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

In the Matter of:)	
)	
Christopher Collins,)	PERB Case No. 10-S-10
)	
Complainant,)	
)	Opinion No. 1557
v.)	
)	CORRECTED COPY
American Federation of Government)	
Employees, National Office, and Local 1975,)	
)	
Respondents.)	
)	

DECISION AND ORDER

On December 16, 2014, the D.C. Superior Court affirmed in part and remanded in part PERB’s Decisions and Orders in *Collins v. Am. Fed. of Gov’t Emp., National Office & Local 1975*, Slip Op. No. 1289, PERB Case No. 10-S-10 (June 27, 2012) (hereinafter “Op. No. 1289”) and *Collins v. Am. Fed. of Gov’t Emp., National Office & Local 1975*, 60 D.C. Reg. 2541, Slip Op. No. 1351, PERB Case No. 10-S-10 (2013) (hereinafter “Op. No. 1351”). The Court ordered PERB to address the American Federation of Government Employees, National Office (hereinafter “AFGE”) argument that the Board lacked subject matter jurisdiction over the complaint.¹ As explained below, the Board vacates the parts of Op. Nos. 1289 and 1351 that found that because AFGE’s Motion to Dismiss was untimely, it would not consider AFGE’s subject matter jurisdiction defense. Consistent with the Court’s Opinion, the Board rejects AFGE’s arguments, and finds that it has subject matter jurisdiction over the complaint.

I. Statement of the Case

On July 6, 2010, complainant Christopher Collins filed a standards of conduct complaint against AFGE and American Federation of Government Employees, Local 1975 (“Local 1975”). Collins alleged that AFGE and Local 1975 had mismanaged membership dues and other finances, and had failed to provide an accounting or other financial reports and summaries to

¹ AFGE Local 1975 did not take part in the appeal of this case to Superior Court and is therefore, not a respondent in this decision.

members when requested.² Additionally, Collins alleged that Local 1975 had operated for at least 18 months without a treasurer and had not made any efforts to hold an election.³ Neither AFGE nor Local 1975 filed an answer.

On October 27, 2010, 113 days after the Complaint was filed, AFGE filed a Motion to Dismiss the Complaint against AFGE only arguing that PERB lacked subject matter jurisdiction over it, and alternatively, that the Complaint against AFGE was moot since Collins had already been given all of the requested documents that AFGE had in its possession and could give him.⁴

In Op. No. 1289, the Board found that because AFGE had failed to file an answer within 15 days from the service of the Complaint as required by PERB Rule 544.6, then under PERB Rule 544.7 the allegations in the Complaint were deemed admitted.⁵ Accordingly, the Board denied AFGE's Motion to Dismiss and found that the Respondents' actions violated D.C. Official Code § 1-617.03(a) (5), which requires unions to maintain "fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members."⁶

AFGE filed a Motion for Reconsideration arguing that subject matter jurisdiction defenses can be raised at any time, and that the Board had erred when it failed to consider those arguments in AFGE's Motion to Dismiss.⁷ In Op. No. 1351, the Board denied AFGE's Motion for Reconsideration, finding that the arguments presented constituted nothing more than a mere disagreement with the Board's initial decision.⁸

AFGE appealed the Board's decisions to the D.C. Superior Court. In its Opinion, the Court made three findings.

First, the Court found that Op. Nos. 1289 and 1351 erred by not addressing AFGE's argument that PERB lacked subject matter jurisdiction, which the Court asserted "can never be waived."⁹ The Court reasoned that PERB Rule 544.6's use of the term "jurisdiction" is unclear as to whether it is referring to personal jurisdiction, subject matter jurisdiction or PERB's authority to act under a statute, but that Ops. No. 1289 and 1351 applied the term "to encompass subject matter."¹⁰ Further, the Court noted that under D.C. Official Code §§ 1-605.02(9) and (11), "[a] Standards of Conduct Complaint is incontrovertibly a subject matter under the authority of the Board," and that the Board's adoption of PERB Rules 544.6 and 544.7 is also within its authority.¹¹ The Court remanded the matter to PERB to consider AFGE's subject

² Complaint at 1.

³ *Id.* at 2.

⁴ Motion to Dismiss at 1, 5.

⁵ Op. No. 1289 at p. 1.

⁶ *Id.* at 3.

⁷ Motion for Reconsideration at 2.

⁸ Op. No. 1351 at p. 3.

⁹ *Am. Fed'n of Gov't Emp, Nat'l Office v. D.C. Public Emp. Relations Bd.*, Case No. 2013 CA 000846 P(MPA) at p. 6-7 (D.C. Super. Ct. Dec. 16, 2014) (internal citations omitted).

¹⁰ *Id.* at 5.

¹¹ *Id.* at 6.

matter jurisdiction defense, “which PERB... erred as a matter of law in not addressing,” since subject matter jurisdiction arguments “can be raised at any time.”¹²

Second, the Court affirmed the Board’s findings that it had personal jurisdiction over AFGE.¹³ The Court stated that subject matter jurisdiction covers “what” a court can hear, and personal jurisdiction covers “who” that court can reach.¹⁴ Further, the Court held that while subject matter jurisdiction can never be waived, “parties can waive personal jurisdiction.”¹⁵ AFGE argued that PERB Rule 544.1 only applies to exclusive representatives, and that AFGE Local 1975 is the exclusive representative, not the AFGE National Office. However, the Court reasoned that AFGE’s argument was a personal jurisdiction defense, and that by failing to timely assert its position, AFGE “waived personal jurisdiction thereby placing [AFGE] within reach of PERB’s personal jurisdiction.”¹⁶

Third, the Court rejected AFGE’s argument that Collins’ complaint is moot.¹⁷ The Court found that the case is not moot “because [AFGE] has the authority under its own constitution to request and have access to all financial documents of [Local 1975] and all financial records have not been submitted.”¹⁸ The Court reasoned:

[AFGE] has given annual financial submissions over the past four years, but it has not granted all relief. They claim that they do not have access to all of Local 1975’s financial records. However, [AFGE] has control of Local 1975’s record by operation [of] AFGE’s National Constitution and Local 1975’s Constitution. Local 1975 has yet to respond to these legal proceedings. In their absence, [AFGE] has the authority and must act within that authority to provide all relief requested to the complainant, not just the parts [AFGE] deems readily accessible. The case and controversy has not been resolved, and, therefore, the case is not moot.¹⁹

Based on these findings, the Court affirmed in part, and remanded in part, the Board’s Decisions and Orders in Op. Nos. 1289 and 1351. On remand, the Court ordered PERB to address AFGE’s argument that it lacked subject matter jurisdiction.

II. Analysis

Consistent with the Court’s Opinion, the Board vacates the parts of Ops. No. 1289 and 1351 that stated PERB could not consider AFGE’s subject matter jurisdiction argument because

¹² *Id.* (citing *District of Columbia v. AFGE, Local 1403*, 19 A.3d 764, 771 (D.C. 2011)).

¹³ *Id.* at 8.

¹⁴ *Id.* (citing *Black’s Law Dictionary*, 870 (8th ed. 1999)).

¹⁵ *Id.* (citing *Jemison v. Nat’l Baptist Convention*, 720 A.2d 275, 282) (D.C. 1998)).

¹⁶ *Id.*

¹⁷ *Id.* at 9.

¹⁸ *Id.*

¹⁹ *Id.* at 9-10 (citing AFGE Local 1975 Constitution, Art. 5 § 5 and AFGE National Office Constitution, Article XIX, § 7).

AFGE's pleading was untimely. Indeed, subject matter jurisdiction defenses cannot be waived and may be raised at any time.²⁰

In its Motion to Dismiss, AFGE argued that under PERB Rule 544.1, a standard of conduct complaint can only be filed against an organization that has been certified by PERB as the exclusive representative through an election, or against an organization whose exclusive recognition was already established prior to the effective date of the CMPA and has continued until the date of the filing of the complaint without being decertified.²¹ AFGE asserted that it is not the certified exclusive representative of Mr. Collins' bargaining unit. Only Local 1975 is certified as the exclusive representative. AFGE contends that PERB therefore lacks subject matter jurisdiction over AFGE and that Collins' complaint against it must be dismissed.²²

In its Opinion, the Court found that D.C. Official Code § 1-605.02(9) grants the Board incontrovertible subject matter jurisdiction over standards of conduct complaints.²³ Further, D.C. Official Code §§ 1-617.03(a)(1) and (5), as well as PERB Rules 544.2(a) and (e), allow any individual to file a standards of conduct complaint with PERB if that individual has been aggrieved by his or her union's failure to hold periodic democratic elections, to maintain fiscal integrity in the conduct of the affairs of the union, or to provide members with regular financial reports. Since these are the very bases of Collins' allegations, the Board finds that it has subject matter jurisdiction over his complaint.

In regard to whether PERB has jurisdiction over AFGE in this case, the Court expressly rejected AFGE's argument that the standards of conduct requirements in PERB Rule 544.1 only apply to the certified exclusive representative, which is Local 1975, and not to AFGE. The Court found that Respondent's assertion was a personal jurisdiction argument couched as a subject matter jurisdiction defense, and that AFGE waived its right to raise its argument when it failed to file a timely response.²⁴

AFGE's argument fails. The title of "exclusive representative" applies to a person or entity, answering the question "who" the court can reach, clearly the very definition of personal jurisdiction. In accordance to PERB Rule 544.6, when jurisdiction is not asserted within the allotted time frame, 15 days in this case, jurisdiction is waived. AFGE waived personal jurisdiction thereby placing AFGE lawfully within reach of PERB's personal jurisdiction.²⁵

Accordingly, consistent with the Court's Opinion, the Board finds that it has subject matter and personal jurisdiction over AFGE in this matter.

²⁰ *Id.* at 6-7.

²¹ Motion to Dismiss at 3-4.

²² *Id.*

²³ *Am. Fed'n of Gov't Emp, Nat'l Office v. D.C. Public Emp. Relations Bd.*, Case No. 2013 CA 000846 P(MPA) at p. 6.

²⁴ *Id.* at 8.

²⁵ *Id.* at 8.

Furthermore, in accordance with the Court's findings that, due to the absence of any response by Local 1975 in this matter, AFGE "must act within [the oversight authority it has over AFGE Local 1975 under its own Constitution] to provide all relief requested to the complainant," the Board reaffirms the relief it ordered in Ops. No. 1289 and 1351.²⁶

ORDER

IT IS HEREBY ORDERED THAT:

1. The parts of Op. Nos. 1289 and 1351 that stated the Board could not consider the AFGE National Office's subject matter jurisdiction arguments because the AFGE National Office's responsive pleading was untimely is vacated;
2. Complainant Christopher Collins' Standard of Conduct Complaint is granted;
3. AFGE National Office will provide Complainant with requested financial information for the four years prior to filing of the Complaint;
4. AFGE National Office will cease and desist refusing to provide regular financial reports or summaries to members.
5. AFGE National Office shall conspicuously post, within ten (10) days from the receipt of this Decision and Order, the attached Notice where notices to members are normally posted. The Notice shall remain posted for thirty (30) consecutive days;
6. AFGE National Office shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the receipt of this Decision and Order that the Notice has been posted accordingly and that the requested information has been provided;
7. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Ann Hoffman, and Yvonne Dixon.

December 17, 2015
Washington, D.C.

²⁶ *Id.* at 10.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-S-10, Op. No. 1557 was sent by File and ServeXpress (and by U.S. Mail where noted) to the following parties on this the 5th day of January, 2016.

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/s/ Sheryl Harrington
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