

**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:	)	
	)	
Doctors Council of the District of Columbia and Individual,	)	
	)	
Complainants,	)	PERB Case Nos. 05-U-47
and	)	07-U-22
	)	
v.	)	Opinion No. 923
District of Columbia Government Office of the Chief Medical Examiner	)	
	)	
Respondent.	)	
	)	

**REMAND ORDER**

**I. Background:**

The Doctors Council of the District of Columbia and Individual (“Complainants” or “Union and Individual”) filed an unfair labor practice complaint on August 8, 2005, in PERB Case No. 05-U-47. The Union alleged that the District of Columbia Government Office of the Chief Medical Examiner (“Respondent” or “OCME”) violated D.C. Code § 1-617.04(a)(1) and (3) by refusing to allow the employee to return to her Deputy Medical Examiner Career Service bargaining unit position. Respondent filed an Answer on August 25, 2005.

A hearing was scheduled in this matter and postponed indefinitely because the parties filed various motions. The motions were presented before the Hearing Examiner orally on March 21, 2006. The Hearing Examiner issued an Interim Ruling on the Motions on March 21, 2006. A Hearing was held on May 18 and 19, and June 7, 2006. On June 7, 2006, the parties advised the Hearing Examiner that they had reached a tentative settlement agreement of all the issues in the case. At their request, the Hearing Examiner held the matter in abeyance, retaining jurisdiction until all terms of the agreement were finalized. By September 28, 2006, all the parties had signed the agreement.

Subsequently, on February 26, 2007, the Union and Individual filed an unfair labor practice complaint in PERB Case No. 07-U-22 alleging the failure of the Respondent to implement the express, unambiguous terms of a settlement agreement in violation of D.C. Code § 1-617.04(a)(1) and (5). The Complainants requested that the Board issue a remedial order and grant costs and attorney fees. The Respondent filed an Answer to the Complaint stating that it could neither admit nor deny the allegations for want of sufficient information.

On April 19, 2007, the Complainants filed a Motion for Summary Judgment on the Pleadings. On April 23, 2007, the Complainants also filed a Motion to Consolidate the two cases in this matter. On April 24, 2007, a hearing was held before the Hearing Examiner.

The Hearing Examiner issued a Report and Recommendation ("R&R") recommending that the Board consolidate these matters. Also, the Hearing Examiner found that the Respondent was in violation of the CMPA when it failed to implement the terms of the settlement agreement to place certain documents in the employee's official personnel file ("OPF"). The Hearing Examiner retained jurisdiction over the remaining issue - destruction of documents. The Hearing Examiner's R&R is before the Board for disposition. No exceptions were filed.

## **II. Procedural Matters:**

Two Motions were filed by the Complainant: a Motion for Judgment on the Pleadings and a Motion to Consolidate. At the hearing, the Complainants also requested that the caption of the case be changed to reflect the name of the employee as "Individual". Also at the hearing, the Complainants made a motion to change the caption in PERB Case No. 03-U-15. Based on our findings below, we shall not consider the Hearing Examiner's rulings on these motions at this time.

## **III. Factual Background and Hearing Examiner's Report and Recommendation**

The issue before the Hearing Examiner was:

Whether the Respondents have implemented the settlement agreement on the sole issue of removing certain papers from the Individual's OPF and replacing them with other papers.

The settlement agreement negotiated by the parties provides in pertinent part as follows:

Section II (b)(1) - Respondent will withdraw and destroy all Form 1 forms and any other documentation or correspondence in Individual's [OPF] or in any other files . . . referring or relating to Individual's separation on April

12, 2005, to Individual's possible separation or to the reasons for separation; [Respondents] will instead substitute a Form 1 and any other appropriate documentation indicating Individual's placement in a Deputy Medical Examiner position as of April 12, 2005 and Individual's voluntary resignation from that position effective November 4, 2005.

Section II (b)(4) - [Respondents] will within 30 days of the execution of this Agreement certify in writing to [Complainants] that the actions described in subparagraphs (b) (1) . . . have occurred and the dates on which they have occurred.

The Hearing Examiner indicated that except for this question of implementation of the agreement and the issue of the destruction of documents, the parties agree that there has been compliance with the other aspects of the settlement agreement. (R&R at p. 6). The issue of destruction of documents is being held in abeyance. On October 24, 2006, Respondent's counsel informed the Complainant's counsel that the Individual's Official Personnel File ("OPF") had been adjusted to meet the requirements of the settlement agreement. Nonetheless, upon review, the forms in the OPF were found to be different from those required by the agreement. (See R&R at p. 2).

On March 23, 2007, a meeting was held by the parties in this matter and the Respondent's counsel agreed that the forms showing reinstatement and resignation of the Individual were not in keeping with the settlement agreement. (See R&R at p. 3). There has been no further communication from the Respondent addressing whether the papers in the OPF have been removed and replaced.

The Hearing Examiner found that no dispute exists concerning the terms of the agreement. He noted that under Board case law, "when a party simply refuses or fails to implement an award or negotiated agreement where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith and . . . [an] unfair labor practice under the CMLPA." (R&R at p. 6). Therefore, he determined that the Respondents have violated the CMLPA by failing to bargain in good faith and recommended that the Board order the Respondent to comply with the terms of the settlement agreement.

The Board finds that the Hearing Examiner's ruling on the issue of placing certain documents in the employee's OPF merely addresses a portion of the issue raised by the parties. The Complaint also addresses the issue of whether the Respondent has complied with the entire settlement agreement, including the destruction of documents. Thus, the Hearing Examiner's ruling on the placement of documents into the employee's OPF amounts to an interim ruling at this point in the procedure. It is not ripe for our review at this time.

We are therefore remanding this matter to the Hearing Examiner so that he may complete the hearing on all matters relevant to this case. He shall issue a Report and Recommendation on the issue of failure to comply with the settlement agreement, including the replacement of certain documents in the OPF, as well as the issue of the destruction of documents.<sup>1</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The consolidated cases are remanded to the Hearing Examiner so that he may complete the record and make a complete determination on issue in this case, i.e., whether the Respondent has implemented the settlement agreement: including the replacement of certain documents in the Official Personnel File as well as the issue of the destruction of documents.
2. If necessary, the Hearing Examiner shall schedule a hearing within fifteen days of the issuance of this Order. If a decision can be made on the record, the Hearing Examiner shall issue a decision within 30 days of the issuance of this Order.
3. Pursuant to Board Rule 559.1, this Remand Order is final upon issuance.

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

November 29, 2007

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<sup>1</sup> The parties have requested that the Board allow them to change the caption in this matter and refer to the employee in this case as the "Individual". However, no such request has been made to the Board. Thus, we cannot make a determination on this issue.

CERTIFICATE OF SERVICE

This is to certify that the attached Remand Order in PERB Case Nos. 05-U-47 and 07-U-22 was transmitted via Fax and U.S. Mail to the following parties on this the 29<sup>th</sup> day of November, 2007.

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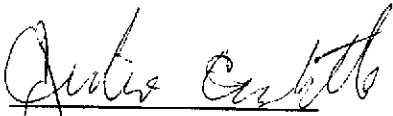
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Courtesy Copy:

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*for*   
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Secretary