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

In the Matter of:)
)
)
Darlene Bryant, et al.¹)
)
Complainants) PERB Case No. 22-S-05
)
v.) Opinion No. 1871
)
Fraternal Order of Police/Department)
of Corrections Labor Committee)
)
Respondent)

DECISION AND ORDER

I. Statement of the Case

On July 27, 2022, Complainants Darlene Bryant, et al., *pro se* (Complainants), filed a Standards of Conduct Complaint (Complaint) against the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) alleging violations of FOP’s by-laws and Section 1-617.03(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA).² The Complaint alleged that several FOP Executive Board officials and shop stewards (Executive Board): (1) dispersed fraudulent reimbursements to FOP officials; (2) failed to remove Executive Board officials who received fraudulent reimbursements; and (3) failed to comply with the FOP by-laws and the fiscal integrity standards of conduct for labor organizations certified as exclusive bargaining representatives prescribed by the CMPA.³

On October 19, 2023, the Board issued Opinion No. 1850. The Board found that FOP violated D.C. Official Code § 1-617.03(a)(5). The Board ordered FOP to remedy its violations and arranged for a compliance hearing to occur within 30 days of its decision to confirm whether FOP had come into compliance with the Board’s decision and the CMPA.⁴

¹ The Complaint also named the following individuals as Complainants: Tasheanna Harris, Bernard Bryan, Edwin Hull, Julia Broadus, Arnold Hudson and Anthony Dyson.

² Complaint at 4.

³ The Complaint further alleged that FOP had violated its by-laws and the CMPA by failing to act on a general membership vote to remove the Treasurer from the Executive Board. Complaint at 10. However, the Board adopted the Hearing Examiner’s recommendation that FOP complied with its by-laws by refusing to act on this vote. *Darlene Bryant, et al. v. FOP/DOC Labor Comm.*, Slip Op. No. 1850 at 4, PERB Case No. 22-S-05 (2023).

⁴ *Darlene Bryant*, Slip Op. No. 1850 at 8. The Board ordered FOP to: (1) cease and desist from violating its by-laws, constitution, and the CMPA by failing to conduct required financial audits, failing to issue appropriate

On December 1, 2023, PERB held a compliance hearing.⁵ On February 8, 2024, the Hearing Examiner filed a Report and Recommendations (Report) finding that FOP has failed to comply with the CMPA. On February 17, 2024, the Respondent filed exceptions to the Report (Exceptions).⁶ On March 21, 2024, the Board heard oral arguments from the parties.

Upon consideration of the Hearing Examiner's Report, applicable law, and the record presented by the parties, the Board finds that FOP has failed to comply with the Board's previous order and the standards of conduct. Therefore, the Board revokes the certification of the Fraternal Order of Police/Department of Corrections Labor Committee.

I. Hearing Examiner's Report and Recommendations and Factual Findings

The Hearing Examiner explained that the Board's orders in Opinion No. 1850 limited the scope of the compliance hearing "to determine whether the Fraternal Order of Police/Department of Corrections Labor Committee has complied with the fiscal integrity standards of conduct for labor organizations."⁷ Upon review of the record the Hearing Examiner found deficiencies in three areas of compliance: (1) the efforts to collect misappropriated funds;⁸ (2) the failure to justify expenses and maintain appropriate records;⁹ and (3) the failure to allocate an appropriate budget.¹⁰

Collection Efforts

The Hearing Examiner focused on the testimony of FOP's Executive Board Chairman (Chairman).¹¹ The Chairman's testimony regarding FOP's compliance relied in part on actions taken by the Executive Board prior to the filing of the complaint in this case.¹²

The Chairman testified that the FOP Judiciary Committee charged, adjudicated, and sanctioned five current or former FOP officials for misappropriation of funds.¹³ The sanctions

reimbursements with proper receipts, failing to have signatories on bank accounts be bonded and insured, or failing to prepare and ratify an annual budget; (2) cease and desist from failing to adopt, subscribe, or comply with the standards of conduct or the Board's rules in any manner; and (3) conspicuously post a notice regarding its violations of the CMPA and provide the notice by email to all bargaining unit members for which FOP had an email address.

⁵ FOP and the Complainants were both represented *pro se*. Two former Executive Board members—who were dismissed as respondents in *Bryant*—were jointly represented by counsel at the hearing.

⁶ On February 27, 2024, another former Executive Board member, who had been dismissed as a respondent in *Bryant*, filed exceptions. As this individual neither filed an appearance in his individual capacity at the compliance hearing nor received authorization to file exceptions or evidence of compliance by FOP's official representative in this case, these exceptions will not be considered.

⁷ Report at 10.

⁸ Report at 13-14.

⁹ Report at 14-15.

¹⁰ Report at 15-16.

¹¹ Report at 13.

¹² Report at 4.

¹³ Report at 4. The Chairman testified that one official timely reimbursed the sanctioned amount to FOP, one official untimely reimbursed the sanctioned to FOP, and three officials failed to reimburse FOP. Report at 4. Two of these individuals disputed the charges and sanctions against them and the amounts allegedly owed by them at the hearing. Report at 8. Further, the Chairman provided conflicting testimony asserting that one of the officials had paid back the money owed, despite also testifying that that official had not paid back the amount owed. Report at 7. The Hearing Examiner reiterated the Chairman's testimony from the first hearing in this case regarding a sixth

included reimbursing FOP for the misappropriated funds received by each official; two of these officials have reimbursed FOP.¹⁴ The then-current FOP officials were not removed from their elected positions;¹⁵ rather they were barred for one-year from running for any Executive Board or Chief Shop Steward positions starting from the end of their current terms.¹⁶

The Hearing Examiner noted the Chairman's testimony that "[t]here hasn't been a collection process' for the recovery of inappropriate reimbursements to certain Executive Board Members" despite the Executive Board's findings of misappropriation by a 2022 audit report and the Judiciary Committee's disciplinary sanctions.¹⁷ The Hearing Examiner further noted the Chairman's testimony that he "can't explain" the lack of collection efforts.¹⁸ The Hearing Examiner deemed the lack of collection efforts "an extraordinary failure to protect members' equity" by the Executive Committee.¹⁹ The Hearing Examiner found that "confusion" in the calculation of amounts owed by sanctioned FOP officials raised an inference that FOP "is not tracking the Union finances or attempting to collect overpayments of reimbursement to Executive Board members."²⁰ The Hearing Examiner found the Chairman's failure to explain disparities in the amounts owed by individual officials contributed to the inference that FOP has failed to properly track its finances.²¹ The Hearing Examiner found that the "cavalier attitude regarding accounting, protecting and preserving members' equity" by FOP leadership has persisted for many years²² and FOP's failure to make "any effort" to collect the misappropriated funds represented "a gross violation of the fiscal integrity standards of conduct"²³ that alone justified the revocation of FOP's certification as an exclusive bargaining representative.²⁴

official found to have misappropriated funds. Report at 4. However, the evidentiary record does not indicate that this official was sanctioned by the Judiciary Committee. *See* Exceptions Ex. 3, *September 12, 2022 Executive Board Meeting Minutes*. The sixth official appears to continue to serve on the Executive Board. Report at 4.

¹⁴ Report at 4.

¹⁵ FOP provided no justification for the disparity between the sanctions regarding holding office in FOP for former Executive Board members and for current Executive Board members, nor for allowing officials who have received such serious sanctions to continue in their positions in FOP leadership. Certainly, FOP has made no effort to explain or justify the disparity in sanctions or the decision to allow sanctioned Executive Board members to remain in their positions through the end of their terms.

¹⁶ December 1, 2023 Tr. 40:2-7; 41:8-12. However, these officials were not barred from serving as shop stewards, despite the officials' failure to comply with sanctions requiring them to reimburse the misappropriated funds they received. December 1, 2023 Tr. 40:6-7; 41:13-14, 17-20; 42:18-19; 43:1-4; 45:17-19. Conversely, those FOP members sanctioned by the Judiciary Committee who had already left or been removed from their positions were sanctioned to either two year or permanent bans from running for Executive Board or Chief Shop Steward positions, effective immediately. December 1, 2023 Tr. 42:14-17; 44:4-6; 45:7-9; 97:8-11.

¹⁷ Report at 13.

¹⁸ Report at 13.

¹⁹ Report at 13.

²⁰ Report at 13. The Hearing Examiner stated that he had accepted that inference as fact because of FOP's history of non-compliance with fiscal integrity standards for handling its own finances. Report at 13-14.

²¹ Report at 14.

²² Report at 14.

²³ Report at 14.

²⁴ Report at 14.

Expense Receipts

The Chairman submitted 268 pages of receipts to the evidentiary record. The Hearing Examiner found that the receipts failed to correlate to any expense report or reimbursement requests and that the Chairman “made no effort to explain this extraordinary confusion and chaos with regard to receipts and expenses.”²⁵ The Hearing Examiner found that “at this time, it is impossible to coordinate the receipts to a valid organizational expense so as to conduct an accounting of the expenditure of members’ equity.”²⁶ The Hearing Examiner further found that the Chairman’s testimony regarding these receipts during the hearing “evinces a level of ignorance regarding [FOP’s] financial accounting which constitutes an ongoing failure to comply with the fiscal integrity standards of conduct.”²⁷ The Hearing Examiner determined that FOP “has no control over purchases of goods and services or coordination or tracking of receipts,” that “the fiscal affairs of the organization are haphazard and out of control in violation of the fiscal integrity standards of conduct,” and that “once again, these chaotic financial operations represent another failure of the organization to protect members’ equity justifying the revocation” of FOP’s certification as an exclusive bargaining representative.²⁸

Annual Budget

The Hearing Examiner reviewed the record regarding FOP’s Calendar Year 2022 (CY22) budget and proposed Calendar Year 2023 (CY23) budget, noting that the budgets included “extraordinary amounts budgeted for non-representational purely social activities...[and] extraordinary dollar amounts year-after-year for activities and functions unrelated to labor-management relations.”²⁹ The Hearing Examiner noted the complete lack of evidence in the record of FOP members’ input into both budgets, the lack of clarity in how FOP calculated these proposed expenses, and the appearance that the Executive Board determined budgetary amounts “with cursory or no membership approval.”³⁰ The Hearing Examiner further noted that neither budget included line items for “expenses that one would reasonably expect to see in a labor organization’s budget,” such as negotiations, grievance and arbitration expenses or legal representation.³¹ The Hearing Examiner found that: (1) the provided budgets show that FOP did not maintain fiscal integrity in the conduct of its affairs, including provisions for accounting and financial controls or regular financial reports and/or summaries to its membership; (2) the provided budgets “contain no meaningful financial allocation for the fundamental representational expenses by a labor organization on behalf of its members;”³² and (3) there is no record evidence of effort by FOP leadership either to protect members’ equity through generally accepted accounting principles or to collect misappropriated funds.

²⁵ Report at 14.

²⁶ Report at 15.

²⁷ Report at 15.

²⁸ Report at 15.

²⁹ Report at 15. The Hearing Examiner cited examples such as CY22 and CY23 line items of \$105,000.00 and \$80,000.00 respectively for “Events/Employee Recognition” and CY22 line items of \$10,000.00 for “Recreation/Miscellaneous” and \$10,000.00 for phone and internet, “neither of which expenses have explanations concerning how these expenses are related to labor-management relations and FOP/DOC’s role as [an] exclusive [bargaining] representative.” Report at 15.

³⁰ Report at 16.

³¹ Report at 16.

³² Report at 16.

Recommendations

The Hearing Examiner found that the record in this case—as well as previous standards of conduct cases against FOP³³—showed that the Board’s “remedies do not appear to have had an effect on the past FOP/DOC leadership or the recently installed leadership to implement changes in the organization’s financial operations consistent with the requirements of [the CMPA].”³⁴ The Hearing Examiner determined that the record in this case “revealed numerous failures of the organization’s leadership to comply with the fiscal integrity standards of conduct for labor organizations.”³⁵ The Hearing Examiner further found that “there is nothing in the stormy financial history of FOP/DOC since 2019 or this record...that shows that the organization will improve in its handling and safeguarding of members’ equity.”³⁶

The Hearing Examiner concluded that the Board must take “extraordinary remedial action” pursuant to the CMPA in order to protect the rights of the District employees currently represented by FOP.³⁷ Accordingly, the Hearing Examiner recommended that the Board revoke FOP’s certification as an exclusive bargaining representative under the CMPA.³⁸

The Hearing Examiner made several recommendations regarding the steps that should be taken in the process of revoking FOP’s certification as an exclusive bargaining representative. The Hearing Examiner recommended that the Board order FOP to: (1) immediately pay all of the labor organization’s just debts; (2) immediately collect all money owed to the labor organization; (3) immediately liquidate all of the labor organization’s property and deposit the money earned into members’ equity; and (4) thereafter, immediately distribute all remaining members’ equity to dues paying bargaining unit members *pro rata*.³⁹ The Hearing Examiner recommended that following these steps, the Board revoke FOP’s certification as an exclusive bargaining representative.⁴⁰

II. Discussion

The Board has held that “issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner.”⁴¹ The Board will adopt a Hearing

³³ The Hearing Examiner cited to one previous case where the Board found that FOP violated the standards of conduct by: (1) failing to have signatories on bank accounts bonded and insured; (2) failing to conduct audits; (3) failing to prepare and ratify an annual budget; and (4) reimbursing inflated travel expenditures. Report at 13 (citing *Bernard Bryan, et al. v. FOP/DOC Labor Comm., et al.*, 67 D.C. Reg. 8546, Slip Op. No. 1750 at 6, PERB Case No. 19-S-02 (2020)). The Board found that FOP violated the standards of conduct regarding maintaining democratic principles in another case in 2020. *Bernard Bryan v. FOP/DOC Labor Comm.*, 68 D.C. Reg. 43, Slip Op. No. 1797 at 7, PERB Case No. 20-S-03 (2021) (holding that FOP’s failure to ensure a complainant had fair and equal treatment under the governing rules of the organization and fair process in disciplinary proceedings violated D.C. Official Code § 1-617(a)(1)).

³⁴ Report at 13.

³⁵ Report at 13.

³⁶ Report at 16.

³⁷ Report at 16.

³⁸ Report at 16.

³⁹ Report at 17.

⁴⁰ Report at 17.

⁴¹ *Bernard Bryan, et al.*, Slip Op. No. 1750 at 5 (citing *WTU, Local #6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. No. 1668 at 5, PERB Case No. 15-U-28 (2018)).

Examiner's Report and Recommendations if it is reasonable, supported by the record, and consistent with Board precedent.⁴²

The CMPA explicitly provides that:

[r]emedies of the Board may include, but shall not be limited to, orders which: [w]ithdraw or decertify recognition of a labor organization; ... compel a labor organization or the District to desist from conduct prohibited under this subchapter; or direct compliance with the provisions of this subchapter.⁴³

The District of Columbia Court of Appeals has held that, while the CMPA “does not give the Board continuing review authority to require a labor organization to maintain such standards following recognition,”⁴⁴ the statute does provide that the Board “shall have the power to ‘[m]ake decisions ... on charges of failure to adopt, subscribe *or comply* with the internal or national labor organization standards of conduct for labor organizations.’”⁴⁵ (Emphasis original.) Even where alleged violations directly involve internal union affairs, the Board has jurisdiction where “the complaints...alleged violations of standards that are the subject of express legislative concern and implicate public policy interests that far exceed what may be fairly viewed as an internal union affair.”⁴⁶

Federally, both the Labor-Management Reporting and Disclosure Act (LMRDA)⁴⁷ and the Civil Service Reform Act (CSRA)⁴⁸ address the standards of conduct that labor organizations must

⁴² *Id.*

⁴³ D.C. Official Code § 1-617.13(a).

⁴⁴ *Fraternal Order of Police/Metropolitan Police Dep't Lab. Comm. v. Pub. Emp. Relations Bd.*, 516 A.2d 501 at 504 (D.C. 1986).

⁴⁵ *Id.*

⁴⁶ *Id.* at 505.

⁴⁷ Section 502(a) of the LMRDA provides, in pertinent part: “[e]very officer, agent, shop steward, or other representative or employee of any labor organization...who handles funds or other property thereof shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others;

Section 504(a) of the LMRDA provides, in pertinent part:

No person...who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve –

1. as a consultant or adviser to any labor organization,
2. as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization...
5. in any capacity, other than in his capacity as a member of such labor organization, that involves decisionmaking authority concerning, or decisionmaking authority over, or custody of, or control of the moneys, funds, assets, or property of any labor organization...

⁴⁸ Section 7120 of the CSRA provides, in pertinent part:

meet to receive or maintain recognition as an exclusive representative. The CMPA's standards of conduct closely mirror the CSRA's standards of conduct for labor organizations representing federal government employees.⁴⁹

FOP argues in its Exceptions that: (1) FOP has come into compliance with the Board's order and the standards of conduct;⁵⁰ (2) contrary to the Report, FOP's budget for corrections week was approved, ratified and actual expenditures for corrections week were documented in a quarterly treasury report;⁵¹ (3) the Chairman had *not* testified that one former official had paid back the amount sanctioned by the Judiciary Committee;⁵² (4) FOP had exhausted its enforcement authority regarding collecting the funds the Judiciary Committee ordered officials to pay back;⁵³ (5) FOP had attained approval and ratification for the CY22 and CY23 budgets and remained within the parameters of those budgets;⁵⁴ (6) the Hearing Examiner's recommendation to withdraw FOP's recognition is based on the history of previous Board cases against FOP, not FOP's current actions;⁵⁵ (7) FOP's responsibilities are not limited exclusively to representational matters;⁵⁶ (8) expenditures for legal representation of bargaining unit members did not violate FOP's by-laws and do not require line items on annual budgets;⁵⁷ and (9) contrary to the Report, the record evidence supports a finding that FOP has come into compliance with the Board's order and the

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

- (1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of the individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;
- (2) the exclusion from office in the organization of persons...identified with corrupt influences;
- (3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and
- (4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

- (1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or
- (2) the organization is in fact subject to influences that would preclude recognition under this chapter.

⁴⁹ D.C. Official Code § 1-617.03(a).

⁵⁰ Exceptions at 3.

⁵¹ Exceptions at 4.

⁵² Exceptions at 4.

⁵³ Exceptions at 4.

⁵⁴ Exceptions at 5.

⁵⁵ Exceptions at 6.

⁵⁶ Exceptions at 6.

⁵⁷ Exceptions at 8.

standards of conduct.⁵⁸ The majority of the arguments in FOP's Exceptions constitute either arguments previously made, considered, and rejected by the Hearing Examiner⁵⁹ or novel arguments not raised to the Hearing Examiner.⁶⁰

A. FOP's Failure to Comply with the Board's Orders and the CMPA

The Hearing Examiner's finding that FOP's lack of *any* collection efforts regarding misappropriated members' equity constitutes an egregious failure to comply with the standards of conduct is reasonable, supported by the record, and consistent with Board precedent. FOP excepted to the Hearing Examiner's finding, arguing that it exhausted its enforcement authority regarding collecting the funds that sanctioned officials were ordered to pay.⁶¹ FOP further excepted to the Hearing Examiner's erroneous statement regarding one of the sanctioned official's repayment of misappropriated funds.⁶² The Complainants asserted at hearing that: (1) FOP failed to prove it had complied with its by-laws requiring that the officials who can disburse funds be bonded or insured;⁶³ and (2) FOP did not take the requisite steps to receive reimbursement through its bonding and insurance policy.⁶⁴ While FOP provided a Liberty Mutual Insurance policy and testimony to rebut the former allegation, there is no evidence in the record to indicate that FOP took any action to receive reimbursement through that policy.⁶⁵ In light of FOP's failure to make any effort toward collecting reimbursements from non-compliant sanctioned officials or through its bonding policy, the argument that it has exhausted its enforcement authority is unpersuasive. Further, FOP did not raise the argument that it has exhausted its enforcement authority to the Hearing Examiner, but only in its Exceptions.⁶⁶ FOP's failure to either follow through with the monetary reimbursement sanctions by the Judiciary Committee or even accurately account the amounts owed by each sanctioned union official is a clear demonstration of FOP's "unwillingness

⁵⁸ Exceptions at 8.

⁵⁹ *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 7, PERB Case No. 23-U-06 (2024).

⁶⁰ *NAGE, Local R3-05 v. MPD*, 64 D.C. Reg. 2014, Slip Op. No. 1605 at 4, PERB Case No. 11-U-54a (2017) (holding that exceptions cannot raise issues not presented to a hearing examiner).

⁶¹ Exceptions at 4. FOP asserts that it has "been successful in collecting funds owed from 2 of the 5 Union Representatives who were found guilty. We have also turned our findings over to the DOJ for restitution enforcement." Exceptions at 4. There is no evidence in the record to indicate whether or not FOP turned over the Judiciary Committee's findings to the Department of the Justice. Further, while FOP has received reimbursement for a paltry amount of the misappropriated funds from sanctioned officials, that does not mitigate FOP's testimony that it "can't explain" that "[t]here hasn't been a collection process." December 01, 2023 Tr. 139:1-2. FOP's claim to have exhausted its enforcement authority is belied by its own assertion that it apparently has failed to even follow up with the sanctioned officials regarding repayment of misappropriated funds. December 01, 2023 Tr. 138:13-17.

⁶² Exceptions at 4. FOP correctly asserts that the Hearing Examiner erred in stating that FOP testified that this individual official had paid back the sanctioned amount. *See* December 1, 2023 Tr. 45:17-19; 138:7-12. The Board notes that the Hearing Examiner accurately recounted this official's repayment status earlier in the Report. Report at 4. Further, the Hearing Examiner's error here does not materially impact his findings regarding FOP's failure to track or collect the misappropriated funds or his conclusion that FOP has not complied with the Board's order or the standards of conduct. *Cf. WTU, Local #6, AFT, AFL-CIO v. DCPS*, Slip Op. No. 1642 at 12-13, PERB Case No. 14-U-02a (2017) (adopting a hearing examiner's report and recommendations despite DCPS's assertion of factual errors and contradictions).

⁶³ December 01, 2023 Tr. 67:19-21 (citing *By-Laws of FOP/DOC* at 16).

⁶⁴ December 01, 2023 Tr. 142:3-5.

⁶⁵ FOP Ex. 3, *2022 and 2023 Bonding Policy*; December 01, 2023 Tr. 46:11-14; 68:8-10, 19-22; 69:20-70:7. The Board notes that while FOP testified to having a 2022-2023 bonding policy and titled its exhibit "2022 and 2023 Bonding Policy" the document itself reflects an insurance policy active from May 26, 2023 to May 26, 2024. FOP Ex. 3, *2022 and 2023 Bonding Policy* at 5.

⁶⁶ *NAGE, Local R3-05*, Slip Op. No. 1605 at 4.

to comply with proper governing requirements”⁶⁷ that clearly supports the Hearing Examiner’s conclusion.

The Hearing Examiner found that the two hundred and sixty-eight (268) pages of receipts submitted by FOP: (1) do not correlate with any expense report or reimbursement requests;⁶⁸ (2) demonstrate extraordinary chaos and confusion in record keeping;⁶⁹ and (3) show a lack of “financial accounting” that constitutes an ongoing failure to comply with the standards of conduct for labor organizations.⁷⁰ These findings are reasonable, supported by the record, and consistent with Board precedent.⁷¹ Months after the Board’s order for FOP to present evidence of compliance at hearing—and years after these negligent and/or fraudulent financial practices were first rebuked by the Board—FOP has “not the slightest clue of how to answer”⁷² questions regarding alleged expenses and reimbursements, which shows, at best, an exceptional lack of care toward FOP’s fiduciary duty to its members and its obligation to comply with either the standards of conduct or the Board’s orders.

Conversely, the Hearing Examiner’s findings regarding the adequacy of FOP’s budgets are unreasonable, unsupported by the record, and inconsistent with Board precedent.⁷³ FOP excepted to the Report, asserting, in pertinent part, that: (1) contrary to the Report, FOP’s budget for corrections week was approved, ratified and documented in a treasury report;⁷⁴ (2) FOP attained approval and ratification for the CY22 and CY23 budgets;⁷⁵ (3) FOP has responsibilities beyond exclusively representational matters;⁷⁶ and (4) expenditures for legal representation of bargaining unit members do not require line items on annual budgets and did not violate FOP’s by-laws.⁷⁷ While the treasury reports submitted by FOP show entries labeled as supplies for corrections week,

⁶⁷ Cf. *Division of Military and Naval Affairs (New York National Guard) Latham, New York and National Federation of Civilian Technicians and Association of Civilian Technicians*, 53 F.L.R.A. 111, 119 (1997) (holding that, once reasonable cause established that a union has been sanctioned by its parent union because of a demonstrated unwillingness to comply with proper governing requirements or is subject to corrupt or anti-democratic influences, the burden of proof shifts to the union to show that it is currently in compliance with the standards of conduct).

⁶⁸ Report at 14.

⁶⁹ Report at 14.

⁷⁰ Report at 15.

⁷¹ The Board further adopts the Hearing Examiner’s determination that FOP’s “chaotic” receipt records and lack of actual knowledge regarding those receipts’ connection to any individual legitimate expense or reimbursement contribute to the conclusion that FOP has failed to maintain fiscal integrity in the conduct of its affairs or provide for accounting and financial controls. Report at 15. FOP has disclaimed any knowledge or understanding of the receipts it has provided, Report at 05, 14, therefore, FOP cannot be considered to have used those receipts in accurate financial reports or claim to have maintained financial controls in how it expends funds or reimburses FOP officials for allegedly legitimate expenditures. Report at 15; See D.C. Official Code § 1-617.03(a)(5).

⁷² Report at 15.

⁷³ Report at 15-16. See *AFGE, Local 1403 v. DOH*, 66 D.C. Reg. 8011, Slip Op. No. 1709 at 5-6, PERB Case No. 18-U-02 (2019) (holding that the hearing examiner’s finding that the agency’s performance review calibration process was a negotiable subject that made material, substantive changes to the parties’ collective bargaining agreement was unsupported by the record and inconsistent with Board precedent). See also *U.S. Dep’t of the Air Force Randolph Air Force Base San Antonio, Texas and AFGE, Local 1840*, 65 FLRA 61, 61 (2010) (holding that the Federal Labor Relations Authority reviews judges’ factual findings and credibility determinations using a preponderance of the evidence standard).

⁷⁴ Exceptions at 4.

⁷⁵ Exceptions at 5.

⁷⁶ Exceptions at 6.

⁷⁷ Exceptions at 8.

there is no indication in the evidentiary record that the budget for corrections week specifically was approved or ratified.⁷⁸ FOP submitted meeting minutes indicating that the CY23 and CY24 budgets were ratified.⁷⁹ The Complainants' testimony did not address whether FOP had sought input on or ratification of the submitted budgets.⁸⁰ Therefore, the Hearing Examiner did not have a preponderance of evidence showing FOP's failure to ratify these budgets.⁸¹

Neither the CMPA nor Board precedent prohibits labor organizations from including budget allocations for social activities, nor require the presence of any specific line items for representational expenses.⁸² Similarly, neither the presence of line items for "purely social activities" nor the lack of line items for "fundamental representational expenses" inherently show that a labor organization has failed to conduct those fundamental representational duties reflected in the explicit requirements of labor organizations under the CMPA.⁸³ Further, Article 10.1 of FOP's by-laws explicitly states that "[n]o budget shall be required for the expenditure of funds required by Article XVII or for legal fees and costs incurred directly by [FOP]."⁸⁴ In fact, FOP's expenditure of funds on legal representation for bargaining unit members constitutes one of the few ostensibly legitimate expenditures shown in the record of this case.⁸⁵ The Board shares the Hearing Examiner's concern regarding FOP's budgeting process and spending priorities. However, the Board does not have the authority to micromanage a labor organization's internal operations beyond what is required to ensure compliance with the CMPA.⁸⁶ But even excluding

⁷⁸ FOP Ex. 7, *Treasury Reports* at 7-9.

⁷⁹ FOP Exceptions Ex. 11, *March 22, 2023 Special General Meeting Minutes*; FOP Exceptions Ex. 11.1, *January 9, 2024 Special General Meeting Minutes*.

⁸⁰ The Complainants' Post-Hearing Brief only makes one reference to budgets, stating in the "Conclusion" that "End of the year Quarterly Meeting was held but FY24 Budget was not done." Complainants' Post-Hearing Brief at 3.

⁸¹ See *Darlene Bryant*, Slip Op. No. 1850 at 7 (holding that FOP's failure to produce meeting minutes does not prove, by a preponderance of the evidence, that FOP violated its by-laws). See also *U.S. Dep't of the Air Force Randolph Air Force Base San Antonio, Texas and AFGE, Local 1840* at 61.

⁸² See *Darlene Bryant, et al. v. FOP/DOC Labor Comm.*, Slip Op. No. 1860 at 3, PERB Case No. 23-S-05 (2024) (adopting hearing examiner's recommendation to dismiss complaint where alleged inappropriate purchases for a Christmas party and "after party" were provided for in the union's budget for that year).

⁸³ See D.C. Official Code § 1-617.03(a).

⁸⁴ Article 10.1 of FOP's by-laws states, in pertinent part, that "[n]o budget shall be required for the expenditure of funds required by Article XVII or for legal fees and costs incurred directly by the LABOR COMMITTEE." *By-Laws of Fraternal Order of Police-Department of Corrections Labor Committee, Jerrard F. Young Lodge D.C. #1* at 16. Article 17 states that "[e]very dues paying member in good standing shall receive legal representation for the defense of any administrative, civil or criminal action against such member pursuant to procedures established by the Executive Board." *By-Laws of FOP/DOC* at 20.

⁸⁵ See *Fraternal Order of Police/Metropolitan Police Dep't Lab. Comm.* at 506 (affirming the Board's determination that FOP's rescission of a prior authorization of reimbursement for a member's legal expenses contributed to FOP's failure to satisfy the standards of conduct). Although FOP did not definitively show that its decisions regarding separating from and/or hiring various law firms were appropriate or agreed upon by FOP's general membership, neither does the record contain adequate evidence to sustain a finding that FOP's decisions regarding legal representation violated either FOP's by-laws or the standards of conduct. *Darlene Bryant*, Slip Op. 1850 at 7.

⁸⁶ But see *Fraternal Order of Police/Metropolitan Police Dep't Lab. Comm. v. Pub. Emp. Relations Bd.* at 505. Even where, as in *Fraternal Order of Police/Metropolitan Police Dep't Labor Comm.*, the nature and extent of apparent standards of conduct violations warrant the Board's intrusion into internal union processes generally considered outside of the Board's jurisdiction, the Board must still exercise caution in such intrusions and avoid inadvertently taking on the role of trustee or receiver of a District local union. That degree of financial or operational micromanagement is—without the intervention of a court order—the sole purview of the National Fraternal Order of Police. *Constitution and By-laws of the Fraternal Order of Police*, Article 19 Sec. 9. Receivership (rev. 2021).

the Hearing Examiner's findings regarding FOP's annual budgets, his other findings, *supra*, are more than enough to carry his determination that FOP has exhibited an extraordinary failure to comply with the Board's order in Opinion No. 1850, the standards of conduct, or FOP's own fiduciary duty to its membership.

The Board finds, based on the Hearing Examiner's analysis of the evidentiary record as a whole, that FOP has not complied with either the Board's previous order or the standards of conduct for labor organizations under the CMPA.

B. Hearing Examiner's Recommended Remedies

The revocation of the Board's recognition of a labor organization as an exclusive bargaining representative as a result of standards of conduct violations is a novel issue before this Board. Revoking a labor organization's certification as an exclusive bargaining representative is not an action that the Board takes lightly. While the Board adopts, *infra*, the Hearing Examiner's recommendation to revoke FOP's certification as an exclusive bargaining representative, the Board rejects the Hearing Examiner's recommendations to order FOP to: (1) immediately pay all the organization's just debts; (2) immediately collect all debts owed to FOP; (3) immediately liquidate all property and deposit the earnings into members' equity; and (4) immediately distribute those funds to dues-paying bargaining unit members.⁸⁷ While it is fully within the Board's remedial power to revoke FOP's certification as an exclusive bargaining representative, the Board declines to exercise any further authority over FOP's debts or assets in this case. However, the Complainants or other similarly aggrieved individuals may seek redress through the internal procedures of the labor organization or pursue original actions in the District of Columbia Superior Court as appropriate.

The CMPA directly supports the Board's authority to withdraw a labor organization's recognition as an exclusive bargaining representative.⁸⁸ Further, while the Board has not previously revoked any labor organization's certification as an exclusive bargaining representative, both the Federal Labor Relations Authority (FLRA) and the National Labor Relations Board (NLRB) have recognized their authority to withdraw or deny recognition to labor organizations.⁸⁹

⁸⁷ Report at 17.

⁸⁸ D.C. Official Code § 1-617.13(a). *See also* D.C. Official Code § 1-617.03(a).

⁸⁹ *See United States Dep't of Lab., Pension and Welfare Benefits Admin. and Nat'l Union of Compliance Officers*, 30 F.L.R.A. 1229, 1234-1235 (1988) (finding that Sec. 7120(f) of the CSRA provides for the FLRA to revoke exclusive recognition status if a union violates the standards of conduct); *See also Pittsburgh Plate Glass Co. and General Drivers, Local Union No. 968, Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL*, 111 NLRB No. 194, (1955) (revoking a union's certification for failure to timely remedy a severe bargaining defect that otherwise would result in the deprivation of a large segment of the employer's work force of the right to select a bargaining representative); *Smith, A. O., Corp. and Local 311, Office Emp. Int'l Union, AFL-CIO*, 119 NLRB 621, 622 (1957) (revoking certification as a result of union's deprivation of franchise and right to representation to employees included in certification); *But see Larus & Bro. Co., Inc. and Tobacco Workers Int'l Union, Local 219, AFL*, 62 NLRB 1075, 1085) (dismissing motion to rescind certification despite clear abuse of standards of conduct because the parties' collective bargaining agreement had already expired); *Hughes Tool Co. and Indep. Metal Workers Union, Locals 1 and 2, AFL*, 104 NLRB No. 318, 329 (1953) (declining to revoke certification prior to granting a union the opportunity to cure standards of conduct violations despite finding that the union's clear evasion and abuse of those standards is sufficient ground for revocation of the union's certificate).

III. Conclusion

The Board finds that FOP has failed to comply with the Board's order in Opinion No. 1850, the Board's rules, and the CMPA's standards of conduct for labor organizations. Therefore, the Board hereby revokes the Fraternal Order of Police/Department of Corrections Labor Committee's certification as an exclusive bargaining representative.⁹⁰

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Department of Corrections Labor Committee shall, within seven (7) calendar days of the service of this decision and order, conspicuously post the attached Notice at its offices and on any website it uses to communicate with bargaining unit members;
2. The Fraternal Order of Police/Department of Corrections Labor Committee shall, within seven (7) calendar days of the service of this decision and order, provide the attached Notice to all bargaining unit members by email;
3. The Fraternal Order of Police/Department of Corrections Labor Committee shall, within fourteen (14) calendar days of the service of this decision and order, notify the Board in writing that the Notice has been posted and emailed to all bargaining unit members as ordered;
4. The Board's recognition of the Fraternal Order of Police/Department of Corrections Labor Committee in Certification No. 73 is revoked, effective immediately;
5. The Fraternal Order of Police/Department of Corrections Labor Committee is barred from filing any new petitions for recognition as an exclusive representative for a period of six months from the date of this decision and order, unless good cause is shown why the Board should entertain a new petition filed prior to the expiration of such period; and
6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

⁹⁰ The Board will notify the National Fraternal Order of Police and the Fraternal Order of Police Jerrard F. Young Lodge #1 of the revocation of the certification of the Fraternal Order of Police/Department of Corrections Labor Committee as an exclusive representative so that the Fraternal Order of Police may take such action as required by the Fraternal Order of Police Constitution and By-Laws or as otherwise deemed necessary to address the Fraternal Order of Police/Department of Corrections Labor Committee's failure to abide by its own by-laws and the standards of conduct for labor organizations under the CMPA. *See Constitution and By-laws of the Fraternal Order of Police*, Article 19 Sec. 9(C). Receivership (rev. 2021), which states, in pertinent part, that "[i]n the event the National Fraternal Order of Police becomes aware of malfeasance and/or misfeasance in the operation of a State or Subordinate lodge, which is not being appropriately addressed ... [t]he National President shall authorize the General Counsel, along with an assigned committee, the duty of investigating this malfeasance and/or misfeasance and the General Counsel may freeze the assets and records in order to preserve evidence and protect membership property from loss."

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BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons and Peter Winkler.

May 16, 2024.

Washington, D.C.



NOTICE

TO ALL EMPLOYEES REPRESENTED BY THE FRATERNAL ORDER OF POLICE/DEPARTMENT OF CORRECTIONS LABOR COMMITTEE: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO THE DECISION AND ORDER IN SLIP OPINION NO. ###, PERB CASE NO. 22-S-05.

WE HEREBY NOTIFY the bargaining unit that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

THE PUBLIC EMPLOYEE RELATIONS BOARD HAS revoked its certification of the Fraternal Order of Police/Department of Corrections Labor Committee as an exclusive representative of the bargaining unit established in PERB Certification No. 73, effective immediately.

THE PUBLIC EMPLOYEE RELATIONS BOARD HAS notified the District of Columbia Department of Corrections, the Fraternal Order of Police Jerrard F. Young Lodge #1 and the National Fraternal Order of Police of the revocation of the certification of the Fraternal Order of Police/Department of Corrections Labor Committee as an exclusive representative.

THE PUBLIC EMPLOYEE RELATIONS BOARD WILL dismiss, with prejudice, any and all petitions for exclusive recognition filed by the Fraternal Order of Police/Department of Corrections Labor Committee within the District of Columbia within six months of the date of the Board's issuance of Slip Opinion No. #####, unless good cause is shown why the Board should entertain a new petition filed prior to the expiration of such period.

DEPARTMENT OF CORRECTIONS EMPLOYEES formerly represented in collective bargaining by the Fraternal Order of Police/Department of Corrections Labor Committee are no longer represented by a recognized labor organization and may seek the certification of another labor organization as the exclusive representative of appropriate bargaining unit(s) within the Department of Corrections.

Fraternal Order of Police/Department of Corrections Labor Committee

Date: _____ By: _____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If former bargaining unit members have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the D.C. Public Employee Relations Board by email at perb@dc.gov, by mail at 1100 4th Street, SW, Suite E630, Washington, D.C., 20024, or by phone at (202) 727-1822.

APPEAL RIGHTS

A final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.