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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
William E. Corboy, et al.,)	
)	
Complainants,)	
)	
v.)	PERB Case No. 93-S-01
)	Opinion No. 391
)	
Fraternal Order of Police,)	
Metropolitan Police Department)	
Labor Committee,)	
)	
Respondent.)	

DECISION AND ORDER

On May 14, 1993, William E. Corboy, an employee of the D.C. Metropolitan Police Department (MPD), filed a Standards of Conduct Complaint with the Public Employee Relations Board (Board) on behalf of himself and other similarly situated employees. Complainants, Detectives, Grade II, employed by MPD, allege that the Respondent Fraternal Order of Police, Metropolitan Police Department Labor Committee (FOP), violated the standards of conduct for labor organizations under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.3(a)(1) and (3) by executing a settlement agreement with MPD that provided for the promotion of Grade II Detectives to Grade I based upon seniority rather than merit.

On June 3, 1993, FOP filed an Answer to the Complaint denying that, by the acts and conduct alleged, it had violated any of the standards of conduct for labor organizations. FOP further asserted that, as members of FOP, the Complainants had failed to comply with FOP by-laws, which required that they submit their claim grievance or complaint to the FOP prior to bringing an action in law. This failure by the Complainants, FOP contends, constitutes a complete defense to their Complaint allegations before the Board.

After a preliminary investigation, the Board, in accordance with Board Rule 520.9, referred this matter to a duly designated Hearing Examiner for hearing on October 5, 1993. In a Report and

Recommendation (a copy of which is appended to this Opinion) issued on February 28, 1994, the Hearing Examiner ruled that attempts to pursue these allegations through internal union proceedings would have been futile and therefore Complainants' failure to first exhaust such procedures is not a bar to this proceeding before the Board. ^{1/} Regarding the merits of the Complaint, the Hearing Examiner concluded that FOP's decision to accept settlement terms providing for promotion solely on the basis of seniority was influenced by factors that reflected "a sound exercise of its discretion and not for any arbitrary or capricious reasons," and that the evidence did not support the claim that the standards of conduct for labor organizations under D.C. Code Sec. 1-618.3(a)(1) and (3) were violated by the decision or the procedures by which the decision was reached. ^{2/} (R&R at 7.)

On March 24, 1994, Complainants filed Exceptions to the Hearing Examiner's Report and Recommendation. The FOP filed no exceptions but filed an Opposition to Complainants' Exceptions, averring that the finding and conclusions of the Hearing Examiner are correct and that FOP's exceptions constitute argument or reargument not based on the record. We agree.

^{1/} While a union may require that members exhaust internal union remedies before litigation on matters of purely internal union concern, union members are not required to exhaust their union remedies prior to seeking Board review of a complaint alleging violations of the standards of conduct. Fraternal Order of Police/MPD Labor Committee v. PERB, 516 A.2d 501 (1986). Upon a determination that the complaint allegations give rise to a statutory cause of action, the complaint can go forward without a determination of whether or not prior exhaustion of internal union remedies or proceedings would have been futile.

^{2/} The Hearing Examiner also ruled that FOP's actions, alleged as a violation of the standards of conduct provisions, did not breach FOP's duty of fair representation to Complainants. We have ruled that a breach of the duty of fair representation is an unfair labor practice under the CMPA, D.C. Code Sec. 1-618.4(b)(1) or (2), and not a violation of the standards of conduct. Charles Bagenstose v. Washington Teachers' Union, Local 6, AFL-CIO, ___ DCR ___, Slip Op. No. 355, PERB Cases No. 90-S-01 and 90-U-02 (1993). Although our disposition of the Complaint is not affected, we note that where such a claim is alleged, the proper cause of action is an unfair labor practice as provided under Sections 1-618.4(b)(1) or (2), and not a complaint alleging a failure to comply with the standards of conduct for labor organizations.

After reviewing the record and applicable law and authority, we find the Hearing Examiner's analysis of the evidence, reasoning and determination of applicable law, particularly with respect to the Complainants' exceptions, to be rational, cogent and consistent with Board precedent regarding standards of conduct Complaints. ^{3/}

We, therefore, adopt the Hearing Examiner's findings, conclusions and recommendation that the Respondent did not violate the standards of conduct for labor organizations under the CMPA. Accordingly, we deny the Complainants' Exceptions and dismiss the Complaint.

^{3/} The thrust of Complainants' objections to the Hearing Examiner's Report and Recommendation is the following: (1) the Hearing Examiner erroneously concluded that FOP by-laws did not require FOP members to ratify the agreement between FOP and MPD settling the grievance; (2) the Hearing Examiner's finding that a union duly selected by employees as their exclusive bargaining representative is empowered to act in the best interest of the unit as a whole is misplaced; and (3) the Hearing Examiner applied the wrong legal standard when he weighed the facts of this case based on an arbitrary and capricious standard. The first objection merely disagrees with the significance accorded record evidence. Such authority is within the domain of the Hearing Examiner when, as we find here, the findings are based on a rational assessment of the record evidence. Moreover, the Hearing Examiner went on to find that the evidence did not support a violation even if the by-laws could be interpreted as Complainant would have us. With respect to the legal conclusion and standard to which Complainants refer in the second and third objections, we find nothing inappropriate about their application to the disposition of the Complaint allegations.

Finally, Complainants' exceptions fail to recognize that a violation of the standards of conduct provisions is not established by the mere breach of a labor organization's internal by-laws or constitution. The Complainant must establish that the labor organization's action or conduct had the proscribed effect set forth in the asserted standard. The record clearly supports the Hearing Examiner's findings and conclusions that the manner in which FOP handled the settlement agreement with MPD did not contravene any of the alleged standards of conduct for labor organizations.

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ORDER

IT IS HEREBY ORDERED THAT:

The Standards of Conduct Complaint is dismissed.

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

June 29, 1994