

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: )  
Ernest Durant, Jr. )  
and )  
Carlton Butler, ) PERB Case No. 98-S-02  
Complainants, ) Opinion No. 537  
v. ) (Motion to Dismiss)  
Fraternal Order of Police/ ) FOR PUBLICATION  
Department of Corrections )  
Labor Committee, )  
and )  
Fraternal Order of Police )  
Jerrard F. Young Lodge #1, )  
Respondents. )

DECISION AND ORDER

On December 4, 1997, Complainants Ernest Durant, Jr. and Carlton Butler (Complainants) filed, pro se, a Standards of Conduct Complaint in the above-captioned case against the Respondents, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) and the Fraternal Order of Police Jerrard F. Young Lodge #1. Complainants are employees of the District of Columbia Department of Corrections (DOC) and members of the collective bargaining unit exclusively represented by FOP.<sup>1/</sup>

The Complainants allege that by various acts and conduct FOP, vis-a-vis executive chairperson Clarence Mack, "willfully and knowingly deny the general membership [including the Complainants] of the Fraternal Order of Police Department of Corrections Labor Committee in good standing with the Fraternal Order of Police

<sup>1/</sup> Complainant Butler also currently holds the office of executive vice-chairperson of FOP.

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Jerrard F. Young Lodge an equal opportunity at seeking elective office and or nominating and supporting candidates of their own choosing within the Fraternal Order of Police Department of Corrections Labor Committee as representatives to the Fraternal Order of Police Jerrard F. Young Lodge... ." (Comp. at para. 9.) The Complainants allege that by these acts, the Respondent has violated FOP's by-laws and failed to comply with the standards of conduct for labor organizations under the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.3(a)(1) and (4).

On December 23, 1997, FOP filed a Motion to Dismiss in lieu of an Answer to the Complaint pursuant to Board Rule 544.5.<sup>2/</sup> FOP requested that we dismiss the Complaint based on the following: (1) the Complainants failed to exhaust internal union remedies;<sup>3/</sup> (2) the Complainants' claims concern alleged acts and conduct by FOP with a third party, FOP Jerrard F. Young Lodge #1, over which the Board holds no jurisdiction; and (3) the Complaint fails to state a standards of conduct claim within the Board's statutory jurisdiction. On January 8, 1998, the Complainants filed an Opposition to the Motion.

The Board, after reviewing the pleadings in the light most favorable to the Complainants, and considering the Motion and Response thereto, hereby grants FOP's Motion to Dismiss the Complaint for failure to state a claim.

Respondent FOP/DOC Labor Committee states that although the asserted standards of conduct violations concern conduct by FOP officers, the conduct itself concerns FOP's affiliation with a Fraternal Order of Police Lodge, i.e., Jerrard F. Young Lodge #1, "an organization that does not fall under the PERB's authority or jurisdiction." (Mot. at 3.) Since the FOP Jerrard F. Young Lodge #1, is not an organization that is either certified by the Board to represent DOC bargaining unit employees specifically or D.C.

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<sup>2/</sup> We note that, contrary to Respondent FOP's expressed presumption, the filing of a Motion to Dismiss does not provide an automatic stay of the time provided under Board Rules for the filing of an Answer to a Complaint. However, in view of our disposition of this matter, we do not need to address the consequences of FOP's erroneous presumption.

<sup>3/</sup> We have held that exhaustion of internal union procedures and remedies is not required in order to bring a cause of action before the Board if the Complaint otherwise asserts a statutory standards of conduct claim. Robert Dennis v. FOP/MPD Labor Committee, Slip Op. No. 466, PERB Case No. 96-S-01 (1997).

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government employees in general, the alleged acts and conduct by FOP do not implicate the CMPA's standards of conduct for labor organizations. In view of our prior findings and decision regarding the relationship between FOP/DOC Labor Committee and the FOP Lodge (discussed below), we agree.

Turning first to Respondent FOP Jerrard F. Young Lodge #1, we find that the CMPA's standards of conduct apply only to labor organizations to which recognition has been accorded by the Board. Respondent FOP Jerrard F. Young Lodge #1, has not heretofore been accorded such recognition with respect to DOC employees or any other unit of District of Columbia government employees. Exclusive recognition for the DOC bargaining unit has been accorded to Respondent FOP/DOC Labor Committee in PERB Case No. 93-R-04, Slip Op. No. 362.

In FOP/DOC Labor Committee and Dept. of Corrections and AFGE, Local 1550, 29 DCR 4611, Slip Op. No. 49, PERB Case No. 82-R-06 (1982), we held that the control of the FOP/DOC Labor Committee by the FOP Lodge was peripheral. We observed that the FOP Lodge served an essentially fraternal and social function for bargaining unit employee members. As such, we found that the relationship between the FOP Lodge and the FOP/DOC Labor Committee was not shown to have any significant impact on the rights of members with respect to their representative, i.e., FOP/DOC Labor Committee. In this regard we held that allegations asserting that FOP/DOC Labor Committee members were deprived of equal treatment in FOP Lodge affairs did not have a significant impact on or relationship to FOP/DOC Labor Committee members' rights in the affairs of the organization that represented them. Therefore, alleged violations concerning the operation and conduct of the FOP Lodge did not support a standards of conduct violation under the CMPA. In light of the above, the Motion to Dismiss the Complaint with respect to Respondent FOP Jerrard F. Young Lodge #1 is granted with prejudice.

In the instant case, the extent of the Complaint allegations take issue with the manner in which FOP Chairperson Mack has used FOP/DOC Labor Committee resources to unfairly facilitate the nomination, campaign and election of one FOP member to the FOP Jerrard F. Young Lodge #1 office (i.e., agency trustee), to the detriment of other members seeking that office. Nothing in the Complaint suggests that this office bears a significant relationship to union members' rights with respect to their representative, Respondent FOP/DOC Labor Committee. However, we are mindful of our <sup>policy</sup> concerning a cause of action which is initiated, as here, by pro se complainants, that we will not impose strict compliance with the standard of clarity required of pleadings under Board Rule 501.8. See, e.g., Clarence Mack v. FOP/DOC Labor

Committee, Slip Op. No. 443, PERB Case No. 95-U-16 (1995). Therefore, while we find that the Complaint allegations lack any basis for distinguishing our holding in FOP/DOC Labor Committee and Dept. of Corrections and AFGE, Local 1550, 29 DCR supra, we shall dismiss the Complaint without prejudice as to the Respondent FOP/DOC Labor Committee. The Complainants may re-file their Complaint in the time set in our Order below. Any re-filing of the Complaint, however, must include allegations that, if proven, would support a basis for drawing the necessary relationship between the FOP Lodge office, i.e., agency trustee, and union members' rights in FOP/DOC Labor Committee that are sufficient to support a basis for distinguishing our holding in FOP/DOC Labor Committee and Dept. of Corrections and AFGE, Local 1550, 29 DCR supra.

Based upon the pleadings as presented, the Motion to Dismiss with respect to the FOP/DOC Labor Committee is granted without prejudice for failure to state a cause of action.

ORDER

**IT IS HEREBY ORDERED THAT:**

1. The Motion to Dismiss the Complaint with respect to the Respondent FOP Jerrard F. Young Lodge #1 is granted with prejudice.
2. The Motion to Dismiss the Complaint with respect to the Respondent FOP/DOC Labor Committee is granted without prejudice.
3. The Complainants are provided 5 days from service of this Decision and Order to amend the Complaint consistent with our discussion in this Opinion.
4. The Complaint be dismissed with prejudice should the Complainants fail to amend the Complaint in the time provided in paragraph 3 of this Order.
5. This Decision and Order is final upon issuance.

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

February 13, 1998