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

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In the Matter of: )  
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)  
)  
)  
)  
Teretha Spain, Carlton Butler, )  
Ernest Durant and Deon Jones )  
)  
and ) PERB Case Nos. 98-S-01  
) and 98-S-03  
Ellowese Barganier, ) Opinion No. 581  
)  
Complainants, )  
)  
v. )  
)  
)  
Fraternal Order of Police/ )  
Department of Corrections )  
Labor Committee, et al., )  
)  
Respondent. )

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**DECISION AND ORDER**

The background and issues underlying these cases is set out by the Hearing Examiner in his Report and Recommendation.<sup>1/</sup> The Hearing Examiner found that FOP's conduct in suspending Complainants Teretha Spain and Carlton Butler from office; expelling Ms. Spain from office for non-payment of dues; failing to furnish Ms. Spain and Mr. Butler with keys, office space and other union resources; failing to conduct a recall referendum; and removing Complainant Barganier from office as chief shop steward, did not violate the standards of conduct for labor organizations as codified under D.C. Code Sec. 1-618.3(a)(1).

Based on his findings and conclusions, the Hearing Examiner recommended that the Complaint be dismissed in its entirety. On

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<sup>1/</sup> In an earlier Decision and Order in PERB Case No. 98-S-03, Opinion No. 542, the Board had denied Complainant Barganier's request for preliminary relief and consolidated her Complaint with the related Complaint allegations in PERB Case No. 98-S-01. The Hearing Examiner's Report and Recommendation is attached as an appendix to this Decision and Order.

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October 26, 1998, FOP filed a pleading styled "Respondent's Exceptions to the Hearing Examiner's Report and Recommendation." On November 17, 1998, Complainant Butler filed a document styled "Complainant's Exception and Rebuttal to Respondent Attorney's Exception to the Hearing Examiners (sic) Report and Recommendations". FOP filed a Motion to Strike the Complainants' Exceptions based on timeliness.

Board Rule 556.3 provides that "[w]ithin 15 days after the service of the report and recommendation, any party may file precise, specific, written exceptions with the Board." Any opposition thereto may be filed within 10 days after service of the exceptions. In the instant proceeding exceptions were due by October 26, 1998, and oppositions by November 16, 1998. Consequently, the Complainants' exceptions and opposition to the Respondent's exceptions (both filed November 17, 1998) were not timely filed. The Complainants made no request for an extension of time nor did they make a request or provide a reason to accord leave to file after the due dates. In view of the above, we grant the Respondent's Motion to Strike the Complainants' November 17, 1998 filing.

FOP excepts to the absence of sanctions or "punishment" against the Complainants in the Hearing Examiner's recommended order dismissing the Complaint. FOP asserts that such action is warranted for the bad faith and abuse of the Board's process that the Complainants have demonstrated by this and prior failed and frivolous actions against the Respondent officers.

FOP's exception is based not merely upon the disposition of the instant case, but upon the aggregate of previous related actions brought by the Complainants against certain officers of FOP.<sup>2/</sup> Those prior cases were not before the Hearing Examiner nor did FOP refer to them to support such relief in its post-hearing brief. In this regard, FOP's request for sanctions is not an exception to the limited matter covered by the Hearing Examiner's Report and Recommendation but rather a post-hearing Request for extraordinary relief to address the Complainants' asserted pattern of abuse of the Board's processes. The fact that the Hearing Examiner did not address this request, however, does not deprive us of the authority to consider such a request at this time.

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<sup>2/</sup> Cases to which the Respondent FOP refers are cases lost by the Complainants as officers acting on behalf of FOP as well as cases the Complainants have brought against FOP as union members.

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FOP has requested the following sanctions against the Complainants: (1) an Order forbidding the Complainants and their counsel from appearing before the Board or from being entitled to secure any benefit from the Board's processes or remedial Orders; (2) imposition of appropriate monetary sanctions, including legal fees to defend this and prior frivolous actions filed by the Complainants against FOP; and (3) referral of this matter to the D.C. Corporation Counsel and U.S. Attorney for the District of Columbia for investigation of possible criminal conduct by the Complainants. Heretofore, the only sanction imposed by the Board has been the expressly prescribed sanction requiring the payment of reasonable costs by an unsuccessful party to the other party. While we have not previously considered the scope of our authority to sanction parties, costs is the only form of sanction expressly provided under provisions of the CMPA establishing the Board's authority to provide appropriate remedies. See, D.C. Code §§ 1-605.2(9) 1-618.13.

Moreover, it is the policy of the Board to interpret the CMPA and construe our rules broadly to facilitate access to our processes for all parties under our jurisdiction. Categorically denying covered individuals access to the means of securing their statutory rights and protections would constitute the most extraordinary of sanctions or relief. We are cognizant of the fact that over the last couple of years, Complainants Butler, Spain and Durant have brought a number of unsuccessful actions against the current chairman and certain other executive officers of FOP. We are also aware that during this same period Complainants Butler and Spain, in their former capacities as officers of FOP, have been the subject of successful actions against FOP. However, no finding was made in any of these prior cases that sanctions, including costs, were warranted.

The records in all of those prior proceedings are no longer before us and our Decisions and Orders in those case are now final. What remains appropriately before us to consider with respect to FOP's request for sanctions is the asserted frivolous nature of the instant claims and/or the alleged bad faith that FOP asserts motivated all of the named Complainants in this case. Constrained to limit our consideration to the findings of this case, we cannot conclude that FOP's request that Complainants be barred from access to our processes is warranted at this time.

We note that the repeated failed attempt by some of the Complainants suggests a disturbing pattern emerging that render suspect the motive for Complainants' actions against current FOP

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officers.<sup>3/</sup> By denying, on the strength of this record, FOP's request that we henceforth bar the Complainants from availing themselves of our processes, we do not exclude such sanctions as appropriate under our authority to provide appropriate relief. In any future request for sanctions by FOP, we shall consider any pattern of cases heretofore established before this agency involving these Complainants wherein sanctions were warranted.

With respect to costs, the Board first addressed the circumstances under which imposing costs upon a party may be warranted in AFSCME, D.C. Council 20, Local 2776 v. D.C. Dept of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990). In that case the Board discussed when sanctions such as costs are warranted in a proceeding before the PERB. The Board observed:

[W]e believe such an award must be in the interest of justice. Just what characteristics of a case will warrant the finding that an award of cost will be in the interest of justice cannot be exhaustively catalogued. We do not believe it possible to elaborate in any one case a complete set of rules or earmarks to govern all cases, nor would it be wise to rule out such awards in circumstances that we cannot foresee. What we can say here is that among the situations in which the losing party's claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith, and those in which a reasonably foreseeable result of the successfully challenged conduct is the undermining of the union among employees for whom it is the exclusive bargaining representative. Slip Op. No. 245, at 5

With respect to the standards of conduct violations alleged by the Complainants, the Hearing Examiner concluded that "each of the controversies litigated herein is of an inherently political nature." (R&R at 15.) He further found that "Respondent's [alleged violative] action had less to do with unlawful retaliation or denial of due process than with the union's fundamental rights to exercise the political power with which its members had invested it." Id. The Hearing Examiner found it apparent from the evidence presented that Complainants "Spain and

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<sup>3/</sup> We note, however, that Complainant Barganier was successful in the last Standards of Conduct Complaint she brought against the Respondent FOP. See, Ellowese Barganier, et al. v. FOP/DOC Labor Committee, 43 DCR 2949, Slip Op. No. 464, PERB Case 95-S-02 (1997).

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Butler in the summer of 1997 were embarked on a grim, determined campaign to bollix up the union's operations from within." (R&R at 19.) With respect to Complainant Barganier's claim that FOP unlawfully failed to conduct a recall referendum of its Chairman Clarence Mack, the Hearing Examiner observed the following: "On this issue... unless PERB has a strong interest in a public-assisted dispensation from the general obligation of mature behavior, there can be no question about any violation of standards [of conduct for labor organization]." (R&R at 25.) Finally, the Hearing Examiner concluded that findings establishing that Complainant Barganier's claims were motivated by her "insurgency" against the current administration of FOP "blows to rabble any suggestion of 'pretext' for unlawful discriminatory conduct" by the Respondent. (R&R at 27.) Based on the Hearing Examiner's findings and conclusions on the asserted violations in this case, we find the interest-of-justice standard met with respect to claims brought by Complainants Butler, Spain and Barganier. We therefore limit our imposition of costs to these Complainants.<sup>4/</sup>

FOP has requested that we impose appropriate monetary sanctions, including the Respondent's legal fees, upon the Complainants. We have held, however, that the Board's authority to impose monetary payments is expressly and specifically limited to costs (absent attorney fees) incurred by a party. Committee of Interns v. D.C. Dept of Human Services, Slip Op. No. 480, PERB Case No. 95-U-22 (1996). See, also, University of the District of Columbia Faculty Association, NEA v. University of the District of Columbia, 38 DCR 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991) (costs under the CMPA excludes attorney fees). We therefore grant this exception limited, however, to the costs

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<sup>4/</sup> While Complainants Durant and Jones decision to join Complainants Butler and Spain as Co-Complainants in PERB Case No. 98-S-01 may have been imprudent, none of the claims against FOP or findings and conclusions of the Hearing Examiner concern charges actually made by either Complainant. Since there were no claims alleging that these Complainants were actually aggrieved by FOP's asserted violations, Complainant Durant and Jones should have been administratively dismissed from this proceeding. We therefore conclude that the record does not support a basis for imposing cost on them stemming from the outcome of PERB Case 98-S-01. The pursuit and thereby processing of PERB Case No. 98-S-01 was based on claims by Complainants Butler, Spain and Barganier that they had been aggrieved by FOP's asserted violations of the CMPA's standards of conduct for labor organizations. We caution Complainants Durant and Jones from joining in any future complaints where they do not have a good faith claim that they have incurred actual injury from the asserted violation(s).

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incurred by FOP in defending this action.

Pursuant to D.C. Code Sec. 1-605.2(3) and Board Rule 544.7, the Board has reviewed the findings and conclusions of the Hearing Examiner and find them, in all other respects, to be reasonable, persuasive and supported by the record. We therefore adopt the recommendations of the Hearing Examiner that the Complaint be dismissed. Furthermore, we grant FOP's exception with respect to sanctions to the extent consistent with our Decision and Order.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Complaints are dismissed.
2. The Respondent shall submit to the PERB, within fourteen (14) days from the date of this Order, a statement of actual costs incurred defending this action. The statement of costs shall be filed together with supporting documentation; the Complainants may file a response to the statement within fourteen (14) days from service of the statement upon it.
3. The Complainants Carlton Butler, Teretha Spain and Ellowese Barganier shall pay the Respondent, its reasonable costs incurred in this proceeding within ten (10) days from the determination by the Board or its designee as to the amount of those reasonable costs.

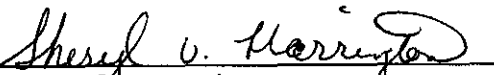
**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**  
Washington, D.C.

February 9, 1999

**Certificate of Service**  
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James Conway  
Hearing Examiner  
10906 Thimbleberry Lane  
Great Falls VA 22066

U.S. MAIL

  
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Sheryl Harrington  
Secretary

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CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Cases Nos. 98-S-01 and 98-S-03 was mailed (U.S. Mail) to the following parties on this the 9<sup>th</sup> day of February, 1999.

Carlton Butler  
Vice Chairperson  
FOP/DOC Labor Committee  
715 8th Street, S.E.  
Washington, D.C. 20003  
U.S. MAIL

Teretha Spain  
Recording Secretary  
FOP/DOC Labor Committee  
715 8th Street, S.E.  
Washington, D.C. 20003  
U.S. MAIL

Ernest Durant  
7249 Bragg Lane  
Manassas, VA 20110  
U.S. Mail

Deon Jones  
1610 Whist Place  
Capitol Heights, MD 30743  
U.S. Mail

Ellowese Barganier  
2919 S. Dakota Avenue, N.E.  
Washington, D.C. 20018  
U.S. Mail

Arthur L. Fox, II, Esq.  
Lobel, Novins & Lamont  
1275 K Street, N.W., Suite 770  
Washington, D.C. 20005  
U.S. MAIL

Courtesy Copies:

Dalton Howard, Esq.  
Brooks and Howard  
6701 16<sup>th</sup> Street, N.W.  
Washington, D.C. 20012  
U.S. Mail

Clarence Mack  
Chairperson  
FOP/DOC Labor Committee  
715 8th Street, S.E.  
Washington, D.C. 20003  
U.S. MAIL