

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:)	
Mary A. Bonaccorsy,)	
Complainant,)	
v.)	PERB Case No. 03-S-01
)	Opinion No. 826
Executive Council,)	
Fraternal Order of Police/ Metropolitan)	
Police Department Labor Committee,)	
Respondent.)	
)	
)	

Decision and Order

I. Statement of the Case

This matter involves a standard of conduct complaint filed by Mary A. Bonaccorsy (Complainant).¹ The Complainant alleges the Executive Council of the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP” or “Union”) violated D.C. Code § 1-617.03(a)(1), (3) and (5) (2001 ed.).² The allegations assert the Executive Council violated the Comprehensive Merit Protection Act (“CMPA”) by: (1) misappropriating funds and embezzlement; (2) expending money of the labor committee without authorization; and (3) interfering with an official of the executive council in the discharge of her duties.³

¹The Complainant filed her complaint on July 23, 2003.

²Prior codification at D.C. Code §§ 1-618.3 (1), (3) and (5) (1991 ed.)

³The Complainant has cited D.C. Code § 1-618.3(a) (1), (3) and (5) (now cited as § 617.03(a) (1), (3) and (5)), Standards of Conduct for Labor Organizations, which state as follows:

FOP denied the Complainant's allegations. A hearing was held and the Hearing Examiner issued a Report and Recommendations. The Hearing Examiner found the complaint was, in part, untimely and, therefore, dismissed the portion of the complaint alleging embezzlement and missappropriation of funds, as well as expending money of the labor committee without authorization. However, the Hearing Examiner sustained the complaint regarding the allegations the Executive Council violated FOP's By-Laws and the standards of conduct of labor organizations by removing the Complainant from two committee positions, and taking away her office space (i.e. interfering with an official of the executive committee). In addition, the Hearing Examiner found the Executive Council violated the By-Laws and the standards of conduct of labor organizations concerning general membership meetings. FOP filed exceptions to the Hearing Examiner's Report and Recommendations.

The Hearing Examiner's Report and Recommendations and the exceptions filed by FOP are before the Board for disposition.

II. Background

The Complainant is a Detective employed by the District of Columbia Metropolitan Police Department. She is a member in good standing of FOP and holds the position of FOP Secretary.

FOP Executive Council is composed of the FOP's Chairman, Vice-Chairman, Secretary, Treasurer, Executive Stewards and all Chief Stewards. On January 20, 2003, the FOP Chairman, Sergeant Gerald Neill, was activated to full military duty and the Vice-Chairman, Sergeant

(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following:

- (1) The maintenance of democratic 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 fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

* * *

- (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;

* * *

- (5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial reports or summaries to be made available to members.

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Gregory Greene, became Acting Chairman. Subsequently, the Acting Chairman appointed Derrick Ross, Fourth District Chief Shop Steward, as Acting Vice-Chairman, receiving Vice-Chairman compensation. He also appointed Medgar Webster, Fourth District Steward, to the position of Fourth District Chief Shop Steward, receiving Chief Shop Steward compensation.

The Complainant claims the By-Laws do not authorize the Acting Chairman to fill vacancies in the Executive Council by appointment. Article V. 5.9 of the FOP By-Laws states “[s]hould any Executive Council member or Shop Steward die, resign or be removed from office, a special election shall be held within thirty days to elect a replacement to serve out the remainder of the unexpired term.... The Chairman shall appoint a replacement to serve in the vacant office until the results of the special election are certified.” In addition, Article VI 6.2 states “[t]he Vice-Chairman shall perform the duties of the Chairman in the absence or disability of the Chairman, and if the Chairman’s office shall become vacant, shall perform the duties of the Chairman until the vacancy is filled by a special election as provided in the By-Laws...” The Complainant asserts that she notified the Executive Council of the alleged violations in a May 6, 2003, letter to Acting Chairman Greene, and requested that he respond in writing to the Executive Council members of the FOP, hold a Special Executive Council Meeting, and correct the violations in accordance with the By-Laws. (Award at 7).

In response, Acting Chairman Greene wrote a letter to the Complainant dated May 8, 2003, making several allegations of the Complainant’s inappropriate behavior towards other Executive Council members, and as a consequence, indicated that she was being removed from her position as Chairperson of the Detective Committee and as a member of the Contract Negotiation Team. In addition, Greene indicated the Complainant must vacate her office space as it was needed for a conference room.

On May 13, 2003, the Complainant, through counsel, submitted a petition to Greene for a special general membership meeting, which allegedly contained the signatures of 450 members. However, no such meeting was held. The record lacks sufficient evidence to establish the Executive Council properly addressed the petition. On June 2, 2003, the Respondent’s Counsel sent a letter to the Complainant’s counsel, indicating no meeting would be held until the Complainant explained specifically what was at issue. The Complainant’s counsel responded on June 9, 2003, stating: (1) the Complainant believed Chairman Greene arbitrarily and capriciously removed her from her various committee positions; (2) Complainant was maligned and interfered with in the discharge of her duties; and (3) again requested that a special general membership meeting be convened. Respondent’s counsel replied on June 17, 2003, indicating that no special general membership meeting would be held, and the Complainant should seek redress of the issue of her removal from committees with internal union mechanisms. Ultimately, no special elections were conducted to fill the positions of Vice-Chairman or Chief Steward, nor were the petitions acted upon for a special general membership meeting.

On August 31, 2003, a general membership meeting was held and a discussion took place regarding the issue of the May 13, 2003, petition for a special general membership meeting and

the appointments of the Acting Vice-Chairman and the Chief Shop Steward. During the meeting the Acting Chairman indicated he had rejected the petition. A suggestion was made for a committee be formed to assess the By-Laws regarding the process for rejecting petitions or the issuance of petitions.

III. The Hearing Examiner's Report and Recommendations and Respondent's Exceptions

Based on the pleadings and the record developed during the hearing, the Hearing Examiner identified several issues for resolution. The Hearing Examiner's findings and recommendations, and the FOP's exceptions are as follows:

1. Whether the appointment of officers to the Executive Council was in violation of the By-Laws and the standards of conduct for labor organizations, and whether the alleged improper appointments constitute misuse of labor committee funds and embezzlement because the positions received compensation.

The Hearing Examiner found under PERB Rule 544.4, a complaint must be filed not later than 120 days after the date of the alleged violation. This is a mandatory requirement and is jurisdictional. Consequently, the Board has no discretion in the matter and cannot extend the deadline. *Jackson and Brown v. AFGE, Local 2741*, PERB Case No. 95-S-01, Slip Opinion No. 414 (1995), citing *PERB v. D.C. Metropolitan Police Department*, 593 A.2d 641 (1991).

The Complainant's allegations concerning the succession and appointment of officers to the Executive Council occurred on January 21, 2003, and March 5, 2003. These allegations were not filed as a complaint until July 23, 2003. The length of time which passed between the ~~alleged incidents~~ and the filing of the complaint amounted to 183 and 140 days, respectively. Consequently, the Hearing Examiner concluded with respect to these allegations, the complaint was untimely as it was filed after the 120-day deadline and must be dismissed. Claimant argued before the Hearing Examiner that the complaint was filed within the jurisdictional time limit, but does not make any specific date to support this contention. The record supports the Hearing Examiner's findings regarding timeliness. The Board has examined the record, which shows the succession and appointment of officers occurred outside the 120-day filing period. This deadline is statutory and is therefore mandatory and cannot be waived. Therefore, the Board concurs with the Hearing Examiner's findings and concludes the complaint with respect to the succession and appointment of officers is untimely and is dismissed.

2. Whether the Complainant's removal from her committee positions and the taking away of her office space was in violation of the standards of conduct for labor organizations.

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The Complainant alleged being removed from her committee positions and the taking away of her office space on May 8, 2003, violated the standards of conduct for labor organizations by interfering with her duties as an Executive Council member. The Hearing Examiner found these actions were disciplinary in nature. The Hearing Examiner also found these actions constituted retaliation for the Complainant having raised allegations of violations of the By-Laws and standards of conduct by the Acting Chairman. Moreover, the Hearing Examiner found the disciplinary action was taken without the due process requirements afforded by the By-Laws.

The Respondent filed exceptions to the conclusions of the Hearing Examiner, arguing the Complaint should have been dismissed for failure to state a claim. In addition, Respondent asserts the Complainant's allegations lacked specificity and never alleged the Acting Chairman's actions were disciplinary and retaliatory.

The Respondent's exception amounts to no more than a disagreement with the Hearing Examiner's finding the Respondent violated the By-Laws and the standards of conduct. This Board has determined a mere disagreement with the Hearing Examiner's findings is not grounds for reversal of the Hearing Examiner's finding where the findings are fully supported by the record. See, AFGE, Local 874 v. D.C. Dept. Of Public Works, 38 DCR 6693, Slip Op. No. 266, PERB Case No. 89-U-15, 89-U-18 and 90-U-04 (1991).

Contrary to the Respondent's assertion, the record adequately supports the Hearing Examiner's findings that the removal of the Complainant from her committee positions and the taking away of her office space were disciplinary actions. The record reflects that the Complainant indicated she believed the actions of Chairman Greene, specifically, her removal from committee positions and the loss of her office space, interfered with her ability to discharge her duties. Therefore, the Complaint should not be dismissed for failure to state a claim. Moreover, the language and tone of Acting Chairman Greene's May 8, 2003, letter to the Complainant, removing her from her committee positions and taking away her office, established Complainant was being disciplined for allegedly unacceptable conduct. The Hearing Examiner concluded the language of the May 8, 2003, letter, as well as the timing of Greene's actions in relation to the Complainant's allegations of By-Laws violations, indicated the Respondent's actions were disciplinary, conducted without due process and retaliatory. The record supports this finding. In addition, these actions were taken without following the due process requirements in the FOP By-Laws at Article XII. DISCIPLINE. The Board has held the Union's actions constitute a violation of the standards of conduct where such action was motivated by retaliation in contravention of standards of conduct under D.C. Code § 1-617.03(a)(1). *Akuchie, Portis and Jackson v. Fraternal Order of Police, Department of Corrections Labor Committee*, 45 DCR 1475, Slip Op. No 524, PERB Case No. 96-S-04 (1998). Therefore, the Respondent's exception is without merit and the Board adopts the Hearing Examiner's finding that Respondent violated the standards of conduct.

3. Whether Respondent failed to comply with the By-Laws and the standards of conduct for labor organizations concerning special general membership meetings.

The Hearing Examiner found the Complainant had presented petitions for a special general membership meeting to the Respondent, and despite receipt of the petitions complied with the By-Laws, no such meeting was held. FOP excepts to this finding, contending there is insufficient evidence to support a finding that petitions were filed representing 10% of the dues paying membership and Acting Chairman Greene violated the By-Laws by failing to hold a meeting. This exception is based on the Respondent's contention that the record evidence establishes facts to the contrary. Specifically, FOP contends it was unable to certify whether the signatures were from members in good standing.

However, the Board, having reviewed the record, finds there are a sufficient number of signatures, many appended by badge numbers, meeting the requisite number to hold a special general membership meeting. The Board has held challenges to a Hearing Examiner's findings based on competing evidence do not give rise to a proper exception where, as here, the record contains evidence supporting the Hearing Examiner's findings. *Clarence Mack v. D.C. Dept. Of Corrections*, 43 DCR 5136, Slip Op. No. 467, PERB Case No. 95-U-14 (1996). Furthermore, issues concerning the probative value of evidence are reserved to the Hearing Examiner. *Cunningham v. Fraternal Order of Police/Metropolitan Police Department*, 49 DCR 7773, Slip Op. No.682, Perb Case No. 01-S-01, 01-U-04 (2002). In light of the above, we find FOP's exception lacks merit. Therefore, FOP's exception is denied.

IV. Remedy

Having determined FOP's violations denied the Complainant, as well as the general membership, the right to participate in the affairs of the organization, including the right to fair process in disciplinary proceedings, the Hearing Examiner recommended the proper remedy in this case is to reinstate the Complainant to her committee positions and to return her office space. The Board adopts this remedy as consistent with Board precedent involving the revision of expulsion of members wrongfully removed from office or membership. See *Mack and Barganier v. Fraternal Order of Police, Department of Corrections Labor Committee*, 46 DCR 110, Slip Op. No 507, PERB Case No. 95-S-03 and 95-S-02 (1999). The Chairman is also to call a special general membership meeting to address the issues raised in the Complainant's petitions, or in the alternative, appoint a representative to convene with representatives of the Complainant and PERB to examine the petitions for the validity of the signatures. If the committee finds there are less than 10% of dues paying members in good standing, then the petition will be dismissed and if there are 10% or more, then a special general membership meeting is to be conducted.

FOP does not make exception to the remedy, but reiterates the complaint should be dismissed for a failure to state a claim, and the Complainant did not meet her burden. As such, FOP has failed to present a compelling reason for not reinstating the Complainant to her

committee positions or to her office space. In addition, there is no compelling reason why a special general membership meeting should not be held or, in the alternative, a committee be convened to determine if the petitions are valid. This Board has held it may retain authority to ensure an election was conducted properly. *Barganier and Alexander v. Fraternal Order of Police, Department of Corrections Labor Committee*, 46 DCR 7224, Slip Op. No. 484, PERB Case No. 95-S-02 (1999) It, therefore, follows the Board may retain a similar authority to ensure a special general membership meeting is held or a committee is convened.

Concerning the posting of notice, we order the FOP post a notice acknowledging its violation of the CMPA. The Board has previously held, "the overriding purpose and policy of relief should be afforded under the CMPA, for unfair labor practices which violates employee rights is the protection of rights that inure to all employees . . ." *Charles Bagentose v. D.C. Public Schools*, 41 DCR 1493, Slip Op. No. 283 at p. 3, PERB Case No. 88-U-33 (1991). Moreover, "it is the furtherance of this end, i.e., the protection of employee rights,... [that] underlies [the Board's] remedy requiring the posting of a notice to all employees concerning the violation found and the relief afforded, notwithstanding the fact that all employees may not have been directly affected." *Id.* Therefore, even though the Complainant's term may have expired or subsequent elections conducted, we believe it is appropriate to require FOP to post a notice. Specifically, if FOP is not required to post a notice, the Decision and Order, and the CMPA's policy and purpose of guaranteeing the rights of all employees is undermined. Moreover, those employees who are most aware of FOP's illegal conduct, and thereby affected by it, would not know exercising their rights under the CMPA is indeed fully protected. Also, a notice posting requirement serves as a strong warning against future violations.

Consistent with the above discussion, the Hearing Examiner's recommended remedy is adopted, and FOP's exceptions are denied pursuant to Board Rule 544.14.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Executive Council of the Fraternal Order of Police/Metropolitan Police Department Labor Committee shall cease and desist from failing to maintain recognized rights of members to participate in the affairs of the organization under the governing rules of the FOP in accordance with basic democratic principles, as codified under D.C. Code § 1-617.03(a).
2. The Executive Council of the Fraternal Order of Police/Metropolitan Police Department Labor Committee shall cease and desist from denying fair and equal treatment to Complainant, Mary A. Bonaccorsy by denying her participation in the affairs of the labor organization, specifically the committees in which she participated. The Complainant, Mary A. Bonaccorsy, is reinstated to her committee positions and, to the extent possible,

return her to her office she had prior to May 8, 2003, or reasonable comparable office in the FOP building.

3. The Executive Council of the Fraternal Order of Police/Metropolitan Police Department Labor Committee shall cease and desist from denying the members of the labor organization the right to participate in elections of officers. FOP shall issue a notice of a special general membership meeting to each eligible FOP member before holding such a meeting to address the issues raised in the petitions. Or, in the alternative, the Complainant, Mary A. Bonaccorsy, may appoint one representative and Respondent, FOP, may appoint one representative and meet with a PERB representative to convene as a tripartite committee to examine the aforementioned petitions' signatures of dues paying members in good standing recorded on any appropriate Respondent record or document. Disputes over the validity of any signature shall be resolved by a majority vote of the committee

If the committee finds that not less than 10% of the dues paying members in good standing have signed the petitions, then the Chairman must call a special general membership meeting to address the issues raised in the petitions pursuant to By-Law 4.2. If the committee finds less than 10% of dues paying members in good standing have signed the petitions, then the petitions shall be dismissed.

4. FOP shall post conspicuously, within ten (10) days from service of this Decision and Order, the attached Notice, admitting the above violations where notices to employees are normally posted.
5. FOP shall notify the Public Employee Relations Board (PERB), in writing, within fourteen (14) days from the date of this Decision and Order that the Notice has been posted accordingly and as to the steps it has taken to comply with paragraphs 1, 2 and 3 of this Order.
6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

October 11, 2011

PERB NOTICE

TO ALL EMPLOYEES REPRESENTED BY THE FRATERNAL ORDER OF POLICE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT LABOR COMMITTEE (FOP) AT THE METROPOLITAN POLICE DEPARTMENT: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 826, PERB CASE NO. 03-S-01 (DECEMBER 30, 2005).

WE HEREBY NOTIFY our members that the District of Columbia Public Employee Relations Board has found that we, the Fraternal Order of Police, Metropolitan Police Department Labor Committee, violated the law and has ordered us to post this notice.

WE WILL cease and desist from failing to maintain recognized rights of members to participate in the affairs of the organization under the governing rules of the FOP in accordance with basic democratic principles, as codified under D.C. Code § 1-617.03(a).

WE WILL cease and desist from denying fair and equal treatment to members by denying participation in the affairs of the labor organization.

WE WILL cease and desist from denying the members of the labor organization the right to participate in elections of officers.

WE WILL NOT, in any like or related manner, fail to adopt, or comply with the standards of conduct for Labor Organizations prescribed by the Labor-Management subchapter of the CMPA.

District of Columbia Fraternal Order of Police,
Metropolitan Police Department Labor Committee

Date: _____ By: _____
Chairman

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 employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630, Washington, D.C. 20024. Phone No. 202-727-1822.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 03-S-01 was transmitted via Fax and U.S. Mail to the following parties on this the 11th day of October 2011.

Geo T. Johnson, Administrator
D.C. Council 20, AFSCME
1724 Kalorama Road, N.W.
Suite 200
Washington, D.C. 20009

FAX & U.S. MAIL

Melina Holmes, Esq.
O'Donnell, Schwartz & Anderson, P.C.
1300 L Street, N.W.
Suite 1200
Washington, D.C. 20005

FAX & U.S. MAIL

Courtesy Copies:

Ms. Mary A. Bonaccorsy
1724 Kalorama Road, N.W.
Suite 200
Washington, D.C. 20009

U.S. MAIL

Sean J. Rogers, Esq.
P.O. Box 1327
20555 September Point Lane
Leonardtown, M.D. 20650

U.S. MAIL

Sheryl V. Harrington
Sheryl V. Harrington
Secretary