

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

In the Matter of:	)	
	)	
National Association of Government Employees	)	PERB Case No. 19-RC-01
	)	
Petitioner	)	
	)	Opinion No.1741
and	)	
	)	
District of Columbia	)	
Department of Forensic Sciences	)	
	)	
Respondent	)	
	)	

**SUPPLEMENTAL DECISION AND ORDER AMENDING DIRECTION OF ELECTION**

**I. Statement of the Case**

On January 16, 2020, the Board ordered an on-site election to determine whether a majority of eligible employees at the Department of Forensic Sciences (DFS) desire to be represented by the National Association of Government Employees (NAGE) or no representative.<sup>1</sup> On March 4, 2020, the American Federation of Government Employees, Local 2978 (AFGE Local 2978) filed a document styled Motion to Intervene Out of Time (Motion to Intervene). On March 11, 2020, NAGE filed an Opposition to AFGE Local 2978’s Motion to Intervene.<sup>2</sup>

**II. Background**

On July 24, 2019, NAGE filed a Petition for Recognition (Petition), seeking to represent a proposed bargaining unit of professional and nonprofessional employees at DFS for the purpose of collective bargaining.<sup>3</sup> On September 4, 2019, after receiving DFS’s comments to the recognition petition, PERB issued a notice of the recognition petition for DFS to post where notices to employees are customarily posted, pursuant to PERB Rule 502.6.

The purpose of the notice was to ensure that all employees, labor organizations, and agencies associated with the performance of work at DFS were aware that a recognition petition

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<sup>1</sup> *NAGE and DFS*, Slip Op. No. 1732, PERB Case No. 19-RC-01 (January 16, 2020).

<sup>2</sup> On March 16, 2020, AFGE Local 2978 filed a Motion for Leave to Reply to Petitioner’s Opposition. The motion is denied because it is rendered moot by the Board’s decision to grant the motion to intervene.

<sup>3</sup> PERB notified NAGE that the Petition filed on July 24, 2019, was deficient. NAGE cured all deficiencies on August 9, 2019, and PERB granted NAGE’s motion to correct the filing date in accordance with PERB Rule 501.3.

was filed regarding the proposed bargaining unit. The notice included the proposed unit description and listed possible current representatives. Specifically, the notice stated, “Employees in the proposed unit may be represented by the American Federation of Government Employees Local 2978 and the Service Employees International Union District 1199-UHE.”<sup>4</sup> The notice also contained instructions to intervene in the proceedings for any affected labor organization. PERB ordered DFS to post the notices for a period of fourteen consecutive days. On September 9, 2019, DFS verified its compliance with the notice posting. No labor organization disputes the length of time the notice was posted and PERB received no intervention petitions or comments in response to the notice.

On November 8, 2019, a hearing was held to determine which employees belonged in the bargaining unit. As stated in Opinion 1732, DFS and NAGE resolved the issue of which employees would be covered by the proposed unit description. The Hearing Examiner concluded that the Petition met all the requirements of PERB Rule 502.<sup>5</sup>

On January 16, 2020, the Board issued a Decision and Order finding that the following unit was an appropriate unit for collective bargaining over terms and conditions of employment.

All employees of the Public Health Laboratory, both professional and nonprofessional, and all other professional employees of the Department of Forensic Sciences, excluding all management officials, supervisors, confidential employees or any employees engaged in personnel work other than in a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.<sup>6</sup>

The Board ordered an on-site election.

Following the Board’s Direction of Election, DFS, NAGE and PERB agents discussed an election agreement. On February 26, 2020, NAGE and DFS submitted an election agreement, which included an election date of March 9, 2020. The notice of election was posted at DFS on February 28, 2020. The notice included the unit description, as well as the date, time, and location of the election.

On March 4, 2020, AFGE Local 2978 filed a Motion to Intervene. Based on the issues raised in the Motion to Intervene and the supporting evidence, PERB postponed the election and issued a notice of election postponement to DFS, which was posted on March 6, 2020, as well as emailed to affected employees.

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<sup>4</sup> Notice at 1.

<sup>5</sup> Report at 7.

<sup>6</sup> Petition at 1-2.

### III. Discussion

AFGE Local 2978 stated in its Motion to Intervene that it became aware of the Petition on February 17, 2020, and had not seen the notice issued by PERB notifying all employees, employers, and labor organization of the petition.<sup>7</sup> AFGE Local 2978 claims to represent at least eight employees who are currently employed at DFS.<sup>8</sup> NAGE argues that AFGE Local 2978's Motion to Intervene is untimely by over five months and that, even if the Board permitted AFGE Local 2978 to intervene, NAGE would still prevail on the merits.<sup>9</sup> According to NAGE, the Petition was filed during an open period after AFGE Local 2978's contract had expired.<sup>10</sup> Furthermore, NAGE argues that a contract bar does not exist because AFGE Local 2978's certification is with the District of Columbia Department of Human Services and not DFS. NAGE asserts that AFGE Local 2978 failed to file a unit modification to reflect a change in agency identity.<sup>11</sup>

As stated earlier, the first notice sent by PERB to DFS on September 4, 2019, specifically stated that members of the proposed bargaining unit may be represented by AFGE Local 2978 or the Service Employees International Union District 1199-UHE (SEIU). Despite the notice, PERB did not receive any intervention petitions from any labor organization within the time period specified by the notice nor receive any motions to intervene prior to AFGE Local 2978's Motion to Intervene.<sup>12</sup>

A hearing was held to specifically determine whether employees in the proposed bargaining unit were represented by any other labor organization. Both DGS and NAGE agreed that the employees in the proposed unit were not currently represented. The Hearing Examiner specifically stated that DFS and NAGE stipulated at the hearing that neither AFGE Local 2978 nor SEIU had collective bargaining agreements currently applicable to these employees.<sup>13</sup>

Looking to the National Labor Relations Board (NLRB) for guidance, the NLRB's Casehandling Manual on Representation Proceedings states that "if no preconsent or prehearing notice was ever given to a union – say, because its interest in the situation was unknown – its intervention should be permitted after approval of an election agreement or after the close of a hearing, only to the extent that its evidence of interest predates the approval of the election agreement or the close of the hearing, whichever applies."<sup>14</sup> AFGE Local 2978 raises in its motion that it did not receive notice of the recognition petition until February 17, 2020. Additionally, PERB Rule 502.8 states that "the incumbent labor organization shall be allowed to intervene as a matter of right without submitting any showing of interest." Although AFGE Local 2978 failed to file a timely request to intervene, timeliness is one factor the Board may

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<sup>7</sup> Motion to Intervene at 1.

<sup>8</sup> Motion to Intervene at 2.

<sup>9</sup> Opposition to Motion to Intervene at 5.

<sup>10</sup> Opposition to Motion to Intervene at 6.

<sup>11</sup> Opposition to Motion to Intervene at 6.

<sup>12</sup> As of the date of this Decision, SEIU has not filed an intervention petition in this matter.

<sup>13</sup> Report at 5.

<sup>14</sup> NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11026.2

consider in granting an intervention petition. PERB Rule 501.15 states that the Board “shall have the discretion to grant or deny a request for intervention, basing the decision on the nature of the interests of the intervenor, whether those interests will be adequately protected by the existing parties, and the timeliness of the intervenor’s request.” AFGE Local 2978 asserts that it did not receive notice of the recognition petition and currently represents at least eight employees in the proposed bargaining unit. Although the motion to intervene is untimely, the Board finds that, in this particular case, the nature of AFGE Local 2978’s interest, which would not be protected by NAGE or DFS, requires allowing it to intervene. The Board finds that AFGE Local 2978’s motion to intervene is granted and AFGE Local 2978 should be added to the ballot.

#### **IV. Conclusion**

Based on the foregoing, AFGE Local 2978’s motion to intervene is granted. The Board orders an election to determine the will of the eligible employees in the unit described above to be represented by NAGE, AFGE Local 2978, or no representative. In accordance with PERB Rule 510.5, all professional employees must be given two ballots: one for indicating whether they desire a combined professional/nonprofessional unit and a second for indicating the choice of representative, if any. Furthermore, the Board finds that based on the changes to D.C. Government’s operating status as a result of COVID-19, a mail ballot election is most appropriate in this case.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. AFGE Local 2978’s Motion to Intervene is granted.
2. A mail ballot election shall be held in accordance with the provisions of D.C. Official Code § 1-617.10 and PERB Rules 510, 511, 513, 514, and 515 in order to determine whether a majority of eligible employees in the above-described unit desire to be represented for the bargaining on terms and conditions of employment by the National Association of Government Employees; the American Federation of Government Employees, Local 2978; or no union.
3. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairperson Douglas Warshof and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Peter Winkler.

Washington, D.C.

March 19, 2020

## **CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 19-RC-01, Opinion No. 1741 was sent by File and ServeXpress to the following parties on this the 30<sup>th</sup> day of March, 2020.

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/s/ Merlin M. George  
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