

OUC filed a Motion to Dismiss the Complaint, in which it contended that NAGE violated PERB Rule 561.8(a) which requires, in part, that “[a]ll parties or their representatives shall make service upon other parties electronically through [PERB’s designated Vendor, File & ServeXpress™ (“Vendor”)].” (Motion to Dismiss, at 1-4). OUC alleged that NAGE failed to serve the Complaint in this manner, despite being expressly directed to do so in a letter by PERB’s then Executive Director, Ondray T. Harris (“Mr. Harris”). *Id.*; and (Motion to Dismiss, Exhibit A). As a result of NAGE’s alleged failure, OUC urged PERB to dismiss the Complaint with prejudice. *Id.* In subsequent correspondence between OUC and Mr. Harris, it was stated that the OUC’s time to file an answer to the Complaint under PERB Rule 520.6 would not begin to run until PERB ruled on OUC’s Motion to Dismiss. (Letter from Kevin M. Stokes, Attorney Advisor, OLRCB, to Ondray T. Harris, Exec. Director, PERB, PERB Case Nos. 12-U-37 (October 26, 2012) (“Oct. 26, 2012, Letter”); and (Letter from Ondray T. Harris, Exec. Director, PERB, to Kevin M. Stokes, Esq., Attorney Advisor, OLRCB, PERB Case Nos. 12-U-37 (November 5, 2012) (“Nov. 5, 2012, Letter”).

In accordance with PERB Rules 501.5 and 553.2, NAGE filed a timely Response to OUC’s Motion to Dismiss in which it averred that it was not possible to comply with PERB Rule 561.8(a) because the Vendor confirmed both to OUC and a PERB Attorney Advisor that “e-service [is] in-fact not possible while initiating a case.” (Response to Motion to Dismiss, at 2; and Exhibit 1). As a result of said impossibility, PERB advised NAGE that in addition to service by facsimile, as PERB Rule 561.8 provides, “mailing or e-mailing will also be acceptable.” *Id.* NAGE contended that in accordance with this direction, its service of the Complaint on Respondent via U.S. Mail on September 28, 2012, should be deemed sufficient and OUC’s Motion to Dismiss should be denied.

Per NAGE, this matter is related to PERB Case No. 12-RC-02, in which the International Union of Public Employees (“IUPE”) petitioned PERB for recognition as the Exclusive Representative of the same OUC bargaining unit represented by NAGE, Local R3-07, in the instant proceeding. (Complaint, at 4). NAGE intervened and an election was held, in which NAGE, Local R3-07, prevailed. NAGE, Local R3-07, was certified as the exclusive representative of the bargaining unit in question on January 31, 2013, which Certification was amended on April 26, 2013. *International Union of Public Employees and District of Columbia Office of Unified Communications and National Association of Government Employees, Local R3-07*, PERB Case No. 12-RC-02, Certification No. 153 (Amended) (2013).

Therefore, the matter in 12-RC-02 having fully concluded, the only question before the Board for disposition in the instant case is OUC’s Motion to Dismiss.

II. Discussion

OUC's Motion to Dismiss is based solely on its argument that NAGE did not comply with PERB Rule 561.8(a). (Motion to Dismiss, at 1-4). Because of PERB's determination that electronic service via the Vendor is currently not possible when initiating an action, and because of the then Executive Director's determination that service by facsimile, mail, or e-mail would each be considered an appropriate alternative for service of an initial pleading in an action, the Board finds that NAGE's service of the Complaint on OUC via U.S. Mail on September 28, 2012, was proper. OUC's Motion to Dismiss is therefore denied.

Because of OUC's reliance on the Nov. 5, 2012, Letter, the Board grants OUC fifteen (15) days from the date of service¹ of this Decision and Order to file an answer to the Complaint. Said answer will be subject to the requirements and guidelines set forth in PERB Rules 520.6 and 520.7, as well as all other pertinent PERB Rules, including but not limited to Rules 501 and 561 *et. seq.*

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's Motion to Dismiss the Complaint is denied.
2. Respondent is granted fifteen (15) days from the date of service² of this Decision and Order to file an answer to the Complaint. Said answer will be subject to the requirements and guidelines set forth in PERB Rules 520.6 and 520.7, as well as all other pertinent PERB Rules, including but not limited to Rules 501 and 561 *et. seq.*
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

July 29, 2013

¹ The fifteen day (15) period will begin to run from the date of service of this Corrected Copy.

² See Footnote 1.

CERTIFICATE OF SERVICE

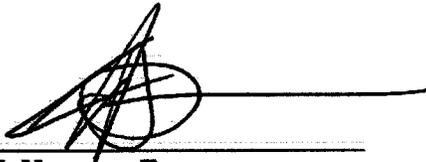
This is to certify that the attached Corrected Copy of the Decision and Order in PERB Case No. 12-U-37, Slip Op. No. 1409, was transmitted via File & ServeXpress™ and e-mail to the following parties on this the 6th day of August, 2013.

Julianne Bongiorno Bythrow
National Association of Government Employees
901 North Pitt Street
Suite 100
Alexandria, VA 22314
Jbongiorno@nage.org

File & ServeXpress™ and E-MAIL

Kevin M. Stokes
Michael D. Levy
Natasha N. Campbell
D.C. Office of Labor Relations and Collective Bargaining
441 4th St, N.W.
Suite 820 North
Washington, DC 20001
Kevin.Stokes@dc.gov
Michael.Levy@dc.gov
Natasha.Campbell@dc.gov

File & ServeXpress™ and E-MAIL



Colby J. Harmon, Esq.
Attorney-Advisor