

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 formal 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:)	
)	
American Federation of Government Employees, AFL-CIO, Local 1975,)	PERB Case No. 07-U-01
)	
Complainant,)	Opinion No. 953
)	
v.)	
)	
District of Columbia Department of Motor Vehicles,)	
)	
Respondent.)	
)	

DECISION AND ORDER

The American Federation of Government Employees, AFL-CIO, Local 1975, ("Complainant") filed an Unfair Labor Practice Complaint against the District of Columbia Department of Motor Vehicles ("DMV" or "Respondent"). The Complainant alleged that DMV violated the Comprehensive Merit Personnel Act by repudiating the parties' collective bargaining agreement. The Respondent filed an Answer denying the allegation.

On September 11, 2008, a hearing was held in this matter. At the beginning of the proceeding, counsel for the Complainant, moved to withdraw the Complaint with prejudice. (See Hearing Examiner's Report and Recommendation at p. 1). The Respondent did not object. As a result, the Hearing Examiner advised the parties that she would recommend that the Complaint be dismissed with prejudice based on the Complainant's motion to withdraw. (See Hearing Examiner's Report and Recommendation at p. 1).

On October 14, 2008, the Hearing Examiner issued a Report and Recommendation in which she recommended that the Complaint be dismissed with prejudice. In support of this recommendation, the Hearing Examiner noted the following:

Pursuant to Board Rule 550.13(c) cited above, the Hearing Examiner has the authority to rule on Complainant's motion to dismiss with prejudice. She concludes that there is no basis upon which to deny the request. If the motion was denied, the matter would still be dismissed pursuant to Board Rule 550.19¹ for failure to prosecute. However, there is no reason for the motion to be denied and it is granted by the Hearing Examiner. (Hearing Examiner's Report and Recommendation at p. 2).

On October 22, 2008, a copy of the Hearing Examiner's Report and Recommendation was transmitted to the parties by first class mail. Pursuant to Board Rule 556.3 the parties could file exceptions by November 11, 2008.² Neither party filed exceptions to the Hearing Examiner's recommendation that the Complaint be dismissed with prejudice.

Pursuant to D.C. Code § 1-605.02(3) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and find them to be reasonable, persuasive and supported by the record. Therefore, the Board adopts the Hearing Examiner's recommendation that the Complaint be dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint in PERB Case No. 07-U-01 is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

¹Board Rule 550.19 provides that "[i]f a party fails to prosecute a cause of action, the Hearing Examiner may recommend that the Board or Executive Director dismiss the action with prejudice or rule against the defaulting party."

²The October 22, 2008, letter transmitting the Hearing Examiner's Report and Recommendation, indicated that exceptions were due on November 12, 2008. However, the November 12th date was not accurate. As a result, on October 27, 2008, the parties were notified of the error and informed that exceptions were due no later than November 11, 2008.

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

December 23, 2009

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-01 was transmitted via Fax and U.S. Mail to the following parties on this the 23rd day of December 2009.

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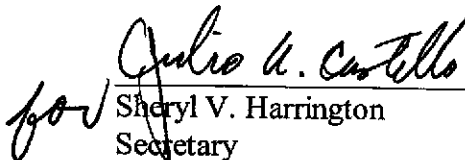
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