

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

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In the Matter of:)	
)	
District of Columbia Nurses)	
Association,)	
)	
Complainant,)	
)	
v.)	
)	
The Mayor of the District of)	PERB Case No. 95-U-03
Columbia,)	
)	Opinion No. 565
and)	
)	
District of Columbia Health and)	
Hospitals Public Benefit)	
Corporation, District of Columbia)	
General Hospital,)	
)	
Respondents.)	
)	
)	

DECISION AND ORDER

The background and issues underlying this case are set out by the Hearing Examiner in his Report and Recommendation.^{1/} The Hearing Examiner found that the Respondent the District of Columbia Health and Hospitals Public Benefit Corporation (PBC), District of Columbia General Hospital (DCGH) and the Mayor of the District of Columbia (Mayor), committed unfair labor practices proscribed by the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(1), (3) and (5).

The Hearing Examiner found that PBC/DCGH failed to meet its statutory obligations under D.C. Code Sec. 1-618.17 when it did not reprogram its budget to satisfy an arbitration award. In addition, the Hearing Examiner found that the Mayor perpetuated this failure

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

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by failing to "transmit[] ... the award to the [District of Columbia City] Council without a proper funding plan or request." (R&R at 7.) The Hearing Examiner concluded that by these acts, both the PBC/DCGH and "the Mayor engaged in bad faith bargaining in violation of D.C. Code Sec. 1-618.4(a)(1) and (5) of the CMPA." Id.

Based on his findings and conclusions, the Hearing Examiner, in addition to the traditional Notice posting and cease and desist order, recommended the following affirmative relief: (1) that the Mayor shall comply with the requirements of D.C. Code Sec. 1-618.17(i) and transmit to the District of Columbia City Council (City Council) an appropriate funding plan for satisfying the arbitration award; and (2) that the PBC/DCGH shall resubmit the arbitrator's award to the Mayor with a plan for how it is to be funded.

The case is now before the Board on Exceptions filed by both parties to the Hearing Examiner's Report and Recommendation.^{2/} DCNA also filed an Opposition to the PBC/DCGH's Exceptions. Pursuant to D.C. Code § 1-605.2(3) and Board Rule 520.14, we have reviewed the findings and conclusions of the Hearing Examiner and adopt his findings of fact and conclusion of law that PBC/DCGH violated its obligation to bargain under the CMPA. With the exception of the recommended finding that the Mayor violated D.C. Code Sec. 1-618.4(a)(5) by his asserted failure to comply with statutory directives under D.C. Code Sec. 1-618.17, for the reasons discussed below, we find no merit to any of the other Exceptions filed by the parties.^{3/} Therefore, we shall modify the Hearing

^{2/}PERB Case No. 95-U-03 was originally consolidated with PERB Case Nos. 97-U-16 and 97-U-28 (involving the same parties) and referred to a Hearing Examiner for a Report and Recommendation. On June 24, 1998, the Board issued a Decision and Order, Opinion No. 558, which severed for further consideration, the issues presented by the Complaint in PERB Case No. 95-U-03 from the two other cases.

^{3/} Respondent PBC/DCGH's exceptions include objections to the Hearing Examiner's findings, conclusions and recommendations with respect to the Mayor. The PBC contends that the Board has no jurisdiction over the Mayor since: (1) the Mayor's name does not appear in the case caption as a party; and (2) no reliable proof was offered that the Mayor was served with notice of the hearing. (PBC Except. at 3.) Consequently, the PBC states, the Mayor did not appear at the hearing and thus, offered no evidence concerning his actions. In view of our disposition with respect to the Mayor, we need not address the PBC/DCGH's objections concerning our jurisdiction over the Mayor in this case.

(continued...)

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Examiner's recommended remedy to the extent consistent with our discussion below.

The PBC/DCGH excepts to the Hearing Examiner's finding that it violated the CMPA by failing to make any effort --beyond its submission of the award to the Mayor-- to demonstrate how the arbitration award could be funded or to request additional appropriations to satisfy the award. The PBC/DCGH contends that the CMPA does not accord agencies any further obligation. We disagree.

Resort to the CMPA's impasse procedures under D.C. Code Sec. 1-618.17 results in a decision and award by an impartial board of arbitration that is final and binding on both the labor organization and the employer. See, D.C. Code Sec. 1-618.17(f). The CMPA authorizes the board of arbitration to render such an award to determine by arbitration what the parties, e.g., DCNA and the PBC, could not achieve by bilateral agreement during negotiations. However, before the award can be actually implemented, the impasse procedures requires certain additional expressed, and necessarily implied, steps to seek and obtain satisfaction or funding of the award.

We have held that:

In the public sector, where the effectiveness of a negotiated or awarded compensation settlement depends on its acceptance by the legislative authority, we have no doubt that management's obligation includes meticulous adherence to the statutory procedures for securing that acceptance or, as provided by the CMPA, D.C. Code Sec. 1-618.17(j), for rejection by the Council and a return to the parties for renegotiation, with specific reasons for the rejection. Although DCPS has repeatedly, and in our

³(...continued)

The PBC has also contended that "[b]ecause it is undisputed that there is [sic] insufficient funds to pay the arbitration award" the Hearing Examiner's conclusion that the Mayor is required to support the arbitration award with a request for funding, pursuant to statutory obligations under D.C. Code Sec. 1-618.17(i), violates the federal Anti-Deficiency Act. (Except. at 4.) The PBC/DCGH further contends that the Mayor's compliance with the arbitration award also violates the Anti-Deficiency Act because it would exceed the District of Columbia Government's budget. Our determination of the PBC/DCGH's obligation with respect to the arbitration award in the exceptions discussed in the text precludes any need to reach these issues.

view, inexplicably maintained that it was not required to accompany its June 1992 submission with a supplemental budget request, it is clear that the statute, as then in effect, did so require, and that the defective submission was the root cause of the Council's failure to act. Teamsters Local, Unions No. 639 and 730 a/w IBTCWHA v. D.C. Public Schools, 43 DCR 6633, Slip Op. No. 400, at p. 6, PERB Case No. 93-U-29 (1996).

We are cognizant of the fact that the relevant provisions of D.C. Code Sec. 1-618.17 which were applicable to our holding in that case have been since amended. At all times material to this case, Section 1-618.17(i)(1) and (2) requires the Mayor, not the agency, to transmit arbitration awards to the City Council and to elect one of several statutorily prescribed means of funding the award.^{4/}

The amendment to D.C. Code Sec. 1-618.17(i), however, did not extinguish the constrained obligation imposed by a final and binding award on a party/employer to identify options to satisfy the award within its budgetary authority.⁵ Satisfaction of this obligation may require the discretionary reprogramming of its budget. In any event, we find the agency has a duty to communicate it to the Mayor. This is a necessary prerequisite to the Mayor's duty to act under D.C. Code Sec. 1-618.17(i).

The Hearing Examiner found the PBC transmitted the award to the Mayor accompanied only by a cost analysis statement. There is no evidence the PBC made any effort to identify funds within its control that could be used to satisfy the award and the consequences of doing so. That was its obligation. The PBC's claim that there are insufficient funds to pay the arbitration award does not address whether previously committed funds could be

^{4/} D.C. Code Sec. 1-618.17(i) was amended on March 17, 1993. Specifically, D.C. Code Sec. 1-618.17(i)(1), in pertinent part, provides: "The Mayor shall transmit all settlements, including arbitration awards, to the Council with a budget request act, a supplemental budget requests act, a budget amendment act, or a reprogramming, as appropriate;... The budget request act, supplemental budget request act, budget amendment act, or reprogramming shall fully fund the settlement for the fiscal year to which it applies."

^{5/} As an independent agency, the PBC negotiates its own compensation agreements and, if necessary, represents itself in any impasse resolution proceeding culminating in final and binding arbitration. See, D.C. Code Sec. 1-618.17(b).

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reprogrammed to meet the award. We find PBC/DCGH's transmittal of the award to the Mayor without providing options for satisfying it violates the legal obligation imposed upon the PBC by the impasse procedures mandated under D.C. Code Sec. 1-618.17.

Until this obligation is fulfilled, we find the Mayor has no obligations under D.C. Code Sec. 1-618.17(i). Therefore, the Mayor did not violate any duty to bargain in good faith because the PBC failed to provide needed information.^{6/} In view of the above, we sustain the Hearing Examiner's finding that the PBC/DCGH failed to meet its statutory obligation under the CMPA to bargain in good faith, but reject the conclusion that the Mayor violated the CMPA.^{7/}

Notwithstanding the PBC/DCGH's failure to discharge its statutory obligation under the CMPA, its contention concerning the impact of the *Health and Hospital Public Benefit Corporation Act of 1996, D.C. Law 11-212 (Act)*, on its duty to bargain merits further discussion. In Doctors Council of the DCGH, et al. v. the PBC and DCGH, Slip Op. No. 539, PERB Case No. 97-U-25 (1998), we held that the Act temporarily relieved the PBC/DCGH of any obligation it may otherwise have under the CMPA to obtain funding for a compensation agreement reached between the parties prior to our determination of appropriate units at the PBC. That decision was based on our holding in Doctors Council of the DCGH v. D.C. General Hospital, et al., Slip Op. No. 525 at p. 5, PERB Case No. 97-U-24 (1997).

^{6/} The impact of the Financial Responsibility and Management Assistance Act (FRMAA) (the legislation that created the Control Board or Authority) is worth noting with respect to its effect on the role of agency heads in this process.^{*} The FRMAA became effective on October 1, 1995, and therefore was in effect at the time the instant arbitration award was issued. Section 203(b)(1) and (2) of the FRMAA requires "the Mayor (or appropriate officer or agent of the District Government)" to submit contracts, including "labor agreements that result from collective bargaining" to the Authority for review in order to determine if the contract is consistent with the financial plan and budget for the respective year. The FRMAA has no impact on the nature or substance of the PBC's obligations under the CMPA. Rather, the review of labor agreements or awards under the FRMAA merely affects to whom the PBC's obligations under D.C. Code Sec. 1-618.17 is directed as between the Mayor and the Authority.

^{7/} The PBC is an independent agency with its own personnel authority. As such, the PBC, not the Mayor, is charged with the responsibility of determining its budget. We make our holding with respect to the Mayor cognizant of these factors.

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There, we held that one intent of the Act, i.e., D.C. Code Sec. 32-262.8(h), relevant to the labor-management program in the District mandates that the PBC be bound by pre-existing collective bargaining agreements of all affected bargaining units at the time they were transferred. Slip Op. at 7.

DCGH and DCNA had commenced negotiations over a new compensation agreement in December 1994, long before their unit of registered nurses was transferred to the PBC/DCGH. The parties exhausted efforts to reach an agreement on March 5, 1996, and on March 28, 1996, invoked the CMPA's impasse proceedings that resulted in the instant arbitration award. See, PERB Case No. 96-I-01. The PBC Act became effective on August 28, 1996. DCGH and other affected agencies were transferred to the jurisdiction of the PBC sometime between September 29 and October 1, 1996. Doctors' Council of the DCGH, et al., Slip Op. No. 525 at p. 4, PERB Case No. 97-U-24. Following the transfer, the PBC assumed and was bound by all the obligations of DCGH. *Id.* This included the completion of the previously invoked statutory impasse resolution process under D.C. Code Sec. 1-618.17. We hold therefore that the PBC was bound to implement bargained terms and conditions of employment reached either by agreement or as result of statutory impasse resolution processes initiated before the transfer of covered employees.

Two factors distinguish Doctors Council of the DCGH, et al., Slip Op. No. 539, PERB Case No. 97-U-25, from this case. In the Doctors Council negotiations for a new compensation agreement --unlike the instant negotiations-- were not completed until after the Act went into effect, i.e., sometime during the first quarter of 1997.^{8/} Moreover, the Doctors Council's compensation agreement excluded all retroactivity prior to October 1, 1997, the period prior to the transfer of employees to the PBC. Doctors Council of the DCGH, et al., Slip Op. No. 539, PERB Case No. 97-U-25 (Hearing Examiner's Report and Recommendation at p. 3.) The compensation provisions contained in the DCNA arbitration award are retroactive to FY94.

No basis exists for excusing the PBC from paying the compensation for years before the Act became effective. We therefore find that upon the issuance of the final and binding arbitration award, the provisions contained therein became the terms and conditions of employment for covered employees for the

^{8/} We note that in both cases at no time during the negotiations for new compensation agreements did the PBC evoke the mandates of the Act as a basis for relieving it of any obligation to continue bargaining or participate in impasse proceedings.

period prior to their transfer to the PBC. As such, the terms contained in the award are those which remain in effect.

In view of the above, we find that the PBC/DCGH failed to meet its obligation under D.C. Code Sec. 1-618.17 and thereby committed unfair labor practices in violation of D.C. Code Sec. 1-618.4(a)(1) and (5). For the reasons discussed, we reject the Hearing Examiner's findings and conclusions that by similar acts and conduct, the Mayor violated the CMPA.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint, with respect to alleged violations by the Office of the Mayor of the District of Columbia (Mayor), is dismissed.
2. The Health and Hospitals Public Benefit Corporation/District of Columbia General Hospital (PBC/DCGH), its agents and representatives shall cease and desist from refusing to bargain in good faith with the District of Columbia Nurses' Association (DCNA) with respect to their arbitrated compensation agreement.
3. The PBC/DCGH shall cease and desist from failing to comply with the requirements of the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.17, with respect to taking steps necessary to satisfy a final and binding arbitrated compensation agreement.
4. The PBC/DCGH shall take the necessary steps to enable compliance with the requirements of D.C. Code Sec. 1-618.17(i) with respect to the compensation portion of the arbitration award with DCNA, by re-transmitting the arbitration award to the District of Columbia Financial Responsibility and Management Assistance Authority or the Mayor with either fiscal options or alternatives for satisfying the award, which may include: (1) any necessary reprogramming of previously committed funds over which the PBC maintains legal discretion to spend and (2) supplemental budget request.
5. PBC/DCGH shall, within ten (10) days from the service of this Decision and Order, post for thirty (30) consecutive days the attached Notice, dated and signed, conspicuously on all bulletin boards where notices to these bargaining-unit employees are customarily posted.

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6. DCGH/PBC shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, that the Notice has been posted accordingly and what steps it has taken to comply with paragraph 4 of this Order.

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

October 21, 1998



Public
Employee
Relations
Board

Government of the
District of Columbia

415 Twelfth Street, N.W.
Washington, D.C. 20004
[202] 727-1822/23
Fax: [202] 727-9116



NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA HEALTH AND HOSPITALS PUBLIC BENEFIT CORPORATION, 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. 565, PERB CASE NO. 95-U-03 (OCTOBER 21, 1998).

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 District of Columbia Nurses Association (DCNA) by failing to fully discharge our obligations under the impasse resolution provisions of the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.17.

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.

District of Columbia Health and
Hospitals Public Benefit
Corporation

Date: _____ By: _____
General Manager/
Chief Operating Officer

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: 717-14th Street, N.W. 11th Floor, Washington, D.C. 20004. Phone: (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
November 9, 1998