

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:	)	
	)	
American Federation of Government, Employees, Local 2978,	)	
	)	
Complainant,	)	PERB Case No. 04-U-27
	)	Opinion No. 773
v.	)	
	)	Motion for Continuance
District of Columbia Department of Health,	)	
	)	
Respondent.	)	

**DECISION AND ORDER**

The American Federation of Government Employees, Local 2978 ("Complainant" or "Union"), filed an Unfair Labor Practice Complaint, an Amended Complaint and a Motion for Preliminary and Injunctive Relief, in the above-referenced case. In their Complaint the Complainant alleges that the District of Columbia Department of Health ("DOH" or "Respondent") violated D.C. Code § 1-617.04 (a)(1) and (3) (2001 ed.) by: (1) coercing employees in the exercise of their rights; (2) discriminating against employees because of their Union activity; (3) threatening reprisals for union activity; (4) relocating the Union's office; and (5) transferring the union president. In addition, the Complainant asserts that the Union's president's "overall performance rating was '[u]nsatisfactory' [and] among the reasons listed for this negative rating was her failure to meet a work quota due to her performance of official Union duties." (Compl. at pgs. 2-3).

The Complainant further claims that "the Interim Director of DOH, Herbert Tillery, met with employees in the HIV/AIDS Administration and told them that the fact that they had recently formed a union would make it easier for him to disband the [HIV/AIDS Administration]." (Motion at p. 1)

The Complainant asserts that by making this statement, Mr. Tillery was threatening employees with retaliation for forming a union. (Amended Compl. at p.3 and Motion at p. 1) As a result, The Complainant requested that the Board grant its request for preliminary relief on the basis of Mr. Tillery's alleged statement.

In Slip Op. No. 771, the Board denied the Complainant's request for Preliminary Relief. In addition, paragraphs 2-5 of the Board's Order provide as follows:

\* \* \*

(2) [That] the Board's Executive Director shall refer the unfair labor practice complaint to a Hearing Examiner and schedule a hearing under the expedited schedule set forth below.

(3) [That] a hearing shall be scheduled within forty five days of this Decision and Order. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.

(4) [That] following the hearing, the designated Hearing Examiner shall submit a report and recommendation to the Board no later than twenty-one (21) days following the submission of written closing arguments or post-hearing briefs.

(5) [That] the parties may file exceptions and briefs in support of the exceptions no later than seven (7) days after service of the Hearing Examiner's Report and recommendation. A response or opposition to the exceptions may be filed no later than five (5) days after service of the exceptions.

\* \* \*

Slip Op. No. 771 was issued on November 8, 2004. Therefore, pursuant to paragraph three (3) of the Board's Order, a hearing was to be scheduled in this case no later than December 23, 2004. However, on November 16, 2004, the Respondent filed a document styled "Statement of Non-Availability of Counsel and Motion for Continuance."

In their motion, the Respondent claims that the individual who is responsible for this case is not available from December 9-15, 2004 and from January 14-21, 2004. In addition, the Respondent contends that it will be difficult to have witnesses available during the holiday season. As a result, the Respondent is requesting that the hearing in this case not be scheduled until the end of January 2005. Pursuant to Board Rule 553.2, the Complainant's response to the Motion for Continuance was due on November 23, 2004.<sup>1</sup> However, the Complainant did not file a response to the motion.

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<sup>1</sup>On November 19, 2004, the Complainant's counsel advised the Board that she was no longer representing the Complainant in this matter. As a result, the Board's staff contacted Joanne McCarthy, President of Local 2978 in order to determine whether the Complainant had

In their "Motion for Continuance," the Respondent notes that the Complainant has filed a document styled "Motion to Strike Respondent's Answer To The First Amended Unfair Labor Practice Complaint." The Respondent claims that the disposition of the motion to strike may affect the Respondent's position on the merits of this case. As a result, the Respondent claims that a "hearing in this matter prior to the disposition of [the motion to strike,] would be premature and potentially prejudicial to either party." (Motion for Continuance at p. 2).

After reviewing the Respondent's request for a continuance, we have concluded that the reasons noted in support of the request, are reasonable. In addition, the Complainant has not filed an objection to the Respondent's motion for a continuance. Therefore, we are granting the Respondent's request for a continuance. As a result, we are directing that the hearing in this case be scheduled the week of January 31, 2005.

As noted in footnote 1, the Complainant's counsel has withdrawn from this case; therefore, by granting a continuance, we are also providing the Complainant with an opportunity to retain new counsel

Concerning the Complainant's motion to strike, we believe that the motion involves some issues of fact. As a result, we are referring the Complainant's motion to strike, to the Hearing Examiner who will be assigned to this case.

For the reasons discussed above, the Board: (1) grants the Respondent's request for a continuance; and (2) directs the development of a factual record through an unfair labor practice hearing which will be scheduled the week of January 31, 2005. Also, we are referring the Complainant's motion to strike, to the Hearing Examiner.

### ORDER

#### **IT IS HEREBY ORDERED THAT:**

- (1) The Respondent's Motion for a Continuance is granted.
- (2) The Complainant's Motion to Strike is referred to the Hearing Examiner.
- (3) The Board's Executive Director shall refer the unfair labor practice complaint to a Hearing Examiner and schedule a hearing under the expedited schedule set forth below.

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retained new counsel. However, to date, Ms. McCarthy has not provided the Board's staff with the name of the Complainant's new counsel.

- (4) A hearing shall be scheduled the week of January 31, 2005. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
- (5) Following the hearing, the designated Hearing Examiner shall submit a report and recommendation to the Board no later than twenty-one (21) days following the submission of written closing arguments or post-hearing briefs.
- (6) Parties may file exceptions and briefs in support of the exceptions no later than seven (7) days after service of the Hearing Examiner's Report and recommendation. A response or opposition to the exceptions may be filed no later than five (5) days after service of the exceptions.
- (7) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

January 5, 2005

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order for in PERB Case No. 04-U-27 was transmitted via Fax and U.S. Mail to the following parties on this the 5<sup>th</sup> day of January 2005.

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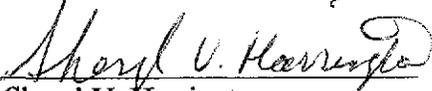
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Certificate of Service  
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