

The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DCGH, filed an Answer to the Complaint, denying that by the acts and conduct alleged, DCGH had committed any unfair labor practices. In response to the Board investigation of the Complaint, OLRCB filed an Addendum to its Answer. The Doctors' Council responded by filing a "Motion for Judgment on the Pleadings and/or for Summary Judgment Including an Award of Costs". In accordance with Board Rule 553.2, OLRCB filed a Response to the Motion.

On June 9, 1995, OLRCB filed a Motion to Dismiss the Complaint. OLRCB contends that the matter is moot since the bargaining unit member in question will be on annual leave from June 9 to 15, 1995, and will no longer be employed by the hospital after June 15, 1995. Therefore, OLRCB asserts, the fee-for-service arrangement with the bargaining unit member would effectively end after June 9, 1995.

That same day, the Doctors' Council filed an opposition to the Motion, stating that the bargaining unit members' employment had not in fact ended at the time of the Motion. Moreover, Complainant argues that the termination of the bargaining unit member's employment by Respondent, does not negate the alleged violation by Respondent of failing to bargain in good faith during the parties' negotiations for a new agreement. We agree.

Even accepting the unsworn representations in the Motion as true, the impact of the alleged violation is upon the Complainant's right as the exclusive bargaining representative of the entire collective bargaining unit. D.C. Code § 1-618.11. The effect of the alleged violation is not limited to a single bargaining unit member with whom an employer may have directly dealt but to the unit as a whole. All employees in the unit have the right to bargain collectively through the representative of their own choosing. D.C. Code § 1-618.6(a)(3). Therefore, DCGH's alleged direct dealing with one bargaining unit member violates not only the Doctors' Council's right as the exclusive representative of all bargaining unit employees, but also the rights of all other employees as a bargaining unit. Accordingly, we must deny DCGH's Motion to Dismiss the Complaint as moot.

However, the record remains unclear and therefore inconclusive with respect to determining the existence of a violation. Therefore, we shall direct the parties to provide affidavits addressing the nature of the relationship between DCGH and the bargaining unit employee in question under the fee-for-service arrangement. Specifically, the Doctors' Council is directed to elaborate further --to the best of its knowledge-- on the terms and conditions of the fee-for-service arrangement which was addressed in part in the affidavit of the President of the Doctors' Council

filed with the Board on June 9, 1995. Complainant's submission should also present argument(s) concerning the appropriateness of this matter for resolution under the parties' grievance arbitration procedures.^{2/}

OLRCB is directed to state DCGH's position concerning whether or not the bargaining unit employee's fee-for-service work at the hospital is separate and apart from his work and status as a DCGH employee. If so, OLRCB is further directed to provide the basis of, and evidence supporting, its position, including a point-by-point response to the above-noted affidavit previously submitted by the Doctors' Council. OLRCB shall also address whether the undisputed facts of this matter give rise to any issues concerning the Board's jurisdiction to resolve this matter.

ORDER

IT IS HEREBY ORDERED THAT:

1. D.C. General Hospital's Motion to Dismiss the Complaint is denied.
2. The parties shall provide responses to the Board's inquiry, as discussed above, within 15 days from the date of issuance of this Order. All assertions of fact shall be in the form of sworn affidavits or documented evidence.

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

June 15, 1995

^{2/} Particular attention is directed to the provisions of the parties' Compensation Agreement and Articles XVII and XX of the Noncompensation Agreement.