Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia Public Employee Relations Board

In the Matter of:)	
National Association of Government Employees,)	
Local R3-07,)	
)	PERB Case No. 12-U-37
Complainant,)	
)	Opinion No. 1409
V.)	
)	(CORRECTED COPY)
District of Columbia)	,
Office of Unified Communications,)	Motion to Dismiss
	j i	
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.

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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 & ServeXpressTM ("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 "eservice [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 & ServeXpressTM and e-mail to the following parties on this the 6th day of August, 2013.

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