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

Tyrone Jenkins, Edwin Hull, Sharon Cain,)	
Arnold Hudson, Ernest Durant, Sylvia Cephas,)	
Swanda Dunn, Inga Campbell, Clyde Jenkins,)	
Judy Brown and Wayne Taylor,)	PERB Case No. 08-S-01
Complainants,)	Opinion No. 946
v.)	
Fraternal Order of Police/Department of)	Motion for Preliminary Relief
Corrections Labor Committee and the Election)	
Committee, ¹)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case:

On March 28, 2008, Tyrone Jenkins, Edwin Hull, et al., (“Complainants”) filed a Standards of Conduct Complaint and a Motion for Preliminary Relief (“Motion”) against the FOP/DOC Labor Committee and its Election Committee (“Respondent” or “FOP”). The Complainants allege that the FOP has violated D.C. Code § 1-617.03(a), (d) and (e) by breaching its by-laws and violating “Board rules for representation elections”. (Complaint at p. 1). The Complainants are requesting that the Board: (1) order the Respondent to conduct the election for new union officers at the District of Columbia Detention Facility located at 1901 D Street, S.E.; (2) order the Respondent to use an impartial body to conduct the representation election to be held on May 12, 2008; and (3) issue a “temporary restraining order on any [of] Respondent’s action[s] on conducting [the] election until the Board rules on the[ir] motion.” (Motion and Complaint at p. 9).

¹The Complainants have named the FOP/DOC the Labor Committee and the Election Committee as Respondents. Therefore, in this case, the term “Respondent” refers to the FOP DOC Labor Committee and the Election Committee.

The Respondent filed an Opposition to the Motion ("Opposition") and an answer to the Standards of Conduct Complaint denying that it has violated of the Comprehensive Merit Personnel Act ("CMPA"). The Respondent requests that the Motion be denied. The Complainants' Motion and the Respondent's Opposition are before the Board for disposition.

II. Discussion:

On or about February 29, 2008, the Respondent's Election Committee posted a notice on the union bulletin board at the District of Columbia Detention Facility at 1901 D Street, S.E., Washington, D.C. concerning an internal union election for officers within the FOP/DOC Labor Committee. (See Motion and Complaint at ¶ 6). The notice provided *inter alia* that the election was to be held on May 12, 2008 at the Fraternal Order of Police Lodge at 711 - 4th Street, Washington, D.C. from 6:30 a.m. to 6:30 p.m. (See Motion and Complaint, Exh. A, p. 2). The notice also provided that "the FOP/DOC Election Committee shall resolve all challenged ballots and promptly certify the results of the ballot count following completion" of the election and that "[a]ny member wishing to challenge the election must do so in written and signed protest, . . . no later than 12:00 noon on Thursday, May 15, 2008." (Motion and Complaint, Exh. A, p. 2).

The Complainants allege that the FOP and its Election Committee are not conducting a fair and impartial election. Specifically, the Complainants assert that: (1) Article 9, Sections 9.2 and 9.3. of the FOP by-laws create a conflict of interest - allowing the incumbent chairman, who is running for office - to participate as a member of the Election Committee. (See Complaint at ¶ 9-11); (2) the election is being conducted without an impartial body pursuant to Board rules for "representation elections".² (See Motion and Complaint at ¶ 12-18). (3) "the election [was moved] off site from the employees' employment agency location at 1901 D Street, S.E." and thus "will cause low voter participation because the majority of [the] petitioners will be restrained from voting by being on duty station during voting hours of the election from 7:30 a.m. to 4:00 p.m. [during their tour of duty]". (Motion and Complaint at ¶ 20); and (4) the incumbent chairman of FOP contacted employees who were terminated and informed them of the location of the election and encouraged them to vote for the current officers who are seeking re-election. (Motion and Complaint at ¶ 21).

The Complainants claim that the FOP's violation of the CMPA is clear-cut and flagrant. (See Motion and Complaint at p. 1). Also, they assert that the Board's ultimate remedy will be inadequate. (See Motion and Complaint at ¶ 18). Therefore, the Complainants contend that preliminary relief is appropriate in this case.

²We note that in their pleadings the Complainants refer to the May 12th election as a "representation election". However, the election that is the focus of the instant complaint is not a "representation election" as that term is used in Board Rule 510.1, but an internal union election for officers.

The criteria the Board employs for granting preliminary relief in Standards of Conduct cases are prescribed under Board Rule 544.15, which provides in pertinent part as follows:

The Board may order preliminary relief ... where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged violation is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy will be clearly inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. See, *AFSCME, D.C. Council 20, et al. v. D.C. Government, et al.*, 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). In determining whether or not to exercise its discretion under Board Rule 544.15, this Board has adopted the standard stated in *Automobile Workers v. NLRB*, 449 F.2d 1046 (CA DC 1971). There, the Court of Appeals - addressing the standard for granting relief before judgment under Section 10(j) of the National Labor Relations Act - held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by *pendente lite* relief." *Id.* at 1051. "In those instances where [this Board] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been restricted to the existence of the prescribed circumstances in the provisions of Board Rule [544.15] set forth above." *Clarence Mack, et al. v. FOP/DOC Labor Committee, et al.*, 45 DCR 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

In its response to the Motion, the Respondent denies the material elements of the allegations asserted in the Motion. FOP counters that: (a) the election rules were circulated by the Election Committee - independently of the Executive Board members (See Opposition at p. 2); (b) the incumbent chairman of the FOP is not involved in the Election Committee (See Opposition at p. 3); (c) there will be an impartial third party to certify the ballot count and review the ground rules for the election (See Opposition at p. 2); and (d) the election will be held from 6:30 a.m. to 6:30 p.m. at a location where all union meetings are held and does not impose an unfair burden to any of the nominees or members (See Opposition at p. 3); and (e) an outside professional entity is hired to ensure the validity of the election (See Opposition at p. 3). Therefore FOP maintains that there is no Standards of Conduct violation and preliminary relief should not be granted. Furthermore, FOP asserts that even if a violation of union by-laws were found, this is not enough to constitute a cause of action within the jurisdiction of the Board. (See Opposition at p.6). Finally, FOP contends that even if the Board determines that it has jurisdiction over this matter, the Complainants have failed to satisfy the statutory requirements for preliminary relief. (Opposition at p. 5).

It is clear that the parties disagree on the facts in this case. The Board has found that preliminary relief is not appropriate where material facts are in dispute. See, *DCNA v. D.C. Health and Hospitals Public Benefit Corporations*, 45 DCR 6067, Slip Op. No. 559, PERB Case Nos. 98-

U-06 and 98-U-11 (1998).

In the present case, the Complainants' claim that the Respondent's actions meet the criteria of Board Rule 544.15 is a mere repetition of the allegations contained in the Complaint. Even if the allegations are ultimately found to be valid, it does not appear that any of the Respondent's actions constitute clear-cut or flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. The Respondent's actions presumably affect bargaining unit members. However, the Respondent's actions stem from a single action (or at least a single series of related actions), and do not appear to be part of a pattern of repeated and potentially illegal acts.

While the CMPA states that labor organizations are prohibited from violating the CMPA, the alleged violations, even if determined to be valid do not rise to the level of seriousness that would undermine public confidence in the Board's ability to enforce compliance with the CMPA. Finally, while some delay inevitably attends the carrying out of the Board's dispute resolution process, the Complainants have failed to present evidence which establishes that these processes would be compromised, or that eventual remedies would be inadequate, if preliminary relief is not granted.

The Complainants have failed to provide evidence which demonstrates that the allegations, even if true, are such that remedial purposes of the law would be served by *pendente lite* relief. Moreover, should violations be found in the present case, the relief requested can be accorded with no real prejudice to the Complainants following a full hearing. In view of the above, we deny the Complainants' Motion for Preliminary Relief.

For the reasons discussed above, we: (1) deny the Complainants' request for preliminary relief and (2) refer the Standards of Conduct Complaint to a hearing examiner.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainants' Motion for Preliminary Relief is denied.
2. The Board's Executive Director shall: (a) schedule a hearing and (b) refer the Complainants' Standards of Conduct Complaint to a Hearing Examiner for disposition.
3. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.

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4. 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.

June 2, 2008

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-S-01 was transmitted via U.S. Mail to the following parties on this the 2nd day of June 2008.

J. Michael Hannon, Esq.
1901 18th Street, N.W.
Washington, D.C. 200009

Mr. Tyrone Jenkins
2236 Alice Avenue
#202
Oxon Hill, MD 20745

Mr. Edwin Hull
2236 Alice Avenue
#202
Oxon Hill, MD 20745

Mr. Earnest Durant, Jr.
813 Galway Lane
Fredericksburg VA 22407

Ms. Sharon Cain
2236 Alice Avenue
#202
Oxon Hill, MD 20745

Mr. Arnold Hudson
2236 Alice Avenue
#202
Oxon Hill, MD 20745

Ms. Sylvia Caphos
2236 Alice Avenue
#202
Oxon Hill, MD 20745

Ms. Swanda Dunn
2236 Alice Avenue
#202
Oxon Hill, MD 20745

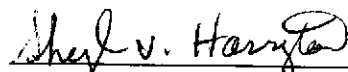
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Ms. Inga Campbell
2236 Alice Avenue
#202
Oxon Hill, MD 20745

Mr. Clyde Jenkins
2236 Alice Avenue
#202
Oxon Hill, MD 20745

Ms. Judy Brown
2236 Alice Avenue
#202
Oxon Hill, MD 20745

Mr. Wayne Taylor
2236 Alice Avenue
#202
Oxon Hill, MD 20745



Sheryl V. Harrington
Secretary