GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

Doctors Council of the District of Columbia General Hospital,

Complainant,

v.

District of Columbia General Hospital,

Respondent,

Doctors Council of the District of Columbia, National Union of Hospital and Healthcare Employees, American Federation of State, County and Municipal Employees, AFL-CIO,

and

District of Columbia Health and Hospitals Public Benefit Corporation,

Intervenors.

PERB Case No. 97-U-24
Opinion No. 525

Motion to Dismiss and Motion for Judgment on the Pleadings

DECISION AND ORDER

On June 18, 1997, the Doctors Council of the District of Columbia General Hospital (Complainant) filed an Unfair Labor Practice Complaint, in the above-referenced case. The Complainant charges the Respondent District of Columbia General Hospital (DCGH)

with violating the Comprehensive Merit Personnel Act (CMPA), by failing to recognize or bargain upon demand with Complainant as the exclusive bargaining representative of certain medical officers transferred from the D.C. Department of Human Services, Commission of Public Health to the employment of DCGH. The Complainant asserts that DCGH's conduct constitutes an unfair labor practice as codified under D.C. Code Sec. 1-618.4(a)(5).

On July 7, 1997, the Doctors Council of the District of Columbia, National Union of Hospital and Healthcare Employees, American Federation of State, County and Municipal Employees, AFL-CIO (DCDC) filed a Motion to Intervene based on its contention that it is the certified representative of the disputed medical officers. DCDC's Motion to Intervene was accompanied by a Motion to Dismiss. DCGH filed an Answer to the Complaint on July 8, 1997, denying the acts and conduct alleged in the Complaint constitute any unfair labor practice under the CMPA. On August 18, 1997, the Complainant filed a document styled "Motion for Judgement on the Pleadings, or, in the Alternative, Request for Preliminary Relief".

No objection was made to DCDC's Motion to Intervene and pursuant to Board Rule 501.15 it was granted. Thereafter, in response to the Board's investigation, supplemental pleadings and supporting documentation concerning the issues raised by the Complainant allegations were filed by DCDC. In addition, an Opposition to the Motion for Judgement on the pleadings was filed by the D.C. Health and Hospitals Public Benefit Corporation (PBC).[1]/

The Board, after reviewing the pleadings and applicable authority, and considering the Motions and Responses thereto, finds that the alleged violations do not present an issue of fact but rather turns on a question of law. Therefore, pursuant to Board Rule 520.10, this case can appropriately be decided on the pleadings. We find, under applicable provisions of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996, that DCGH's acts and conduct do not constitute an unfair labor practice under the CMPA. Therefore, for the reasons discussed below, we: (1) grant DCDC's Motion to Dismiss; (2) deny the Complainant's Motion and; (3) request for preliminary relief, and dismiss the Complaint.

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[1]/For the reasons stated in the PBC's Motion for an enlargement of time and the lack of any objection, DCGH's Opposition to Complainant's "Motion for Judgement on the Pleadings or in the Alternative Preliminary Relief", is accepted for filing. Additionally, on our own motion, we permit the PBC to intervene in these proceedings pursuant to Board Rule 501.14.

The Health and Hospitals Public Benefit Corporation Emergency Act of 1996, became effective on August 28, 1996 as D.C. Act 11-388. Provisions of D.C. Act 11-388 relevant to the facts of this case remained effective and were maintained through a series of emergency act amendments. The pertinent provisions of the Emergency Act of 1996 now exist as part of the Health and Hospitals Public Benefit Corporation Act of 1996, D.C. Law 11-212, effective April 9, 1997 (Act). To avoid confusion and in the interest of consistency, we cite D.C. Law 11-212, as codified under D.C. Code Sec. 32-261.1, et seq., when quoting relevant provisions of this law.

The Act created the Public Benefit Corporation (PBC) as a separate legal entity within the District of Columbia government. D.C. Code Sec. 32-262.2. The purpose of the PBC is to provide comprehensive community-centered health care and medical treatment for residents of the District of Columbia. To achieve this objective the Act mandated that "the health care functions presently performed by the D.C. General Hospital and the community clinics of the Commission of Public Health of the Department of Human Services must be transferred to the public benefit corporation." D.C. Code Sec. 32-261.1. The Act directed the PBC to "expeditiously as possible" assume management and control over the functions of DCGH and the community health clinic.[2]/ D.C. Code Sec. 32-262.7.

The uncontroverted facts of this case are as follows. The Complainant is the certified bargaining representative of a unit of "[a]ll qualified medical officers (physicians, dentists and podiatrist) employed by the District of Columbia General Hospital." Doctors Council of D.C. General Hospital and the District of Columbia General Hospital, Certification No. 30, PERB Case No. 83-R-11 (1985). This unit currently consists of approximately 183 medical officers. (Mot. for J.O.P at 3.) The Complainant asserts that on May 30, 1997, it made a written demand to bargain and be recognized as the exclusive representative of approximately 80 medical officers who were transferred to DCGH from the public health clinics formerly operated by the Department of Human Services (DHS), Commission of Public Health (DHS). Comp. at 2; Mot. For J.O.P. at 3).[3]/ DCDC is the certified bargaining

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[2]/The Bureau of Dental Health Services, Bureau of Maternal and Child Care Administration, and certain function of the Long-Term Care Administration were also transferred to the PBC under the Act.

[3]/It appears that the Complainant had made a prior written

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representative of a unit of "[a]ll dentists, physicians and podiatrists" employed by the District of Columbia Department of Human Services" which includes the transferred medical officers. Doctors Council of the District of Columbia and The District of Columbia Government (Department of Corrections and Department of Human Services), Certification No. 42, PERB Case No. 84-R-12 (1987).

The asserted transfer of these medical officers, who continued to work at their respective public health clinics, occurred sometime between September 29 and October 1, 1996. (Comp., Attach. A and Mot. to Int. at 2.) The Complainant asserts that as the certified exclusive bargaining representative of all medical officers employed by DCGH, DCGH is obligated to recognize as well as bargain upon request with the Complainant over the transferred medical officers' terms and conditions of employment. DCGH does not dispute that it refused to recognize or bargain with the Complainant as the bargaining representative of the health clinic medical officers. DCGH asserts that, notwithstanding the transfer of these medical officers to its authority, it 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. We agree.

We state from the outset that the transfer of individual employees from the employment of one agency or agency sub-component to another ordinarily results in the employee(s) being placed in any established bargaining unit that may exist in that agency or agency sub-component to which they are transferred. Should the transferred employee(s) fall under the unit description of an existing bargaining unit, the employee(s) would be subject to the exclusive representation of the duly recognized labor organization(s) for that unit as well as any effective collective bargaining agreement. Absent any superceding law, any failure by an agency to bargain upon request or recognize such a labor organization as the representative of employees transferred into its collective bargaining unit would constitute a violation of the duty to bargain under the CMPA as codified under D.C. Code Sec. 1-618.8(a)(5).

The Act, however, requires "[t]he Corporation [to] assume and be bound by all existing collective bargaining agreements with

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[3](...continued)
demand to be recognized as the representative of the disputed medical officers as early as October 7, 1996, shortly after these employees were transferred from DHS to DCGH. (DCDC, Exh. 1)

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."

The plain meaning of Sec. 32-262.8(h) allows all affected bargaining units and their certified representative to survive their transfer to the PBC. The Act, however, did not anticipate the time it would take for the PBC to become operational and, thereby, capable of assuming autonomous authority over the functions and personnel formerly held by these agencies.[4]/ Apparently, in an effort to comply with the Act's mandate to assume management and control of DCGH and the DHS clinics as "expeditiously as possible", on November 1, 1996, DCGH entered into an agreement with DHS to assume interim operational authority over the DHS clinics during the period the PBC required to organize itself before it could assume direct control. (Mot./J.O.P., Exh. 1.) The transfer of the DHS clinics was implemented under the dictates of the Act. DCGH's operational authority over the clinics and, consequently, its medical officers, also stemmed from the Act. Therefore, in our view, the nature of DCGH's authority over the clinic personnel can be no greater than the PBS's authority. As such, DCGH was subject to the same constraints as the PBS with respect to maintaining pre-existing agreements with pre-existing labor organizations. The agreement between DCGH and DHS reflects that DCGH's authority over the clinics was to some extent circumscribed and, in some respect, remained jointly held with

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[4]/Apparently, the delay was largely due to the time necessary for the PBC Board of Directors to prepare and submit an operational and organizational plan and have it approved by the District Council and the D.C. Financial Responsibility and Management Assistance Authority. (Op. to the J.O.P. at 3.)

DHS.[5]/ Whatever the precise nature of DCGH's authority over the clinics and their medical officers, the Act rendered it clearly transiently held on behalf of the PBC.[6]/

Further frustrating the time targets of the Act was the Board's incapacity to make appropriate bargaining unit determinations within the prescribed 120 days pursuant to Sec. 32-

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[5]/Under the agreement between DCGH and DHS, which specified the responsibilities and obligations of DCGH with respect to the CPH clinics, primary responsibility for the continued operation of the clinics was placed in the Executive Director of DCGH. However, DHS/CPH's budget was the source of funding the operation of the clinics. DCGH was required to submit quarterly reports concerning the utilization of the clinics. Moreover, DHS/CPH maintained, jointly with DCGH, control over any alteration in the operation of the clinics. (Memo. Supp. J.O.P., Exh. 1.)

[6]/The Complainant asserts that D.C. Code Sec. 32-262.8(h) "simply states that existing PERB certifications are controlling on the PBC." Therefore, the Complainant argues, the Act does not permit DCGH to unilaterally amend its and DCDC's certifications by removing "clinic-based medical officers employed by DCGH out of [its] certification" and placing "medical officers employed by DCGH to the certification of DCDC." (Mot. J.O.P. at 4.) While we agree with the Complainant's interpretation of Section 32-262.8(h), its argument is misdirected.

DCGH's actions in recognizing both the Complainant and DCDC as the representative of DCGH-based medical officers and clinic-based medical officers, respectively, is not driven by discretion but is required under the Act. As we noted in the text, DCGH's authority is derived from the PBC which in turn stems from the Act. DCGH stood in the PBC's shoes when it received the public health clinics and their medical officers under its management and control. Therefore, DCGH was similarly subjected to the dictates of the Act requiring the PBC to "be bound by all existing collective bargaining agreements with labor organizations that have been duly certified by the [Board]." In other words, pursuant to Section 32-262.8(h), all employees covered by collective bargaining agreements that were transferred to the PBC, vis-a-vis, DCGH, maintain their terms and conditions of employment under those agreements until the provisions of D.C. Code Sec. 32-262.8(j) are met. Thereafter, the duty to bargain with labor organizations on behalf of their respective appropriate PBS units will inure to labor organizations certified to represent them as determined pursuant to Section 32-262.8(j). As noted these determinations are currently the subject of the proceedings in PERB Case Nos. 97-UM-05 and 97-CU-02.

262.8(j).[7]/ The parties were made well aware during the processing of that case, i.e., PERB Case Nos. 97-UM-05 and 97-CU-02, that unexpected budgetary problems precluded the holding of hearings, a necessary prerequisite to making the instant bargaining unit determinations. The hearing in that matter is currently on-going and a disposition will be made in due course. In our view the time table under the Act contemplated unit determinations and attending certifications of bargaining unit representatives by the Board prior to the commencement of bargaining with the PBC.

Turning to the asserted violation, we find that DCGH's authority, with respect to the former DHS community health clinic medical officers transferred to its management and control, arose from the Act and therefore was subject to the same dictates conferred by the Act on the PBC. Consequently, DCGH remained similarly obligated to "assume and be bound by all existing collective bargaining agreements with labor organizations" until the Board "render[ed] determinations regarding the establishment of appropriate units ... and certif[ied] labor organizations as the exclusive bargaining agents for these units." D.C. Code Sec. 32-262.8(h) and (j).[8]/ In this regard, the Act relieved the PBC, and thereby DCGH, of any duty it may have otherwise had to recognize and/or bargain with the Complainant, with respect to the transferred community health care medical officers, notwithstanding the Complainant's status as the certified representative of all DCGH medical officers. This conclusion is mandated by the Act since a pre-existing collective bargaining agreement covered the transferred medical officer at the time they were transferred.

Therefore, in view of the above, a violation of the duty to bargain, as codified under D.C. Code Sec. 1-618.8(a)(5), cannot lie

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[7]/Our investigation in PERB Case No. 97-UM-05 and 97-CU-02 revealed that the first meeting of the PBC's Board of Directors occurred on December 17, 1996. Pursuant to D.C. Code Sec. 32-262.8(h), the Board would have made a determination within 120 days of that date, i.e., April 16, 1997. Unfortunately, due to a 33% cut in our FY 97 budget, the Board was unable to schedule a hearing until September 5, 1997.

[8]/The PBC assumed actual management and control of the functions of the agencies placed under it on October 1, 1997. It now continues in this posture of maintaining the status quo until the requirements of D.C. Code Sec. 32-262.8(j) are satisfied, i.e., the disposition of PERB Case Nos. 97-UM-05 and 97-CU-02.(Op. to J.O.P, Attach. 2.)

under the facts and applicable laws of this case.[9]/ See, e.g., University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, Slip Op. No. 485, PERB Case No. 96-U-14 (1996)and D.C. Council 20, American Federation of State, County and Municipal Employees, AFL-CIO, et al. v. Government of the District of Columbia, et al., 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion to Dismiss is granted; the Motion for Judgement on the Pleadings or in the alternative Request for Preliminary Relief is denied.

2. Complaint is dismissed.

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

November 18, 1997

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[9]/We note that the transfer of the community health clinics to DCGH pursuant to the Act was not merely the transfer of employees, but rather a reorganization of several DHS sub-components under a another agency. Notwithstanding whether the receiving agency is deemed to be DCGH or the PBC, under a reorganization of two or more agencies, the absorption of whole bargaining units under agency components that remain substantially intact after a reorganization by existing bargaining is not necessarily compelled. If not provided by the Act, such a reorganization would support the basis for a unit modification petition by the agency or any affected labor organization. Board Rule 504. In view of our disposition, we not reach this issue under these facts.

CERTIFICATE OF SERVICE

This is to certified that the attached Decision and Order was hand-delivered and/or mailed (U.S. mail) to the following parties on the 18th day of November, 1997.

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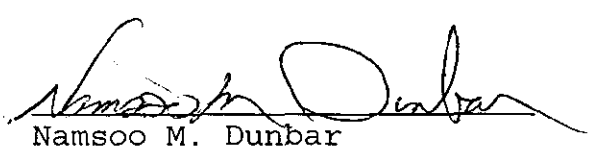

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