

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

Carlene Haynesworth)

and)

Darnell Lee,)

Complainants,)

v.)

American Federation of Government)

Employees, Local 631, AFL-CIO,)

Respondent.)

PERB Case Nos. 97-S-02
and 97-S-03
Opinion No. 535

FOR PUBLICATION

SUPPLEMENTAL DECISION AND ORDER

On November 24, 1997, the Board issued its Decision and Order in this case, Slip Opinion No. 528. We found that the Respondent, the American Federation of Government Employees, Local 631, AFL-CIO (AFGE), by certain acts and conduct discussed therein, violated the standards of conduct for labor organizations as codified under D.C. Code Sec. 1-618.3(a)(1), and ordered appropriate relief. We further found that the Hearing Examiner did not fully dispose of one of the issues presented by the consolidated Complaints and reopened the record for the limited purpose of permitting the Respondent to submit further evidence to rebut a partial finding we made on the evidence submitted during the hearing. Specifically, we ordered the following:

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.

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.

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On December 8, 1997, AFGE timely responded to our order with a document styled "Motion to Accept Evidence Pursuant to Mandate of PERB Opinion No. 528 and Request for Sua Sponte Remand to Hearing Examiner." AFGE attached to the Motion an affidavit from the General Counsel of the international office of the American Federation of Government Employees, AFL-CIO. However, AFGE's submission does not address the narrow issue presented by our Decision and Order as set forth above. Rather, AFGE introduces for the first time evidence to support its interpretation of AFGE by-laws and constitutional provisions. These by-laws and constitutional provisions were the basis upon which we based our conclusion that Mr. Badmus was no longer qualified to hold his local elected office.^{1/} In this regard, AFGE's submission is actually a Motion for Reconsideration of our findings and conclusions in Opinion 528. We shall therefore treat it as such pursuant to Board Rule 559.

Complainant Haynesworth filed a Response, opposing any remand to the Hearing Examiner. In addition, Complainant Haynesworth also filed a motion seeking enforcement of our Order in Opinion No. 528. In her Motion she also challenged the timeliness of Respondent's submission under Board Rule 559. In view of our decision to treat the Respondent's submission as a Motion for Reconsideration, our Decision and Order in Opinion 528 did not become final; therefore, the Complainant's Motion is premature. If the Complainant believes the circumstance so warrants following the issuance of this Supplemental Decision and Order, she can pursue her Motion for enforcement at that time in accordance with Board Rule 560. With respect to the issue of timeliness, we affirm the Executive Director's determination that the Respondent's submission was timely filed under Board Rules 559.2, 501.4 and 501.5.

In Opinion No. 528 we found, in pertinent part, the following:

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

^{1/} The Hearing Examiner made no findings with respect to this issue in his Report and Recommendation.

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).

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 in an elected capacity once he left the bargaining unit, the by-laws accord AFGE's executive board the authority to appoint Mr. Badmus to serve the remainder of his term by appointment. Slip Op. at p.4-5.

We note that AFGE neither asserts nor offers any evidence in its response to our Order to support that its executive board appointed Mr. Badmus to serve the unexpired term of his elected office (after he was no longer eligible to do so in his elected capacity). Therefore, in accordance with Board Rule 550.18(a), we draw an inference in favor of Complainants that no such evidence exists establishing that AFGE's executive board duly appointed Mr. Badmus to the remainder of his term.

AFGE's position that we misinterpreted Section 11(a) of its by-laws by concluding that Mr. Badmus became ineligible to maintain his office in an elected capacity has no foundation once you consider the plain meaning of this provision.^{2/} Moreover, D.C.

^{2/} AFGE does not dispute that Mr. Badmus left the jurisdictional scope of the bargaining unit that elected him. The crux of AFGE's argument rests on its averment that when confronted with similar circumstances, AFGE's National Office has interpreted Section 11(a) as not forfeiting the local office of an incumbent who has left the bargaining unit that elected them if certain conditions still exist. Specifically, AFGE asserts that automatic forfeiture under this provision requires the officer in question to "physically move[] to a different geographical location so that the individual is no longer able to attend meetings, represent employees, or be present at the worksite or union office, i.e., is no longer capable of fulfilling the duties of his/her office." (Affid. at p. 1.)
(continued...)

Code Sec. 1-618.3(a) requires that the labor organization be "free from ... influences opposed to basic democratic principles." In our view, AFGE's strained interpretation of one of its by-laws governing this democratic process in order to circumvent required actions under another, clearly violates the rights of all union members to be represented by officers duly elected and/or appointed. In this respect, AFGE's actions violates basic democratic principles and thereby the proscriptions of this standard of conduct.

Moreover, no support for the qualifications AFGE attributes to the plain meaning of Section 11(a) are found in the expressed provisions of this by-law or any other governing rule of the organization. We need not rule on the meaning of the by-law itself, however, ~~to~~ rule that AFGE has applied this by-law in a manner that fails to secure the Complainants' and other AFGE members' "rights to participate in the affairs of the organization" through officers duly elected and/or appointed. Ellowese Barganier, et al. v. Fraternal Order of Police/Department of Corrections Labor Committee, 43 DCR 2949, Slip Op. 464, PERB Case No. 95-S-02 (1996).

Finally, we note that our threshold findings and conclusions concerning AFGE's improper recognition of Mr. Badmus' continued eligibility to hold elected office was based on the existing record created before the Hearing Examiner. The evidence AFGE now submits to support its new argument was never presented at the hearing. In a Motion for Reconsideration, only the findings and conclusions which were based on the existing record can be reconsidered. The only new evidence AFGE was accorded the opportunity to submit concerned the issue of AFGE's possible subsequent appointment of Mr. Badmus to the office of secretary/treasurer (after he became ineligible to hold the office in his elected capacity). AFGE has submitted new evidence that disputes the findings and conclusions we made in Slip Op. No. 528.

(...continued)

AFGE's argument, however, is misplaced. First, how AFGE may have interpreted this by-law in order to resolve prior internal challenges by members is not controlling in determining the existence of a statutory violation under the Comprehensive Merit Personnel Act (CMPA). A violation of the CMPA's standards of conduct for labor organizations, turns not on the mere breach of a by-law or constitutional provision, but rather on whether the "labor organization's act or conduct had the prescribed effect set forth in the standard." Corboy, et al. v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, Slip Op. No. 391, at n. 3, PERB Case No. 93-S-01 (1994).

However, the findings and conclusions in Slip Op. No. 528 were based on the existing record. Our Order in that Opinion specifically sought evidence on the only outstanding issue we identified as relevant to our final disposition of this alleged violation of the standards of conduct for labor organization. There is no contention by AFGE that it was not provided a full opportunity to submit this evidence before the record closed. Therefore, due process requirements forecloses our consideration of this new evidence in any reconsideration of our earlier findings which were based on the record before the Hearing Examiner. See, e.g., Clarence Pratt v. D.C. Dep't of Administrative Services, 43 DCR 2943, Slip Op. No. 457, PERB Case No. 95-U-06 (1996).

In view of the above, we find that Respondent, AFGE Local 631 violated the standards of conduct for labor organizations, as codified under D.C. Code Sec. 1-618.3(a)(1), by sanctioning Mr. Badmus' tenure as secretary/treasurer of AFGE after he was no longer eligible to hold such elected office. We therefore supplement our Order in Opinion 528 with the following additional relief.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 631, AFL-CIO's (AFGE) Motion to Accept Evidence is granted; its request that we reconsider our findings and conclusions with respect to Issue 3 in Slip Opinion No. 528 and remand to the Hearing Examiner, is denied.
2. AFGE, and its officers and agents, shall cease and desist from applying its by-laws and otherwise operating the labor organization in a manner that fails to define and secure the rights of individual members to participate in the affairs of the organization in accordance with basic democratic principles.
3. AFGE shall cease and desist from sanctioning or otherwise perpetuating Muminu Badmus' as the elected secretary/treasurer since he no longer is a member of the bargaining unit that elected him.
4. AFGE shall post conspicuously the attached Notice and our

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Notice in Opinion No. 528 within ten (10) days from the service of this Opinion where AFGE notices to employees are normally posted.

5. AFGE shall notify the Public Employee Relations Board (PERB), in writing, within fourteen (14) days from the date of this Order that the Notices noted above in paragraph 4 have been posted accordingly and the steps it has taken to comply with the directives in paragraphs 2, 3 and 4 of this Order and our Order in Opinion 528.

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

February 4, 1998



Public
Employee
Relations
Board

Government of the
District of Columbia

415 Twelfth Street, N.W.
Washington, D.C. 20004
[202] 727-1822/23
Fax: [202] 727-9116

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NOTICE

TO ALL EMPLOYEES REPRESENTED BY THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 631, AFL-CIO, AT THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS SUPPLEMENTAL DECISION AND ORDER IN SLIP OPINION NO. 535, PERB CASE NOS. 97-S-02 and 97-S-03.

WE HEREBY NOTIFY our bargaining unit members that the Public Employee Relations Board has found that the American Federation of Government Employees, Local 631, AFL-CIO (AFGE), violated the standards of conduct for labor organizations and, thereby, the law, and has ordered us to post this notice.

WE WILL cease and desist from applying our by-laws and otherwise operating the labor organization in a manner that fails to define and secure the rights of individual members to participate in the affairs of the organization in accordance with basic democratic principles in violation of the Comprehensive Merit Personnel Act, as codified under D.C. Code § 1-605.2(9).

WE WILL cease and desist from sanctioning or otherwise perpetuating Muminu Badmus' representation of our membership as secretary/treasurer in his elected capacity while he no longer is a member of the bargaining unit that elected him contrary to the CMPA's standards of conduct for labor organizations, as codified under D.C. Code § 1-618.3(a)(1).

WE WILL NOT, in any like or related manner fail to adopt, subscribe, or comply with the standards of conduct for labor organizations prescribed under the Labor-Management sub-chapter of CMPA.

American Federation of
Government Employees,
Local 631, AFL-CIO,

Date: _____

By: _____
President

