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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
American Federation of State, County and Municipal Employees, Local 2087,)	
)	
Complainant,)	PERB Case No. 07-U-32
)	
v.)	Opinion No. 936
)	
Office of Labor Relations and Collective Bargaining,)	
)	
and)	Motion for Reconsideration
)	
University of the District of Columbia,)	
)	
Respondents.)	

DECISION AND ORDER

I. Statement of the Case:

This matter involves a Motion for Reconsideration filed by the American Federation of State, County and Municipal Employees, Local 2087 (“Complainant” or “Union”). The Complainant is requesting that the Board reverse the Executive Director’s determination of the disposition of this case.

The Complainant filed an unfair labor practice complaint against the Office of Labor Relations and Collective Bargaining (“OLRCB” or “Respondents”) and the University of the District of Columbia (“UDC” or “Respondents”) alleging that OLRCB and UDC violated the Comprehensive Merit Personnel Act (“CMPA”). Specifically, the Union alleges that OLRCB and UDC violated D.C. Code § 1-617.04(a)(1) and (5) by “withholding from UDC bargaining unit employees increases in compensation provided in the compensation agreement covering employees in Compensation Units 1 and 2” (Compl. at p. 2).

After the complaint was filed, the parties settled this matter. On February 1, 2008, the Union withdrew the Complaint. By letter dated February 11, 2008, the Board's Executive Director informed the Union that consistent with the "[Union's] request and Board Rule 520.5, [the case was] withdrawn with prejudice."

In a letter dated February 18, 2008, the Union's counsel informed the Board's Executive Director that the parties settled the case and that the Union had requested that the case be "withdrawn without prejudice". The Union asserted that despite their request, the case was "withdrawn with prejudice". As a result, the Union requested that the Executive Director change the language in his February 11th letter from "withdrawn with prejudice" to "withdrawn without prejudice."

In its February 18th letter, the Union indicated that it takes exception to the case being "withdrawn with prejudice", on two grounds. First, the Union asserted that it never requested that the case be "withdrawn with prejudice." Second, the Union contended that pursuant to Board Rule 520.5, the case should have been "withdrawn without prejudice." In support of this position, the Union cited Board Rule 520.5 and *Gambocz v. Yelenesics*, 468 F. 2d 837, 841 (3d Cir. 1972). For the reasons discussed above, the Union requested that the Executive Director reverse the disposition of the case as having been "withdrawn with prejudice". The Union indicated that if the Executive Director does not grant the Union's request, then the Union would like the Board to treat the Union's February 18th submission as a "motion for reconsideration". Specifically, the Union is requesting that the Board reverse the Executive Director's disposition of the case as having been "withdrawn with prejudice".

By letter dated March 28, 2008, the Executive Director acknowledged that the Union did not request that the case be "withdrawn with prejudice." Therefore, the Executive Director stated that it was an oversight on his part to indicate that *pursuant to the Union's request* the case was "withdrawn with prejudice."

Regarding, the Union's argument that pursuant to Board Rule 520.5 this case should have been "withdrawn without prejudice," the Executive Director noted that he "respectfully disagree[d]". In support of his position, the Executive Director stated that Board Rule 520.5 provides that: "*A complainant may withdraw a complaint without prejudice at any time prior to the filing of an answer.*" (emphasis added in the Executive Director's February 11th letter). The Executive Director indicated that in the present case, the Union's complaint was filed on April 13, 2007 and the Respondents filed their answers to the complaint on June 4, 2007. Also, the Executive Director noted that the parties did not sign their settlement agreement until September 2007 and October 2007. The Union's letter requesting that the case be withdrawn was dated February 1, 2008. In view of the above, the Executive Director concluded that it was clear that the case was withdrawn after the Respondents' answers were filed. Therefore, the Executive Director opined that pursuant to Board Rule 520.5 the case could only be "withdrawn with prejudice."

In view of the above, the Executive Director issued a letter on March 28, 2008 correcting his earlier disposition of the case dated February 11th letter. The corrected version of the February 11th disposition letter, deleted the reference to any request by the Union to withdraw the complaint with prejudice. However, the Executive Director reiterated his position that pursuant to Board Rule 520.5 the complaint could only be withdrawn with prejudice because the Union's request to withdraw post-dates the Respondents' answers.

On April 3, 2008, the Union responded to the Executive Director's March 28th letter. In its April 3rd submission, the Union again asserted that the complaint should be "withdrawn without prejudice." In support of its position the Union stated the following:

"A complainant may withdraw a complaint without prejudice at any time prior to the filing of an answer." In your reply dated March 28, 2008, you issued a corrected copy of the dismissal deleting the reference to any request by the Union to withdraw the complaint with prejudice. Nevertheless, you continue to maintain that the complaint has been withdrawn with prejudice because the request post-dates the answer. The Union cannot agree. The Union requested withdrawal without prejudice. The Board is not authorized to dismiss the complaint with prejudice when the Union did not so request and there has been no finding that the Union's complaint was without merit. But, as I explained in my earlier letter, dismissal with prejudice is the equivalent of an adjudication of the merits.

The Agency did not object to the request to withdraw the complaint without prejudice, so the Board should do so summarily. Assuming that the Agency was not required to object and that it is unwilling to stipulate that the complaint may be withdrawn without prejudice, the complaint must be reinstated on the docket. (Union's letter dated April 3, 2008).

In light of the Executive Director's decision, we are consolidating the Union's February 18th and April 3rd submissions and treating them as a "motion for reconsideration". The Respondents did not submit a response to the Union's request. The Union's motion is before the Board for disposition. The issue before the Board is whether the Executive Director erred as a matter of law when he determined the disposition of the case as having been "withdrawn with prejudice".

II. Discussion

Relying on Board Rule 520.5 the Union claims that it should be allowed to withdraw its case

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Relying on Board Rule 520.5 the Union claims that it should be allowed to withdraw its case “without prejudice”.

The Union is requesting that we adopt its interpretation of Board Rule 520.5. This we will not do because the language in Board Rule 520.5 is clear. In the present case, the record reveals that the Union withdrew its case eight (8) months after the Respondents filed their answers.

However, the Board notes that: (1) this matter concerns a settlement of the underlying issue by the parties; (2) there is no opposition by the Respondents to the Union’s request for withdrawal of the case without prejudice; and (3) there is no showing that either party will be prejudiced by withdrawing the appeal without prejudice. As a result, under the circumstances of this case, we find that this case is ripe for the Board to exercise its discretion in this matter and we grant the Union’s motion.

For the reasons discussed above, we hereby grant the Union’s motion for reconsideration and grant the Union’s request to withdraw its appeal “without prejudice”.

ORDER¹

IT IS HEREBY ORDERED THAT:

1. The American Federation of State County and Municipal Employees, Local 2087's Motion for Reconsideration, is granted. This matter is withdrawn without prejudice.
2. Pursuant to Board Rule 559.3, this Decision and Order is final upon issuance.

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

September 30, 2009

¹This Decision and Order implements the decision and order reached by the Board on April 29, 2008, and ratified on July 13, 2009.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-32 was transmitted via Fax and U.S. Mail to the following parties on this the 30th day of September 2009..

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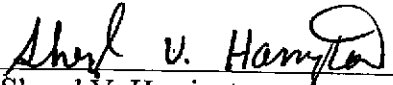
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