

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 General Hospital,	)	
	)	
Complainant,	)	
	)	
v.	)	PERB Case No. 97-U-25
	)	
District of Columbia General Hospital,	)	Opinion No. 937
	)	
and	)	
	)	
Health and Hospital Public Benefit Corporation,	)	
	)	
	)	
Respondents.	)	
	)	

**DECISION AND ORDER**

**I. Statement of the Case**

On March 13, 2007, the Superior Court of the District of Columbia remanded this case to the Board with instructions, following the decision of the District of Columbia Court of Appeals, in *Doctors Council of the District of Columbia General Hospital v. District of Columbia Public Employee Relations Board*, 914 A.2d 682 (2007). Consistent with the Superior Court's instructions, the Board on April 10, 2007 issued Slip Opinion No. 889.

In Slip Opinion No. 889 the Board adopted the December 2, 1997 finding of the Hearing Examiner that the District of Columbia General Hospital violated D.C. Code § 1-618.4(a)(3) and (5) (1981 ed.)<sup>1</sup> by: (1) failing to make wage parity adjustments for Hospital medical officers based on discriminatory considerations and (2) renegeing on its contractual agreement with the Doctors Council of the District of Columbia General Hospital and acting in a manner designed to ensure that the

---

<sup>1</sup>Now codified as D.C. Code § 1-617.04(a)(3) and (5) (2007).

agreement would not receive the approval of the Mayor and the City Council. (See Slip Op. No. 889 at p. 2). In order to determine the remedy to make employees whole for the loss of wage parity adjustments to which they were entitled, the Board ordered the Executive Director to assign the matter to a Hearing Examiner and to schedule a hearing. In paragraph 2 of the order the Board stated the following:

the purpose of the hearing referenced in . . . this Order, is to determine the remedy necessary to make employees whole for the loss of wage parity adjustments to which they were entitled by computing the value of such payments from October 1, 1996 to the present, with interest in a manner described in the Hearing Examiner's Report and Recommendation dated December 2, 1997. (Slip Op. No. 889 at pgs. 2-3).

Pursuant to the Board's order, this matter was assigned to a Hearing Examiner. On February 24, 2008, the Hearing Examiner issued a Report and Recommendation ("R & R"). "In order to provide for expedited processing of the resolution of this case, the parties agreed that they [would] not take exceptions to the Hearing [Examiner's] Report and Recommendation." ( R & R at p. 4). Therefore, no exceptions were filed. The Hearing Examiner's R & R is before the Board for disposition.

## **II. The Hearing Examiner's Report and Recommendation**

In the late 1990's the District of Columbia General Hospital was transferred to the Health and Hospital Public Benefit Corporation ("PBC"). The PBC was abolished in 2001 and the District of Columbia government assumed all the liabilities of the PBC.<sup>2</sup> As a result, the parties in this case for the purpose of computing the remedy noted in Slip Opinion No. 889, are the Doctors Council of the District of Columbia General Hospital ("Doctors Council") and the District of Columbia government ("Respondent") represented by the Office of Labor Relations and Collective Bargaining ("OLRCB").

The Hearing Examiner stated that Slip Opinion No. 889 requires the District of Columbia "to pay a back-pay remedy to certain medical officers ("doctors" or "employees") formerly employed by

---

<sup>2</sup>On August 28, 1996, the Council of the District of Columbia approved the Health and Hospitals Public Benefit Corporation Emergency Act of 1996. D.C. Act 11-388, 43 DCR 4937 (1996). Subsequent emergency acts were approved by the Council and eventually D.C. Law 11-212, Health and Hospitals Public Benefit Corporation Act of 1996, became law on April 9, 1997. Pursuant to the PBC Act, the District of Columbia General Hospital was one of the agencies transferred to the PBC. The PBC was abolished and the PBC Act was repealed by section 9(a) of the Health Care Privatization Amendment Act of 2001, D.C. Law 14-18, 48 DCR 4047, 4055 (July 12, 2001). Under D.C. Code § 7-1402(d) (Supp. 2006), all employees of the PBC were transferred to the Department of Health. D.C. Code § 7-1403 provided that: "All liabilities of the Public Benefit Corporation shall be assumed by the District of Columbia".

the District of Columbia General Hospital ("DCGH") for lost earnings resulting from the DCGH's failure to provide the [doctors] with parity pay equivalent to the pay scale of certain other medical officers employed at community health clinics and who were transferred to DCGH in 1996." ( R & R at p. 1).

The Hearing Examiner indicated that in order to comply with Slip Opinion No. 889, the Parties were required to establish and agree on three facts: (1) the identity of the doctors due a back-pay remedy; (2) the correct back-pay period for each doctor; and (3) the amount of the back-pay, and appropriate interest, equal to the parity pay owed to each doctor. (See R & R at p. 2). The Hearing Examiner had the Parties attempt to establish these facts bilaterally with his oversight.

The Hearing Examiner found that the Parties' attorneys and the staff of the OLRCB were able to reconstruct all the necessary records and data to satisfy the requirements of Slip Opinion No. 889. The Hearing Examiner submitted with his Report and Recommendation Attachments A,<sup>3</sup> B<sup>4</sup> and C<sup>5</sup> which describe the remedy necessary to make employees whole for the loss of wage parity adjustments to which they were entitled by computing the value of such payments from October 1, 1996 to the present, with interest. Therefore, the Hearing Examiner recommended that the Board adopt the stipulations found in Attachments A, B and C as the final disposition of this case. (See R & R at pgs. 2-3).

In addition, the Hearing Examiner recommended that the 4% per annum statutory interest required by D.C. Code § 28-3302(b),<sup>6</sup> be applied to the back-pay owed to the affected employees.

---

<sup>3</sup> "[T]he parties have stipulated that Attachment A represents the names and earnings of the affected doctors due a back-pay remedy for: part of calendar year 1996 within the back-pay period; entire calendar year 1997 within the back-pay period; and the part of calendar year 1998 within the back-pay period." ( R & R at p. 3).

<sup>4</sup> "Attachment B sets out DCGH's pay plan of five pay-grades with six pay-steps. In few instances a pay cap limited the compensation received by some doctors. The pay cap has been taken into account in these calculations; the employees' compensation appropriately adjusted; and these employees will receive the full back-pay remedy. . . Based on the record developed by the parties, the Hearing Examiner [found] that Attachment B correctly establishes the correct percentage differences between the actual earnings of the affected doctors during the back-pay period and the parity pay owed as the back-pay remedy." ( R & R at p. 4).

<sup>5</sup> "Based on the calculations found in Attachment B, Attachment C sets out the back-pay owed each doctor for each calendar year, or portion thereof, within the back-pay period." ( R & R at p. 4).

<sup>6</sup> D.C. Code § 28-3302. Rate of interest not expressed and on judgments.

\* \* \*

(b) Interest, when authorized by law, on judgments or decrees against the District of Columbia, or its officers, or its employees acting within the scope of their employment, is at the rate of not exceeding 4% per annum.

Specifically, the Hearing Examiner recommended that the "interest on the back-pay should be computed as follows: back-pay interest for calendar year 1996 should start on January 1, 1997 and continue until the affected employee is paid; back-pay interest for calendar year 1997 should start on January 1, 1998 and continue until the affected employee is paid; and back-pay interest for calendar year 1998 should start on October 1, 1998 and continue until the affected employee is paid." (R&R at p. 4) The Hearing Examiner noted that the Parties did not oppose this calculation of statutory interest on the back-pay owed to the affected employees. (See R & R at p. 4).

The Hearing Examiner indicated that the Parties agreed that funds disbursed in fulfillment of the order of the Board in this case should be paid to the Doctors Council directly, and that the Doctors Council would bear the full responsibility for any payments to members from these funds. (See R & R at p. 4) The Hearing Examiner also noted that the Parties agreed that, after a reasonable period of time, the Respondent could request an accounting regarding the Doctors Council's distribution of this money. Therefore, the Hearing Examiner recommended that the Board order the payment of the back-pay and interest to the Doctors Council, which shall be responsible for prompt distribution to the affected doctors.

The Hearing Examiner stated that the Parties agreed that they would not take exceptions to the Hearing Examiner's Report and Recommendation. In addition, the Hearing Examiner noted that the Parties had requested, "in the interest of fairness, and in an abundance of caution and due diligence, that the Hearing Examiner retain jurisdiction to allow for corrections and additions to the Hearing Examiner's Attachments A, B and C which may be necessary due to mathematical errors, and inadvertent errors and omissions, including the identification of affected employees." R & R at p. 5).

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. See *Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO/CLC v. District of Columbia Public Schools*, 43 DCR 5585, Slip Op. No. 375 at p. 2, PERB Case No. 93-U-11 (1994). The Board finds that the Hearing Examiner's findings and conclusions are reasonable and supported by the record. Therefore, the Board adopts the Hearing Examiner's findings, conclusions and recommendations concerning the calculation of back-pay and interest. Also, the Board adopts the Hearing Examiner's recommendation that he retain jurisdiction for 90 calendar days after the issuance of this Decision and Order in order to allow for corrections and additions to the Hearing Examiner's Attachments A, B and C. These corrections or additions may be necessary due to mathematical errors, inadvertent errors and omissions, including the identification of affected employees.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Board adopts the Hearing Examiner's findings that Attachments A, B and C are: (1) the record for the calculation of back-pay owed to the affected doctors pursuant to Slip Opinion No. 889 and (2) subsumed by and incorporated into this Decision and Order.
2. The District of Columbia government ("Respondent") shall pay the employees identified in the Hearing Examiner's Attachment C the back-pay amounts listed therein plus the 4% per annum statutory interest as provided in the Hearing Examiner's Report and Recommendation. Specifically, the "interest on the back-pay should be computed as follows: back-pay interest for calendar year 1996 should start on January 1, 1997 and continue until the affected employee is paid; back-pay interest for calendar year 1997 should start on January 1, 1998 and continue until the affected employee is paid; and back-pay interest for calendar year 1998 should start on October 1, 1998 and continue until the affected employee is paid." (R&R at p. 4).
3. The back-pay owed to employees shall be made to the Doctors Council of the District of Columbia General Hospital ("Doctors Council") for distribution to the affected employees.
4. The Respondent may request an accounting regarding the Doctors Council distribution of the back-pay. This request may be made at a reasonable time after the Respondent has paid the back-pay to the Doctors Council.
5. The Hearing Examiner shall retain jurisdiction over the case for 90 calendar days after the issuance of this Decision and Order for the limited purpose of correcting mathematical errors, inadvertent errors and omissions, including the identification of affected employees.
6. Within sixty (60) days from the issuance of this Decision and Order, the Respondent shall provide the Board with a written status report concerning the steps it has taken to comply with paragraphs 2 and 3 of this Order.

Decision and Order  
PERB Case No. 97-U-25  
Page 6

7. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

March 7, 2008

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 97-U-25 was transmitted via Fax and U.S. Mail to the following parties on this the 7<sup>th</sup> day of March 2008.

David R. Levinson, Esq.  
1320 19<sup>th</sup> Street, N.W.  
Suite 601  
Washington, D.C. 20036

**FAX & U.S. MAIL**

Jonathan O'Neill, Esq.  
Supervisory Attorney Advisor  
Office of Labor Relations  
and Collective Bargaining  
441 4<sup>th</sup> Street, N.W.  
Suite 820 North  
Washington, D.C. 20001

**FAX & U.S. MAIL**

**Courtesy Copies:**

Marceline D. Alexander, Esq.  
(Counsel for Health & Hospital Public Benefit Corp.)  
c/o Office of Property Management  
441 4<sup>th</sup> Street, N.W.  
Suite 11005  
Washington, D.C. 20001

**U.S. MAIL**

Charles L. Reischel, Esq.  
Office of the Attorney General  
441 4<sup>th</sup> Street, N.W.  
Sixth Floor South  
Washington, D.C. 20001

**U.S. MAIL**

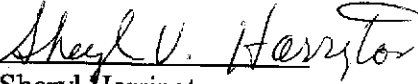
Linda Correia, Esq.  
Webster, Fredrickson & Henrichsen, Correia  
& Puth, P.L.L.C.  
1775 K Street, N.W.  
Suite 600  
Washington, D.C. 20006

**U.S. MAIL**

Certificate of Service  
PERB Case No. 97-U-25  
Page 2

Sean Rogers, Esq.  
20555 September Point Lane  
P.O. Box 1327  
Leonardtown, MD 20650

U.S. MAIL

  
Sheryl Harrington  
Secretary