GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: Glendale Hoggard, Complainant, v. District of Columbia Public Schools, Respondent.	PERB Case No. 95-U-20 Opinion No. 496

DECISION AND ORDER

The background and issues underlying this case are set out by the Hearing Examiner in his detailed Report and Recommendation.[1/] The Hearing Examiner found that Complainant Glendale Hoggard, a former employee of the District of Columbia Public Schools (DCPS), did not establish that DCPS had refused to rehire him, i.e., taken reprisals against him, because he had engaged in activity protected under the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. § 1-618.4(a)(4). (R&R at 19.)[2/]

Based on his findings, the Hearing Examiner recommended that the Complaint be dismissed. On September 5, 1996, Complainant's counsel filed Exceptions to the Hearing Examiner's Report and Recommendation.

[1/] The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion.

[2/] The Complainant also attempted to litigate a claim that DCPS had refused to renew his employment because of his union activities in violation of D.C. Code § 1-618.4(a)(3). The Hearing Examiner, however, dismissed this claim as untimely pursuant to Board Rule 520.4. (R&R at 12.) The Board had previously affirmed the administrative dismissal of this claim as untimely in Glendale Hoggard v. D.C. Public Schools and the American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO, 43 DCR 1297, Slip Op. No. 352, PERB Case No. 93-U-10 (1993). Complainant appealed the Board's Order which was ultimately affirmed by the D.C. Court of Appeals. Hoggard v. PERB, 94-CV-198 (March 2, 1995).

Complainant's Exceptions are actually his assessment of the evidence to support conclusions he believes should be drawn. Such exceptions merely disagree with the probative value and significance the Hearing Examiner accorded certain evidence over other evidence on order to support his conclusions. Based on his assessment of the evidence, the Complainant also takes issue with the Hearing Examiner's conclusion that he failed to meet his burden of proof.[3]/ The Hearing Examiner's conclusions, however, are

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[3]/ With respect to his burden of proof, Complainant contends that he has satisfied the two-part test of Wright Line, applied by the Hearing Examiner, to support the finding of a violation. The Wright Line standard was developed as a rule for allocating the burdens of proof to determine the existence of an unfair labor practice violation where mixed or dual motives exist, i.e., prohibited and non-prohibited, for actions taken by employers against their employees. See, Wright Line, Inc., 250 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 US 989 (1982). The Board has adopted this approach in apportioning the parties' burden to determine whether a violation has been established. Charles Bagenstose and Dr. Joseph Borowski v. District of Columbia Public Schools, 35 DCR 415, Slip Op. No. 270, PERB Case No. 88-U-33 and 88-U-34 (1991)

Under the Wright Line analysis, the Board has observed as follows:

> ... the Complainant's "prima facie showing creates a kind of presumption that the unfair labor practice has been committed." Id. at 905. Once the showing is made the burden shifts to the employer to produce evidence of a non-prohibited reason for the action against the employee. This burden however, does not place on the employer the onus of proving that the unfair labor practice did not occur. Rather, the employer's burden is limited to a rebuttal of the presumption created by the complainant's prima facie showing. The First Circuit in Wright Line articulated this standard as "producing evidence to balance, not [necessarily] to outweigh, the evidence produced by the general counsel." Id.
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> Green v. D.C. Dept. of Corrections, 41 DCR 5991, 5993, Slip Op. No. 323, at p. 3, PERB Case No. 91-U-13 (Supp. Dec.)(1994).

While Complainant may have made a prima facie showing that DCPS' decision not to hire him was motivated by reasons proscribed under the asserted unfair labor practice, the Hearing Examiner

(continued...)

supported by evidence contained in the record. The evidence supporting Complainant's contentions, while also part of the record, was considered and rejected by the Hearing Examiner.

Challenges to a Hearing Examiner's findings based on competing evidence do not give rise to a proper exception where, as here, the record contains evidence supporting the Hearing Examiner's conclusion. See, Clarence Mack v. D.C. Dept. of Corrections, Slip Op. No. 467, PERB Case No. 95-U-14 (1996) and American Federation of Government Employees, Local 872 v. D.C. Dept. of Public Works, 38 DCR 6693, Slip Op. No. 266, PERB Cases Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). Issues concerning the probative value of evidence are reserved to the Hearing Examiner. See, e.g., University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, 39 DCR 6238, Slip Op. No. 285, PERB Case No. 86-U-16 (1992) and Charles Bagenstose, et al. v. D.C. Public Schools, 38 DCR 4154, Slip Op. No. 270, PERB Cases Nos. 88-U-33 and 88-U-34 (1991). Therefore, we find no basis for Complainant's Exceptions.

Pursuant to D.C. Code § 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings and conclusion of the Hearing Examiner and find them to be reasonable and supported by the record. We therefore adopt the recommendation of the Hearing Examiner that the Complaint be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

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

November 7, 1996

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[3](...continued)
concluded that Respondent DCPS presented sufficient evidence of a legitimate reason to rebut any such showing. Complainant's exceptions merely disagrees with the Hearing Examiner's findings in this regard. As discussed in the text, disagreement with a hearing examiner's findings of fact based on competing evidence is not a basis for an exception.