

Notice:
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:)	
)	
Doctors Council of the District)	
of Columbia General Hospital,)	
)	
Complainant,)	
)	
v.)	
)	
District of Columbia Health and)	
Hospitals Public Benefit)	PERB Case No. 98-U-22
Corporation,)	Opinion No. 563
)	
Respondent.)	
)	
)	
Doctors Council of the District)	
of Columbia, National Union of)	
Hospital and Healthcare)	
Employees, American Federation of)	
State, County and Municipal)	
Employees, AFL-CIO,)	
)	
Intervenor.)	
)	

DECISION AND ORDER

On June 3, 1998, the Doctors Council of the District of Columbia General Hospital (DCDCGH or Complainant) filed an Unfair Labor Practice Complaint, in the above-referenced case. DCDCGH represents a bargaining unit of medical officers at the District of Columbia General Hospital (DCGH). The Complainant charges that Respondent District of Columbia Health and Hospitals Public Benefit Corporation (PBC)/District of Columbia General Hospital (DCGH) interfered with: (1) bargaining unit employees' free exercise of their rights under D.C. Code § 1-618.6(a)(1) and (2); and (2) the administration of the Complainant by unlawfully assisting and contributing support to a rival labor organization, Doctors Council of the District of Columbia, National Union of Hospital and Healthcare Employees, American Federation of State, County and Municipal Employees, AFL-CIO (DCDC). The Complainant

**Decision and Order on
PERB Case No. 98-U-22
Page 2**

asserts that DCGH's conduct constitutes an unfair labor practice violation under the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code Sec. 1-618.4(a)(1) and (2).

DCDC represents medical officers transferred from the D.C. Department of Human Services, Commission of Public Health to the employment of PBC/DCGH pursuant to the Health and Hospitals Public Benefit Corporation Emergency Act of 1996, D.C. Act 11-388 (Act). On July 9 and August 18, 1998, respectively, DCDC filed a Motion to Intervene pursuant to Board Rule 501.14 and a brief supporting the dismissal of the Complaint. DCDC's Motion is based on its status as the certified representative of the transferred medical officers. No objection was made to DCDC's Motion. Pursuant to Board Rule 501.15, we hereby grant DCDC's Motion based on its clear interest in the disposition of the Complaint allegations.

No Answer to the Complaint was filed by the PBC.^{1/} Board Rule 520.7 provides that "[a] respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing." Board Rule 520.7 further prescribes that "[t]he failure to answer an allegation shall be deemed an admission of that allegation." Consequently, the Complaint can be decided on the pleadings. We find, for the reasons discussed below that the PBC/DCGH's acts and conduct do not constitute the asserted unfair labor practices.

Pursuant to the Act, DCGH and DHS/CPH public health clinics were reorganized under the newly created PBC. Existing bargaining units and the respective representatives were maintained under the Act pending determinations by the Board of appropriate bargaining units at the newly formed PBC. As a result of this reorganization, former DHS/CPH public health clinic medical officers represented by DCDC and DCGH medical officers represented by DCDCGH came under a single personnel authority, i.e., the PBC.

On March 4, 1998, a memo addressed to PBC executive and medical management staff was also distributed to medical officers represented by the Complainant and DCDC. The Complainant asserts

^{1/} Board Rule 520.6 affords a respondent to an unfair labor practice complaint with an opportunity to provide: (1) an "answer containing a statement of its position with respect to the allegations set forth in the complaint"; and (2) "affirmative defenses, including, but limited to allegations that the complaint fails to allege an unfair labor practice or that the Board otherwise lacks jurisdiction."

**Decision and Order on
PERB Case No. 98-U-22
Page 3**

that in the memo the PBC expressed, among other things, a preference for DCDC as the collective bargaining representative of a consolidated unit of all PBC medical officers, including those medical officers currently represented by the Complainant.^{2/} (Comp. at 2.) The Complainant further asserts that said memo "held out promises and representations that the Medical Officer employees represented by Complainant would be afforded wage increases, which would otherwise be denied to them, if they abandoned representation by Complainant and requested representation by DCDC." Id.

The March 4 memo in question was apparently issued by PBC management in response to inquiries made by employees concerning the status of collective bargaining during this transitional period at the PBC while the Board made determinations of appropriate units. In pertinent part, the memo stated as follows:

Until the PERB issues its unit determinations, the PBC is required to assume and be bound by all of the existing collective bargaining agreements with the existing unions. Accordingly, the PBC is required to maintain the status quo, which, in the case of the medical officers, means that it must continue to recognize DCDCGH as the representative of the doctors [medical officers] at the Hospital and DCDC as the representative of the doctors at the Clinics. (Attach. A.)

The PBC went on to express its doubt that a recently negotiated compensation agreement with the Complainant --that provides DCDCGH medical officers with wage parity with DCDC medical officers-- would obtain the required approval from the D.C. City Council and the Financial Responsibility and Management Assistance Authority (Control Board) necessary for implementation. Based on this assessment, the PBC opined that two "alternative ways" for reaching parity existed. These statements are the basis of the asserted violations. Specifically, the PBC stated the following:

Only two possibilities come to mind at this point. First, if the two doctors units were consolidated (either voluntarily or as a result of the PERB's

^{2/} During the Board's proceeding in PERB Case Nos. 97-UM-05 and 98-CU-02, which were still pending at the time the memo was issued, the PBC had proposed a single unit of all PBC medical officers.

**Decision and Order on
PERB Case No. 98-U-22
Page 4**

ruling) and DCDC became the representative of all of the doctors at the PBC, the Hospital doctors could get the raise if they were covered by the DCDC collective bargaining agreement, which would not have to be approved by the Council or the Control Board. Second, if the doctors unions would agree to work with the Provider Practice Plan (the "PPP") which handles, among other things, compensation issues, as proposed in the the PBC's Organizational and Operational Plan, the PPP could address the salary disparity issues without the need for contract approval by the Council or Control Board. The DCDCGH would have to agree to void the long standing Compensation Agreement under which it has received no pay increases over the last 8 or 9 years.... We can only hope that the PERB will issue a favorable ruling, and/or that DCDC and DCDCGH will cooperate voluntarily, either by consolidating or having their pay issues addressed by the PPP, or both. (Attach. A.)

Under the Act, the PBC is required "[to] assume and be bound by all existing collective bargaining agreements with labor organizations that have been duly certified by the District of Columbia Public Employee Relations Board to represent employees transferred to the Corporation until successor agreements have been negotiated." D.C. Code Sec. 32-262.8(h). We have previously held that the PBC is legally obligated under the Act to continue recognizing the collective bargaining representatives and the collective bargaining agreements that existed prior to the employees transfer to the PBC until (1) the Board determines the appropriate collective bargaining units at the PBC and their respective bargaining representative and (2) successor agreements are negotiated. Doctors Counsel of the District of Columbia v. District of Columbia Health and Hospitals Public Benefit Corporation, Slip Op. No. 539 at 4, PERB Case No. 97-U-25 (1997). See, also D.C. Code Sec. 32-262.8(h).

Since the filing of this Complaint, in accordance with our mandate under the Act, we have determined that the two existing units of medical officers are appropriate as a single unit. We also concluded that our determination gives rise to a question concerning the representative of the single consolidated unit of medical officers. However, if the Complainant and DCDC, in the interest of expediting wage parity, made an agreement to voluntarily consolidate the DCDCGH medical officers into the unit of medical officers represented by DCDC, and we approved the consolidation, no current question concerning representation would exist. Pursuant to the Act, until a successor agreement is negotiated, the terms and conditions of employment of the medical

**Decision and Order on
PERB Case No. 98-U-22
Page 5**

officers represented by DCDC would then prevail for all medical officers.

As the PBC stated in its memo, however, this could only occur if "DCDC and DCDCGH cooperate voluntarily". (Attach. A.) Although the Complainant manifests a will that makes clear that it never would have voluntarily made such an agreement with DCDC, we do not find that the PBC's representation concerning the effect of such an agreement constitute unlawful support or assistance in the formation, existence or administration of either labor organization as proscribed under D.C. Code Sec. 1-618.4(a)(2).

Under the options presented in the PBC's memo, it is not the discretion of the PBC that would accord DCDCGH medical officers wage parity with DCDC medical officers. Rather, obtaining wage parity under these options would occur, if at all, by the acts of the two Doctors Councils. The process could not be initiated unless the Complainant and DCDC mutually agreed to do so.

Even if the PBC's stated means of achieving wage parity can be interpreted by employees as the PBC's declared preference for DCDC, we find that an employer may state a preference for one union over its rival under the CMPA so long as no restraint or coercion of employees' choice is present. Cf., Alley Constr. Co., 210 NLRB 999 (1974); Plymouth Shoe Co., 182 NLRB 1 (1970). Consequently, we find under the particular facts of this case that the PBC's representation that a "possible" way for DCGH medical officers to achieve interim wage parity while unit determinations remained pending before the Board was to become part of the unit of clinic medical officers does not rise to unlawful interference, restraint or coercion of employee rights in violation of D.C. Code Sec. 1-618.4(a)(1).^{3/}

In view of our disposition the Complainant's requests that we direct the PBC to reimburse the Complainant for attorney and

^{3/} We are aware that there is an impending election involving the Complainant and DCDC (PERB Case No. 97-UM-05) to determine the exclusive bargaining representative of the consolidated unit of medical officers that we have determined is appropriate. The Complainant has filed in that proceeding, i.e., PERB Case No. 97-UM-05, a Motion to block the scheduling of the election in view of the instant Complaint. As discussed above, we find that the PBC's acts and conduct do not constitute violations of the CMPA. Therefore, we find no basis for blocking the election directed in PERB Case No. 97-UM-07 based on the asserted violations in the instant Complaint.

**Decision and Order on
PERB Case No. 98-U-22
Page 6**

consultant fees is denied. University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, 38 DCR 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991). See, also, American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2776 v. D.C. Department of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990).

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is Dismissed.

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

October 14, 1998

Characterized as one of "only two possibilities" for achieving wage parity by alternative means, the PBC stated its hope that the Complainant and DCDC would "cooperate voluntarily by consolidating" and that "DCDC [would] bec[o]me the representative of all of the doctors at the PBC". (Comp.; Attach. A) The memo states further that a unit represented by DCDC would ensure that all medical officers (inclusive of DCGH medical

CERTIFICATE OF SERVICE

This is to certified that the attached Decision and Order in PERB Case 98-U-22, Slip Op. No. 563, was mailed (U.S. mail) to the following parties on the 15th day of October, 1998.

David R. Levinson, Esq. U.S. Mail
1835 K Street, N.W. Suite 950
Washington, D.C. 20006

Jonathan Axelrod, Esq U.S. Mail
Beins, Bodley,
Axelrod & Kraft, P.C.
1717 Massachusetts Avenue, N.W.
Washington, D.C. 20036-2001


Michael Stevens, Esq. U.S. Mail
Arent Fox Kintner Plotkin
& Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Courtesy Copies:

Roscoe Ridley U.S. Mail
Special Assistant/Labor Relations
D.C. General Hospital
19th and Massachusetts Avenue, S.E.
Washington, D.C. 20003

Kenneth Dais, M.D., President U.S. Mail
Doctors Council of
D.C. General Hospital
19th and Massachusetts Ave., S.E.
Room G266
Washington, D.C. 20003

Cheryl Williams, M.D., President U.S. Mail
Doctors Council of the
District of Columbia
300 I Street, N.W.
Suite 5
Washington, D.C. 20002


Namsoo Dunbar
Deputy Executive Director