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

In the Matter of:)	
National Association of Government Employees, Local R3-07,)	
Complainant,)	PERB Case No. 12-U-37
v.)	Opinion No. 1428
District of Columbia Office of Unified Communications,)	Decision and Order
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

Complainant National Association of Government Employees, Local R3-07 (“Complainant” or “NAGE” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Office of Unified Communications (“Respondent” or “OUC” or “Agency”), alleging OUC violated D.C. Code § 1-617.04 (a)(1), (2), (3) and (5) (“Comprehensive Merit Personnel Act” or “CMPA”), by allowing a rival union to use Agency property and resources to collect signatures for a representation petition, to spread misrepresentations of material facts to bargaining unit members, to meet with bargaining unit members, and to distribute flyers, pamphlets, and brochures, all of which AFGE alleged interfered with its rights as the exclusive representative. (Complaint, at 2-3). NAGE further alleged that OUC improperly failed to recognize NAGE as the exclusive representative when one of its Watch Commanders endorsed the rival union during a morning meeting. *Id.*, at 2. Lastly, NAGE alleged that OUC improperly failed to negotiate the parties’ Collective Bargaining Agreement (“CBA”) and failed to engage in impact and effects bargaining over the implementation of a new 12-hour shift schedule for bargaining unit members. *Id.*, at 3.

OUC filed a Motion to Dismiss the Complaint, in which it contended that NAGE violated PERB Rule 561.8(a) in its service of the Complaint on OUC. (Motion to Dismiss, at 1-4). PERB denied OUC's Motion and granted OUC additional time to file an Answer to the Complaint. *National Association of Government Employees, Local R3-07 v. District of Columbia Office of Unified Communications*, 60 D.C. Reg. 12123, Slip Op. No. 1409, PERB Case 12-U-37 (2013).

In its Answer, OUC denied violating the CMPA and raised several affirmative defenses.

No other pleadings having been filed in this matter, NAGE's Complaint and OUC's affirmative defenses are now before the Board for disposition.

II. Background

At the time the matters complained of in this case occurred, NAGE and OUC were parties to a collective bargaining agreement. (Complaint, at 3). On April 3, 2012, NAGE filed a grievance with OUC alleging that OUC had improperly recognized another representative. *Id.*, at 2. On April 25, 2012, OUC filed a response to the grievance in which it "[confirmed] that the Agency would contact the Union to ensure no representation conflicts would arise in the future" and requested that NAGE provide OUC with a list of all authorized Union representatives, which NAGE later provided. *Id.* In its Answer, OUC admitted that NAGE filed a grievance and that it responded to the grievance on April 25, 2012, but denied that it had "improperly recognized another representative of the bargaining unit employees." (Answer, at 3).

NAGE alleged that on June 26-27, 2012, OUC Assistant Watch Commander, Lajuan Sullivan ("AWC Sullivan"), announced at morning roll call that the International Union of Public Employees ("IUPE") would be meeting with bargaining unit members on those days. (Complaint, at 2). NAGE alleged that this announcement constituted the wrongful "use of Agency resources for the purposes of establishing another union on-site" and a "blatant endorsement" of another union which intimidated, coerced, and interfered with NAGE bargaining unit employees. *Id.* OUC admitted that AWC Sullivan made the announcements as alleged, but asserted that said announcements were "not made at the direction or with the knowledge of the OUC upper management" and that "once it was made aware that IUPE non-employee advocates planned to hold a meeting at the OUC for the purposes of establishing a union at OUC, OUC told IUPE employee advocates that the IUPE non-employee advocates could not hold a meeting at the OUC for the purposes of establishing a union at OUC." (Answer, at 3). Furthermore, OUC denied that it "allowed the use of its resources for the purposes of

establishing another union on-site” and asserted that it “did not allow, consent to, or grant permission for the purposes of establishing another union on-site.” *Id.*

NAGE further alleged that on June 26, 2012, OUC interfered with its rights as the exclusive representative when it allowed IUPE to meet with three (3) bargaining unit employees on OUC property and when, on an unspecified date, OUC “agreed to authorize a meeting between NAGE bargaining unit employees and IUPE” in which IUPE was able to “collect 150 signatures.” (Complaint, at 3). OUC denied this allegation in its entirety. (Answer, at 3-4).

NAGE alleged that in July 2012, OUC allowed IUPE to circulate a petition and to “coerce and fraudulently” solicit signatures from bargaining unit members on the operations floor of the 911 and 311 call center during the members’ tours of duty. (Complaint, at 2-3). NAGE further alleged that OUC interfered with the bargaining unit members’ exercise of free choice by allowing IUPE’s advocates to “[coerce at least twenty-eight members] into signing this petition with the false understanding that it was an authorization for a meeting, not a petition to disaffiliate with NAGE.” *Id.*, and Exhibit 1. OUC denied the entirety of these allegations and stated it is “without knowledge as to whether 28 or more bargaining unit employees were coerced into signing [the alleged petition].” (Answer, at 2, 5).

On July 30, 2012, IUPE filed a petition with PERB for exclusive representation (PERB Case No. 12-RC-02, *supra*) of the bargaining unit, after which OUC allegedly “allowed IUPE, through its employee advocates, to [continuously] distribute flyers, pamphlets and brochures on the 911 and 311 call center operations floor, during [the members’] tours of duty.” (Complaint, at 2-3). OUC admitted that IUPE filed a recognition petition with PERB, but denied that it allowed IUPE to distribute flyers, pamphlets or brochures in the call center. (Answer, at 2, 4). Rather, OUC asserted that it instructed “both IUPE employee advocates and [IUPE] not to distribute [such items] in the call center.” *Id.*, at 4.

In addition, NAGE alleged that it made numerous requests to negotiate a new collective bargaining agreement, but that OUC failed to respond to the requests for “over a month” and did not meet with NAGE to begin negotiations until just four (4) days before the then current CBA was set to expire. (Complaint, at 3). NAGE contended that OUC’s “refusal to bargain collectively, in good faith, [interfered] with NAGE’s right as the exclusive representative of the bargaining unit employees.” *Id.* OUC denied these allegations in their entirety and asserted that OUC had attempted to negotiate a new collective bargaining agreement with NAGE as early as 2011, but that NAGE refused OUC’s request to bargain. (Answer, at 4-5). OUC further contended the parties negotiated the ground rules for the negotiation of a new collective bargaining agreement between January and September 2012, and that since then, OUC has

“engaged in negotiations with the Union for a new contract on October 25, 2012, November 8, 2012, December 6, 2012, January 10, 2013, January 17, 2013, January 24, 2013, January 31, 2013, February 7, 2013, February 21, 2013, March 28, 2013, April 4, 2013, April 25, 2013, May 2, 2013, May 23, 2013, May 30, 2013, June 6, 2013, and August 8, 2013.” *Id.*

Last, NAGE alleged that OUC interfered with its “right to bargain over workplace changes affecting bargaining unit employees” and “intimidated employees in the exercise of their rights” when it “attempted to move forward with [the implementation of a new 12-hour shift plan for employees] without consulting the Union” and after having only met with NAGE once to discuss the impact and effects of the plan. (Complaint, at 3). NAGE stated that even though OUC “has since agreed to [resume impact and effects bargaining over the plan], it has continuously failed to provide the Union any updates on this issue.” *Id.* While OUC admitted it notified NAGE that it planned to implement a 12-hour shift, it denied it failed to provide NAGE with information concerning the change and denied it attempted to implement the new shift plan without consulting NAGE. (Answer, at 5). Furthermore, OUC asserted it “met with the Union on July 16, 2012, September 26, 2012, March 4, 2013, March 25, 2013, and May 13, 2013, to discuss such implementation.” *Id.*

Based on its allegations, NAGE alleged OUC “has engaged in a pattern of objectionable interference with NAGE’s right to exclusive representation of the bargaining unit employees at OUC.” (Complaint, at 2). OUC denied this allegation in its entirety. (Answer, at 2).

NAGE sought as a remedy that PERB: 1) find OUC committed an unfair labor practice in violation of the CMPA; 2) order OUC to cease current and future interference with NAGE’s right to exclusive representation; 3) block the election in PERB Case No. 12-RC-02, *supra*; 4) order OUC to “immediately proceed negotiating with NAGE ... on all workplace changes affecting bargaining unit employees”; 5) order OUC to undergo training “on its duty to remain neutral in labor recognition disputes” and to continue to negotiate in good faith with NAGE; 6) order OUC to continue to recognize NAGE during the election in PERB Case No. 12-RC-02, *supra*; and 7) order all “other relief deemed just and appropriate.” (Complaint, at 4).

OUC raised the affirmative defenses that: 1) NAGE’s Complaint is defective because it alleged OUC violated “D.C. Code § 1-617.04 (a)(1), (2), (3) and (5)” rather than “D.C. Official Code § 1-617.04 (a)(1), (2), (3) and (5)” and therefore asked PERB to “perform a legal impossibility” in finding violations of statutes that do not exist¹; 2) PERB’s certification of

¹ OUC further contended that, to the extent NAGE intended to cite “D.C. Official Code § 1.617.4 (a)(1), (2), (3) and (5)”, it failed to allege any facts in the Complaint that would demonstrate a violation of “D.C. Official Code § 1.617.4 (a)(3)”, which states: “(a) The District, its agents, and representatives are prohibited from: (3)

NAGE as the exclusive representative of the bargaining unit in question in PERB Case No. 12-RC-02, *supra*, rendered moot paragraphs 2-9 in the Complaint's statement of facts and paragraphs 3 and 6 in the Complaint's prayer for relief; and 3) the parties' current negotiation of a successor agreement renders moot paragraphs 10-13 in the Complaint's statement of facts and paragraph 4 in the Complaint's prayer for relief. (Answer, at 1-7)

III. Discussion

The District of Columbia Official Code directs that the Code be cited as "D.C. Code, 2001 Ed. § _____".² (District of Columbia Official Code (West), Vol. 1 at p. IL (2001)). Therefore, the Board finds that NAGE's omission of the word "Official" in its citations to the D.C. Code did not render the Complaint "defective" as OUC argued. *Id.* The Board further notes that even if NAGE's references to the D.C. Code had been improperly cited, such, by itself, would not constitute a sufficient basis to declare the entire Complaint "defective" or to warrant a dismissal of its allegations. (See PERB Rule 501.1³).

While a complainant does not need to prove its case on the pleadings, it must plead or assert allegations that, if proven, would establish a statutory violation of the CMPA. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department, et al.*, 59 D.C. Reg. 5427, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09 (2009). If the record demonstrates that the allegations do concern violations of the CMPA, then the Board has jurisdiction over those allegations and can grant relief accordingly if they are proven. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 9212, Slip Op. No. 1391 at p. 22, PERB Case Nos. 09-U-52 and 09-U-53 (2013).

Here, OUC argues that because PERB Case No. 12-RC-02, *supra*, has been decided, paragraphs 2-9 in the Complaint's statement of facts and paragraphs 3 and 6 in the Complaint's prayer for relief are moot. (Answer, at 6-7). The Board agrees that OUC's requested remedies that PERB block the election in PERB Case No. 12-RC-02, *supra*, and that PERB order OUC to continue to recognize NAGE during the election in PERB Case No. 12-RC-02, *supra*, are now

Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, except as otherwise provided in this chapter".

² Additionally, the Bluebook® format for citing to statutory compilations in the District of Columbia is "D.C. Code § x-x (<year>)". (THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 236 tbl.T.1 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010)).

³ PERB Rule 501.1: "The rules of the Board shall be construed broadly to effectuate the purposes and provisions of the CMPA."

moot because the election in PERB Case No. 12-RC-02, *supra*, has already been held and the case has been brought to a final conclusion. Notwithstanding, the Board does not agree that NAGE's alleged statements of fact relating to OUC's possible behavior and actions preceding that election are moot because said allegations, if proven, could still constitute violations of the CMPA. *FOP v. MPD, et al., supra*, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09. Therefore, the Board accepts OUC's affirmative defense that paragraphs 3 and 6 in the Complaint's prayer for relief are moot, but rejects its affirmative defense that paragraphs 2-9 in the Complaint's statement of facts are moot. *Id.*

Similarly, if NAGE's allegations in paragraphs 10-13 in the Complaint's statement of facts are proven to have occurred, such conduct could constitute violations of the CMPA, despite any actions that OUC may have subsequently taken. *Id.* Furthermore, if NAGE's allegations are proven, then the Board would be authorized to grant the relief requested in the Complaint. *FOP v. MPD, supra*, Slip Op. No. 1391 at p. 22, PERB Case Nos. 09-U-52 and 09-U-53. Therefore, the Board rejects OUC's affirmative defense that the parties' alleged current negotiation of a successor agreement renders moot paragraphs 10-13 in the Complaint's statement of facts and paragraph 4 in the Complaint's prayer for relief. *FOP v. MPD, et al., supra*, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09.

Finally, PERB Rule 520.8 states: "[t]he Board or its designated representative shall investigate each complaint." Rule 520.10 states that "[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument." However, Rule 520.9 states that in the event "the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board shall issue a Notice of Hearing and serve it upon the parties." (Emphasis added).

In the instant case, OUC disputes most—if not all—of NAGE's characterization of the facts, material allegations, and legal conclusions. (Answer, at 1-7). As such, the Board finds that this matter presents a material dispute of fact that cannot be reconciled by a review of the pleadings alone. Therefore, pursuant to PERB Rule 520.9, the Board refers this matter to an unfair labor practice hearing to develop a factual record and make appropriate recommendations. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 5957, Slip Op. No. 999 at p. 9-10, PERB Case 09-U-52 (2009).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Executive Director shall refer the Unfair Labor Practice Complaint to a Hearing Examiner to develop a factual record and present recommendations in accordance with said record.
2. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

September 26, 2013

CERTIFICATE OF SERVICE

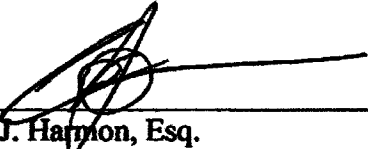
This is to certify that the attached Decision and Order in PERB Case No. 12-U-37, Slip Op. No. 1428, was transmitted via File & ServeXpress™ and e-mail to the following parties on this the 10th day of October, 2013.

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