

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:)	
)	
Carlene Haynesworth)	
)	
and)	
)	
Darnell Lee,)	
)	
Complainants,)	PERB Case No. 97-S-02
)	and 97-S-03
)	Opinion No. 528
v.)	
)	
American Federation of Government)	
Employees, Local 631, AFL-CIO,)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

The background and issues underlying this case are set out by the Hearing Examiner in his detailed Report and Recommendation.^{1/} The Hearing Examiner found that the Respondent American Federation of Government Employees (AFGE), Local 631, AFL-CIO, did not violate the Comprehensive Merit Personnel Act's standards of conduct for labor organizations as codified under D.C. Code § 1-618.3(a)(1), (2) and (4). *Pro se* Complainants Carlene Haynesworth and Darnell Lee are members of AFGE and part of a consolidated collective bargaining unit at the D.C. Water and Sewer Authority (WASA) represented by AFGE, Local 631. The Complainants had charged, in their respective Complaints,^{2/} AFGE with violating the afore-stated statutory provisions, and thereby the rights of its members, by: (1) failing to conform with AFGE constitutional and by-law requirements regarding the number of delegates to its national convention and the manner by which they are elected; (2) sanctioning the election of an allegedly ineligible AFGE member as

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

^{2/}PERB Case No. 97-S-02 and 97-S-03 were consolidated on July 24, 1997.

Decision and Order
PERB Cases Nos. 97-S-02
and 97-S-03
Page 2

a delegate to its national convention; and (3) allowing a local officer to maintain his office after he was no longer qualified.

Based on his findings and conclusions, the Hearing Examiner recommended that the Complaints be dismissed in their entirety. On September 23, 1997, Complainant Haynesworth filed Exceptions to the Hearing Examiner's Report and Recommendation. *Start Here*

Complainant Haynesworth's Exceptions with respect to the findings and conclusions concerning the first issue are merely her assessment of the evidence. Such exceptions merely disagree with the probative value and significance a hearing examiner accords certain evidence to support his conclusions. Based on her assessment of the evidence, Complainant Haynesworth also takes issue with the Hearing Examiner's conclusion that she failed to meet her burden of proof. The Hearing Examiner's conclusions, however, are supported by evidence contained in the record.

Challenges to a Hearing Examiner's findings based on competing evidence do not give rise to a proper exception where, as here, the record contains evidence supporting the Hearing Examiner's conclusion. See, Clarence Mack v. D.C. Dept. of Corrections, Slip Op. No. 467, PERB Case No. 95-U-14 (1996) and American Federation of Government Employees, Local 872 v. D.C. Dept. of Public Works, 38 DCR 6693, Slip Op. No. 266, PERB Cases Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). See, also, University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, 39 DCR 6238, Slip Op. No. 285, PERB Case No. 86-U-16 (1992) and Charles Bagenstose, et al. v. D.C. Public Schools, 38 DCR 4154, Slip Op. No. 270, PERB Cases Nos. 88-U-33 and 88-U-34 (1991) (issues concerning the probative value of evidence are reserved to the Hearing Examiner). Therefore, we find no basis for Complainant's Exceptions with respect to the Hearing Examiner's finding of no violations concerning the propriety of the election and the proper number of delegates. However, while the vast majority of the evidence referenced and cited by Complainant Haynesworth was specifically considered and rejected by the Hearing Examiner, we find that critical evidence has been apparently overlooked as it relates to the second and third issues presented by the Complainants.

With respect to the second issue, the Hearing Examiner found that at the time AFGE member Mumimus Badmus ran and was elected as a delegate, he was not a member of the bargaining unit represented

Decision and Order
PERB Cases Nos. 97-S-02
and 97-S-03
Page 3

by AFGE, Local 631.^{3/} (R&R at 4.) Nevertheless, the Hearing Examiner found that "Mumimus Badmus did not leave Local 631's field of membership and that he remain[ed] a member in good standing with Local 631." (R&R at 4-5.) The Hearing Examiner supported his conclusion with findings that Mr. Badmus: (1) was not a member of any other union; (2) for grievance-arbitration purposes, could be represented by AFGE, Local 631; and (3) continued to regularly pay membership dues to AFGE, Local 631. (R&R at 5.) He further found that an AFGE local by-law, i.e., Sect. 11(a), cited by Complainants concerned a member's capacity to maintain office and was not dispositive of Mr. Badmus' eligibility to be a delegate. Based on these findings, the Hearing Examiner concluded that Mr. Badmus was qualified to run and be a delegate. While these findings are supported by the record, they are neither dispositive nor controlling factors in the record presented with respect to Mr. Badmus' eligibility to run or be a delegate.

Article IX of AFGE's local constitution states, in pertinent part, that "[d]elegates, alternate delegates and proxy delegates to the National convention... must be elected by name and in accordance with applicable provisions of the AFGE National Constitution." (Comp. Exh. 9.) Article VI, Sec. 3 of the National Convention states, in pertinent part, that "[o]nly a member duly elected by his or her own local as a delegate in accordance with AFGE Rules of Conduct for an Election may represent a local by proxy." (Compl. Exh. 2.) Part 1, Sect. E of the AFGE Rules of Conduct for an Election provides, in pertinent part, that "[t]o be qualified as an officer or candidate for office, an individual must meet the following qualification:.... 2. Be a member for one year of an AFGE local, immediately preceding the closing of the nomination process." ^{4/} Finally, Article III, Sect. 1 of the local constitution provides that "[a]ll persons eligible for AFGE membership as prescribed by Article III of the AFGE National Constitution and who come within the local's jurisdiction as defined by its charter shall be eligible for membership in this local." (Emphasis added.)

Under the CMPA, all employees have the right to "form, join or assist any labor organization" or present a grievance "under the name, or by representation, of by any labor organization

^{3/}Mr. Badmus is employed in the Bureau of Sewer Services, a sub-component of WASA. Employees in this sub-component not represented by AFGE, Local 631.

^{4/}Sect. 1, A of these same Rules provide that "officer" includes delegates, alternate delegates and proxy delegates.

Decision and Order
PERB Cases Nos. 97-S-02
and 97-S-03
Page 4

notwithstanding whether or not the labor organization is the recognized or certified bargaining representative. D.C. Code Sec. 1-618.6(a)(2) and (b). See, e.g., Patricia Bush, et al. v. Teamsters Local 1714, a/w IBTCWHA, AFL-CIO and Dept of Correction, Slip Op. No. 367, PERB Case No. 92-U-10 (1993). However, the Board's authority under the CMPA to determine appropriate collective bargaining units, and thereby the jurisdictional scope of the unit's certified representative, is exclusive. D.C. Code Sec. 1-605.2(1) and (2). Cf., Hawkins v. Hall, 537 A.2d 571 (1988).

The Hearing Examiner's finding that at all time material to the Complaint Mr. Badmus was no longer in the collective bargaining unit represented by AFGE, Local 631, is in effect a finding that Mr. Badmus was no longer within Local 631's jurisdiction as defined in its certification by the Board. Moreover, we had previously found in another proceeding, that Mr. Badmus had not been part of this unit represented by AFGE, Local 631, at least since May 11, 1997. (Compl. Exh. 4 and 13.) Mr. Badmus' nomination and election as a delegate took place after May 11, i.e., May 17, 1997. (Compl. Exh. 3.) The evidence supporting these controlling factors clearly establish that Mr. Badmus did not meet the qualification for being a local delegate to the National AFGE Convention, as outlined above, when he was nominated and elected on May 17, 1997.

We turn now to the issue of Mr. Badmus' eligibility to maintain his local office. While the record supports the Hearing Examiner's finding that Sect. 11(a) of AFGE's by-laws was not dispositive of Mr. Badmus' eligibility to be a delegate, it clearly addresses certain terms and conditions under which a member can no longer maintain an executive office. The Hearing Examiner, however, made no findings or conclusions concerning this issue.

Section 11(a) provides in pertinent part as follows: "[a]ny officer who moves beyond the jurisdiction of the Local during his/her term of office or who ceases to be a member in good standing shall thereby automatically forfeit said office." Section 11(a) further provides that "[t]he vacancy caused thereby shall be filled under the provision of Article VII, sec. 4 of the National Standard Local Constitution." While, as the Hearing Examiner found, Mr. Badmus continued to be entitled to certain rights and privileges accorded a member in good standing, after he left AFGE's local jurisdiction Mr. Badmus's right to continue holding his elected local office for the balance of its term was expressly and specifically extinguished by Section 11(a).

Decision and Order
PERB Cases Nos. 97-S-02
and 97-S-03
Page 5

The inquiry, however, does not end here. Article VII, sec. 4, referenced under Section 11(a), provides "[v]acancies in any other office [other than president] unless otherwise prescribed by the local's by-laws shall be filled for the unexpired term by appointment by [AFGE's] Executive Board." Read together, while Mr. Badmus lost his capacity to continue holding his local executive office as an elected officer once he left the bargaining unit, the by-laws accord the AFGE's executive board the authority to appoint Mr. Badmus to the remainder of his term by appointment. The record, however, has not been fully developed by the pro se Complainants with respect to whether or not AFGE permitted Mr. Badmus to continue in office after he was no longer qualified to do so in an elected capacity and contrary to AFGE by-laws as discussed above. In view of the above and Complainants' pro se status, we shall defer our determination of whether AFGE's acts or conduct with respect to this issue constitutes a violation of a standard of conduct, until AFGE has submitted further evidence concerning this issue in accordance with our Order.

In view of the above, we sustain Complainant Haynesworth's exception with respect to the Hearing Examiner's finding that Mr. Badmus' was eligible to run and be a delegate to AFGE's national convention. In furthering Mr. Badmus' candidacy as a delegate to the national convention, AFGE has failed to reasonably secure the rights of individual members of the local, thereby depriving them of fair and equal treatment under the governing rules of AFGE. With respect to the propriety of AFGE's handling of Mr. Badmus' tenure as secretary/treasurer, we shall direct the parties to submit further evidence, in the form of documents and affidavits, and issue a supplemental Decision and Order, along with an appropriate relief, dispositive of this issue. With respect to the remainder of Complainant Haynesworth's exceptions, we deny them for the reasons discussed.

Pursuant to D.C. Code § 1-605.2(9) and Board Rule 544.7, the Board has reviewed all of the other findings and conclusions of the Hearing Examiner; finds them to be reasonable and supported by the record; and, to the extent consistent with this Opinion, adopts them. Based on the record evidence presented we find that AFGE, Local 631, has failed to comply with the CMPA's standards of conduct for labor organizations as codified under D.C. Code Sec. 1-618.3(a)(1) in violation of D.C. Code Sec. 1-605.2(9). There is no evidence to support that any of AFGE's actions fail to comply, subscribe or comply with the standards of conduct under D.C. Code § 1-618.3(a)(2) and (4).

The Hearing Examiner's recommendation that the Complaint be dismissed in its entirety is therefore rejected. The

Decision and Order

PERB Cases Nos. 97-S-02

and 97-S-03

Page 6

Complainants' request for reasonable attorney fees are denied for the reasons discussed in University of the District of Columbia Faculty Association and University of the District of Columbia, 38 DCR 2463, Slip Op. 272, PERB Case No. 90-U-10 (1991).

ORDER

IT IS HEREBY ORDERED THAT:

1. The American federation of Government Employees, Local 631, AFL-CIO (AFGE), and its officers and agents shall cease and desist from denying fair and equal treatment under the governing rules of AFGE to Complainants Darnell Lee, Carlene Haynesworth and other members of AFGE by failing to adhere to its rules during elections for delegates and other internal union affairs.
2. AFGE shall cease and desist from otherwise violating the Comprehensive Merit Personnel Act (CMPA) standards of conduct for labor organizations as codified under D.C. Code §§ 1-618.3(a)(1) or in any like or related manner.
3. AFGE shall cease and desist from fostering or perpetuating Muminu Badmus' representation of its membership as a delegate to the AFGE national convention while he lacks the requirements under AFGE's governing rules for such office as discussed in this Opinion.
4. Having found that former AFGE, Local 631 member Minumu Badmus continued to hold his local union office of secretary/treasurer after he was no longer qualified to do so in an elected capacity under AFGE by-laws and constitution, AFGE is directed to submit evidence in the form of affidavits and documents to rebut a finding that it did not violate the standards of conduct for labor organizations, as codified under D.C. Code Sec. 1-618.3(a)(1), by allowing Mr. Badmus to maintain his office after he left the local jurisdiction of AFGE, Local 631.
5. AFGE shall submit the evidence referenced in paragraph 4 within fourteen (14) days from the service of this Opinion. No extension of time will be considered.
6. The remaining allegations of the Complaint are dismissed.

Decision and Order

PERB Cases Nos. 97-S-02

and 97-S-03

Page 7

7. AFGE shall post conspicuously within ten (10) days from the service of this Opinion the attached Notice where AFGE notices to employees are normally posted.
8. AFGE shall notify the Public Employee Relations Board (PERB), in writing, within fourteen (14) days from the date of this Order that the Notice to Members have been posted accordingly and as to the steps it has taken to comply with the directives in paragraphs 2, 3, 4 and 5 of this Order.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

November 24, 1997

CERTIFICATE OF SERVICE

This is to certified that the attached Decision and Order in PERB Cases Nos. 97-S-02 and 97-S-03 was faxed, hand-delivered and/or mailed (U.S. Mail) to the following parties on this the 24th day of November, 1997.

Carlene Haynesworth
1330 Levis Street, N.E.
Washington, D.C. 20002

Hand-Delivered & U.S. Mail

Darnell Lee
3129 Apple Road, N.E.
Washington, D.C. 20018

U.S. Mail

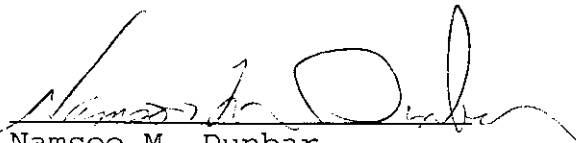
Roscoe Ridley, Jr.
President
American Federation of
Government Employees,
Local 631, AFL-CIO
522 Crittenden Street, N.W.
Washington, D.C. 20011

Faxed & U.S. Mail

Courtesy Copy

Robert Perry
Hearing Examiner
13343 Foxhall Drive
Silver Spring, Md. 20906

U.S. Mail


Namsoo M. Dunbar
Deputy Executive Director