of Section 618.4(a)(2), since Complainants make no allegation that Respondents are "[d]ominating, interfering or assisting in the formation, existence or administration of [FOP or] any labor organization, or contributing financial or other support to it... ." (Emphasis added.) FOP's curious absence as a complainant in view of this alleged statutory violation indicate threshold issues that may exist between the Complainants and FOP. If indeed these claims arise from issues between the Complainants and FOP, an unfair labor practice complaint is not the proper vehicle to address them.<sup>3/</sup>

Therefore, for the foregoing reasons, we dismiss the Complaint and Motion for Interim Relief.

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<sup>2/</sup> In Clarence Mack, et al. v. FOP/DOC Labor Committee, et al., PERB Case 95-S-03, Slip Op. 507, at p. 4, decided just before the filing of this Complaint, our Order did not provide for the installation of the prevailing candidates to their respective office, but rather the certification of the election results. In that case, FOP asserted that internal union disputes arose since the Board-ordered election that has affected Mr. Mack's current membership and eligibility to take office. In declining to reach that issue, we stated that "to the extent that Complainant Mack, may have engaged in conduct since the election which gave rise to any action by the Respondent under its by-laws with respect to his membership and/or Chairmanship, such claims are beyond the scope of the Complaints and this proceeding." We take administrative notice that FOP contends that such a dispute exists between it and Complainant Mack with respect to his eligibility to take office for reasons beyond the scope of the issues addressed in PERB Case No. 95-S-03. OLRCB, in its Answer, asserts that the dispute remains on-going. (See footnote 3.)

<sup>3/</sup> Since the filing of this Complaint, the Complainants have filed a Standards of Conduct Complaint against FOP alleging that FOP violated the CMPA's standards of conduct for labor organizations by rendering them ineligible to hold the offices they claim herein. See, PERB Case No. 97-S-01.

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ORDER

IT IS HEREBY ORDERED THAT:

The Complaint and Motion for Emergency Interim Relief are dismissed.

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

April 9, 1997

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 97-U-14 was faxed and/or mailed (U.S. Mail) to the following parties on this the 9th day of April, 1997.

Arthur L. Fox, II, Esq. FAX & U.S. MAIL  
Lobel, Novins & Lamont  
1275 K Street, N.W., Suite 770  
Washington, D.C. 20005

James R. Klimaski, Esq. FAX & U.S. MAIL  
Klimaski, Miller & Smith, P.C.  
1988 L Street, NW, Suite 1250  
Washington, D.C. 20036

Dean Aquil Deputy Director FAX & U.S. MAIL  
Office of Labor Relations  
and Collective Bargaining  
441-4th Street, N.W.,  
Suite 200  
Washington, D.C. 20001

Courtesy Copies:

Clarence Mack U.S. MAIL  
P.O. Box 11  
Garrisonville, VA 22463

Hazel Lee U.S. MAIL  
5918 Applegarth Place  
Capital Heights, MD 20243

Shirley Simmons U.S. MAIL  
8701 Reicher Street  
Landover, MD 20747

Joseph Ott U.S. MAIL  
5816 Glen Eagles Drive  
Fredricksburg, VA 22463

Margaret Moore U.S. MAIL  
Director  
D.C. Department of Corrections  
1923 Vermont Ave., N.W.  
Washington, D.C. 20003

Johnnie Landon, Esq. U.S. MAIL  
4401-A Connecticut Ave., N.W.  
Suite 286  
Washington, D.C. 20032

**Certificate of Service**  
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Carlton Butler  
Acting Chairperson  
FOP/DOC Labor Committee  
1320 G Street, S.E.  
Washington, D.C. 20003

U.S. MAIL

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Namsso M. Dunbar  
Deputy Executive Director