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**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD**

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In the Matter of: )  
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)  
District of Columbia Health and ) PERB Case Nos. 97-UM-05,  
Hospitals Public Benefit Corporation,) 97-CU-02 and 99-U-02  
) Opinion No. 575  
)  
Agency, ) (Motion to Stay Election)  
)  
and )  
)  
All Unions Representing Bargaining )  
Units in Compensation Units 12, 20, )  
21, 22, 23 and 24 and employees )  
employed by the Health and Hospitals )  
Public Benefit Corporation, )  
)  
Labor Organizations. )  
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)  

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**DECISION AND ORDER**

In Slip Op. No. 564, we directed that a mail ballot election commence on December 4, 1998, to determine the exclusive bargaining representative for a unit of medical officers we found appropriate at the Health and Hospitals Public Benefit Corporation (PBC) in Slip Op. No. 559. The choice among bargaining unit employees is between two incumbent labor organizations, the Doctors Council of the District of Columbia (DCDC) and the Doctors Council of the District of Columbia General Hospital (DCDCGH).<sup>1/</sup> The directed election will determine the certified bargaining representative (as between DCDCGH and DCDC) for the consolidated single unit of medical officers at the PBC.

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<sup>1/</sup>DCDC and DCDCGH were the exclusive representatives of the the DHS clinic medical officer unit and DCGH medical officers' unit, respectively, before we found a single consolidated unit appropriate after their transfer to the PBC pursuant to the D.C. Health and Hospitals Public Benefit Corporation Act (Act).

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On October 9, 1998, DCDC filed an Unfair Labor Practice Complaint (PERB Case No. 99-U-02). DCDC alleges that the PBC has committed an unfair labor practice violation by either negotiating or unilaterally implementing a "Revised Salary Scale" or "Special Rate Schedule" which eliminates the wage disparity between DCGH and clinic medical officers before a certified representative has been determined.<sup>2/</sup> DCDC asserts that "[i]f the PBC implemented the salary increase after negotiating an amendment to the collective bargaining agreement with DCDCGH, then the PBC has violated D.C. Code § 1-618.4(a)(1) by interfering in the election process and has violated D.C. Code § 1-618.4(a)(5) by refusing to bargain with the [DCDC] at the same time it was bargaining with DCDCGH." (Mot. at 4). DCDC also alleges that DCDCGH has violated D.C. Code § 1-618.4(b)(1) if it has engaged in any collective bargaining negotiations with the PBC because any such negotiations interfere with the process in the pending election.

On October 19, 1998, DCDC filed a document styled "Motion to Stay Election" in PERB Case No. 97-UM-05. DCDC requests that the Board stay the election between it and DCDCGH pending the disposition of the above-noted Complaint. The PBC and DCDCGH filed Answers to the Complaint denying that they have committed unfair labor practices and filed Oppositions to the Motion to Stay Election. DCDC filed a document styled "Reply Memorandum in Support of Motion to Stay."

In its Complaint, DCDC contends that the PBC and DCDCGH have violated the Act by negotiating an agreement before the Board determined, vis-a-vis the Board-directed election, the certified bargaining representative for the now consolidated single unit of medical officers. DCDC asserts that the PBC has failed to treat it and DCDCGH equally by entering into such an agreement only with DCDCGH during the interim period. DCDC states that the disparate salaries of the DCGH medical officers represented by

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<sup>2/</sup>Clinic medical officers represented by DCDC were paid a higher salary than D.C. General Hospital medical officers represented by DCDCGH. A consequence of the Board's determination that a single unit of medical officers was appropriate was the creation of a salary disparity between bargaining unit employees in the same unit and with the same job classification, i.e., medical officer.

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DCDCGH and the clinic medical officers represented by DCDC was a significant issue in an earlier unfair labor practice complaint (i.e., PERB Case No. 97-U-25), and during the unit determination phase of the proceeding in PERB Case No. 97-UM-05. DCDC states that the issue has remained significant during the currently pending election phase of this proceeding.

The PBC contends that DCDC's Motion is disingenuous. The PBC asserts that everyone was aware of its announced intention to achieve wage parity for the DCGH medical officers prior to the time the Board's directed election for the medical officers unit made it apparent that a choice between DCDC and DCDCGH as the certified representative would have to be made. The PBC asserts that it simply had not identified a funding source for achieving the salary parity until now. Therefore, its actions cannot be deemed as an intent to interfere with the election process.

In PERB Case No. 97-U-25 the Board found that the PBC's interference with the administration of DCDCGH, by failing to meet with it as often as it met with DCDCGH's rival, were unfair labor practices. This conduct occurred while the determination of the appropriate bargaining unit remained pending before the Board and before we directed an election between DCDC and DCDCGH to determine the certified representative of the consolidated medical officer unit. The Board found such conduct abrogated employees' rights under the CMPA to organize, form, join, or assist any labor organization, and bargain collectively through representatives of their own choosing. Also, the Board found that the PBC had not remedied the unfair labor practice by its failure to post the Board's Notice.

The PBC's failure to comply with the Board's Order to post the Notice in PERB Case No. 97-U-25 precipitated an earlier Motion to stay election filed by DCDCGH on August 12, 1998. The Board granted DCDCGH's Motion to stay election until PBC fully complied with the Board's Order, finding that the "unremedied unfair labor practice [in PERB Case No. 97-U-25] interferes with a free and fair election." Slip Op. No. 564. We based our decision to grant that Motion in part on our conclusion "that employees should be informed that the Board ha[d] found the PBC impermissibly to have preferred one union over another before casting votes to select among rivals unions as their representative." Id. We find that the Complaint in PERB Case No. 99-U-02 allege acts and conduct by the PBC that, if proven, could establish an unfair labor practice precluding a free and fair election. The PBC's response presents genuine and significant issues of fact that must be resolved after the development of a

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complete record. We grant DCDC's Motion to Stay the Election pending the disposition of the Complaint in PERB Case No. 99-U-02.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Doctors Council of the District of Columbia's (DCDC) Motion to Stay Election pending the disposition of the Unfair Labor Practice Complaint in PERB Case 99-U-02, is granted.
2. The Hearing in PERB Case No. 99-U-02 shall commence on January 14, 1999. The Notice of Hearing shall issue no less than seven (7) days prior to the scheduled date of the hearing.
3. Following the hearing, the designated hearing examiner shall submit a report and recommendation to the Board not later than twenty (21) days following the conclusion of closing arguments. Briefs limited to the application of any relevant law or statute may be filed with the Board not later than five (5) days following the conclusion of the hearing.
4. Parties may file exceptions and briefs in support of the exceptions not later than seven (7) days after service of the hearing examiner's report and recommendation. A response or opposition to exceptions may be filed not later than five (5) days after service of the exceptions.

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

December 14, 1998

**CERTIFICATE OF SERVICE**

This is to certified that the attached Decision and Order in PERB Cases Nos. 97-UM-05 and 99-U-02 , Slip Op. No. 575, was mailed (U.S. mail) to the following parties on the 14th day of December, 1998.

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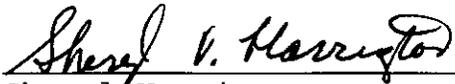
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