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

In the Matter of:)	
)	
UNIONS IN COMPENSATION UNIT 21,)	
AFSCME, LOCAL 2097,)	PERB Case No. 99-U-37
IBPO, LOCAL 446 and AFGE,)	
Local 631)	
)	
)	
)	Opinion No. 659
)	
Complainants,)	
)	
)	
v.)	
)	
DISTRICT OF COLUMBIA)	
HEALTH AND HOSPITALS PUBLIC)	
BENEFIT CORPORATION)	
)	
Respondent.)	

DECISION AND ORDER

This matter involves an Unfair Labor Practice Complaint (Complaint) filed by the three labor organizations which comprise Compensation Unit 21 (Complainants).¹ The Complainants contend

¹Compensation Unit 21 consists of the three following unions:

- International Brotherhood of Police Officers, Local 446 - security guards;
- American Federation of Government Employees, Local 631 - skilled trade wage grade employees; and
- American Federation of State, County, and Municipal Employees, Local 2097- non-skilled trade wage grade employees.

These three units were established as a single compensation unit pursuant to the Board's decision in District of Columbia Health and Hospitals Public Benefit Corporation and all

(continued...)

that the District of Columbia Health and Hospitals Public Benefit Corporation² ("PBC" or "Respondent") violated D.C. Code § 1-618.4 (a)(1) and (5). (Compl. at p.5) Specifically, the Complainants allege that the PBC violated the Comprehensive Merit Personnel Act (CMPA) by failing to: (1) generate and provide cost and funding information to the District of Columbia Financial Responsibility and Management Assistance Authority ("Authority" or "Control Board"); (2) generate and provide cost and funding information to the Complainants; and (3) implement the parties' negotiated compensation agreement ("Agreement" or "Contract"). (Compl. at p.5) The relief sought by the Complainants includes: (1) implementation of the negotiated wage increases, retroactively with backpay and interest; and (2) providing cost and funding information to the Control Board and the Complainants. (Compl. at p.6)

The Respondent denies the allegations. The PBC asserts that it has submitted the requested information to both the Control Board and the Complainants. (R & R at p.8) Furthermore, it claims that it has performed all of the necessary acts required to get the contract approved. (R & R at p. 8) Moreover, it contends that it cannot do anything further until the Control Board approves the agreement.³ (R & R at p. 8)

A hearing was held. The Hearing Examiner found that the PBC committed an unfair labor practice by failing to: (1) implement the negotiated compensation agreement and (2) promptly deliver the cost and funding information to the Control Board. (R & R at p. 10, 12) In addition, the Hearing Examiner determined that the PBC did *not* commit an unfair labor practice by failing to promptly deliver cost and funding information to the Complainants. (R & R at p. 13) The Hearing

¹(...continued)

Unions..., 45 DCR 6743, Slip Op. No. 559, PERB Case Nos. 97-UM-06 and 97-CU-02 (1998).

²The Health and Hospitals Public Benefit Corporation was created by the Health and Hospitals Public Benefit Emergency Act of 1996 (D.C. Act 11-388), provisions of which remained effective through a series of additional emergency acts (D.C. Acts 11-421, 11-487, and 12-39). The permanent legislation [Health and Hospitals Public Benefit Corporation Act of 1996] D.C. Law 11-212 was approved by the U.S. Congress and became effective on April 9, 1997. This law is codified at D.C. Code §32-261 *et. seq.*(R &R at 2)

³At the hearing, the PBC argued that throughout the negotiations it believed that the PBC had the final legal authority to implement the compensation agreement pursuant to D.C. Code §32-262.8(b). This section provides that the Corporation [PBC] "shall have sole authority with respect to the development and approval of compensation agreements." (R &R at 2) However, the PBC stated that it decided to cooperate with the Control Authority because it did not want to legally challenge the Control Board's authority. (R &R at 10)

Examiner's Report & Recommendations (R & R) and the Parties' Exceptions and Opposition are before the Board for disposition.

After the Report and Recommendation was issued in this matter, the PBC was abolished through the Health Care Privatization Amendment Act of 2001(" Heath Care Act"). As a result, the Unions contend that the District of Columbia has an obligation to pay based on §5 of the Health Care Act⁴. The Respondent contends that since the PBC was abolished, the District of Columbia is not required to pay for any remedy involving the former PBC.

The Board initially considered this matter on May 15, 2001 and decided to hold the matter in abeyance for thirty days (30). In addition, the Board ordered the parties to brief six issues⁵ concerning, *inter alia*, the status of former PBC employees and what would be an appropriate remedy should the Board find that an unfair labor practice was committed.⁶

⁴This section provides that the District of Columbia Government will assume liability for the former PBC's financial obligation under certain circumstances.

⁵See, Comp Unit 21 v. PBC, Slip Op. No. 653, PERB Case No. 99-U-37 (2001). This decision was issued by the Board on May 22, 2001.

In their supplemental submission, the Unions suggest that the Board's questions would not have been necessary had the Board decided this case prior to May 2001 (and before the PBC closed). However, the Board finds that our timing in rendering this decision is of no consequence, since we would still have to consider the same issues regarding implementation of the negotiated agreement.

⁶In response to the questions posed by the Board, the parties' submissions indicate the following: The Control Board and Congress made a finding that the PBC was operating in a budget deficit. As a result, they determined that the District of Columbia's public healthcare system should be restructured. To accomplish the restructuring, the Control Board drafted legislation (Health Care Privatization Amendment Act of 2001) which abolished the PBC, effective April 30, 2000. Pursuant to the Health Care Privatization Amendment Act of 2001 ("Health Care Act") approximately 1600 former PBC employees were transferred to the District of Columbia Department of Health ("DOH") on April 30, 2001, and assigned to a division called the Health Care Safety Net Administration. It is planned that the majority of these employees will remain employed by the DOH until July 14, 2001, the effective date of the Reduction in Force. The remaining employees, approximately 167, will remain at DOH to complete transition activities until December of 2001. Both parties agree that the negotiated agreement has not been approved by the Control Board. See, Comp Unit 21 v. PBC, Slip Op. No. 653, PERB Case No. 99-U-37 (2001)

After reviewing the record in this case, including the parties' supplemental briefs, we have determined that under normal circumstances, we would find that the PBC committed an unfair labor practice, both in failing to diligently seek Control Board approval of the negotiated agreement and failing to promptly provide the Control Board and the Unions with cost and funding information. However, due to the unique, intervening circumstances which have taken place since this Complaint was filed, the Board does not feel that there is any appropriate remedy that we are empowered to grant. Therefore, the Board finds that the case is *moot*. Accordingly, we dismiss the Union's Unfair Labor Practice Complaint.

Pursuant to D.C. Code §1-605.2(3) and Board Rules 520.14 and 544.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and for the reasons discussed above, we do not adopt the Hearing Examiner's findings.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint is dismissed.
2. 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.

July 12, 2001

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-U-37 was transmitted via Fax and/or U.S. Mail to the following parties on this 12th day of July 2001.

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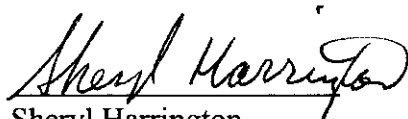
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