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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
A. Renee Holden, Michael Johnson, Knowles Harmon and Tyronne Best,)	
)	
Complainants,)	PERB Case No. 02-S-03
)	
v.)	Opinion No. 675
)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,)	
)	
)	
Respondent.)	
)	

ORDER

In view of the time sensitive posture of this case, the Board has decided to issue its Order now. A decision will follow. The Board, having considered the Complainants' Motion for Preliminary Relief and the Respondent's Motion to Dismiss, hereby denies both motions. In addition, this case is consolidated with PERB Case No. 02-S-02.

IT IS HEREBY ORDERED THAT:

1. The Complainants' Motion for Preliminary Relief is denied
2. The Respondent's Motion to Dismiss is denied.
3. This case is consolidated with PERB Case No. 02-S-02. The consolidated cases are scheduled for a hearing beginning on April 3, 2002.

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

April 2, 2002

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charges to the Complaint. In addition, FOP filed a response opposing the Complainants' Motion for Preliminary Relief. In its response, FOP argues that Union by-laws prohibit FOP members from bringing an action in any forum without first submitting their claim to the FOP Labor Committee for review. (Respondent's Opposition to Motion for Preliminary Relief at p. 3). As a result, FOP filed a Motion to Dismiss based on the Complainants' failure to exhaust internal union administrative remedies.

In view of the above, FOP contends that both the Motion for Preliminary Relief and the Standards of Conduct Complaint should be dismissed.

The Complainants' Motion for Preliminary Relief and the Respondent's Motion to Dismiss are before the Board for disposition. For the reasons noted below, we find that the Complainants' request for preliminary relief does not meet the threshold criteria that the Board has adopted for granting such relief. Specifically, the Complaint does not establish that there is reasonable cause to believe that the Comprehensive Merit Personnel Act (CMPA) has been violated and that remedial purposes of the law will be served by pendente lite relief. As a result, we deny the Complainants' request for preliminary relief and consolidate the present case with PERB Case No. 02-S-02.⁴ In addition, we deny FOP's Motion to Dismiss.

Complainants Renee Holden (candidate for Chairperson of FOP), Michael Johnson (candidate for Vice Chair of FOP), Knowles Harmon (candidate for Treasurer of FOP) and Tyrone Best (candidate for Executive Steward), ran for office in the January 31, 2002 election.⁵

The Complainants claim that the January 31, 2002 elections "were rife with procedural violations and improprieties, which individually and collectively effected the outcome of the election." (Complainants' Motion at p. 2). Specifically, the Complainants assert that FOP committed the following violations. "First, the Union Election Committee either allowed or participated in ballot tampering, causing Renee Holden and the United Front Slate to lose the election. Second, an ineligible candidate was allowed to run, which effected the outcome of the election. Third, the Union Election Committee was demonstrably partisan and gave preferential treatment to the Neill slate.⁶ Fourth, the Union Election Committee deprived members in good standing of their right to vote due to various procedural violations. Fifth, the Election Committee failed to ascertain that all of the votes were cast by Union members in good standing. Sixth, the Union Election Committee failed to insure that the fifteen Chief Shop Stewards were elected in accordance with the Union by-laws when they allowed members outside of the [fifteen] Chief Shop Stewards' districts to vote for the Chief Shop Steward." (Complainants' Motion at p. 2). The Complainants contend that FOP's actions violate the CMPA. In light of the above, the Complainants filed their Complaint and Motion for Preliminary Relief.

⁴PERB Case No. 02-S-02 was filed by Complainants Holden, Best and Johnson prior to the January 31, 2002 election. Among other things, this case involves allegations concerning: (1) a December 7, 2001 election for Chief Shop Steward at the Fifth District; and (2) pre-election irregularities associated with the January 31, 2002 election. PERB Case No. 02-S-02 has been scheduled for a hearing beginning on April 3, 2002.

⁵These four candidates formed the "United Front Slate."

⁶The "Neill Slate" was headed by Gerald Neill who is FOP's incumbent Chairman.

The Complainants assert that the election violations committed by FOP were clear-cut, flagrant and widespread. (Complainants' Motion at p. 2). In addition, the Complainants assert that preliminary relief is appropriate because any later remedy imposed by the Board would be inadequate. Specifically, the Complainants argue that the "undemocratic election deprives members of their voice [and] their right to select the union officers who represent them. [Moreover,] once those Union leaders take office, the members are deprived of their democratic rights for the duration of those undemocratically-elected officers' tenure [Furthermore, the Complainants claim that] the harm done to the members' democratic rights cannot be undone." (Complainants' Motion at p. 30).

The criteria the Board employs for granting preliminary relief in standards of conduct cases is prescribed under Board Rule 544.15.

Board Rule 544.15 provides in pertinent part as follows:

The Board may order preliminary relief ... where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged violation is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy will be clearly inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. See, AFSCME, D.C. Council 20, et al. v. D.C. Government, et al., 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). In determining whether or not to exercise its discretion under Board Rule 544.15, the Board has adopted the standard stated in Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1971). There, the Court of Appeals - addressing the standard for granting relief before judgment under Section 10(j) of the National Labor Relations Act - held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by pendente lite relief." Id. at 1051. "In those instances where [PERB] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been] restricted to the existence of the prescribed circumstances in the provisions of Board Rule [544.15] set forth above." Clarence Mack, et al. v. FOP/DOC Labor Committee, et al., 45 DCR 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

In its answer to the Complaint, FOP disputes the material elements of all the allegations asserted in the Complaint. We have held that preliminary relief is not appropriate where material facts are in dispute. See, DCNA v. D.C. Health and Hospitals Public Benefit Corporation, 45 DCR 6067, Slip Op. No. 550, PERB Case Nos. 98-U-06 and 98-U-11 (1998). Whether FOP's actions occurred as the Complainants claim, or whether such actions constitute violations of the CMPA, are matters best determined after the establishment of a factual record through a standards of conduct hearing.

The Complainants' claim that FOP's actions meet the criteria of Board Rule 544.15 are little more than repetition of the allegations contained in the Complaint. Even if the allegations are ultimately found to be valid, it does not appear that any of FOP's actions constitute clear-cut or flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. FOP's actions presumably affect all bargaining unit members who participated

in the January 31st election. However, FOP's actions stem from a single action (or at least a single series of related actions), and do not appear to be part of a pattern of repeated and potentially illegal acts. While the CMPA asserts a standards of conduct for labor organizations, the alleged violations, even if determined to be valid do not rise to the level of seriousness that would undermine public confidence in FOP's ability to comply with the CMPA. Finally, while some delay inevitably attends the carrying out of the Board's dispute resolution processes, the Complainants have presented no evidence that these processes would be compromised, or that eventual remedies would be inadequate, if preliminary relief is not granted.

Under the facts of this case, the alleged violations and their impact, do not satisfy any of the criteria prescribed by Board Rule 544.15. Therefore, we find that the circumstances presented do not appear appropriate for the granting of preliminary relief.

In conclusion, the Complainants have failed to provide evidence which demonstrates that the allegations, even if true, are such that the remedial purposes of the law would be served by pendent lite relief. Moreover, should violations be found in the present case, the relief requested can be accorded with no real prejudice to the Complainants following a full hearing. In view of the above, we deny Complainants' Motion for Preliminary Relief.

In their response to the Motion for Preliminary Relief, FOP claims that pursuant to its by-laws, the Complainants are required to exhaust their internal appeal procedures before filing a complaint with the Board. As a result, FOP asserts that the Complainants' failure to pursue a challenge through available internal union proceedings, mandates that the present Complaint be dismissed. In light of the above, FOP filed a Motion to Dismiss. In support of its Motion, FOP cites Article 14 of the Union by-laws and a May 23, 2001 Order issued by Judge Davis of the D.C. Superior Court.

Articles 14.1 and 14.2 of FOP's by-laws provide as follows:

- 14.1 Every member, without exception, agrees and pledges not to bring any action at law or in equity against the Labor Committee, or any officer or Executive Council [member] in his official capacity until first submitting his claim, grievance, complaint appeal, or injury to the Labor Committee for action, decision, review or adjudication, as the case may be.
- 14.2 Until all the conditions precedent imposed by the Charter and these By-Laws have been strictly complied with this article may be set forth by the Labor Committee as a complete defense to any action that may be brought and this defense will be sustained by any court.

FOP claims that Article 14 applies to every union member. As a result, FOP argues that "[t]he Complainants ... are barred from bringing this action against the Respondent because they have not first submitted their claim to the Labor Committee as required under Article 14 of the By-laws." (Motion to Dismiss at p. 3). Also, FOP claims that the Superior Court has enforced this provision of the Union's by-laws. Specifically, FOP asserts that on "May 23, 2001, Superior Court Judge Davis dissolved a Temporary Restraining Order and dismissed a lawsuit brought by Petitioners Holden, Best and Johnson ... because the Petitioner(s) [did] not exhaust their administrative remedies." (Motion

to Dismiss at p. 3). In view of the above, FOP contends that the Board must dismiss the present Complaint.

The D.C. Court of Appeals has previously addressed the issue of whether a Complainant must exhaust internal union administrative remedies before filing a Complaint with the Board. In Fraternal Order of Police/MPD Labor Committee v. Public Employee Relations Board, 516 A.2d 501 (1986), the Union appealed a Superior Court order which affirmed a decision of the Board. In their decision, the Board concluded that FOP had violated the standards of conduct for labor organizations when it rescinded an earlier decision to pay up to \$100 per hour for legal counsel retained by one of its members.⁷ On appeal, the “Union asserted that the Board was required to dismiss the standards of conduct allegations because [the Complainant] failed to exhaust internal union remedies as required by the Union’s by-laws.”⁸ Id. at 505. The D.C. Court of Appeals noted that “a union has the right to compel its members to follow certain prescribed practices, among which can be the requirement to exhaust available internal complaint processes before litigating against the union.” Id. However, the Court of Appeals observed that “[s]uch requirements will not be enforced if [unions] violate clearly expressed labor policy” such as those prescribed under the CMPA’s standards of conduct. Id. (Citing, Chambers v. Local Union, No. 639, 578 F.2d 375 (1978)). Also, the Court of Appeals found that “[t]he [CMPA] and the rules adopted by the Board express a clear intent that alleged violations of the [CMPA’s] standards of conduct [for labor organizations] be promptly brought to the Board’s attention.” Id. Furthermore, the Court of Appeals held that “in view of this unambiguously expressed intent that complaints alleging standards of conduct violations be filed with the Board . . . an individual need not exhaust available union remedies before seeking the Board’s services.”⁹ Id.

Since the present allegations assert violations of labor policies prescribed under the CMPA’s standards of conduct, no basis exists for requiring the Complainants to exhaust available union remedies before filing a complaint with the Board. As a result, FOP’s argument lacks merit. Therefore, FOP’s Motion to Dismiss is denied.

For the reasons discussed above, the Board: (1) denies Complainants’ Motion for Preliminary Relief; (2) denies Respondent’s Motion to Dismiss; and (3) directs the development of a factual

⁷See, Hairston v. FOP/MPD Labor Committee and MPD, 31 DCR 2293, Slip Op. No. 75, PERB Case Nos. 83-U-11, 83-U-12 and 83-S-01 (1984).

⁸The by-law which was the focus of the Court of Appeals decision was Article 14.1. This is the same Article which FOP is relying on in the present case to support its Motion to Dismiss.

⁹We have followed the Court of Appeals’ standard when considering whether an individual must exhaust available union remedies before filing a complaint with the Board. See, Dupree and Butler v. FOP/DOC Labor Committee, 47 DCR 1431, Slip Op. No. 605, PERB Case Nos. 98-S-08 and 98-S-09 (1991); and Deborah Jackson, et al. v. American Federation of Government Employees, Local 2741, 48 DCR 10959, Slip Op. No. 414, PERB Case No. 95-S-01 (1995).

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record through a standards of conduct hearing. In addition, we believe it would be appropriate to consolidate the present case with PERB Case No. 02-S-02 because the two cases involve the same parties and similar issues. Therefore, the present case is consolidated with PERB Case No. 02-S-02.

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

April 10, 2002

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 02-S-03 was transmitted via Fax and/or U.S. Mail to the following parties on this April 10, 2002.

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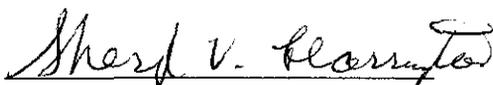
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