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**Government of the District of Columbia**

**Public Employee Relations Board**

_____	)	
In the Matter of:	)	
	)	
The National Association of Government	)	
Employees, Local R3-07	)	
	)	
	)	PERB Case No. 10-U-32
Complainant,	)	
	)	Opinion No. 1343
v.	)	
	)	
The Government of the District of Columbia	)	
Office of Unified Communications;	)	
Mr. Bennie Coates, Supervisor	)	
	)	
Respondents.	)	
_____	)	

**DECISION AND ORDER**

**I. Statement of the Case**

In its complaint (the "Complaint"), the National Association of Government Employees, Local R3-07 (the "Complainant" or the "Union") alleges that Mr. Bennie Coates, while serving as a supervisor in the Office of Unified Communications (the "Agency"), interfered with the efforts of Union officials to perform their official functions. The Complaint alleges that this interference violated D.C. Code 1-617.04(a)(1) and (2), as well as the collective bargaining agreement ("CBA") between the Union and the Agency.

The Agency filed its Answer to Unfair Labor Practice Complaint (the "Answer") asserting that the Public Employee Relations Board (the "Board") is without authority to resolve what is essentially a collective bargaining contract dispute between the Agency and the Union. Also, the Agency asserted that the underlying facts are in dispute.

The issues before the Board are whether the proper parties are before the Board, whether this Board has jurisdiction over the alleged violations of the CBA, and how this matter should proceed.

## II. Discussion

### A. Capacity of Mr. Bennie Coates

The Complaint alleges that Mr. Coates committed the alleged violations in his official capacity and seeks his removal from that capacity. (Complaint, pages 2 and 3). In *Fraternal Order of Police v. District of Columbia*, Slip Op. No. 1118, PERB Case No. 08-U-41 (Aug. 19, 2011), the Board quoted a decision of the Superior Court opining that a suit against an officer or agent of the government in his official capacity is a suit against the government, not against the officer or agent, and that when the government is named as a defendant, the addition of an officer or agent in his official capacity is “redundant and an inefficient use of judicial resources.” *Id.* at pp. 4-5 (quoting *AFGE Local 1403 v. District of Columbia*, Case 2008-CA-8472 (July 21, 2009)). Therefore, the Board held that “[s]uits against the District officials in their official capacity should be treated as suits against the District.” *Id.* at 5.

The Comprehensive Merit Personnel Act empowers the Board to “[d]ecide whether unfair labor practices have been committed and issue an appropriate remedial order.” D.C. Code § 1-605.02(3). The presence of Mr. Coates as an additional respondent does not assist the Board in deciding whether an unfair labor practice has been committed. In short, it is “redundant and an inefficient use of judicial resources.” *Fraternal Order of Police*, Slip Op. No. 1118 at pp. 4-5 (quoting *AFGE Local 1403 v. District of Columbia*, Case 2008-CA-8472 (July 21, 2009)).

Therefore, Mr. Coates should be dismissed as a named respondent.

### B. Alleged Unfair Labor Practice

In its Complaint, the Union has made factual allegations about actions taken by the Agency. (E.g. Complaint, at 2-3). In its Answer, the Agency has asserted that those factual allegations are incorrect (Answer, at 2-4). The Board believes that is a matter best determined after the establishment of a factual record, through an unfair labor practice hearing.

Therefore, all claims against Mr. Coates are not properly before the Board and should be dismissed. The remaining factual issues may be established through an unfair labor practice hearing, unless resolved through mediation.

## ORDER

### IT IS HEREBY ORDERED THAT:

1. Mr. Bennie Coates is dismissed as a respondent.
2. The unfair labor practice claim by the National Association of Government Employees, Local R3-07, is best determined by establishment of a factual record through an unfair

labor practice hearing. That dispute will first be submitted to the Board's mediation program to allow the parties the opportunity to reach a settlement by negotiating with one another with the assistance of a Board appointed mediator.

3. The parties will be contacted to schedule the mandatory mediation within seven (7) days of the issuance of this Decision and Order.
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.

November 8, 2012

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**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 10-U-32 is being transmitted via U.S. Mail and electronic mail to the following parties on this the 9th day of November, 2012.

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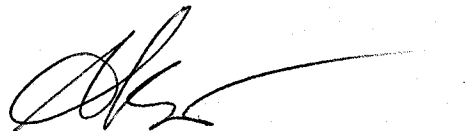
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