

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 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:)	
)	
UNIONS IN COMPENSATION UNIT 20,)	
i.e., American Federation of State,)	PERB Case No. 02-U-13
County and Municipal Employees,)	
)	Opinion No. 688
National Union of Hospital and)	
Healthcare Employees, Local 1033)	
)	
)	
and)	CORRECTED COPY
)	
Service Employees International)	
Union District 1199E-DC)	
)	
Complainants,)	
)	
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v.)	
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF HEALTH (formerly the)	
HEALTH AND HOSPITALS PUBLIC)	
BENEFIT CORPORATION),)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

This matter involves an unfair labor practice Complaint filed by the Unions in Compensation Unit 20¹ ("Unions" or "Compensation Unit 20") against the Department of Health ("DOH" or

¹Compensation Unit 20 includes:

All allied health professional employees (excluding medical officers and registered nurses) and non-professional and technical allied employees represented by National
(continued...)

“Agency”². The Complainants are alleging that DOH violated D.C. Code §1-617.04(a)(1) and (a)(5) (2001 ed.) by failing to engage in compensation bargaining with the employees in Compensation Unit 20, who were formerly employed by the Health and Hospitals Public Benefit Corporation (“PBC”). The parties have not bargained and reached an agreement concerning compensation since the Board authorized compensation bargaining units for the PBC in 1998.³ The Complainants seek an Order directing: (1) the Agency to bargain with Compensation Unit 20; (2) the awarding of costs; and (3) all other appropriate relief.

The Complaint alleges that the Agency denied the Unions’ request to bargain over compensation matters applicable to DOH Health Care Safety Net Administration (“HCSNA”) employees in Compensation Unit 20.⁴ In a November 2, 2001 letter, the Agency based its denial of the request to bargain on the fact that the matter concerning compensation bargaining was the subject of other litigation. As a result, the Agency would not bargain with the Unions over that matter until that litigation was resolved.

¹(...continued)

Union of Hospital and Health Care Employees and Service Employees International Union District 1199E-DC. Compensation Unit 20 consists of approximately 650 to 700 District employees. A description of the employees represented by Compensation Unit 20 is contained in Health and Hospitals Public Benefit Corporation and All Unions Representing Bargaining Units 12, 20, 21, 22, 23 and 24, 45 DCR 6743, Slip Op. No. 559, PERB Case Nos. 97-UM-05 and 97-CU-02 (1998).

²In April 2001, the PBC was abolished. The Department of Health (“DOH”) is the successor to the District of Columbia Health and Hospitals Public Benefit Corporation (“PBC”). Pursuant to §4 of the Health Care Privatization Amendment Act of 2001 (“HCPAA” or “Act”), approximately 1600 former PBC employees were transferred to DOH on April 30, 2001, and assigned to a division called the Health Care Safety Net Administration. See also, Compensation Unit 21 v. D.C. Health and Hospitals Public Benefit Corporation, 48 DCR 8547, Slip Op. No. 659 at footnote 6, p.3, PERB Case No. 99-U-37 (2001).

³In the matter of the District of Columbia Health and Hospitals Public Benefit Corporation and All Unions..., PERB Case Nos. 97-UM-05 and 97-CU-02, Op. No. 552 (June 25, 1998).

⁴The Complaint contends that the denials were contained in letters dated November 2, 2001 and November 9, 2001. The Complaint alleges in paragraphs 13 and 15 that the letters denying the Unions’ request to bargain were written by Michael Jacobs, a Supervisory Labor Relations Specialist, who was acting as the Agency’s representative in this matter.

The Respondent did not file an Answer to the Complaint. Board Rule 520.7 provides in relevant part: “[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.” Although the material facts alleged in the complaint are deemed admitted, the Board must still determine whether the Complainants have met their burden of proof concerning whether an unfair labor practice has been committed. See, Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06, 46 DCR 6876, Slip Op. No. 491 at p.4, PERB Case No. 96-U-22 (1996). The Board has determined that “[to] maintain a cause of action, [a] Complainant must [allege] the existence of some evidence that, if proven, would tie the Respondent’s actions to the asserted [statutory violation].” Goodine v. FOP/DOCLabor Committee, 43 DCR 5163, Slip Op. No. 476 at p.3, PERB Case No. 96-U-16 (1996).

The Unions’ complaint cites §4(d) of the Health Care Privatization Amendment Act of 2001 (“HCPAA”) for the proposition that Compensation Unit 20 is entitled to bargain with the Agency over a new compensation agreement.

Section 4(d) of the HCPAA provides in pertinent part that:

“transferred employees shall retain the same rights and privileges that they had as employees of the Public Benefit Corporation before the effective date of this act and shall not obtain any additional rights or privileges as a result of the transfer.”

We believe that the above referenced language contained in the HCPAA makes clear that transferred Compensation Unit 20 employees have a right to bargain over compensation pursuant to D.C. Code §1-617.17⁵ and that the Agency is obligated to engage in compensation bargaining with them. Additionally, pursuant to §4 of the HCPAA former PBC employees in Compensation Unit 20 retained their right to bargain when they were transferred to DOH. Therefore, the Agency’s refusal to bargain with Compensation Unit 20 employees is not justified.

The Board is cognizant of the fact that the Financial Responsibility Management Assistance Authority (Control Board) was attempting to reduce spending by closing the PBC and reducing funded positions. However, the fact remains that some Compensation Unit 20 employees are still employed at DOH (as a result of the transfer) and have remained employed there for over a year after the transfer. Furthermore, their right to bargain over compensation was not expressly extinguished by the HCPAA.

⁵D.C. Code §1-617.17 (2001 ed.), entitled “Collective Bargaining Concerning Compensation,” gives unionized employees the right to bargain concerning compensation and outlines the requirements for that bargaining process.

In view of the above and pursuant to D.C. Code §1-605.02(3)(2001 ed.) and Board Rule 520.14, the Board finds that DOH has committed an unfair labor practice in violation of the Comprehensive Merit Personnel Act (CMPA) by refusing to engage in compensation bargaining with these Compensation Unit 20 employees. Therefore, the Board orders that the parties commence compensation bargaining within 30 days after the issuance of this Decision and Order.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Health (DOH), its agents and representatives shall cease and desist from violating D.C. Code §1-617.04(a)(1) and (5) (2001 ed.) by refusing to bargain on request concerning compensation with the Unions in Compensation Unit 20.
2. DOH shall begin compensation bargaining with Compensation Unit 20 within thirty (30) days of the issuance of this Order.
3. DOH shall post conspicuously within ten (10) days from the service of this Opinion the attached Notice where notices are normally posted. The Notice shall remain posted for thirty (30) consecutive days.
4. DOH shall notify the Public Employee Relations Board (PERB), in writing within fourteen (14) days from the date of this Order that the Notice has been posted, accordingly, and as to the steps it has taken to comply with the directive in paragraph 2 of the Order.
5. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

September 13, 2002

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 02-U-13 was transmitted via U.S. Mail to the following parties on this 16th day of September, 2002.

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A handwritten signature in cursive script, reading "Alicia D. Williams". The signature is written in black ink and is positioned above a horizontal line.

Alicia D. Williams
Intern



Public
Employee
Relations
Board

Government of the
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH (DOH), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 688, PERB CASE NO 02-U-13 (September 13, 2002).

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 violating D.C. Code §1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 688.

WE WILL cease and desist from: (a) interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act (CMPA) and (b) refusing to bargain collectively in good faith with the exclusive representative.

WE WILL commence compensation bargaining pursuant to D.C. Code §1-617.17 with the Unions in Compensation Unit 20 no later than 30 days after the issuance of this Decision and Order.

WE WILL notify the Board in writing that we have begun bargaining with the Unions in Compensation Unit 20 on the date of the first scheduled bargaining session.

WE WILL NOT, in any like or related manner, interfere, restrain or coerce, employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

WE WILL NOT refuse to bargain in good faith with the Unions in Compensation Unit 20.

District of Columbia Department of Health

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 this Notice or compliance with any of its provisions, they may communicate directly with the Public Employees Relations Board, whose address is: 717 14th Street, N.W., Suite 1150 Washington, D.C. 20005. Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD