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

In the Matter of:)	
)	
Tanya Butler, James Cannon-Bey and Rashid Jones,)	
)	
Petitioners,)	PERB Case No. 07-RD-01
)	
and)	Opinion No. 943
)	
Federal Employees and Transportation Workers,)	
Local Union 960, Affiliated with the Laborers')	
International Union of North America, Local)	
Union 572, AFL-CIO, LIUNA,)	
)	
Incumbent Labor Organization.)	

DECISION AND ORDER

On September 10, 2007, Tanya Butler, James Cannon-Bey and Rashid Jones,¹ ("Petitioners"), filed a document styled "Petition for Decertification" ("Petition").² The Petitioners seek to decertify the Federal Employees and Transportation Workers, Local Union 960, affiliated with the Laborers' International Union of North America, Local Union 572, AFL-CIO.

In 1977, the Public Employee Relations Board certified the Federal Employees and Transportation Workers Local Union 960 ("Union"), affiliated with the Laborers' International Union of North America, Local Union 572, AFL-CIO, as the exclusive representative for the following unit:

All non-professional employees of the Office of the Chief Medical Examiner, Department of Human Resources excluding management executives, confidential employees,

¹ Petitioners are employees of the Office of the Chief Medical Examiner of the District of Columbia.

² The Petition satisfied the showing of interest requirement of Board Rule 505.10.

supervisors or any employee engaged in personnel work in other than a purely clerical capacity. (See PERB Case No. 7R004, LIUNA L/960, DHR, LIUNA L/571, April 28, 1977.³)

Petitioners seek decertification of the incumbent labor organization for the following reasons: (1) fifty-six (56%) of the employees no longer wish to be represented by the incumbent labor organization; (2) the incumbent labor organization has failed to adequately represent the Petitioners; (3) the incumbent labor organization's lack of activity is clear from the fact that the collective bargaining agreement in place is over twenty years old and the labor organization has failed to take any steps to enact a new agreement; and (4) the incumbent labor organization's lack of activity is also evident from the fact that the employees endure poor working conditions with apparently no union support. (See Petition at pgs. 2-3).

The Petitioners claim that on September 10, 2007, they served the incumbent labor organization with a copy of the Petition via electronic mail ("e-mail") and first class mail. (See Petition at p. 6).

Board Rules 505.6, 501.16, 501.4 and 501.5 provide as follows:

505.6 - The exclusive representative shall be given ten (10) days from the date of service of the petition to file a response to the decertification petition. **If the exclusive representative does not file a timely response indicating that it desires to continue to rerepresent the employees, the Board may issue a decertification order.** (Emphasis added).

501.16 - Service of pleadings shall be complete on personal delivery during business hours; depositing of the message with a telegraph company, charges prepaid; depositing the document in the United States mail, properly addressed, first class postage prepaid, or by facsimile transmission.

501.4 - Whenever a period of time is measured from the service of a pleading and service is by mail, five (5) days shall be added to the prescribed period.

³ The certification also states the following: The certification of representatives is amended by changing the exclusive representative from Laborers' District Council of Washington, D.C. and Vicinity and Local 571, affiliated with the Laborers' International Union of North America, AFL-CIO, to Federal Employees and Transportation Workers Local Union 960, affiliated with Laborers' International Union of North America, AFL-CIO. Amendment of certification does not amount to a new certification, recertification or extension of the old certification

501.5 - In computing any period of time prescribed by these rules, the day on which the event occurs from which time begins to run shall not be included. If the last day of a prescribed period falls on a Saturday, Sunday or District of Columbia holiday, the period shall extend to the next business day. If a prescribed time period is less than eleven (11) days, Saturdays, Sundays and District of Columbia holidays shall be excluded from the computation. Whenever the prescribed time period is eleven (11) days or more, such days shall be included in the computation.

Service by e-mail is not one of the acceptable methods of service noted in Board Rule 501.16. As a result, the September 10, 2007 service by first class mail, is what triggers the ten day requirement of Board Rule 505.6. Thus, consistent with Board Rules 501.4 and 501.5, the incumbent labor organization's response to the Petition was due in the Board's office no later than September 28, 2007. However, as of April 17, 2008, the incumbent labor organization had failed to respond to the September 10, 2007 Petition. As a result, on April 17, 2008 the Board's Executive Director sent a letter to the incumbent labor organization requesting that it show cause "why the Board, pursuant to Board Rule 505.6, should not issue a 'decertification order' based on the Union's failure to file a timely response." The Executive Director informed the incumbent labor organization that it must respond to the Executive Director's Order to Show Cause by April 29, 2008. Subsequently, on June 4, 2008, the Board's Executive Director spoke with Don Milliken, National President, Local 572, LIUNA in order to determine if LIUNA had received the Petition. Mr. Milliken acknowledged that he had been informed of the Petition by the Treasurer. However, he stated that he had not seen the Petition. Mr. Milliken requested that the Board's Executive Director transmit to him via e-mail a copy of the April 17, 2008, "show cause" letter. Consistent with Mr. Milliken's request, on June 5, 2008, a copy of the April 17, 2008, "show cause" letter was forwarded to Mr. Milliken. To date, the incumbent labor organization has failed to respond to the Executive Director's April 17, 2008 "Order to Show Cause."

On April 30, 2008, the Petitioners filed a document styled "Notice of Untimely Response." In their April 30th submission, the "Petitioners . . . request that the Board issue a Decertification Order without ordering an election." (Petitioners' Notice of Untimely Response at p. 2). In support of the request, the Petitioners assert that the incumbent labor organization failed to respond to the September 10, 2007 Petition and the Executive Director's "Order to Show Cause." (See Petitioners' Notice of Untimely Response at p. 2).

A review of the record reveals that to date, the incumbent labor organization has failed to respond to both the September 10, 2007 Petition and the Executive Directors April 17, 2008 Order to Show Cause.

We find that under the circumstances of this case, failure of the incumbent labor organization to respond to the Petition, to enter an appearance and to respond to the Executive Director's "Order to Show Cause" establish a conclusive presumption that it no longer desires to represent the employees of this unit. (See *District of Columbia General Hospital and Physicians*

National Housestaff Association, 79 DCR 1859, Slip Op. No. 35, PERB Case No. 81-RC-02). Therefore, pursuant to Board Rule 505.6, we are decertifying the incumbent labor organization.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Petitioners' Request for a Decertification Order without an election is granted.
2. The Federal Employees and Transportation Workers Local Union 960, affiliated with the Laborers International Union of North America, Local Union 572, AFL-CIO is hereby decertified and is no longer the exclusive representative for the following unit:

All non-professional employees of the Office of the Chief Medical Examiner, Department of Human Resources excluding management executives, confidential employees, supervisors or any employees engaged in personnel work in other than a purely clerical capacity.

3. 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.

August 25, 2009

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-RD-01 was transmitted via Fax and U.S. Mail to the following parties on this the 25th day of August 2009.

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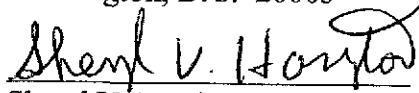
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