

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. 08-U-47
	)	
v.	)	Opinion No. 1433
	)	
District of Columbia	)	
Department of Health,	)	
	)	
Respondent.	)	

**DECISION AND ORDER**

**I. Statement of the Case**

Complainant American Federation of Government Employees, Local 2978 (“Union,” “AFGE,” or “Complainant”) filed an Unfair Labor Practice Complaint (“Complaint”), against Respondent District of Columbia Department Health (“Agency,” “DOH,” or “Respondent”) for alleged violations of sections 1-617.04(a)(1), (3), and (5) of the Comprehensive Merit Protection Act (“CMPA”) by converting Union President Robert Mayfield from career status to term status and subsequently terminating his employment. (Complaint at 2). The Complainant filed a Motion for Preliminary and Injunctive Relief and a Motion for a Temporary Restraining Order. The Respondent submitted an Answer to the Complaint denying any violation of the CMPA. (Answer at ¶¶ 4-9). The matter was submitted to a Hearing Examiner, a hearing was held, and the parties supplied post-hearing briefs to the Hearing Examiner. In Slip Op. No. 1256, issued March 27, 2012, the Board adopted the Hearing Examiner’s conclusion that the Respondent committed an unfair labor practice, and directed that Mr. Mayfield be reinstated to his position.

(Slip Op. No. 1256 at p. 11). Additionally, the Board ordered the Complainant to submit a verified statement as to the appropriate amount of back pay, and ordered the Respondent to provide a response to the verified statement within ten (10) days. *Id.* The Board stated that it would then issue a supplemental order ruling on the appropriate remedy in a subsequent order. *Id.*

## II. Discussion

On July 2, 2012, the Union submitted a verified statement on the appropriate amount of back pay. Tyler Letter, June 18, 2012. DOH requested additional information from Mr. Mayfield, which was provided on October 17, 2012. McGillivray Verification at 1. On January 8, 2013, DOH submitted a worksheet to the Board reflecting a net payment amount to Mr. Mayfield of \$112,757.33, and contributions to Mr. Mayfield's retirement account totaling \$14,952.66. Levy e-mail, Jan. 8, 2013. Further, DOH noted that Mr. Mayfield's annual and sick leave had been restored. *Id.*

In an e-mail to the Board dated January 8, 2013, the Union asserted that the Agency's calculation of Mr. Mayfield's back pay did not include interest. Stewart e-mail, Jan 8, 2013. The Union requested interest at 4% per annum through January 4, 2013, totaling \$16, 448.81. *Id.* In a subsequent e-mail, the Union stated that Mr. Mayfield requested that his annual leave be restored through a lump sum payment, instead of through restored leave. Stewart e-mail, January 9, 2013. The Union contended that under the CMPA, employees may only carry a certain amount of annual leave from year to year, and that under this "use or lose" policy, Mr. Mayfield stood to lose a great deal of any restored leave hours, "undercutting the make-whole remedy ordered by the [Board]." *Id.* In subsequent e-mails, the parties continued to debate the issue of whether interest was appropriate in this matter, and the appropriate method of complying with the Board's order in Slip Op. No. 1259 as it pertained to restoring annual leave.

On May 8, 2013, the parties attended mandatory mediation in an attempt to resolve the outstanding back pay issues. The mediation was unsuccessful, and on September 12, 2013, the Union sent a letter to the Board requesting a hearing on the issue of remedies. Stewart letter, Sept. 12, 2013. In response, the Agency opposed an additional hearing, stating:

Since the issue of a determination of a make-whole remedy in this matter is strictly a legal issue, there is no need to hold an additional hearing in front of Hearing Examiner Johnson. Ms. Johnson has already issued her Report and Recommendation in this matter and is *functus officio* since [the Board] followed this Report and

Recommendation with its own Decision and Order of March 27, 2012.

Gerst letter, Sept. 16, 2013. Additionally, the Agency contended that Slip Op. No. 1256 did not mention an additional hearing in this case, and that the Board's rules do not provide for an additional hearing once a hearing examiner has issued the report and recommendation. *Id.* On October 1, 2013, the Union submitted a document styled "Request for Briefing Schedule or, Alternatively, for Hearing with Respect to Appropriate Remedy" ("Request"). In its Request, the Union asked the Board to issue a briefing schedule "so that the parties may submit briefs informing the Board of the parties' positions and providing the necessary information to form a basis for a 'supplemental order ruling on the appropriate remedy' contemplated by Slip Op. No. 1256. (Request at 2). Alternately, the Union asked the Board to set a hearing date. *Id.*

The parties' disagreements in this matter coalesce around two issues: (1) whether DOH must pay interest on the back pay award, and if so, at what rate; and (2) whether Mr. Mayfield's accrued annual leave must be restored via "restored hours" or as a lump sum payout. The majority of the arguments supporting each party's position have been presented to the Board in the form of e-mails dating back to December 2012. To clarify the parties' positions and aid the Board in resolving this matter, the parties are ordered to brief these issues, pursuant to the Board's investigatory powers. *See* Board Rule 520.8. The Complainant's brief will be due no later than 11:59 p.m. on November 29, 2013, and must be electronically filed via File & ServeXpress. The Respondent's brief will be due no later than 11:59 p.m. on December 30, 2013, and must be electronically filed via File & ServeXpress. After considering the parties' briefs, the Board will determine whether an additional hearing is necessary, or whether the Board may issue a decision on the pleadings in accordance with Board Rule 520.10.

### **ORDER**

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

1. The parties will submit briefs addressing: (1) whether the D.C. Dep't of Health must pay interest on the Robert Mayfield back pay award, and if so, at what rate; and (2) whether Mr. Mayfield's accrued annual leave must be restored via "restored hours" or as a lump sum payout?
2. The American Federation of Government Employees, Local 2978's brief must be filed no later than 11:59 p.m. on November 29, 2013, via the Board's File & ServeXpress electronic filing system.

3. The D.C. Dep't of Health's brief must be filed no later than 11:59 p.m. on December 30, 2013, via the Board's File & ServeXpress electronic filing system.
4. 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.

October 31, 2013

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 08-U-47 was transmitted via File & ServeXpress to the following parties on this the 31<sup>st</sup> day of October, 2013.

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