GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: Elaine Sessions, et. al., Complainants, and The District of Columbia Nurses Association, Respondent.	PERB Case No. 82-S-01 Opinion No. 57

DECISION AND ORDER

The parties to this proceeding are five (5) members of the District of Columbia Nurses Association (Complainants) and the District of Columbia Nurses Association (DCNA). The proceeding arises out of a dispute over the contract ratification process in February 1982.

On May 3, 1982, the Complainants filed a Standards of Conduct Complaint with the District of Columbia Public Employee Relations Board (Board) against (DCNA) under Board Rule 108. The Complainants originally filed suit in the Superior Court of the District of Columbia seeking injunctive relief to prevent the counting of the contract ratification ballots which had been cast.

On April 22, 1982, the Court issued an Order which stated as follows:

"1. Plaintiffs shall prepare and file with the Board a complaint or other documents which will submit this matter to the Board, within ten days of the date of this Order, or by April 26, 1982, whichever is later.

2. The Board shall render a determination within one hundred and twenty (120) days.

3. Pending action by the Board, the Court will reserve action on Defendant's Motion to Dismiss.

4. Pending action by the Board upon any request by Plaintiffs to the Board for Injunctive Relief, the Court will not act on Plaintiffs' request for Injunctive Relief."

The Complainants charge DCNA with violating provisions of DCNA's governing rules regarding:

"1. Membership and Unit control of aims, goals and proposals;
2. Notice requirements;
3. Role of the Negotiating Committee;
4. Meeting requirements for contract ratification;
5. Comingling of ratification votes from two units; and
6. Election procedures including hours of balloting, politicking at voting sites, and lack of ballot box security."

In addition, Complainants allege that the overall fairness of the contract ratification election and the right to fair and equal treatment under democratic principles has been impermissibly tainted by certain actions of DCNA including:

"1. Exclusion of Ms. Sessions and Ms. Miller, unit chairpersons and negotiating committee co-chairs, from the process and retaliation against them for opposing the contract and the ratification process.

2. Use of a secret, in camera process, without notice, which determined that certain people's votes should not be counted notwithstanding the fact that those people had been allowed to vote without challenge.

3. Post-balloting destruction of ballots and membership lists which prevents any review of the propriety of numerous aspects of the election process.

4. The confusion generated by DCNA as to whether a simple majority or two-thirds vote was needed for ratification."

On May 18, 1982, DCNA filed its Response to the Complaint and a Motion to Dismiss. In its Response, DCNA contends as follows:

"1. The May 3, 1982, Complaint should be dismissed for failure to comply with PERB Rule 103.2, which requires that a complaint be notarized."

2. The Complaint should be dismissed for failure to state a cause of action.

3. Complainants' improper motivations warrant dismissal of this Complaint.

4. Complainants' failure to state a cause of action mandates dismissal of their Complaint.

5. Complainants' request for attorneys fees is wholly inappropriate. DCNA should be awarded attorneys fees for defending against frivolous suits."

On June 4, 1982, the Board ordered that a hearing be held before the Board's designated Hearing Examiner on June 24, 1982, to resolve the numerous factual issues in dispute. John H. Gentry, Esquire, was appointed Hearing Examiner. The hearing was postponed until July 8, 1982, at the request of the Complainants. On July 8, 1982, neither the Complainants nor their attorney appeared at the hearing. On July 26, 1982, the Board then ordered all Complainants to appear for a hearing on August 4, 1982. The hearing was continued on August 25, 1982. Complainants appeared and participated with their counsel. Post-hearing briefs and memoranda were filed by the parties on September 20 and September 30, and October 14, 1982. The Hearing Examiner's Report and Recommendation was filed with the Board on January 4, 1983. Neither party filed written exceptions to the Hearing Examiner's Report and Recommendation.

In summary the Hearing Examiner framed the issue as being whether or not DCNA violated the Standards of Conduct provisions of the Comprehensive Merit Personnel Act (CMPA) by, (1) failing to follow its own internal rules and/or, (2) depriving its membership of a democratic and fair process during negotiation and ratification of the contract. After considering the entire record, the Hearing Examiner concluded that "DCNA substantially followed its By-Laws and that the negotiation and ratification process did not violate the Standards of Conduct provisions of the CMPA."

The Hearing Examiner reached the following specific conclusions:

"1. The Pre-Negotiating Agreement gave DCNA's Chief Negotiator the authority to initial the agreement on February 8, 1982. The language of that agreement clearly supports Respondent's contention in this regard.

2. While the By-Laws (Art. XIII, Section 12) states that contract agreements be ratified by a majority vote in a local unit, the decision by DCNA to conduct the contract ratification vote among a "combined" unit of the two local units was both fair and logical. PERB's certification of the bargaining unit required that both local

units negotiate one compensation agreement although the two units negotiate separately over working conditions. Since the nurses from both units are equally affected by the terms of a compensation agreement, to have allowed each unit to vote separately would have been unfair. A rejection of the agreement by the smaller unit could have had the effect of negating a majority vote in favor of ratification by the total membership of both units.

3. I conclude that ratification could be accomplished by a simple majority as required by Art. XIII, Section 12 of the By-Laws. I reach this conclusion based upon the fact that unlike the Guidelines, the By-Laws have been adopted by the full membership of DCNA. The By-Laws could have been amended (by a two-thirds vote of the membership), ... to reflect the sentiment expressed in the Guidelines, but they had not been so amended. Testimony by one of the drafters of the Guidelines and the concluding paragraph of the document itself persuades me that the Guidelines are, to a large degree, a statement of "goals," in contrast to the By-Laws which are the "law" of the Association. Where, as here, there appear provisions containing different requirements for contract ratification in two documents, the provision in the basic governing document of the organization must prevail.

4. Since the contract required ratification only by a simple majority of votes cast, Complainants' allegations that valid votes were improperly excluded from the tally, even if true, do not alter the fact that ratification of the contract received a majority of the vote. If the four votes which were determined by the accountant to be invalid had, to the contrary, all been valid and had all been cast against ratification, the contract still would have been ratified by a majority.

5. While it is true that both Miller and McCaskill's ballots were not counted, the record is clear that they both were in arrears on their dues on the date of the vote. The By-Laws define a member as one who is not delinquent in their dues. There has been no dispute as to the fact that only members were eligible to vote. In fact, one of the Complainants, Angela Webster, joined DCNA on the day of the vote by signing a payroll deduction form so that she could vote against the agreement. (Transcript at 112-113.) Thus, regardless of the explanations offered by Miller and McCaskill as to why their dues were in arrears, or of the fact that the tellers permitted them to cast ballots, their ballots were properly determined to be invalid.

6. Complainants' allegations that the exclusion of Sessions and Miller, the co-chairs of the negotiating committee, from the negotiation and ratification process violated DCNA's internal rules and was improper have not been proved. Neither Sessions or Miller attended the E & GW Council meeting on February 11, at which the Council voted to recommend ratification of the contract. Both had notice of the meeting, and although the meeting's agenda did not include discussion of the agreement, Sessions and Miller knew on February 10 that a ratification vote was scheduled for February 12, pending the recommendation of the E & GW Council. Thus, it should have been obvious to both Sessions and Miller that the E & GW Council would consider the contract at its meeting on February 11. If they wanted to make known their objections to the agreement, they could have attended the E & GW Council meeting. While neither Sessions nor Miller were solicited by DCNA to assist in arranging for the ratification vote, it is apparent that both of them knew that a vote on the contract was scheduled, and neither of them offered their assistance.

7. Members had reasonable notice of the election and were provided ample opportunity to vote. Balloting was allowed on two days and was conducted at four locations on each day. DCNA used DCGH's [D.C. General Hospital] internal mail system inform nurses of the scheduled vote, flyers were posted at work locations and a serious attempt was made to telephone the membership. While DCNA extended voting at some locations beyond the hours posted, this was done to accommodate voters who arrived before closing time but had not yet cast their ballots. Complainants do not any where suggest that only known supporters of the agreement were allowed to vote after hours. Accepting ballots after the voting was supposed to be over could have cut both ways.

8. The Guidelines provide that a written recommendation for or against ratification shall be presented and read at the contract ratification meeting. Although the recommendation of the E & GW Council was not read, it was distributed to each member who arrived at the voting sites in a letter signed by Glennda Harrision, the Council's Chair. Members were also given copies of the agreement, together with summaries of its highlights, and were asked to review the materials before negotiating a ballot. At each polling site, members who were knowledgeable of the terms of the agreement (together with the chief negotiator) were available for answering questions.

9. The contention that paragraph 9 of the Directions to Tellers (i.e., tampering with ballot boxes) was not complied with is without merit. It was impossible for the tellers to verify that the seals affixed on the boxes at the end of Friday's voting were not tampered with when the boxes were opened on Monday because different boxes were used on each voting day. The ballot boxes used on Friday were delivered on that day to a representative of the League of Women Voters. She received the Monday ballot boxes on Monday evening. All eight boxes arrived with their seals intact. On February 17, the sealed boxes were delivered to the accountant who was to count the ballots. The accountant opened the seals on the boxes. Respondent has convincingly traced the chain of possession of the ballot boxes on the record and there is no evidence to suggest or even imply tampering.

10. The Executive Director of DCNA did not, in camera, determine who was or who was not entitled to vote. The instructions that she prepared for the accounting firm left in the accountant's hands the determination of the validity of the ballots. The Executive Director provides directions on how each voter's membership was to be verified. The 18 names listed were culled from a review of membership records and were provided because in those individuals' cases, the membership rolls or payroll deduction lists were inaccurate. The alleged delinquencies have not been seriously challenged. The votes not counted by the accountant were not challenged but were found to be invalid under the criteria used to determine membership. That criteria is certainly subject to amendment, but is not subject to challenge only because its application results in unwelcome or unintended consequences.

Complainants' reliance on the fact that votes which had been accepted as valid when cast were later disregarded does not change the fact that only members were entitled to vote.

11. There has been no proof that DCNA's decision to destroy the ballots after the vote was tabulated was improper or made in bad faith. In light of subsequent events the decision to destroy the ballots was unfortunate if only for the appearance it created. Nevertheless, the Association's reason for its decision was reasonable. Preserving the secrecy of each member's vote was customary and logical, and was perhaps even more important here considering the controversy surrounding the vote. While the Guidelines (Section 10(d)) states that ballots are to be preserved for thirty days after a vote, when the provision is read in context, it is clear that it is intended to apply to the election of Association Officers."

Based upon our review of the entire record, the Board finds the Hearing Examiner's analysis, reasoning and conclusions to be thorough, rational and persuasive. Accordingly, the Hearing Examiner's conclusions are adopted for the reasons enumerated.

O R D E R

The Complaint is dismissed based upon Complainant's failure to establish, by sufficient evidence, a violation of Section 1707 of the District of Columbia Comprehensive Merit Personnel Act (District of Columbia Code Section 1-618.3) or Board Rule 108.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD.

March 22, 1983