

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

In the Matter of:)	
)	
District of Columbia Nurses Association,)	PERB Cases No. 97-U-16
)	
Complainant,)	Opinion No. 560
)	
v.)	MOTION FOR RECONSIDERATION
)	
District of Columbia Health and Hospitals Public Benefit Corporation, District of Columbia General Hospital,)	
)	FOR PUBLICATION
)	
Petitioner/ Respondent.)	
)	

DECISION AND ORDER

The Board's Decision and Order in the above-captioned Unfair Labor Practice case, Opinion No. 558, was issued on June 24, 1998. On July 9, 1998, pursuant to Board Rule 559.2, the Respondent District of Columbia Health and Hospitals Public Benefit Corporation (PBC) filed a "Motion for Reconsideration." An "Opposition to Reconsideration" was filed by the Complainant District of Columbia Nurses Association (DCNA). The issues presented by this case are set forth in Opinion No. 558.

The PBC objects to our adoption of the Hearing Examiner's findings that: (1) "DCGH's [District of Columbia General Hospital] officials threat[ed] to discipline two employees because one of them had exercised her right to union representation" and; (2) the Complainant's failure to allege in the Complaint "that Ms. Terry-Haley and Ms. Burns were improperly transferred" did not deprive the PBC of adequate due process in the proceedings. (Mot. at 6.) These findings by the Hearing Examiner served as the basis of our conclusion that the PBC violated D.C. Code Sec. 1-618.4(a)(1) and (3). (Slip Op. No. 558 at 2.)

The PBC asserts that the findings and conclusions are neither supported by the record or by law. (Mot. at 3). We

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previously considered and rejected such contentions by the PBC when presented as exceptions to the Hearing Examiner's Report and Recommendation. Notwithstanding the PBC's arguments to the contrary, we find that the record supports the Hearing Examiner's findings and conclusions,^{1/} and therefore no basis exists for disturbing our Decision and Order finding these violations of the CMPA.^{2/} See, Clarence Mack v. D.C. Dept. of Corrections, Slip Op.

^{1/} Respondent manager, nurse Marion Jarrett, authenticated and provided testimony on a memorandum she issued to her superior concerning the transfer of the two employees "due to behavior, et cetera" exhibited during the underlying incident in question. (Tr. at 427 - 434; Exh. 10.) Terry-Haley and Burns both testified that they lost earning due to a reduction in their scheduled work hours after they were transferred. (Tr. at 129 - 131 and 217 - 223.)

^{2/} The PBC also requested that we reconsider our adoption of credibility determinations and findings of fact because they were made by a Hearing Examiner who was clearly biased. Curiously, the PBC did not take issue with the objectivity of the Hearing Examiner's findings in their exceptions to his Report and Recommendation. This new objection to the Hearing Examiner's findings arose only after the PBC's exceptions, based on other grounds, were denied (Opinion No. 558).

The PBC asserts that the Hearing Examiner prematurely concluded that a witness was credible during the PBC's cross-examination and before the PBC had put on its case. A review of the transcript reflects that the Hearing Examination's characterization of the witness as credible was made only after the PBC counsel's improperly declared the testimony to be "lies" during the Complainant's direct examination of the witness. (Tr. at 241.) The Hearing Examiner acceded to the PBC's objection that the timing of his opinion of the witness' testimony may have been inappropriate. We do not find the circumstance of this objection a basis for reversible error.

The PBC also contends that the Hearing Examiner's bias was demonstrated by concluding, before the PBC's case was presented, that a violation had occurred. Again, a review of the record reveals that the Hearing Examiner expressed his opinion on a belabored point to move the proceedings forward. The Hearing Examiner did not conclude at that time that a violation occurred. Rather, he observed that the limited testimony offered by the witness described an "unlawful" act. (Tr. at 252.) The Hearing

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No. 467, PERB Case No. 95-U-14 (1996) and American Federation of Government Employees, Local 872 v. D.C. Dept. of Public Works, 38 DCR 6693, Slip Op. No. 266, PERB Cases Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). See, also, University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, 39 DCR 6238, Slip Op. No. 285, PERB Case No. 86-U-16 (1992) and Charles Bagenstose, et al. v. D.C. Public Schools, 38 DCR 4154, Slip Op. No. 270, PERB Case Nos. 88-U-33 and 88-U-34 (1991) (issues concerning the probative value of evidence are reserved to the hearing examiner).

The Board, having considered the Motion, finds that the Motion (1) raises no basis for reconsidering our Decision in Opinion No. 558 or (2) presents no arguments that were not dispositively addressed by the rationale in that Opinion. Therefore, the Petitioner's Motion for Reconsideration of Opinion No. 558 is denied.

ORDER

IT IS HEREBY ORDERED THAT;

The Petitioner's Motion for reconsideration is denied.

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

September 21, 1998

²(...continued)

Examiner confirmed that he was merely expressing "an exposition of what... the law is on the issue". He did not conclude that the testimony established the alleged violation. Moreover, the Hearing Examiner expressly informed the PBC's representative that he could proceed to make his record. (Tr. at 253, 256 and 257.)

Neither of the instances cited by the PBC establish that the Hearing Examiner's temperament or opinions expressed during the hearing exceeded the authority accorded him or precluded the Respondent from being afforded a fair hearing. See, e.g., Clarence T. Pratt, Sr. v. D.C. Dept of Administrative Services, Slip Op. No. 457, PERB Case No. 95-U-06 (1995) and Charles Bagenstose v. Washington Teachers' Union, Local 6, AFL-CIO, Slip Op. No. 355, PERB Case Nos. 90-S-01 and 90-U-02 (1993). Therefore, we find no basis for reconsidering our Decision on this basis.