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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

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In the Matter of: )

Clarence E. Mack, Shirley )  
Simmoms, Hazel Lee, Carlton )  
Butler, and Ellsworth Alexander, )

Complainants, )

v. )

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

Respondent. )

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PERB Case No. 95-S-03  
Opinion No. 483

ORDER

A Complaint was filed by counsel on behalf of the above-captioned Complainants on July 31, 1995, alleging a violation of D.C. Code § 1-618.3 by Respondent. This cause of action was filed pursuant to our jurisdiction under D.C. Code § 1-605.2(9) to decide charges of alleged failures to comply with standards of conduct for labor organizations under the Comprehensive Merit Personnel Act. The matter was referred to a hearing examiner to develop a record upon which to base a report and recommendation to the Board. Before the conclusion of the hearing, there was a change in the administration of the Respondent, Fraternal Order of Police/Department of Corrections Labor Committee's (FOP) executive board.<sup>1/</sup> Shortly after this development, the Board's Executive Director suspended the next scheduled hearing date after receiving

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<sup>1/</sup> As a result of this turnover, Complainants Butler, Lee, and Simmons assumed the FOP executive board offices of vice-chairperson, treasurer, and secretary, respectively. Pursuant to our Order in Opinion 472, PERB Case No. 95-S-02, the eligibility of Complainant Mack (the successful candidate for chairperson) to assume the office of chairperson will turn upon the findings and conclusions of the Hearing Examiner in the instant proceeding. New counsel for FOP represented Complainant Mack and others as intervenors in the related standards of conduct case against FOP, i.e., PERB Case No. 95-S-02. Complainant Alexander has retired since the filing of this Complaint.

Order

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notice from FOP's counsel of record that he no longer would be representing the Respondent in this proceeding.

On July 8, 1996, a Motion to Intervene was filed by Nathan Pugh, Robert Washington, and Carolyn Coppedge, executive officers in the previous administration of FOP during the period material to the Complaint allegations. On July 10 and 16, 1996, respectively, new counsel for FOP filed the following documents: Respondent's Notice of Substitution of Counsel; Labor Committee's Motion to Expedite; Respondent Labor Committee's Notice of Realignment; and Labor Committee's Response to Motion to Intervene. On consideration of these Motions,

**IT IS HEREBY ORDERED THAT:**

1. The Notice of Substitution of Counsel and Realignment is acknowledged. Officers of Respondent who are also Complainants in this proceeding shall provide a written consent of representation by new counsel for Respondent pursuant to D.C. Code of Professional Conduct, Rule 1.7.<sup>2/</sup>

2. The Motion to Expedite is granted; a Notice of Hearing setting the earliest possible date to resume the Hearing will issue under separate Order.

3. The Motion to Intervene and Opposition is referred to the Hearing Examiner for a ruling on the pleadings no later than 15 calendar days prior to the scheduled hearing. Should the Motion be granted, Intervenors would have the minimum 15 days' notice to prepare for the hearing, as provided under Board Rule 550.4. No requests for postponement of the hearing date will be considered.

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

August 16, 1996

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<sup>2/</sup> Respondent Labor Committee's Notice of Realignment informs the Board that FOP "will no longer defend this action on behalf of its former officers and it will instead assume the posture of a stakeholder." To the extent that new counsel for FOP represents officers and agents of Respondent who are also Complainants in this proceeding, we note that we have no authority to rule on the propriety of counsel's representation. However, from a review of Rule 1.7 of the D.C. Rules of Professional Conduct (the rule arguably applicable to this situation), it appears current officers of FOP who are also Complainants may consent to counsel's representation of FOP upon full disclosure of any possible conflict or adverse consequences to FOP.