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Government of the District of Columbia
Public Employee Relations Board

_____)	
In the Matter of:)	
Christopher Collins,)	
)	
Complainant,)	PERB Case No. 10-S-10
)	
v.)	Opinion No. 1351
)	
American Federation of)	Motion for Reconsideration
Government Employees)	
National Office & Local 1975,)	
)	
Respondents.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

On July 6, 2010, Christopher Collins (“Collins” or “Complainant”) filed a Standards of Conduct complaint against American Federation of Government Employees National Office & Local 1975 (“AFGE,” “Local 1975,” collectively “Respondents”) alleging a Standards of Conduct violation. Respondents filed a Motion to Dismiss (“Motion to Dismiss”) on October 27, 2010. Complainant responded by filing a Response to Motion to Dismiss (“Response to Motion”). Respondents countered with a Reply to Opposition to Motion to Dismiss (“Reply”).

On June 27, 2012, the Board issued a Decision and Order in this case. *Collins v. American Federation of Government Employees National Office & Local 1975*, Slip Op. No. 1289, PERB Case No. 10-S-10 (June 27, 2012). In Slip Op. No. 1289, the Board held that because the Respondents’ responsive pleading was untimely, the Motion to Dismiss and all subsequent filings would not be considered, in accordance with Board Rule 544.6. Slip Op. No. 1289 at p. 2. Furthermore, in accordance with Board Rule 544.7, the Board deemed the material facts alleged in the Complaint to be admitted, and subsequently granted the Complaint. *Id.* at 3.

On July 12, 2012, Respondent AFGE submitted a Motion for Reconsideration (“Motion for Reconsideration”), alleging that the Board erred in failing to consider the issues of mootness and subject matter jurisdiction raised in the Respondents’ untimely Motion to Dismiss. (Motion for Reconsideration at 2). Specifically, AFGE alleges that subject matter jurisdiction is a question of law that must be addressed by the Board, and that the Board does not have subject matter jurisdiction over AFGE. (Motion for Reconsideration at 5). In support of that allegation, AFGE contends that the CMPA’s standards of conduct for labor organizations apply only to labor organizations that have been accorded exclusive recognition, and that AFGE is not the exclusive representative of Collins’ bargaining unit. (Motion for Reconsideration at 7-8). Additionally, AFGE alleges that the Complaint is moot because it has provided Collins with the financial records he requested. (Motion for Reconsideration at 8).

Collins filed an Opposition to AFGE’s Motion for Reconsideration (“Opposition”), calling AFGE National Office’s arguments “unfounded, conclusory, and offer[ing] no tangible point which is necessarily fatal to PERB’s Order of June 27, 2012, a proper exercise of its regulatory authority over public employee unions in the District of Columbia.” (Opposition at 3). Collins states that he made multiple requests to AFGE for financial records, and that AFGE has “taken no steps whatsoever to address and remediate over six years of malfeasance and negligence by the Local 1975 leadership.” (Opposition at 2). Additionally, Collins contends that AFGE never alleged that it did not receive service of the Complaint or the opportunity to timely respond. (Opposition at 3). Further, Collins alleges that “AFGE cannot be permitted to collect union dues and act as a public employee union within the District of Columbia, but not be subject to the ordinary regulation of one,” and that Local 1975 is a “subservient element” of AFGE. (Opposition at 8).

II. Discussion

In its Motion for Reconsideration, AFGE National Office specifically contends that the Board’s application and dismissal of its Motion to Dismiss on the basis of Board Rule 544.7 was erroneous. (Cite). AFGE argues that Board Rule 544.7 applies “only to material facts and does not extend to questions of law,” and that the Board was obligated to consider the legal defenses raised in its Motion to Dismiss, even if Board separately properly determined that the *material facts* of the Complaint were deemed as admitted under Board Rule 544.7. (Motion for Reconsideration at 2). PERB notes that AFGE’s argument in this regard is without merit.

Board Rule 544.6 states “[a] respondent shall file, within fifteen (15) days from service of the complaint, an answer containing a statement of its position with respect to the allegations set forth in the complaint.” In this case, on July 6, 2010, Complainant filed their initial Standards of Conduct complaint against AFGE. (R. at). On October 27, 2010, one-hundred and thirteen (113) days later, Respondents filed a Motion to Dismiss. (R. at). PERB submits that nowhere in the record before the Board, is there evidence that AFGE ever requested from PERB an extension for filing its response. Board Rule 501.1 states in pertinent part that “[w]hen an act is required or allowed to be done within a specified time by these rules, the Board, Chair, or the Executive Director shall have the discretion, upon timely request therefore, to order the time period extended or reduced to effectuate the purposes of the CMPA...” The record is clear that AFGE National Office did not file its Answer within the fifteen (15) day time frame, nor did it

request from PERB that the deadline be extended under Board Rule 501.1. As such, the Board properly found that under Board Rule 544.6, the Respondent's response in this case, was untimely. Board Rule 544.6 specifically states: "[a] respondent shall file, within fifteen (15) days from service of the complaint, an answer..." As Therefore, the Board did not err when, in accordance with its rules, it stated that AFGE's "Motion and all subsequent filings will not be considered." Slip Op. No. 1289 at p. 2.

In its Motion for Reconsideration, AFGE cites to PERB's reliance on Board Rule 544.7 and seems to argue that while the Board's adoption of the Complainant's facts under this Rule was proper, the Board's dismissal of its substantive legal arguments under the same Rule was somehow improper. (Cite). PERB submits that AFGE's arguments in this regard are erroneous at best. As discussed *supra*, the Board did not consider *any matter*, substantive or non-substantive, that was raised in Respondent's response, because it was untimely filed. Simply stated, an untimely response - without a requested exception in the form of a requested for and granted extension - does not exist in the eyes of PERB. As such, the only matter that could have been considered by PERB at the time of Board's initial adjudication came in the form of the July 6, 2010, Complaint. Board Rule 544.7 specifically provides that in these very circumstances, the material facts alleged in the complaint *must be* admitted. *See* Board Rule 544.7. The Board therefore, properly admitted the facts provided in Complainant's Complaint as material. (R. at). Contrary to Respondent's assertions however, Rule 544.7 does not provide for any other matter to be admitted in an untimely filed response. In fact, under Rule 544.6 any such matter *cannot* be considered. (*See* Board Rule 544.6).

As PERB properly applied its rules to the facts of this case, AFGE's argument submitted in its Motion for Reconsideration amounts to no more than a disagreement with the Board's underlying decision. The Board has repeatedly held that "a motion for reconsideration cannot be based upon mere disagreement with its initial decision." *E.g., Univ. of D.C. Faculty Assoc/National Educ. Assoc, v. Univ. of D.C.*, ___ D.C. Reg. ___, Slip Op. No. 1004, *10, PERB Case No. 09-U-26 (Dec. 30, 2009) (*citing AFGE Local 2725 v. D. C. Dept of Consumer and Regulatory Affairs and Office of Labor Relations and Collective Bargaining*, ___ D.C. Reg. ___, Slip Op. No. 969, PERB Case No. 06-U-43 and 02-A-05 (2003)). AFGE's Motion for Reconsideration has not provided any authority which compels reversal of the Board's decision. A simple disagreement with the Board's findings does not merit reconsideration of its Decision and Order. Therefore, we conclude the AFGE's Motion for Reconsideration cannot be granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. American Federation of Government Employees National Office's Motion for Reconsideration is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

Decision and Order
PERB Case No. 10-S-10
Page 4 of 4

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

January 2, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-S-10 was transmitted to the following parties on this the 2nd day of January, 2013.

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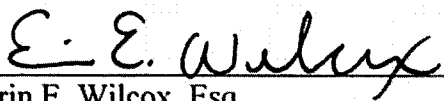
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