

Notice: This decision may be form revised before it is published in the District of Columbia Register. 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:)

Committee of Interns and)
Residents,)

Complainant,)

v.)

District of Columbia)
Department of Human Services,)

Respondent.)

PERB Case No. 95-U-22
Opinion No. 480

DECISION AND ORDER

The facts and issues that gave rise to this case are set out by the Hearing Examiner in his Report and Recommendation.^{1/} The Hearing Examiner found that the District of Columbia Department of Human Services (DHS) violated the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(1) and (5). Specifically, the Hearing Examiner found that DHS has failed, and continues to refuse, to negotiate in good faith with the Committee of Interns and Residents (CIR) by failing to provide CIR with information necessary and relevant to its role as the collective bargaining representative of bargaining unit employees employed by DHS in the Commission on Mental Health Services (CMHS).^{2/} The

^{1/} The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion.

^{2/} By letter dated June 27, 1995, CIR requested from the Office of Labor Relations and Collective Bargaining (OLRCB) information on bargaining unit employees' salary increases, retroactive pay and professional allowances. (R&R at 2.) The June 27 letter renewed written requests for certain information first submitted by CIR on November 18, 1994, and again February 9, 1995. The Hearing Examiner found that DHS "violated Section 1-618.4(a)(1) and (5) of the CMPA and the D.C. Code on November 18, 1994 and thereafter, when it failed to provide the information the Union had requested." (R&R at 3-4.) The Complaint was filed by CIR on July 17, 1995. Pursuant to Board Rule 520.4(a) the Board's jurisdiction over alleged unfair labor practices extends to "90 [now 120] days after the date on which the alleged violation(s) occurred." Therefore, while CIR renewed requests for information it made
(continued...)

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information was requested in conjunction with an effort by CIR to ensure that DHS was complying with certain compensation provisions of the parties' collective bargaining agreement.

The Hearing Examiner determined that: (1) the information requested was clearly relevant; (2) DHS knowingly disregarded its obligations under the CMPA; and (3) the violation is chronic and ongoing. As a result, the Hearing Examiner granted CIR's request for costs (excluding attorney fees).^{3/} The Hearing Examiner recommended further that DHS be ordered to reimburse the Board for its costs in processing this unfair labor practice complaint that DHS has pressed to hearing when this case was totally without merit.

No exceptions were filed by either party to the findings, conclusions and recommendations made by the Hearing Examiner.

Pursuant to D.C. Code § 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and the entire record. The Board hereby adopts the Hearing Examiner's conclusion that DHS violated D.C. Code § 1-618.4(a)(1) and (5), by failing to provide information necessary and relevant to CIR's role as the collective bargaining representative of bargaining unit employees. See, Doctors' Council of the District of Columbia General Hospital v. District of Columbia General Hospital, Slip Op. No. 468, PERB Case No. 95-U-12 (1996); International Brotherhood of Police Officers, Local No. 445, AFL-CIO v. D.C. Dep't of Administrative Services, 43 DCR 1484, Slip Op. No. 401, PERB Case No. 94-U-13 (1994) and Doctors' Council of the District of Columbia v. Government of the District of Columbia, et al., Slip Op. No. 353, PERB Case No. 92-U-27 (1993).

We also adopt the Hearing Examiner's recommended relief, including an Order directing DHS to pay the costs incurred by CIR to pursue this action. With respect to the recommendation that DHS be ordered to pay the Board's costs to process this case, we must decline the adoption of this recommendation. While we keenly appreciate the reasons for the Hearing Examiner's recommendation --especially in these fiscally austere times for the District

²(...continued)
earlier, our jurisdiction for finding a violation by DHS extends only to DHS's failure to provide necessary and relevant information requested by CIR in its June 27, 1995 letter.

^{3/} The Hearing Examiner also recommended that in addition to the customary posting of the Notice to employees setting forth the violations found, DHS mail the Notice to the approximately 50 employees in the bargaining unit.

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Government--, our authority to order the payment of costs is governed by the CMPA, as codified under D.C. Code § 1-618.13. Pursuant to Section 1-618.13(d), the Board's authority to require the payment of costs is expressly and specifically limited to the costs incurred by a party. Section 1-618.13 does not authorize the payment of the Board's costs under any circumstances, nor is such authority provided by any other provision under the CMPA. Therefore, we do not, *sub colore juris*, exercise such authority herein. Cf., 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) (where the Board made a similar ruling with respect to its authority to award attorney fees).

In all other respects, however, we adopt the recommended remedy of the Hearing Examiner as set forth below in our Order.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Human Services (DHS) shall cease and desist from refusing to bargain in good faith by failing to provide certain information and to timely provide other information requested by the Committee of Interns and Residents (CIR) in conjunction with the administration of the parties' collective bargaining agreement.
2. The DHS shall (1) furnish CIR with the information requested in its June 27, 1995; (2) provide CIR with biweekly reports listing any wage and salary adjustments for unit employees during that reporting period together with an explanation as to why the action was taken; and (3) make its officials available to CIR for the purpose of explaining and answering any questions concerning the data. This requirement shall continue in effect until a new collective bargaining agreement is approved and ratified or CIR is no longer the collective bargaining representative of this unit of employees.
3. DHS management official shall make themselves available to CIR representatives for the purpose of explaining and answering any questions concerning information referred to in paragraph 2 of this Order.
4. DHS shall provide the information requested not later than fourteen (14) days following the issuance of this Order.
5. DHS shall cease and desist from interfering, in any like and

related manner, with the rights guaranteed employees and their exclusive bargaining representatives by the Comprehensive Merit Personnel Act.

6. DHS shall send the attached Notice to all employees in the following bargaining unit and post it at all of the affected work sites within ten (10) days from the service of this Opinion. The Notice shall remain posted for thirty (30) consecutive days.

All medical and dental interns, residents and fellows who are being paid by the Commission on Mental Health Services, D.C. department of Human Services. Excluded are management officials or supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended.

7. DHS shall notify the Public Employee Relations Board (PERB), in writing, within fourteen (14) days from the date of this Order that the Notices have been posted and as to the steps it has taken to comply with the directives in paragraphs 1, 2, 3 and 6 of this Order.

8. The Complainant shall submit to the PERB, within fourteen (14) days from the date of this Order, a statement of the costs sought from DHS together with supporting documentation; DHS may file a response to the statement within fourteen (14) days from service of the statement upon it.

9. If the parties are not in accord over the costs incurred by CIR, DHS shall pay to Complainant its reasonable expenses incurred in this proceeding within ten (10) days from the determination by the Board or its designee as to the amount of those reasonable costs.

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

August 19, 1996



Public
Employee
Relations
Board

Government of the
District of Columbia



415 Twelfth Street, N.W.
Washington, D.C. 20004
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NOTICE

ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES, COMMISSION ON MENTAL HEALTH SERVICES REPRESENTED BY THE COMMITTEE OF INTERNS AND RESIDENTS, THIS OFFICIAL NOTICE IS POSTED AND SENT TO YOU BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 480, PERB CASE NO. 95-U-22 (August 19, 1996).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from refusing to bargain in good faith with the Committee of Interns and Residents concerning information requested in conjunction with the administration of the parties' collective bargaining agreement.

WE WILL NOT in any like or related manner interfere with the rights guaranteed to employees by the Comprehensive Merit personnel Act to the bargaining unit employees at D.C. Department of Human Services, Commission on Mental Health Services.

District of Columbia
Department of Human Services

Date: _____ By: _____
(Director)

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 415-12th Street, N.W. Room 309, Washington, D.C. 20006. Phone 727-1822.