

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:)		
)		
Dancy Simpson, Pamela Chase, Ernest Durant, Shante Briscoe, et al.,)	PERB Case Nos.	10-S-05
)		10-S-07
Complainants,)		10-S-08
)		10-S-09
v.)		
)	Opinion No. 1614	
Fraternal Order of Police/Department of Corrections Labor Committee,)	Motion for Reconsideration	
)		
Respondent.)		
)		

DECISION AND ORDER

On December 1, 2016, the Board issued Opinion No. 1601 (Corrected Copy) in the above captioned case, finding that the Respondent, the Fraternal Order of Police/Department of Corrections Labor Committee (“FOP” or “Union”), committed several standards of conduct violations during its 2010 election of union officers. The Board ordered FOP to post a Notice detailing the violations where notices to bargaining-unit employees are customarily posted.

On December 14, 2016, FOP filed a Motion for Reconsideration, stating that it did not object to the Board’s order, “except insofar as to the language within the Notice that is to be posted....” The specific language FOP objects to reads:

If employees have any questions concerning this Notice or FOP/DOC’s compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4th Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

FOP argues that this language “invites *ex parte* communications with the Board.” FOP asserts that since the Board’s Decision and Order is a matter of public record and the posting “speaks for itself,” the language is “better left out of the Notice.” FOP further contends that “the need to guard against opportunities for miscommunication is a real concern for the Union, because a small group of the Union membership has been intent on filing a multiplicity of

standards of conduct violations after every election that is held” and that such communications “will unduly interfere with the responsibility of the Labor Committee to manage the internal affairs of the Union and cause significant disruption within its membership.” Thus, FOP requests that the Board “reconsider the language in the Notice and amend it to omit the language ... that suggests that interested parties may contact PERB for questions regarding the Notice and compliance thereto.”¹

FOP’s motion is denied. PERB Rule 500.17 states that no “party shall engage in any *ex parte* communication with a hearing officer or with any member of the Board regarding proceedings pending before the Board.” PERB Rule 500.19 states in relevant part that “*ex parte* communications concerning the merits of any matter before the Board for adjudication ... are prohibited from the time the persons have knowledge that the matter may be considered by the Board until the Board has rendered a final decision.”

Here, PERB Rule 500.17 clearly states that only a “party” to a case is forbidden from engaging in *ex parte* communications, and then only while the case is “pending” before the Board. Similarly, PERB Rule 500.19 only prohibits *ex parte* communications in “matters before the Board for adjudication ... until the Board has rendered a final decision.” Once the Board has issued a final decision in a case and the notice has been posted, the matter is no longer “pending” before the Board or being “adjudicated.” Furthermore, any inquiries about the decision from bargaining unit members would be directed to PERB’s staff, and not to “a hearing officer” or toward any of PERB’s Board members.

Therefore, the Board finds that the cited language in the Notice—which is boilerplate and has always been included in the notices issued by the Board²—does not invite prohibited *ex parte* communications. Indeed, as a matter of public policy, when the Board finds that a union has breached the standards of conduct in violation of the CMPA, members of the bargaining unit need to be able to communicate any questions they may have about the decision to an impartial third party. Under D.C. Official Code § 1-605.01(b), PERB is that impartial third party. Accordingly, the Board sustains its findings and Orders in Slip Op No. 1601 (Corrected Copy), and FOP’s Motion for Reconsideration is denied.

¹ Motion for Reconsideration at 1-3.

² See, e.g. *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. Dist. of Columbia Metro. Police Dep’t*, 37 D.C. Reg. 2704, Slip Op. No. 242, PERB Case No. 89-U-07 (1990) (in which the Notice the Board ordered to be posted included the following language: “If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 415 12th Street, N.W., Suite 309, Washington, D.C. 20004”).

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's Motion for Reconsideration is denied;
2. FOP shall immediately cease violating its bylaws, constitution, and the CMPA in the conduct of its internal elections, as described in Slip Op. No. 1601 (Corrected Copy);
3. FOP shall conspicuously post, within fourteen (14) calendar days of the service of this Decision and Order, the attached Notice detailing its violations of the CMPA where notices to bargaining-unit employees are customarily posted;
4. Said Notice shall remain posted for thirty (30) consecutive days;
5. Within twenty-one (21) days of the service of this Decision and Order, FOP shall notify the Board in writing that the Notice has been posted as ordered; and
6. Pursuant to Board Rule 559.3, this Decision and Order is final upon issuance.

BY ORER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and members Ann Hoffman and Douglas Warshof. Member Barbara Somson was not present.

February 23, 2017

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Nos. 10-S-05, *et al.*, Op. No. 1614 was transmitted to the following parties on this the 27th day of February, 2017.

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NOTICE

TO ALL BARGAINING UNIT MEMBERS OF THE FRATRENAL ORDER OF POLICE/DEPARTMENT OF CORRECTIONS LABOR COMMITTEE, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISIONS AND ORDERS IN SLIP OPINION NOS. 1601 (CORRECTED COPY) (DECEMBER 1, 2016) AND 1614 (FEBRUARY 27, 2017), PERB CASE NOS. 10-S-05, ET AL.

WE HEREBY NOTIFY our members that the District of Columbia Public Employee Relations has ordered FOP/DOC to post this Notice pursuant to the Board's finding in Slip Opinion No. 1601 (Corrected Copy) that we violated the law in the conduct of our 2010 election of union officers, by:

1. imposing qualifications for voting in the 2010 election that were not contained in the union's bylaws;
2. not effectively posting the nomination and election notices in all work areas where members were employed;
3. destroying all election ballots and materials 13 days after the 2010 election; and
4. wrongly denying Shante Briscoe's candidacy for the office of Executive Secretary.

WE WILL cease and desist from violating the CMPA in these manners, as ordered in Slip Opinion Nos. 1601 (Corrected Copy).

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 employees have any questions concerning this Notice or FOP/DOC's compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4th Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

February 27, 2017

Washington, D.C.