

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**

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In the Matter of:	)	
	)	
Doctors' Council of the District of Columbia General Hospital,	)	
	)	
Complainant,	)	
	)	PERB Case No. 97-U-25
v.	)	Opinion No. 539
	)	
District of Columbia General Hospital,	)	
	)	
and	)	
	)	
Health and Hospital Public Benefit Corporation,	)	
	)	
Respondents.	)	
	)	

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DECISION AND ORDER

The background and issues underlying this case are set out by the Hearing Examiner in his Report and Recommendation.<sup>1/</sup> The Hearing Examiner found that the Respondent District of Columbia General Hospital (DCGH), committed unfair labor practices proscribed by the Comprehensive Merit Personnel Act, as codified under D.C. Code § 1-618.4(a)(2), (3) and (5).<sup>2/</sup> Specifically, the Hearing Examiner found that DCGH interfered with the existence of the Complainant Doctors' Council of D.C. General Hospital (DCDCGH) by providing unlawful assistance to a rival labor organization, Doctors' Council of the District of Columbia (DCDC). The Hearing Examiner further found that DCGH unlawfully discriminated against the medical officers represented DCDCGH in order to discourage

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<sup>1/</sup> The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion.

<sup>2/</sup> DCGH was succeeded in interest by the Health and Hospital Public Benefit Corporation on October 1, 1997, pursuant to D.C. Act 11-388, "Health and Hospitals Public Benefit Corporation Emergency Act of 1996".

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their continued representation by DCDCGH. The Hearing Examiner determined this was done by failing to provide DCDCGH medical officers wage parity comparable with the medical officers represented by DCDC. Finally, in furtherance of its unlawful conduct, the Hearing Examiner concluded that DCGH failed to exercise good faith in its unsuccessful attempt to fund the compensation agreement with the Complainant DCDCGH that would have provided said wage parity.

Based on his findings and conclusions, the Hearing Examiner, in addition to the traditional cease and desist order, recommended the following affirmative relief: (1) DCGH shall meet its contractual agreement with the Complainant; (2) DCGH make whole employees for the loss of wage parity adjustments to which they were entitled by computing the value of such payments from October 1996, with interest; and (3) DCGH shall reimburse Complainant its costs for pursuing this case. No Exceptions to the Hearing Examiner's Report and Recommendation were filed by either party.

Pursuant to D.C. Code § 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings and conclusions of the Hearing Examiner. Although we find the Hearing Examiner's findings of fact to be supported by the record, we reject several of the Hearing Examiner's conclusions as contrary to our holding in DCDCGH v. DCGH and DCDC and HHPBC, Slip Op. 525, PERB Case No. 97-U-24 (1997).

Critical to the determination of a violation of the asserted unfair labor practices is the meaning and application of Sec. 32-262.8(h) of the Health and Hospital Public Benefit Corporation Act of 1996, D.C. Law 11-212 (Act), to the facts of this case. Pursuant to this Act, public health clinic medical officers represented by DCDC under the Department of Human Services (DHS) were reorganized, along with DCGH medical officers, under the newly created Health and Hospital Public Benefit Corporation (PBC). As an accommodation, DCGH assumed interim administrative control of all medical officers during the period the PBC required to organize itself. In PERB Case No. 97-U-24, Slip Op. No 525, we held that under the Act, "notwithstanding the transfer of [DCDC] medical officers to [DCGH's] authority, [DCGH] was legally obligated under the Act to continue recognizing the collective bargaining representative (i.e., DCDC), and the collective bargaining agreement of DHS medical officers prior to their transfer." Slip Op. at 4.

DCDC medical officers earn appreciably more in salary than

DCGH medical officers.<sup>3/</sup> Thus, as a result of the reorganization, a wage disparity existed between two units of medical officers now employed by a single agency, i.e., DCGH. DCGH's failure to take any action to bring the DCDCGH medical officers' salaries in line with the DCDC medical officer is the basis of the Hearing Examiner's finding that DCGH unlawfully discriminated against the DCDCGH medical officers in violation of D.C. Code Sec. 1-618.4(a)(3).

Quoting the Act, we stated in PERB Case No. 97-U-24 the following:

The Act, however, requires '[t]he Corporation [to] assume and be bound by all existing collective bargaining agreements with labor organizations that have been duly certified by the District of Columbia Public Employee Relations Board to represent employees transferred to the Corporation until successor agreements have been negotiated.' D.C. Code Sec. 32-262.8(h). D.C. Code Sec. 32-262.8(j) provides that '[w]ithin 120 days of the first meeting of the Board, in accordance with Sec. 32-262.4(h), the District of Columbia Public Employee Relations Board shall investigate and render determinations regarding the establishment of the appropriate unit for working conditions and compensation within the Corporation and, pursuant to applicable statutory and regulatory provisions, certify labor organizations as the exclusive bargaining agents for these units.' This section further provides that '[n]egotiations between the Corporation and the labor organizations that have been certified to represent its employees shall commence not later than 180 days after the first meeting of the Corporation's Board of Directors.'

We concluded in PERB Case No. 97-U-24 that "the Act

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<sup>3/</sup> DHS medical officers were formerly under the personnel authority of the Mayor when their salary was last negotiated. DCGH medical officers negotiated their salary under the separate and independent personnel authority of the D.C. General Hospital Commission. Hence, the disparity. As a result of the reorganization, future salary negotiations for these two units of medical officers will be with a single personnel authority. Whether or not these two units of medical officers will remain distinct and what labor organization(s) will represent them are issues currently pending disposition in PERB Case Nos. 97-UM-05 and 97-CU-02.

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contemplated unit determinations and attending certifications of bargaining unit representatives by the Board prior to the commencement of bargaining with the PBC." (Emphasis added.) Slip Op. 7. These unit determinations are currently pending imminent disposition by a hearing examiner. We find that our holding in PERB Case No. 97-U-24 extends to the facts of this case and was controlling during DCGH's interim operational administration of the PBC.

Thus, DCGH, like the PBC, was under no obligation to alter the contractual terms and conditions of employment of PBC bargaining unit employees as existed at the time of their transfer into the PBC. This includes the salaries, albeit disparate, of the former DHS and DCGH medical officers. In our view, the intent of this mandate was to maintain the status quo of affected bargaining unit employees in the interest of achieving a degree of labor-management stability during the transitional period following the establishment of the PBC.

In light of the above, we must reject the Hearing Examiner's findings that DCGH/PBC violated the CMPA by its failure unilaterally to effect wage parity during the transitional period. Therefore, notwithstanding its motive, DCGH has no legal duty to change employee compensation. As a result, under these facts, the Act precludes the finding of a violation of the CMPA by DCGH's failure to afford DCDCGH medical officers wage parity with DCDC medical officers prior to our determination of appropriate units at the PBC.

However, the record supports the conclusions that DCGH improperly interfered with the existence of the Complainant by displaying a bias against the Complainant at a time when unit determinations and certification of bargaining representatives at the PBC remained pending before the Board. In so finding, we adopt the Hearing Examiner's conclusion that DCGH/PBC committed unfair labor practices in violation of D.C. Code Sec. 1-618.4(a)(2). We note, however, that the unlawful conduct by DCGH/PBC consists of its less than even-handed treatment of the Complainant, DCDCGH, not its assistance to DCDC as found by the Hearing Examiner. (R&R at 6.) See, International Brotherhood of Correctional Officers/National Association of Government Employees, SEIU, AFL-CIO v. D.C. Department of Corrections, 43 DCR 5147, Slip Op. No. 470, PERB Case No. 95-U-23 (1996). DCGH's conduct is unlawful because it disparaged the Complainant DCDCGH, not because it had a constructive collective bargaining relationship with Complainant's rival, DCDC. We further find that by engaging in such conduct during this period, DCGH/PBC has improperly interfered with employees' right of free choice under D.C. Code § 1-618.6(a)(1) and (2) in violation of D.C. Code § 1-

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618.4(a)(1). In all other respects the Complaint is dismissed.

With respect to the Hearing Examiner's recommended reimbursement of Complainants' costs, in view of our disposition of this case, we find that the interest-of-justice criteria articulated in American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2776 v. D.C. Department of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990), does not warrant the adoption of such extraordinary relief.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia General Hospital/Health and Hospital Public Benefit Corporation (DCGH/PBC), its agents and representatives shall cease and desist from interfering, restraining or coercing its employees in the exercise of rights guaranteed by the Labor-Management sub-chapter of the Comprehensive Merit Personnel Act (CMPA) by failing to accord the Doctors Council of the District of Columbia General Hospital (DCDCGH), comparable treatment to that of a rival bargaining representative, Doctors Council of the District of Columbia, National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO, (DCDC).
2. DCGH/PBC, its agents and representatives shall cease and desist from interfering, restraining or coercing its employees by engaging in acts and conduct that abrogate employees' rights guaranteed by the Labor-Management sub-chapter of the CMPA to organize, form, join, or assist any labor organization, and bargain collectively through representatives of their own choosing.
3. DCGH/PBC shall cease and desist from dominating, interfering, or assisting in the formation, existence or administration of any labor organization by failing to accord the Complainant comparable access to the Respondent with respect to labor-management relations as that accorded to its rival, DCDC, during the period that the determination of appropriate bargaining units at DCGH/PBC remain pending before the Board (pursuant to the Health and Hospital Public Benefit Corporation Act of 1996, D.C. Law 11-212 (Act)).
4. DCGH/PBC, its agents and representatives shall cease and desist from interfering, restraining or coercing, in any like or related manner, employees represented by DCDCGH in the

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exercise of rights guaranteed by the Labor-Management sub-chapter of the CMPA.

5. DCGH/PBC shall, within ten (10) days from the service of this Decision and Order: (1) 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; and (2) send a copy of said Notice to bargaining unit employees represented by DCDCGH and DCDC.
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 written statement has been issued and the Notice has been posted and sent accordingly.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Washington, D.C.

February 20, 1998

CERTIFICATE OF SERVICE

This is to certified that the attached Decision and Order in PERB Case 97-U-25, Slip Op. No. 539, was mailed (U.S. mail) to the following parties on the 20<sup>th</sup> day of February, 1998.

David R. Levinson, Esq. U.S. Mail  
1835 K Street, N.W. Suite 950  
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Stephen Cook U.S. Mail  
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D.C. General Hospital  
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Washington, D.C. 20003

Courtesy Copies:

Robert Perry  
Hearing Examiner  
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Silver Spring, Maryland 20906

Carmel P. Ebb  
4532 Broad Branch Road, N.W.  
Washington, D.C. 20008

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Sheryl Harrington  
Secretary/Receptionist



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 HOSPITAL BENEFIT CORPORATION AND THE DISTRICT OF COLUMBIA GENERAL HOSPITAL, 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. 539, PERB CASE NO. 97-U-25 (February 20, 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 interfering, restraining or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act (CMPA) to freely: (a) form, join, or assist any labor organization and (b) bargain collectively through representatives of their own choosing.

WE WILL cease and desist from dominating, interfering, or assisting in the formation, existence or administration of any labor organization by failing to accord the Doctors Council of the District of Columbia General Hospital comparable access to the Respondent as that accorded to its rival, Doctors Council of the District of Columbia, with respect to matters of labor-management relations prescribed under the CMPA.

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.

Health and Hospital Public Benefit  
Corporation

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Chairperson

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District of Columbia General  
Hospital

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. 20004. Phone: (202) 727-1822.

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

February 20, 1998



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Employee  
Relations  
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Health and Hospital Public Benefit  
Corporation

Date: \_\_\_\_\_ By: \_\_\_\_\_

NOTICE

PERB Case No. 97-U-25

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Washington, D.C.

February 20, 1998