

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

In the Matter of:)	
)	
Carlton Butler, Ernest Durant, John Rosser and Willie Temoney,)	
)	
Complainants,)	PERB Case No. 99-S-02
)	Opinion No. 580
v.)	
)	(Request for Preliminary
Fraternal Order of Police/ Department of Corrections Labor Committee,)	Relief and Motion to
)	Dismiss)
)	
Respondent.)	
)	

DECISION AND ORDER

On November 17 and 24, 1998, Complainants Carlton Butler, Ernest Durant, John Rosser and Willie Temoney, filed a Standards of Conduct Complaint and Amended Complaint (hereinafter referred to as the Complaint). The Complainants allege that the Respondent Fraternal Order of Police/Department of Corrections Labor Committee (FOP) has violated the Comprehensive Merit Personnel Act's (CMPA) standards of conduct for labor organization, as codified under D.C. Code § 1-618.3(a)(1), (3) and (5) by the manner in which its officers conducted the internal affairs of the union.^{1/} The Complainants request that

^{1/} Specifically, the Complainant alleged that FOP has violated the CMPA's standards of conduct for labor organizations by the following acts and conduct: (1) failing to provide, in accordance with FOP by-laws and the National FOP Lodge constitution, regular financial reports, e.g., annual union budget (no date or time frame was provided); (2) failing, since May 1997, to conduct a legitimate audit of union dues as mandated by FOP by-laws; (3) FOP executive board Members Mack, Simmons and Lee retained a private attorney to represent them in PERB proceedings prior to becoming FOP Board Members and subsequently paid the attorney from union funds once they became officers; (4) FOP has failed to comply with FOP by-laws governing the financial disposition of union dues and has therefore expended said dues improperly and without the required membership approval (no time frame was provided); (5) since May 1997, FOP has continuously and deliberately: (a) failed to schedule and conduct membership meetings each quarter in accordance with FOP by-laws and (b) held general

(continued...)

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the Board provide preliminary relief to redress the alleged violations.^{2/}

On December 11, 1998, FOP filed a Motion to Dismiss the Complaint and an Opposition to the Complainants' Request for Preliminary Injunction, with supporting affidavits and documents. The Respondent's Motion to Dismiss and the Complainants' Request for Preliminary Relief are now before the Board for consideration and disposition.^{3/}

FOP asserts, as grounds for dismissing the Complaint and denying preliminary relief, that the factual allegations: (1) are conclusory, vague and not specific; (2) are unsubstantiated by the evidence presented; and (3) even if proven, fail to state a

^{1/}(...continued)

membership meetings each quarter in accordance with FOP by-laws and (b) held general membership meetings only during evening hours to purposely exclude the Complainants whose regularly scheduled tour of duty is during this time; (6) since May 1997, FOP has failed without reasonable cause to accord union members their right to vote on meaningful affairs of the union (no specific act or conduct supporting this general charge is alleged); (7) on March 23, 1998, FOP contracted the services of the American Arbitration Association to conduct a mail-ballot election of union officers without the approval of the membership as required under FOP by-laws; (8) passing resolutions that enabled the FOP Executive Board to suppress the democratic financial control of union members whose views differ from that of the Executive Board (no time frame was provided); and (9) violating the standard for fiduciary responsibility set forth under the Labor Management Reporting and Disclosure Act of 1959 (LMRDA) concerning the union rights to which members are entitled and a union's financial disclosure requirements.

^{2/} By way of preliminary relief, the Complainants request that the Board: (1) enjoin FOP's access to its funds until an independent accountant conducts a retroactive audit to June 21, 1996; (2) temporarily decertify FOP until the D.C. Inspector General or the U.S. Labor Department Inspector General conduct a full investigation to determine FOP's suitability to maintain its status as a certified representative under the CMAA's standards of conduct for labor organizations; and (3) issue a Board Notice to FOP members within 48 hours of the Board's issuance of its Order to this effect.

^{3/} The Motion to Dismiss was served on the Complainants by mail on December 11, 1998. The Complainants filed a Response to the Motion to Dismiss on January 11, 1999. Pursuant to Board Rule 553.2, [a]ny response to a written motion shall be filed within five (5) days after service of the motion. The Complainants' Response was due by December 31, 1998. See also Board Rule 501.5. The Complainants' Response was untimely filed and therefore not considered in our disposition of the Motion.

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claim under the asserted provision of the CMPA. FOP asserts that the timeliness of some of the alleged violations cannot be determined while other alleged violations concern financial reporting obligations that are not expressly prescribed under the CMPA or Board Rules. FOP asserts that on that basis those allegations should be dismissed. Finally, FOP also contends that a union constitution and by-laws are in effect contracts enforceable by the courts, not the Board. Therefore, FOP submits, the Board is without general statutory authority to consider the Complainants' claims alleging a breach of FOP's by-laws or constitution.

The Board has held that a cause of action under our standards of conduct jurisdiction is not established by mere breach of a union's internal by-law or constitution. William Corboy, et al. v. FOP/MPD Labor Committee, Slip Op. No. 391, PERB Case No. 93-S-01 (1994). However, the Board will find a cause of action if in violating internal by-laws, the labor organization's action has the proscribed effect set forth in the asserted standard of conduct. Id. See, also, Ellowese Barganier, et al. v. FOP/DOC Labor Committee, 43 DCR 2949, Slip Op. No. 464, PERB Case No. 95-S-02 (1996). Therefore, under such circumstances, alleged violations of internal union rules can constitute a cause of action within our standards of conduct jurisdiction.

The Board has previously considered similar standards of conduct allegations involving these parties in Ernest Durant v. FOP/DOC Labor Committee, Slip Op. No. 430, PERB Case 94-S-02 (1995). In that case, the Complainant had made several allegations that FOP had violated the standards of conduct for labor organizations by the manner in which its officers conducted the internal affairs of the union. The Hearing Examiner concluded that the Complainant failed to allege or present evidence of actual injury to him or other members resulting from alleged improprieties in FOP by-laws. In adopting the Hearing Examiner's findings, the Board observed that Board Rule 544.2 provides for the filing of a complaint by [a]ny individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations... . (Emphasis added) Slip Op. at n. 2. The Board held in that case that the alleged interference with members rights was merely imputed by the alleged failure to adhere to the asserted standards of conduct. Therefore, any injury was not actual but rather hypothetical or potential at best. On that basis, we adopted the Hearing Examiner's recommendation and

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dismissed the Complainant. /

After reviewing the initial filing of the instant Complaint, the Board's Executive Director issued a deficiency letter to the Complainants. One of the deficiencies noted in the letter was the Complaint's failure to provide a concise statement of the nature of the case and all information relevant to determining the cause of action, including the alleged violation and date and time of occurrence. The Complainants were also advised in that letter that failure to cure the deficiency could result in dismissal of its action.

We have not strictly applied Board rules governing the conciseness of pleadings when complainants proceed *pro se*, as have the instant Complainants. However, when a failure to cure deficiencies renders a complaint lacking in specificity to such an extent that a determination cannot be made whether or not a cause of action exists or jurisdictional requirements are met, we are constrained to dismiss such complaint allegations notwithstanding the *pro se* status of the complainants. Such is the case with the instant Complaint as amended by the Complainants.

The absence of the dates of occurrence of several alleged violations remain uncured in the amended Complaint. Moreover, the Complainants have failed to allege that any of the Complainants or other FOP members have incurred any actual injury by the asserted standard of conduct violation. The only injury asserted by the Complainants is essentially in the abstract. The Complainants allege that FOP members are being deprived of union officers that adhere to internal by-laws that Complainants contend are consistent with the standards of conduct violated. However, no actual injury resulting from the failure to adhere to the asserted standards is alleged to have been incurred by the Complainants or other union members.

Therefore, we dismiss the Complainants' allegations as: untimely; failing to meet filing requirements pursuant to Board Rule 501.13; and/or failing to state a cause of action under the CMPA's standards of conduct for labor organizations and Board Rule 544.2. We further dismiss the Complainants' claim of an alleged violation of obligations that exists under statutes over

^{4/} In reaching this decision, the Board referenced an observation made by the D.C. Superior Court in Charles Bagenstose v. PERB, 93-MPA-29 (1994), which sustained the Board's Decision and Order in Charles Bagenstose v. Washington Teachers Union, Local 6, 43 DCR 1497, Slip Op. 355, PERB Case No. 90-S-01 (1993).

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which the Board lacks jurisdiction, i.e., LMRDA. See, e.g., Joanne Hicks v. D.C. Office of the Controller and American Federation of State, County and Municipal Employees, 41 DCR 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Having dismissed the Complaint in its entirety, the Complainants' request for preliminary relief is also dismissed as moot.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Department of Corrections Labor Committee's (FOP) Motion to Dismiss is granted.
2. The Complaint and request for preliminary relief are dismissed.

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

February 3, 1999

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-S-02 was mailed (U.S. Mail) to the following parties on this the 3 day of February, 1999.

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