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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
Ellowese Barganier)	
and Ellsworth Alexander,)	
)	PERB Case No. 95-S-02
Complainants,)	Opinion No. 484
)	
v.)	(Motions to Intervene and
)	for Reconsideration)
)	
Fraternal Order of Police/)	
Department of Corrections)	
Labor Committee,)	
)	
Respondent.)	

DECISION AND ORDER

In Opinion 472, issued in the above-captioned case on June 21, 1996, the Board certified the results of an election of officers comprising Respondent's Executive Board. The election was held pursuant to our earlier Order in Opinion 464. Following the issuance of Opinion 472, several Motions were filed, including Motions by the former Chairperson, a current member of FOP's Executive Board, and individual employee members of FOP. The Movants request to intervene in this case and that the Board reconsider its Order in Opinion 472. Oppositions to these Motions were filed by counsel on behalf of the Respondent FOP and on behalf of Complainant Alexander.

All Movants are employee members of FOP. As such they were eligible to vote in the aforementioned election and thereby have an interest in its outcome. We find this reason alone a sufficient basis upon which to grant all the Motions to Intervene under the circumstances of this case.^{1/}

^{1/} Board Rule 501.14 provides that "persons who wish to intervene in a proceeding shall promptly direct such requests to the Board or its delegate." Board Rule 559.2 provides that "the Board's Decision and Order shall not become final if any party files a motion for reconsideration within ten (10) days after issuance of the Decision... ." A motion for reconsideration of the Board's Decision and Order in Opinion 472, issued on June 21, 1996, was due no later than July 8, 1996. The Motion to Intervene and for Reconsideration filed by Teretha Spain, the former and current member of FOP's executive board, was filed on (continued...)

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The grounds presented by the Movants in support of their request that we reconsider our certification of the election results ordered in this proceeding substantially overlap. Therefore, we consolidate the Motions for purposes of our consideration and disposition below.

Several of the grounds merely reassert objections concerning the Board's authority to certify the election results over Respondent's findings to the contrary. These objections were previously presented and considered prior to our issuance of Opinion 472. In Opinion 464, we ordered that Respondent's "regular election ... be conducted under the supervision of the Public Employee Relations Board (Board) and administered by a neutral third party designated by the Board with the expenses of such election to be borne solely by the FOP/DOC Labor Committee." By ordering the election, we retained ultimate authority over determining whether compliance was properly satisfied. Movants have presented no persuasive or new arguments to support that the Board lacks the authority to certify an election it has ordered and supervised, albeit an election for union officer, when ordered as appropriate relief pursuant to its jurisdiction over standards of conduct complaints.^{2/} To the extent issues raised by Movants dispute our authority to order the election, they are untimely made. The subject election was ordered pursuant to our Decision and Order in Opinion 464 issued on February 16, 1996.

Movants next contend that fairness and due process cannot be met with respect to that part of our Order holding the certification of the results for chairperson in abeyance pending the hearing examiner's findings in PERB Case 95-S-03. In Opinion

¹(...continued)

July 12, 1996. However, once a timely motion for reconsideration is filed, as the other Movants have done, the Board's Decision and Order in Opinion 472 was no longer final. Board Rule 559.2. Although Movant Spain's Motion would have been untimely if it was the only motion for reconsideration filed, we shall consider it since Opinion 472 became open, for purposes of reconsideration, until our decision on the timely filed Motions for reconsideration is rendered. Board 559.3.

^{2/} Movants also assert that the placement on the ballot of a candidate for chairperson, i.e., Clarence Mack, whose eligibility to run for office is in question, has tainted the entire results. Therefore, Movants contend, no results should be certified until Mr. Mack's eligibility is determined in PERB Case 95-S-03. However, Movants present no compelling reason for setting aside the election results with respect to all other candidates whose eligibility to hold office is not in dispute.

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472 we declined to certify the election results for chairperson until issues affecting Clarence Mack's eligibility to hold office were determined in a related standards of conduct case, i.e., PERB Case 95-S-03. Movants base their contention on the fact that Respondent's executive board now consist of the slate of candidates that ran with Mack. On July 8, 1996, a motion to intervene was filed by Nathan Pugh, Robert Washington, and Carolyn Coppedge, ex-executive officers of FOP during the period material to the Complaint allegations in PERB Case 95-S-03. Respondent FOP did not oppose the motion to intervene by these former FOP officers. We have referred that motion to the hearing examiner for a ruling. In our view, any issues of due process and fundamental fairness that might exist have been addressed by this Order in PERB Case No. 95-S-03.

Another ground contained in the Motions is actually a request that we enforce a part of our Order in Opinion 472 that Movants claim is being violated. In Opinion 472 we barred Mack from assuming any office pending further action by the Board following the disposition in PERB Case No. 95-S-03. Movants assert that FOP has permitted Mack to run its affairs. This part of our Order only bars Mack from holding any office in FOP. There is no contention, much less evidence, establishing that Mack has done so.

Several of the Movants assert that the newly elected officers of FOP that we certified in Opinion 472 have acted without regard to FOP bylaws and thereby jeopardized the rights of employee members and their guarantee of fair representation. Notwithstanding the merits of these claims, the issues raised by these allegations are independent and separate from the issues contained in the Complaint and the relief provided.^{3/}

Finally, Movants assert that PERB Case No. 95-S-03 cannot properly serve as a basis for determining Mack's eligibility to assume office since Mack never appealed FOP's decision rendering him ineligible to run for office. Prior exhaustion of internal union appeal procedures is not required before we can consider charges that, by its actions, a union has failed to adopt, subscribe or comply with the standards of conduct for labor organizations under the CMPA. Fraternal Order of Police v. Public Employee Relations Board, 516 A.2d 501 (1986 CA DC).

^{3/} Among other things Movants assert that the officers have terminated its contract for legal services with its former counsel, Gary Hankins and Associates; replaced all elected shop steward with their own unilateral appointments; and conducted business without a quorum or entering same into the minutes.

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ORDER

IT IS HEREBY ORDERED THAT:

1. The Motions to Intervene filed by Robert Washington, Ivan Thompson, Eugene Kerns, Victor Akuchie, Rebecca Portis, Frank Jackson, Anthony Hill and Teretha Spain, are granted.
2. The respective Motions for Reconsideration are consolidated and denied.

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

August 21, 1996

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 95-S-02 was sent via facsimile, hand-delivered and/or mailed (U.S. Mail) to the following parties on the 21th day of August, 1996.

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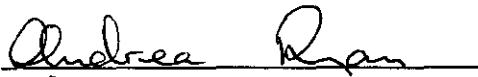
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