

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 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**

In the Matter of:	)	
Nursat I. Aygen,	)	
Complainant,	)	PERB Case No. 03-U-48
v.	)	Slip Op. No. 897
Washington Teachers' Union, Local 6,	)	
AFT, AFL-CIO,	)	
Respondent.	)	

**DECISION AND ORDER**

**I. Statement of the Case**

Nursat I. Aygen ("Complainant" or "Ms. Aygen"), filed an Unfair Labor Practice Complaint against the District of Columbia Public Schools ("DCPS"); the Washington Teachers' Union, Local 6, AFT, AFL-CIO ("WTU", "Union" or "Respondent"); and the American Federation of Teachers, AFL-CIO ("AFT"). Specifically, the Complainant alleged that DCPS unlawfully terminated her and that WTU and AFT failed to fairly represent her in her efforts to reclaim her position. WTU filed a "Response to Unfair Labor Practice" ("Answer") denying the allegations. DCPS and AFT filed Motions to Dismiss along with their Answers to the Complaint.

The Board's Executive Director dismissed the complaint against DCPS concluding that it was not filed within 120 days from the date of the alleged violation. (See Board Rule 520.4). He further found that the Complainant failed to state any basis for a claim against DCPS under the Comprehensive Merit Personnel Act ("CMPA").

The Executive Director noted that WTU was certified as the exclusive representative of teachers employed by DCPS. Therefore, he dismissed AFT as a Respondent consistent with Board precedent establishing that under the CMPA, a union's "statutory obligation . . . to its

bargaining unit accrues to the certified representative . . . not its national organization.”<sup>1</sup> The Complainant did not appeal the Executive Director’s decisions regarding DCPS and AFT.

A Hearing Examiner was appointed to hear the Complainant’s allegations against WTU. After four (4) days of hearing, the Complainant failed to appear at a December 9, 2004 scheduled hearing. As a result, on January 3, 2005, the Hearing Examiner issued an order directing Ms. Aygen to show cause why she did not appear at the December 9, 2004 hearing to prosecute her unfair labor practice complaint. The Complainant did not respond.

On January 27, 2005, the Hearing Examiner issued a Report and Recommendation dismissing the Complaint because the Complainant failed to respond to the order to show cause. The Complainant filed exceptions in a document styled “Order to Show Cause” and also requested that another Hearing Examiner be assigned to this case.

The Hearing Examiner’s Report and Recommendation (“R&R”) and the Complainant’s exceptions are before the Board for disposition.

## **II. Hearing Examiner’s Report**

The Hearing Examiner’s R&R states that a hearing in this matter was held during four (4) hearing dates in 2004: March 18; June 24; August 10; and October 5. During this time, the Hearing Examiner issued several orders in response to motions and requests made by the parties and testimony was taken from several witnesses. At the October 5 proceeding, the Hearing Examiner allowed witnesses who had been subpoenaed by the Complainant, over objections by the WTU, DCPS and AFT, to testify. “The parties agreed to a hearing date of November 3 or November 5. On October 27, by letter to [the Board’s] Executive Director, Ms. Aygen stated she would accept Ms. Holmes’ [WTU’s representative] request for a December hearing date since the scheduled hearing would take place during Ramadan, a month of fasting. On October 29, Ms. Holmes responded that she had not sought a December hearing date and that Ms. Aygen had not contacted her to determine her position regarding a postponement.” (R&R at p. 5). WTU objected to the Complainant’s request. The Hearing Examiner granted the Complainant’s request and rescheduled the matter for December 9, 2004.

“On December 6, 2004, the Hearing Examiner was provided with a copy of a letter from Ms. Aygen to [the Board’s] Executive Director received [in the Board’s office] by PERB late on the afternoon of December 3, 2004 requesting a continuance. The letter was not accompanied by a certificate of service to Respondent, although [it] did include a ‘cc’ to Ms. Holmes. The basis for the request was Complainant’s belief ‘that there is the possibility for a settlement after the union elections this month.’ Ms. Aygen did not represent that she had contacted WTU’s counsel

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<sup>1</sup>Citing *Felicia Thomas v. AFGF, Local 1975, AFL-CIO*, 45 DCR 6712, Slip Op. No. 554, PERB Case No. 98-S-04 (1998).

prior to making the request. She did not explain why she waited until just a few days before the hearing to submit the request, although she did not allege she had only recently become aware of the election. In addition, Complainant did not explain why the change in Union leadership would impact on her claim that the Union had failed to represent her in February 2004 or would affect her interest in reclaiming her teaching position. Since the Hearing Examiner did not know if the Respondent would receive the letter prior to the hearing, she asked that Ms. Holmes be notified by telephone and fax and asked to respond. Respondent objected to the request, noting that it had prepared its witnesses for the proceeding. On December 6, the Hearing Examiner issued an Order denying the request. In order to ensure that Complainant receive[d] timely notice of the decision, PERB staff spoke with Ms. Aygen by telephone and notified her that the hearing would take place as scheduled." (R&R at p. 5).

The Complainant did not appear at the December 9<sup>th</sup> proceeding. After waiting thirty minutes, the Hearing Examiner asked the Board's staff to telephone the Complainant. "Ms. Aygen did not answer and a voice mail message was left advising her of the proceeding and asking her to contact the office. Ms. Aygen returned the telephone call at approximately 10:55 a.m. and told staff she was not going to attend. She did not offer any reason for her refusal to attend." (R&R at p. 5). At the December 9 hearing, Ms. Holmes informed the Hearing Examiner that she had contacted Ms. Aygen in response to a statement in her letter about possible resolution. "Ms. Holmes indicated she left a message for Ms. Aygen stating that Respondent did not consent to postponing the December 9<sup>th</sup> proceeding, but that Ms. Holmes would be glad to discuss settlement with Ms. Aygen. Ms. Holmes stated that Ms. Aygen had not responded to that telephone call. Ms. Holmes then moved to dismiss the matter for failure to prosecute. The proceeding was then closed." (R&R at pgs. 5-6).

On January 3, 2005, the Hearing Examiner issued an order directing that the Complainant show cause why the matter should not be dismissed with prejudice. The Complainant's response was due on January 21, 2005. The Complainant did not respond to the order to show cause. The record closed on January 22, 2005. On January 27, 2005, the Hearing Examiner issued her R&R in this matter. The R&R was served on the parties on February 7, 2005.

### III. Complainant's Exceptions

On February 28, 2005, the Complainant filed exceptions. First, the Complainant alleges that she did not receive the order to show cause for failure to prosecute her case. Review of the record did not produce affirmative evidence demonstrating that the Complainant received the order to show cause. Therefore, the Board rejects the Hearing Examiner's recommendation that the Complaint be dismissed. Further, the Board directs that the Hearing Examiner's January 3, 2005 order to show cause shall be transmitted to the Complainant via certified mail, return receipt requested. This matter shall be remanded to the Hearing Examiner with instructions to hold a hearing on the show cause issue once the Complainant has been served with a notice of hearing. If there is a finding of good cause the Hearing Examiner, mindful that four (4) hearing

days have already been devoted to this matter, may proceed with the fifth day of hearing on the merits of this case.

The Complainant made numerous other claims concerning the actions of the Hearing Examiner. In large part these claims are premature and we will not address them here. The Complainant may raise these claims if she files exceptions when a final Report and Recommendation is issued by the Hearing Examiner.

Also, the Complainant requested that the Board assign a new Hearing Examiner in this matter. Her request was not in the form of a motion and the opposing party was not served. However, for clarity and expediency we shall address this request as a motion and will address it here.

Board Rule 557.1 provides that “[a] hearing examiner or Board member shall withdraw from proceedings whenever the person has a conflict of interest.” The Complainant’s reasons for requesting that the Hearing Examiner be removed from this case do not establish a conflict of interest, but rather merely reflect her disagreement with the Hearing Examiner’s rulings. A disagreement with the Hearing Examiner’s rulings does not satisfy the requirement under Board Rule 557.1 for removing a Hearing Examiner. See *Vartan Zenian, et al. v. American Federation of State, County and Municipal Employees, Local 2743 and Department of Insurance, Securities and Banking*, Slip Op. No. 832, PERB Case Nos. 03-RD-02 and 04-U-30 (2006). Therefore, we deny the Complainant’s request that a new Hearing Examiner be assigned in this matter.

### ORDER

#### IT IS HEREBY ORDERED THAT:

1. The Hearing Examiner’s Report and Recommendation is rejected and the matter is remanded to the Hearing Examiner.
2. Nursat I. Aygen’s (“Complainant’s”) request that the Board assign another Hearing Examiner in this matter, is denied.
3. Within fourteen (14) days of the service of this Decision and Order, the Complainant shall be served with a Notice of Hearing scheduling a hearing to show good cause why this matter should not be dismissed with prejudice for failure to prosecute this matter. The Notice of Hearing shall be transmitted to the Complainant via certified mail return receipt requested.
4. The January 3, 2005 Order to show cause shall be transmitted to the Complainant via certified mail return receipt requested.

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5. If the Hearing Examiner determines that the Complainant had good cause, she may proceed to complete the hearings on the merits of the case.
6. 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.

June 14, 2007

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No.03-U-48 was transmitted via U.S. Mail to the following parties on this the 14<sup>th</sup> day of June 2007.

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Apt. 31-B  
Arlington, VA 22204

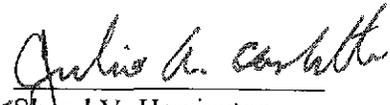
**RETURN RECEIPT REQUESTED**

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*for*   
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Sheryl V. Harrington  
Secretary