

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, |) | |
| |) | PERB Case No. 97-U-25 |
| Complainant, |) | |
| |) | Opinion No. 758 |
| v. |) | |
| |) | |
| District of Columbia General Hospital, |) | |
| |) | |
| and |) | |
| |) | |
| Health and Hospitals Public Benefit Corporation, |) | |
| |) | |
| Respondents. |) | |
| |) | |

DECISION AND ORDER

In the above-referenced case, the Hearing Examiner found that the District of Columbia General Hospital ("Respondent" or "DCGH") and the District of Columbia Health and Hospitals Public Benefit Corporation ("Respondent" or "PBC") violated D.C. Code Sec. 1-617.04(a)(2), (3) and (5). Specifically, the Hearing Examiner found that DCGH interfered with the existence of the Doctors' Council of the District of Columbia General Hospital ("Complainant" or "DCDCGH") by providing unlawful assistance to a rival labor organization, namely, the Doctors' Council of the District of Columbia ("DCDC"). In addition, the Hearing Examiner determined that DCGH unlawfully discriminated against the medical officers represented by DCDCGH in order to discourage their continued representation by DCDCGH. The Hearing Examiner determined that this was done by failing to provide DCDCGH medical officers wage parity comparable with the medical officers represented by DCDC. Finally, the Hearing Examiner concluded that DCGH failed to exercise good faith in its unsuccessful attempt to fund the compensation agreement with the DCDCGH that would have provided wage parity.

In Slip Op. No. 539 which was issued on February 20, 1998, the Board concluded that the Hearing Examiner's findings were supported by the record. However, the Board rejected several of the Hearing Examiner's conclusions. Specifically, the Board determined that DCGH and the PBC engaged in unlawful conduct by "its less than even handed treatment" of DCDCGH. However, the

Board "reject[ed] the Hearing Examiner's findings that DCGH/PBC violated the [Comprehensive Merit Personnel Act] by its failure unilaterally to effect wage parity during the transitional period [from the DCGH to the PBC]." Slip Op. No. 539 at p. 4. Also, the Board indicated that the interest-of-justice criteria articulated in 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), did not warrant the awarding of reasonable costs in this case. Therefore, the Board rejected the Hearing Examiner's recommendation awarding costs to the Complainant.

DCDCGH appealed the Board's decision to the Superior Court of the District of Columbia. The Superior Court affirmed the Board's decision. As a result, DCDCGH appealed the decision of the Superior Court.

In an Order issued on January 20, 2004, the District of Columbia Court of Appeals, indicated that the Board in Slip Op. No. 539, "[i]n effect . . . concluded that there was no agreement binding DCGH/PBC prior to October 1, 1996. Therefore, DCDCGH was denied the relief sought with respect to the implementation of a compensation agreement that would have corrected a wage disparity in certain fiscal years between medical officers employed by the DCGH and those employed by the District of Columbia Department of Human Services. [Also, the Court of Appeals, points out that,] [w]hile reviewing PERB's decision in DCDCGH v. DCGH & PBC, Case No. 97-U-25, th[e] court has determined that there are PERB opinions in other cases concerning or related to the wage compensation matter in this case. . . . [Moreover,] two of these cases appear to raise questions as to the proper disposition of the instant case. [However,] because we are unable to reconcile the [other] PERB opinions . . . both with respect to factual findings and the application of the law, we are constrained to remand this case to the agency." (Order at p. 1).

Consistent with the Order of the Court of Appeals, we are requesting that the parties in this case provide clarification, explanation and/or their position concerning the two following questions:

(1) Is the DCDCGH/DCGH compensation agreement discussed in DCDCGH v. DCGH & PBC, 45 DCR 3999, Slip Op. No. 539, PERB Case No. 97-U-25 (1998), the same as that discussed in District of Columbia Health and Hospitals Public Benefit Corporation and all Unions Representing Bargaining Units in Compensation 12, 20, 21, 22, 23 and 24 and Employees employed by the Health and Hospitals Public Benefit Corporation, 47 DCR 2995, Slip Op. No. 604, PERB Case Nos. 97-UM-05, 97-CU-02 and 99-U-02 (1999)? If so, is the date on which that agreement was reached mid-September 1996, or a date after the October 1, 1996, transfer of medical officers to the PBC? If two different compensation agreements are involved, what are the dates on which those respective agreements were reached or initiated?

(2) If the DCDCGH/DCGH agreement is the same one discussed in both cases, should the legal conclusion in both cases be the same with respect to its binding effect? If the answer is yes, is the DCDCGH entitled to any compensation in this case?

ORDER

IT IS HEREBY ORDERED THAT:

1. The parties in this case provide clarification, explanation and/or their position concerning the two following questions:

(A) Is the DCDCGH/DCGH compensation agreement discussed in DCDCGH v. DCGH & PBC, 45 DCR 3999, Slip Op. No. 539, PERB Case No. 97-U-25 (1998), the same as that discussed in District of Columbia Health and Hospitals Public Benefit Corporation and all Unions Representing Bargaining Units in Compensation 12, 20, 21, 22, 23 and 24 and Employees Employed by the Health and Hospitals Public Benefit Corporation, 47 DCR 2995, Slip Op. No. 604, PERB Case Nos. 97-UM-05, 97-CU-02 and 99-U-02 (1999)? If so, is the date on which that agreement was reached mid-September 1996, or a date after the October 1, 1996, transfer of medical officers to the PBC? If two different compensation agreements are involved, what are the dates on which those respective agreements were reached or initiated?

(B) If the DCDCGH/DCGH agreement is the same one discussed in both cases, should the legal conclusion in both cases be the same with respect to its binding effect? If the answer is yes, is the DCDCGH entitled to any compensation in this case?

2. The parties' clarification, explanation and/or their position concerning the above noted questions, shall be filed with the Public Employee Relations Board within fourteen (14) days from the issuance of this Decision and Order.

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

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

July 23, 2004

CERTIFICATE OF SERVICE
(CORRECTED COPY)

This is to certify that the attached Corrected Certificate of Service in PERB Case No. 97-U-25 was transmitted via Fax and U.S. Mail to the following parties on this the 23rd day of July 2004.

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

FAX & U.S. MAIL

Edward Schwab, Deputy Attorney General
for the District of Columbia
Appellant Division
441 4th Street, N.W.
6th Floor
Washington, D.C. 20001

FAX & U.S. MAIL

Courtesy Copy:

Mary Connelly, Esq.
Assistant Attorney General
for the District of Columbia
Appellant Division
441 4th Street, N.W.
6th Floor
Washington, D.C. 20001

U.S. MAIL



Sheryl V. Harrington
Secretary