

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

The Director of the Department of Consumer and Regulatory Affairs pursuant to D.C. Law 2-144, effective March 3, 1979-, "**The Historic Landmark and District Protection Act of 1978**" hereby gives notice that the addresses listed below, as requested permission to demolish, altar, sub-divide or erect new structures at the following location(s):

Application Date	Address	Lot	Sq.	Use
6/2/03	2578 Eye Street, NW	32	17	Add
	3346 Prospect Street, NW	815	1205	Replace Window/SFD
	144 Constitution Avenue, NE	885	725	Replace Roof/ Museum
	330 3 rd Street, SE	5	792	Sign/ School
6/5/03	1241 30 th Street, NW	812	1211	Door/Add
	3249 N Street, NW	833	1231	Pergola/SFD
	2660 Woodley Road, NW	32	2132	Sign/Hotel
	301 7 th Street, NW/Awning	823	458	Awning Bank
	25 Mass. Ave. /660 N. Capitol St. NE		625	Concept
6/6/03	1633 Wisconsin Avenue, NW	890	1280	Sign/Retail
6/9/03	1607 31 st Street, NW	9	1282	Add/SFD
	1911 Park Road, NW	55	2617	Fence/Pkg. Pad-SFD
	1659 Wisconsin Avenue, NW	90	1280	Sign/Restaurant
	1612 U Street, NW	62	176	S/W Café
6/10/03	1767 U Street, NW	273	150	Window Replace
	1247 & 1245 Wisconsin Avenue, NW	56	1208	Concept
6/11/03	1229 30 th Street, NW	10	1211	Window Replacement
	506 8 th Street, NE	50	892	Windows SFD
	316 12 th Street, SE	41	1017	Windows SFD
	1686 34 th Street, NW	228	1294	Ret. Wall

**DEPARTMENT OF CONSUMER AND REGULATORY
AFFAIRS****NOTICE OF PUBLIC INTEREST**

Forwarded for your information is a weekly listing of raze permit application filed with the Permit Service Center of the Building and Land Regulation Administration, requesting a permit to raze listed structures with the District of Columbia.

Application Date	Address	Lot	Sq.	Use
6/4/03	5524 MacArthur Blvd, NW	840	1445	2- Story SFD
6/6/03	1521 14 th Street, NW	114	241	1-Story Shed
	2105-07 10 th Street, NW	802	358	3-Story Church
	1330 5 th Street, NW	817	480	2-Story SFD

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Certification of Filling a Vacancy
In Advisory Neighborhood Commission

Pursuant to D.C. Code section §1-309.06 (d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics ("Board") from the affected Advisory Neighborhood Commission, the Board hereby certifies that a vacancy has been filled in the following single member district by the individual listed below:

Lisa Ridgeway
Single Member District 7D07

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Certification of Filling a Vacancy
In Advisory Neighborhood Commission

Pursuant to D.C. Code section §1-309.06 (d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics ("Board") from the affected Advisory Neighborhood Commission, the Board hereby certifies that a vacancy has been filled in the following single member district by the individual listed below:

Teresa Howe Jones
Single Member District 8D07

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Certification of Filling a Vacancy
In Advisory Neighborhood Commission

Pursuant to D.C. Code section §1-309.06 (d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics ("Board") from the affected Advisory Neighborhood Commission, the Board hereby certifies that a vacancy has been filled in the following single member district by the individual listed below:

Raymond Wright
Single Member District 1B11

District of Columbia
BOARD OF ELECTIONS AND ETHICS

Monthly Report
of
VOTER REGISTRATION STATISTICS

for the period ending

MAY 31, 2003

Covering Citywide Totals by:

WARD, PRECINCT and PARTY

One Judiciary Square
441 - 4th Street, NW, Suite 250N
Washington, DC 20001
Phone: (202) 727-2525
<http://www.dcboeee.org>

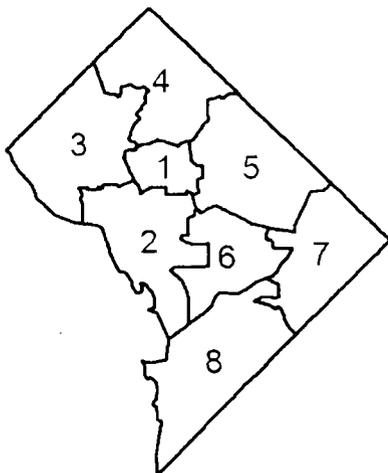
D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE SUMMARY

Party Totals and Percentages by Ward for the period ending May 31, 2003

<i>WARD</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
<i>1</i>	28,820	2,120	1,020	7,534	230	39,724
<i>2</i>	24,173	5,211	501	8,187	143	38,215
<i>3</i>	29,361	8,146	405	8,738	92	46,742
<i>4</i>	41,527	2,460	621	6,216	196	51,020
<i>5</i>	39,679	1,747	606	5,506	171	47,709
<i>6</i>	33,931	4,103	600	3,967	162	42,763
<i>7</i>	37,729	1,343	485	4,839	153	44,549
<i>8</i>	29,711	1,303	557	4,378	130	36,079
TOTALS	264,931	26,433	4,795	49,365	1,277	346,801
<i>TOTAL Percentage (by party)</i>	<i>76.4%</i>	<i>7.6%</i>	<i>1.4%</i>	<i>14.2%</i>	<i>0.4%</i>	<i>100.0%</i>

Ward Index



D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 4

For the Period Ending: May 31, 2003

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
45	1,835	71	39	283	12	2,240
46	2,521	76	40	380	19	3,036
47	2,114	137	41	432	15	2,739
48	2,480	138	41	352	15	3,026
49	609	33	16	116	3	777
51	2,825	617	27	576	6	4,051
52	1,105	268	8	214	5	1,600
53	1,010	81	16	195	8	1,310
54	1,890	114	43	337	14	2,398
55	2,247	78	32	312	11	2,680
56	2,769	70	34	422	8	3,303
57	2,274	84	32	327	15	2,732
58	2,040	52	26	276	8	2,402
59	2,391	75	37	304	10	2,817
60	1,607	77	34	336	7	2,061
61	1,452	57	20	170	3	1,702
62	2,985	170	39	318	5	3,517
63	2,743	129	55	391	12	3,330
64	2,186	71	19	230	7	2,513
65	2,444	62	22	245	13	2,786
TOTALS	41,527	2,460	621	6,216	196	51,020

**D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

PRECINCT STATISTICS

Ward 7

For the Period Ending: May 31, 2003

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
80	1,157	44	18	149	8	1,376
92	1,171	53	21	157	9	1,411
93	1,172	54	15	150	5	1,396
94	1,551	67	17	185	8	1,828
95	1,198	22	20	182	2	1,424
96	1,740	75	27	262	4	2,108
97	892	30	19	131	1	1,073
98	1,442	37	18	165	9	1,671
99	951	39	16	143	6	1,155
100	1,249	49	25	185	4	1,512
101	1,411	33	10	152	8	1,614
102	1,797	56	14	198	9	2,074
103	2,628	93	32	357	9	3,119
104	1,913	62	26	258	8	2,267
105	1,794	72	33	214	3	2,116
106	2,513	76	33	288	8	2,918
107	1,122	45	18	188	2	1,375
108	1,042	48	6	86	5	1,187
109	951	41	9	94	1	1,096
110	3,428	110	37	403	12	3,990
111	1,607	46	26	247	3	1,929
112	1,713	49	18	224	13	2,017
113	1,766	88	12	236	10	2,112
132	1,521	54	15	185	6	1,781
TOTALS	37,729	1,343	485	4,839	153	44,549

Office of the Director of the Department of Mental Health**Public Notice of Funding Availability**

The District of Columbia, Office of the Director of the Department of Mental Health (DMH), announces the availability of a grant fund from the Department of Mental Health. The Director, DMH can authorize up to one grant of up to \$2,600,000.

The qualified recipient of the grant is a department of psychiatry in academic medical centers in the District of Columbia that offer training in general psychiatry residency programs that are accredited by the Accreditation Council for Graduate Medical Education. Qualified recipients are invited to submit application for the following grant:

To Establish a Psychiatric Residency Training Partnership

Three awards will be made in FY 2004.

The Request for Applications (RFA) will be available on June 16 and may be picked up at the reception desk of the following office between 9:00 am and 4:30 pm:

Office of the Department of Mental Health
64 New York Avenue NE
Washington, DC 20002

The deadline for submission of application is 4:30 P.M. on August 11,2003.

For additional question regarding this RFA contact:

Steven Steury, M.D.
Chief Clinical Officer
Department of Mental Health
202-673-1939
Steven.steury@dc.gov

REQUEST FOR APPLICATIONS (RFA): #03-0010

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF MENTAL HEALTH

To Establish a Psychiatric Residency Training Partnership

DMH invites the submission of applications for funding To Establish a
Psychiatric Residency Training Partnership

Announcement Date: June 10, 2003
RFA Release Date: June 16, 2003

Application Submission Deadline: August 11, 2003, 4:30 p.m.

LATE APPLICATIONS WILL NOT BE FORWARDED FOR REVIEW

In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code section 2.1401.01 et seq. ("the Act"), the District of Columbia does not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business.

NOTICE

PRE-APPLICATION CONFERENCE

WHEN: June 25, 2003

WHERE: Department of Mental Health (DMH)
64 New York Avenue, N.E.
Fourth Floor
Washington, D.C. 20002

TIME: 2 to 4 P.M.

RSVP: Please notify Dr. Steury if you plan to attend

CONTACT PERSON: Steven Steury, M.D.
Department of Mental Health
64 New York Avenue, N.E.
Washington, D.C. 20002
(202) 673-1939

Steven.Steury@dc.gov

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

In the Matter of:)
)
 1199 Metropolitan District, D.C.,)
 National Union of Hospital and)
 Health Care Employees,)
 AFSCME, AFL-CIO,)
) PERB Case No. 02-RC-05
)
) Petitioner,) Opinion No. 690
)
 and)
)
) FOR PUBLICATION
 District of Columbia Office of)
 the Chief Medical Examiner,)
)
)
)
 Agency.)
)
)
)
)
)

**DECISION ON UNIT DETERMINATION
AND VOLUNTARY RECOGNITION**

On July 17, 2002, 1199 Metropolitan District, D.C., National Union of Hospital and Health Care Employees (“NUHHCE”), AFSCME, AFL-CIO, filed a Recognition Petition (“Petition”) with the Public Employee Relations Board (“Board”). NUHHCE seeks to represent, for purpose of collective bargaining, a unit of unrepresented physician assistants (medicolegal investigators) employed by the District of Columbia Office of the Chief Medical Examiner (“Office of the Chief Medical Examiner”). The Petition was accompanied by a showing of interest meeting the requirement of Board Rule 502.2, a roster of Petitioner’s officers and a copy of Petitioner’s constitution and bylaws, as required by Board Rule 502.1 (d).

Notices concerning the Petition were issued on July 10, 2002, for conspicuous posting for fifteen (15) consecutive days where employees in the proposed unit are located at the Office of the Chief Medical Examiner. The Notices required that requests to intervene or comments be filed in the Board’s office no later than August 13, 2002. The Office of the Chief Medical Examiner confirmed in writing that the Notices had been posted. Also, the Office of the Chief Medical Examiner does not dispute the appropriateness of the proposed bargaining unit pursuant to the criteria set forth under the Comprehensive Merit Personnel Act as codified under D.C. Code §1-617.09(a) (2001 ed.). Furthermore, the Office of the Chief Medical Examiner submitted comments

**Decision on Unit Determination and
Voluntary Recognition
PERB Case No. 02-RC-05
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indicating their willingness to voluntarily recognize NUHHCE as the exclusive representative.¹

The unit sought by NUHHCE is as follows:

All physician assistants (medicolegal investigators) employed in the District of Columbia Office of the Chief Medical Examiner, excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

D.C. Code § 1-617.09(a) (2001 ed.) requires that a community of interest exist among employees for a unit to be found appropriate by the Board for collective bargaining over terms and conditions of employment. An appropriate unit must also promote effective labor relations and efficiency of agency operations.

Our review of the Petition and attached exhibits reveals that the proposed unit consists of all physician assistants employed by the Office of the Chief Medical Examiner. The physician assistants share a common mission. In addition, all of the physician assistants are covered by the same pay schedule and are subject to the same rules and regulations. Also, there is no other labor organization currently representing this group of employees.

In view of the above, sufficient factors exist for the Board to find that these employees meet the Comprehensive Merit Personnel Act's community of interest criteria as codified under D.C. Code § 1-617.09 (a) (2001 ed.). Such a unit of employees sharing a common purpose would, in our view, promote effective labor relations and efficiency of agency operations, and thereby constitute an appropriate unit under the Comprehensive Merit Personnel Act.

The Office of the Chief Medical Examiner has expressed a willingness to voluntarily recognize NUHHCE as the exclusive representative for the proposed unit. Board Rule 502.12 provides in relevant part that "the Board may permit the employing agency to recognize the labor organization without an election on the basis of evidence that demonstrates majority status (more than 50%) ... indicating that employees wish to be represented by the petitioning labor organization."

We have reviewed the evidence and conclude that it establishes the will of a majority of the

¹The agency notes that they will voluntarily recognize the union if a majority of employees indicate that they desire like to be represented by NUHHCE.

**Decision on Unit Determination and
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employees in the unit regarding their desire to be represented by NUHHCE for purpose of collective bargaining with the Office of the Chief Medical Examiner on compensation and other terms and conditions of employment. We find in all other respects that the requirements of D.C. Code § 1-617.10 (b)(1) (2001 ed.) and Board Rule 502.12 have been met. Therefore, a certification of representative shall be granted to NUHHCE without an election.²

ORDER

IT IS HEREBY ORDERED THAT:

1. The following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

All physician assistants (medicolegal investigators) employed by the District of Columbia Office of the Chief Medical Examiner, excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity, and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

2. Pursuant to D.C. Code § 1-617.10 (b) (1) (2001 ed.) and in accordance with Board Rule 502.12, the District of Columbia Office of the Chief Medical Examiner is permitted to voluntarily recognize, without an election, 1199 Metropolitan District, D.C., National Union of Hospital and Health Care Employees ("NUHHCE"), AFSCME, AFL-CIO, as the collective bargaining representative of the unit found to be appropriate above.

3. The attached Certification of Representative is granted to NUHHCE as the exclusive collective bargaining representative for the unit found appropriate for the purpose of collective bargaining

²The Board's Executive Director requested comments from the parties concerning the appropriate compensation unit for this unit of employees. However, the Board did not receive comments from the agency concerning this issue. As a result, we did not have all the necessary information to make a determination concerning the appropriate compensation unit. Therefore, pursuant to Board Rule 503.2, we will initiate a proceeding at a later date to determine the appropriate compensation unit (for these employees) for the purpose of negotiations for compensation.

**Decision on Unit Determination and
Voluntary Recognition
PERB Case No. 02-RC-05
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over compensation and other terms and conditions of employment.

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

October 28, 2002

Decision and Order

PERB Case Nos. 02-A-04 and 02-A-05

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through its representative, the Office of Labor Relations and Collective Bargaining (OLRCB). The two Arbitration Review Requests assert that arbitrators Lois Hochhauser and Barry Shapiro were without authority and exceeded their jurisdiction by, *inter alia*, making a determination that the underlying grievances in both cases were arbitrable.² Also, before the Board in this case is the

letter on September 10, 2001, that he had been selected by both parties to arbitrate these grievances. Later on October 18, 2001, he was notified by the Agency that it would not arbitrate the grievances because there was no collective bargaining agreement in place which mandated arbitration. After consultation with the parties, it was agreed that the proceedings would be bifurcated. The first proceeding, held on February 19, 2002, was to address the issue of arbitrability. The second proceeding would reach the merits of the grievance. Arbitrator Shapiro did not address the merits of the underlying grievances in the Award that is before the Board.

²In PERB Case No. 02-A-04, the Agency asserts that Arbitrator Lois Hochhauser was without authority and exceeded her jurisdiction in finding that:

- (1) A bargaining representative and an employer are bound by the terms of a predecessor contract executed by different parties;
- (2) A bargaining representative and an employer are required to arbitrate grievances absent an effective contract requiring such;
- (3) The recognition of an "implied-in-fact" contract in the absence of a properly executed and statutorily approved collective bargaining agreement (was proper); and,
- (4) The finding of arbitrability, holding a hearing on the merits and issuance of a decision, all in the absence of a collective bargaining agreement (was proper). (PERB Case No. 02-A-04, Request at p.2).

In PERB Case No. 02-A-05, the Agency asserts that Arbitrator Barry Shapiro was without authority and exceeded his jurisdiction in finding that:

- (1) A bargaining representative and an employer are bound by the terms of a prior contract executed between an Agency and a predecessor union;
- (2) A bargaining representative and an employer are required to arbitrate grievances absent an effective contract requiring such; and
- (3) The finding of arbitrability in the absence of a collective bargaining agreement

Decision and Order

PERB Case Nos. 02-A-04 and 02-A-05

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Agency's Motion for Consolidation³ and Expedited Review⁴.

(was proper). (PERB Case No. 02-A-05 Request at p.2).

³DHS seeks to have the two Arbitration Review Requests consolidated because they share similar issues and involve the same parties. After reviewing the Agency's Motion for Consolidation, the Board finds that the arguments in support of its Motion are valid. The parties, DHS and FOP, are the same in both PERB Case Nos. 02-A-04 and 02-A-05. In addition, after reviewing the claims of error made in both Arbitration Review Requests, the Board finds that three of the four total claims made by DHS are almost identical. As noted in Footnote 2, both Arbitration Review Requests share the following common issues:

Whether the Arbitrator was without authority and exceeded his/her jurisdiction by finding that: (1) a bargaining representative and an employer are bound by the terms of a prior contract executed by an Agency and a predecessor union; (2) a bargaining representative and an employer are required to arbitrate grievances absent an effective contract requiring such; and (3) the grievances are arbitrable, in the absence of a collective bargaining agreement. (PERB Case No. 02-A-04, Request at p.2 and PERB Case No. 02-A-05, Request at p.2).

The only exception is the one claim made in PERB Case 02-A-04, where the Agency asserts that the Arbitrator exceeded her authority by recognizing an "implied-in-fact" contract in the absence of a properly executed and statutorily approved collective bargaining agreement. The Board finds that the three common claims of error and the one claim of error that is not included in both requests can be decided in one consolidated case. Therefore, the Board grants the Agency's Motion for Consolidation.

⁴ DHS seeks expedited review of this matter because the central issue in both arbitration cases concerns whether the Agency has a duty to arbitrate grievances pursuant to either: (1) a negotiated, but unapproved, contract between the Fraternal Order of Police ("FOP" or "Union") and DHS or (2) an existing contract between DHS and FOP's predecessor Union, American Federation of Government Employees, Local 383 (AFGE). DHS seeks to have this issue resolved so that it will know with certainty what its obligation is, as it relates to processing grievances and arbitrating cases in the future. After reviewing the Agency's Motion, the Board finds that the Agency's request for expedited review of this issue is reasonable because this important issue involves employee rights and should be resolved sooner than later. Specifically, the Board finds that the Agency needs to know, as soon as possible, what its duty is as it relates

Decision and Order

PERB Case Nos. 02-A-04 and 02-A-05

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Having determined that it is proper to consolidate PERB Case Nos. 02-A-04 and 02-A-05, the Board will now address the issues raised in the consolidated Arbitration Review Requests on the merits. In both Arbitration Review Requests, the Agency and the Union disagree on the issue of whether the grievances are arbitrable. Specifically, the Agency and the Union disagree on whether there is a valid contract in place between the parties that imposes a *duty* on the Agency to arbitrate employee grievances.

The Agency asserts that the grievances are not arbitrable because there is no valid collective bargaining agreement in effect between FOP and DHS which requires arbitration of those grievances. DHS bases this argument on its assertion that the negotiated agreement between the parties had not been approved by the appropriate authorities prior to the filing of these grievances.⁵ In addition, the Agency, through its representative, OLRCB, argues that the former agreement between AFGE, Local 383 and DHS was no longer applicable to the parties since it had expired.⁶ DHS contends that while

to processing grievances. In addition, the represented employees need to know what mechanism is in place to resolve their disputes, should any arise. If the issue remains unresolved, the Board recognizes that the Agency may choose not make any efforts to resolve issues raised by aggrieved employees. Furthermore, aggrieved employees may feel helpless when it comes to having their disputes resolved. Neither of these results will foster good labor-management relations between management officials and employees at DHS. D.C. Code §1-617.01 (a) (2001 ed.) provides that: "an effective collective bargaining process is in the general public interest and will improve the morale of public employees and the quality of service to the public." Presenting grievances and having them resolved is an important employee right and is a vital part of the collective bargaining process. See, D.C. Code §1-617.06(3)(b) (2001 ed.). As a result, the Board finds that this issue merits expedited review. For the reasons noted above and the ones outlined in its Motion, the Board grants the Agency's Motion for Expedited Review.

⁵Arbitrator Barry Shapiro found that despite considerable fanfare, the negotiated agreement between FOP and DHS had never received the written approval of the Mayor or the District of Columbia Financial Responsibility Management Assistance Authority ("Control Board"). D.C. Code §1-617.15 (2001 ed.) requires, *inter alia*, that a negotiated collective bargaining agreement be approved by the Mayor, City Council and other designated officials before it becomes valid.

⁶Correctional Officers who work for DHS were formerly represented by AFGE, Local 383 and a contract was in place between the officers and DHS when FOP assumed its role as their new representative. FOP replaced AFGE in December 1996. The agreement covering the officers would have expired on September 30, 1997. However, due to its automatic renewal clause, it was renewed in 1997, 1998 and 1999, without evidence of an attempt to cancel it. There was an attempt to cancel the agreement by a letter dated June 30, 2000; however, both arbitrators found that DHS's attempt to cancel was unsuccessful.

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PERB Case Nos. 02-A-04 and 02-A-05

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it may have continued to use "past practices" and processed grievances, the arbitration provision is based on contract and did not survive the expiration of the contract. Finally, the Agency argues that, although the agreement between DHS and AFGE contained an automatic renewal clause, the agreement was not renewed for the year in question because Mary Leary, OLRCB's Director, sent timely notice of the Agency's intent to discontinue adhering to the agreement⁷. In effect, DHS argues that by giving this notice, the Agency successfully disavowed the arbitration clause contained in the older agreement. DHS supports its argument by relying on McNealy v. Caterpillar, Inc. (Caterpillar), a Seventh Circuit case which held that once a contract expires, a party may disavow an arbitration clause. 139 F.3d 1113 (7th Cir. 1998). As a result, DHS concludes that it was under *no obligation* to arbitrate, reasoning that there was no valid arbitration clause in effect. In view of the above, DHS claims that the Arbitrator erred in finding that the grievances were arbitrable.

By contrast, the Union asserts that the grievances contained in the consolidated Arbitration Review Requests are arbitrable. In addition, the Union argues that the Agency's Arbitration Review Requests should be denied because they present no viable claim that would justify overturning the arbitrator's finding of arbitrability. The Union contends that the older agreement between AFGE, Local 383 and DHS is still valid and enforceable against the parties.⁸ Therefore, in the Union's view, the arbitration clause contained therein imposes an affirmative duty upon the Agency to arbitrate the grievances.

Additionally, the Union asserts that the Petitioner's request "is plainly driven by a simple disagreement concerning the Arbitrator's resolution of the issue of arbitrability." (Opposition at p. 1). Furthermore, the Union states that "grievance arbitration review before the Public Employee Relations Board (PERB) was not intended to address such disagreements, but only to afford a narrow appeal in limited circumstances."⁹ Because the Union contends that those limited circumstances are

⁷Article 34, §2 of the AFGE, Local 383 agreement provides that the agreement automatically renews for one year from the date on which it would otherwise expire, unless either party gives to the other party written notice of intention to terminate or modify the agreement 150 days and no later than 90 days prior to its anniversary date. (Shapiro's Award at p. 2).

⁸FOP asserts that it did not receive notice of the Agency's attempt to cancel the agreement within the time frame set forth by the parties' collective bargaining agreement. Thus, in its view, the Agency's attempt to cancel the agreement was ineffective.

⁹D.C. Code §1-605.02 provides, in pertinent part: "that the Board may consider appeals from arbitration awards pursuant to a grievance procedure... only if: (1) the arbitrator was without, or exceeded, his or her jurisdiction; (2) the award on its face is contrary to law and public policy; or (3) was procured by fraud, collusion, or other similar and unlawful means." The Union contends that none of these narrow circumstances exist for maintaining an appeal of the awards in PERB Case Nos. 02-A-04 and 02-A-05. As a result, the Union asserts that the

Decision and Order

PERB Case Nos. 02-A-04 and 02-A-05

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not at issue here, the Union requests that the Board deny DHS's consolidated Arbitration Review Requests. (Opposition at p. 2).

As stated earlier, both arbitrators in the underlying grievances determined that the AFGE, Local 383 contract and its arbitration clause was still in effect. Therefore, the underlying grievances were arbitrable. However, the arbitrators used different analysis in reaching their conclusions. The analysis that each arbitrator used in reaching their conclusion is discussed in detail in the following paragraphs.

In deciding that the grievances in PERB Case No. 02-A-04 were arbitrable, Arbitrator Hochhauser first concluded that the negotiated agreement between FOP and DHS was not finalized or effective during the pertinent time period (when the grievances were filed)¹⁰. She also concluded that the AFGE, Local 383 contract, including its arbitration clause, was still valid. (Award at p. 4). Arbitrator Hochhauser looked at the conduct between the parties and determined that there was, in fact, an agreement in place that obligated the Agency to process grievances to arbitration. This finding is contrary to the Agency's argument that there was no contract in place which required the Agency to arbitrate. Arbitrator Hochhauser also noted that, even though Mary Leary sent a letter on June 30, 2000, which was intended to provide the required notice of termination (of the AFGE, Local 383 agreement), "the Agency itself did not adhere to the notification." (Award at p.4). Instead, the Agency continued to refer to its adherence to the AFGE, Local 383 agreement. (Award at p. 4). In fact, as recently as October 15, 2001, well after the June 30, 2000 notice to discontinue the agreement, Arbitrator Hochhauser noted that the Agency continued to utilize the AFGE, Local 383 agreement to process grievances. (Award at p. 4). In addition, as recently as November 1, 2001, Barbera Bailey, the Agency's Chief of the Office of Labor Relations, testified that it was her understanding that the parties were "currently operating" under the AFGE, Local 383 contract. (Award at p. 4). On this basis, Arbitrator Hochhauser concluded that the AFGE, Local 383 contract, including its arbitration clause, was still valid and that the parties were bound by the terms of the contract.

Arbitrator Hochhauser went further and recognized an "implied-in-fact" contract based on the parties' actions. In Capital Husting Co. v. NLRB, the Seventh Circuit accepted the concept of an "implied-in-fact" collective bargaining agreement where the parties are in accord, even though the agreement "might fall short of the technical requirements of an accepted contract." 671 F2d 237, 243 (7th Cir. 1982). On the facts presently before the Board, the Arbitrator found that the Agency's

Agency's mere disagreement with the Arbitrators' Award does not state a viable reason to modify or set aside either of the Arbitrators' Awards in this case.

¹⁰Specifically, Arbitrator Hochhauser found that the steps needed to finalize the agreement, namely approval from the Mayor and the Control Board pursuant to the Financial Responsibility Management Assistance Act, never took place. (Hochhauser's Award at p. 3).

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conduct was consistent with a contract being in place because they processed and handled many other grievances and arbitration cases that were filed pursuant to the AFGE, Local 383 agreement. Therefore, Arbitrator Hochhauser was not persuaded by the Agency's argument that they are now, *not* bound by a predecessor agreement that they routinely used to process grievances and arbitration cases with.

Arbitrator Hochhauser made this finding despite the Union's argument that no post-expiration duty to arbitrate exists.¹¹ Arbitrator Hochhauser responded to the Agency's argument by stating that "the Supreme Court has also found a post-expiration duty to arbitrate an issue that arose after expiration of the collective bargaining agreement, where the agreement included an arbitration clause." (Award at p. 4). She pointed to the Supreme Court's holding that the duty to arbitrate was "a creature of the collective bargaining agreement, rather than the compulsion of law." Nolde

¹¹ The Agency relied on Litton Financial Printing Division v. NLRB, in support of its argument that there was no post-expiration duty to arbitrate an issue after the expiration of the collective bargaining agreement. (See Hochhauser's Award at p.5; 501 U.S. 190 (1991)). In Litton, the Supreme Court reviewed the issue of whether an Employer had a duty to arbitrate grievances concerning layoffs where the layoffs occurred almost one year after the contract had expired. Id. at 193. The Supreme Court held that there was no post-expiration duty to arbitrate a dispute unless the dispute arose under the expired contract. Id. In holding that the layoff dispute did not arise under the expired contract in Litton, the Supreme Court explained that a post-expiration grievance is said to arise under contract only where: (1) it involves facts and occurrences that arose before the contract's expiration; (2) where an action taken after expiration infringes on a right that accrued or vested under the agreement; or (3) where, under normal principles of contract interpretation, the disputed contractual right survives expiration of the agreement. Id. at 206.

In Litton, the Supreme Court also interpreted its holding in the Nolde Brothers, Inc. v. Bakery Workers case. See, Id. at pp. 203-204 and Nolde Brothers, Inc. v. Bakery Workers, 430 U.S. 243 (1977). In Nolde Brothers, unless "negated expressly or by clear implication", the Court found a "presumption in favor of post-expiration arbitration of matters where the expired agreement between the parties contained a broad arbitration clause." Id. In interpreting Nolde Brothers, the Court observed that it "does not announce a broad rule that post-expiration grievances concerning terms and conditions of employment remain arbitrable." Id. at 204-205. Rather, the Nolde Brothers presumption is limited to disputes arising under the contract. Id. Moreover, the Court noted that the "arbitrability presumption" was "limited by the vital qualification that arbitration was of matters and disputes arising out of the relation governed by contract." Id.

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Brothers, Inc. v. Bakery Workers¹², 430 U.S. 243, at pp. 250-251 (1977). Also, Arbitrator Hochhauser stated that the fact that the parties continued to process arbitrations led to the conclusion that they did not intend for their "arbitration duties to terminate automatically with the contract." (Award at p. 5 and Id. at p. 253).

Finally, the Arbitrator distinguished the present case from the McNealy v. Caterpillar case relied on by the Agency. 139 F3d 1113 (7th Cir. 1998). Arbitrator Hochhauser distinguished the two cases on the facts, by noting that the parties in Caterpillar were unable to negotiate a collective bargaining agreement for an extensive period of time, and the employer had expressly stated that it would *not* submit cases to an arbitrator. 139 F.3d 1113 (7th Cir. 1998). The present case differs from Caterpillar because by DHS's own admission, there was a contract in place which contained a valid arbitration clause under which the parties operated. Also, unlike the facts in Caterpillar, DHS continued to process grievances and *never* expressly stated that it would not submit cases to an arbitrator, as was done in Caterpillar. Based on the above noted facts, the Arbitrator found that the underlying grievance in PERB Case No. 02-A-04 was arbitrable.

Similarly, Arbitrator Shapiro found that the underlying grievances which formed the basis of PERB Case No. 02-A-05 were arbitrable. Specifically, Arbitrator Shapiro found, *inter alia*, that: (1) the parties were bound by the terms of a prior contract executed between DHS and AFGE; (2) the arbitration clause contained in the AFGE, Local 383 agreement was valid; and (3) the grievances

¹²In the copy of the Opinion and Award submitted to the Board with the Agency's Request, the last case mentioned before the "Id., pp. 250-251" cite reference, on the second line of page 5, is the Litton case. 501 U.S. 190 (1991). Since the Litton case *does not* contain pages 250 and 251, as indicated by the Arbitrator's cite reference, the Board's staff contacted Arbitrator Hochhauser about the cite discrepancy and learned that the case she was actually citing was the Nolde Brothers, Inc. v. Bakery Workers case, which *does* contain pages 250 and 251 and that particular quote. 430 U.S. 243 (1977). Arbitrator Hochhauser also notified the Board's staff that she would contact the parties regarding the discrepancy. Arbitrator Hochhauser later sent the Board a copy of the Award which contains the correct cite and which she contends is the copy that the parties should have received. Also, she forwarded to the Board a copy of a letter dated November 15, 2002, in which she notifies the parties of the discrepancy in the two versions of the Award. Additionally, she indicated to the Board's staff that she sent the parties the version of the Opinion and Award which contains the Nolde Brothers cite. The Board notes that this case cite discrepancy makes no substantive difference in the Board's analysis of the case presently before it, as the Board only considered the Award originally submitted to it, when making its decision. Furthermore, the Board did not release this decision until the parties had been notified of the discrepancy.

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were arbitrable.¹³ In asserting that the AFGE, Local 383 agreement was no longer valid, the Agency repeated its argument that once a contract expires, a party may disavow an arbitration clause.¹⁴ McNealy v. Caterpillar, Inc., 139 F.3rd 1113 (7th Cir. 1998). Additionally, the Agency relied on Litton v. NLRB, in support of its argument that there was no duty to arbitrate an issue after the expiration of the collective bargaining agreement. 501 U.S. 190 (1991). However, the Arbitrator was *not* persuaded by the authority relied on by the Agency.

Instead, the Arbitrator found that the contract had *not* expired, but had been renewed automatically pursuant to its automatic renewal clause. (See, Footnote 6). Arbitrator Shapiro made this finding primarily based on the facts of the present case.¹⁵ As noted earlier in Footnote 6, FOP replaced AFGE in December 1996. The agreement covering the officers would have expired on September 30, 1997. However, due to its automatic renewal clause, it was renewed in 1997, 1998, and 1999 without evidence of an attempt to cancel it. There was an attempt to cancel it in 2000 by a letter sent on June 30, 2000; however, Arbitrator Shapiro found that there was *no* proof that the

¹³ In making his first finding, Arbitrator Shapiro relied on NLRB cases when stating that nothing in the Board's case law supports a conclusion that an unexpired collective bargaining (here the AFGE, Local 383) agreement becomes void when a new union is certified as the exclusive representative of the affected employees. (Shapiro's Award at p. 8).

¹⁵ Arbitrator Shapiro also relied on NLRB and Supreme Court precedent which he interpreted as saying that a new union may, if it wishes, continue to be bound by and administer the existing agreement. (See, Award at p. 8), American Seating Boston Machine Works, 89 NLRB 59 (1950) and American Seating Co., 106 NLRB 250 (1953), (where the NLRB adopted the general principle that if an existing collective bargaining agreement was not a bar to an election, it was also not a bar to full collective bargaining by the new exclusive representative.) Arbitrator Shapiro also noted that "the Supreme Court endorsed the principle established in American Seating in NLRB v. Burns International Security Service, by stating the following:

When the Union which has signed a collective bargaining contract is decertified, the succeeding union certified by the Board is not bound by the prior contract, need not administer it and may demand negotiation for a new contract, even if the terms of the old contract have not yet expired. 406 U.S. 272, 284 n.8."

According to Arbitrator Shapiro, "implicit in this line of reasoning (expressed in the above noted quote) is the notion that an existing agreement does not become void simply because a new union has been certified. The new union, may, if it wishes, continue to be bound and administer the existing contract." (Award at p. 9).

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Union received notice of the Agency's attempt to cancel the agreement in a timely manner. Therefore, he found that OLRCB's attempt to cancel the AFGE, Local 383 agreement was not successful.¹⁶(Award at p.9).

Arbitrator Shapiro also found that the new agreement, which had been negotiated between DHS and FOP, was *not* valid because it had not received the necessary approval signatures as required by D.C. Code §1-617.15 (2001 ed.). (See, Footnote 5). In addition, Arbitrator Shapiro reviewed both agreements and highlighted the fact that the "Grievance/Arbitration" clauses contained in both the old and new contract were the same, since there were no substantive changes in the parties' agreement. (See, Shapiro's Award at p.3). Therefore, whether the parties were operating under the old contract or the new one, the Agency's obligation to process grievances and arbitrate cases would be the same. Therefore, Arbitrator Shapiro was unpersuaded by the Agency's claim that there was no valid contract in place and no obligation to process and arbitrate grievances.

The issue before the Board is whether the Arbitrator exceeded his/her authority by finding that: (1) the collective bargaining agreement between AFGE, Local 383 and DHS was valid and enforceable; (2) DHS had a duty to process and arbitrate grievances pursuant to the AFGE, Local 383 agreement; and (3) the grievances in each case were arbitrable.

The Board has authority to review arbitration awards only where an arbitrator exceeds his/her authority or the award is contrary to law and public policy. Washington Teachers' Union v. D.C. Public Schools, 45 DCR 4019, Slip Op. No. 543, PERB Case No. 98-A-02(1998). Concerning DHS's claims that the Arbitrator exceeded his authority and jurisdiction by finding that: (1) the AFGE, Local 383 agreement was valid and enforceable against the parties; (2) the arbitration clause was valid; and (3) the grievances were arbitrable¹⁷, we find no merit to these claims.

¹⁶In concluding that the agreement had not been canceled, Arbitrator Shapiro credited the testimony of two Union witnesses who stated that they did not become aware of the Agency's letter which attempted to cancel the agreement until a year later. (Shapiro's Award at p.10). He also noted that the Agency's claim that it canceled the AFGE, Local 383 contract by its June 30, 2000 letter, is inconsistent with the District's assertion that there was no valid agreement in place that needed to be terminated. (Shapiro's Award at p. 9).

¹⁷After reviewing the Litton and Nolde cases, the Board notes that, in those cases, there was *no* dispute as to whether the collective bargaining agreement had expired. 501 U.S. 190 (1991); 430 U.S. 243 (1991). Id. This fact alone distinguishes Litton and Nolde from the cases presently before the Board. Both arbitrators in the present case found that the AFGE, Local 383 collective bargaining agreement was applicable to the parties and had *not* expired. Therefore, we conclude that it is not necessary for us to review the Arbitrators' finding concerning whether there was a post-expiration duty to arbitrate the grievances.

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The Board has held that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based." Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee, 47 DCR 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000). Moreover, the Board will not substitute its own interpretation or that of the Agency, in place of the duly designated Arbitrator's interpretation. Id. Here, the Arbitrators decided the precise issues¹⁸ that were given to them for decision; namely whether there was a valid contract in place between the parties¹⁹ and whether the underlying grievances in the arbitration cases were arbitrable. After reviewing the evidence in the arbitration cases which form the basis of PERB Case Nos. 02-A-04 and 02-A-05, both Arbitrators determined that there was a valid and enforceable agreement under which the parties were required to arbitrate and that the grievances were arbitrable²⁰. The Agency failed to cite any language in the

¹⁸ In the grievance arbitration case which forms the basis for PERB Case No. 02-A-04, the Arbitrator identified the following issues for resolution:

1. Was there a collective bargaining agreement in effect during the pertinent time, and if so, was it the agreement negotiated between the parties?
2. Is the matter arbitrable?
3. Did the Agency violate the collective bargaining agreement by failing to promote DS-07 correctional officers at Oak Hill beyond grade 7 during the applicable time period?
(Hochhauser's Award at p.2).

In the grievance arbitration which forms the basis for PERB Case No. 02-A-05, the Arbitrator identified the following issue for resolution:

1. Are the grievances of the employees in Groups A and B arbitrable? (Shapiro's Award at p. 5).

¹⁹The Board believes that it does not need to decide the issue of whether Arbitrator Hochhauser exceeded her authority by finding an implied-in-fact contract in the absence of a properly executed and statutorily approved collective bargaining agreement. This is the case because Arbitrator Hochhauser also found that the *express agreement* (AFGE, Local 383 contract), under which the parties operated and processed grievances, was still valid and had not expired.

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parties' collective bargaining agreement or any other authority which limits the Arbitrator's power to decide the precise issues that were placed before him to decide. We conclude that the Arbitrators' conclusion that the grievances were arbitrable is based on a thorough analysis and cannot be said to be clearly erroneous. Therefore, we conclude that neither Arbitrator exceeded his/her authority or jurisdiction in making the findings noted above. As a result, we cannot reverse either Arbitrator's award on this ground.

The Board has also held that "to set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." MPD and FOP/MPD Labor Committee, 47 DCR 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000). In its Arbitration Review Request, DHS did not make a clear argument that the Arbitrators' decisions were contrary to law²¹ and public policy, nor did DHS

²¹ While it is not clear to the Board whether the Agency was making a "contrary to law" argument when it asserted that the Arbitrator's findings were in contravention of the RCA del Caribe line of cases, 262 NLRB 963(1982), we note that DHS did assert the following in its Arbitration Review Request in PERB Case No. 02-A-05:

In clear contravention of the NLRB's well established RCA del Caribe, 262 NLRB 963 (1982), line of cases, Arbitrator Shapiro was without authority and exceeded his jurisdiction in finding that, where there is no collective bargaining agreement between the parties to this dispute: (1) the parties were bound by the terms of a prior contract executed by an Agency and a predecessor Union; (2) the parties are required to arbitrate grievances absent an effective contract requiring such; and, (3) the grievances were arbitrable, in the absence of a collective bargaining agreement. (See, Request for 02-A-05 at p. 2, paragraph 6).

Although DHS cited the above noted case, it did not provide any further explanation for why it believed Arbitrator Shapiro exceeded his authority, pursuant to the RCA del Caribe line of cases, by making the findings that he did.

Upon review of the RCA del Caribe case cited by the Agency, the Board fails to see the relevance of this case as it relates to the facts presently before us. 262 NLRB 963 (1982). In RCA del Caribe, the issue was whether the Employer, RCA del Caribe, committed an unfair labor practice by negotiating with an incumbent Union after a recognition petition had been filed by another union seeking to represent RCA del Caribe's employees. Id. In the case presently before us, the issue is whether the Agency had a duty to arbitrate grievances where there is a dispute concerning whether an effective collective bargaining agreement exists which mandates an arbitration. Without further explanation from the Agency on how RCA del Caribe applies, the

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present any applicable law or public policy which mandated that the arbitrator arrive at a different conclusion. Therefore, we cannot reverse the Arbitrators' decisions based on any violation of law or public policy.

After reviewing both Arbitration Review Requests, the Board finds that they amount to a mere disagreement with the Arbitrators' factual findings and interpretation of the relevant contract provisions. As noted earlier, disagreement with the arbitrator's decision does not provide a basis for reversing the arbitrator's decision. See, MPD v. FOP/MPD Labor Committee, 47 DCR 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000).

Because we find that the Petitioner has not demonstrated how either Arbitrator exceeded his/her authority, nor has it cited any definite applicable law that mandates that either Arbitrator reach a different conclusion, we find that the consolidated Arbitration Review Request lacks merit. Therefore, the Agency's consolidated Arbitration Review Request is denied.

ORDER**IT IS HEREBY ORDERED THAT:**

1. DHS's Motion for Consolidation and Expedited Review is Granted.
- 2.. DHS's Consolidated Arbitration Review Request in PERB Case Nos. 02-A-04 and 02-A-05 is Denied.
3. 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.

November 21, 2002

Board can only conclude that the case is not applicable and; therefore, does not present a viable basis for overturning the Arbitrator's decision in this case.

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

In the Matter of:)	
)	
INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, LOCAL 36,	)	PERB Case No. 00-U-28
)	
	)	Opinion No. 696
Complainant,)	
)	
)	
	)	FOR PUBLICATION
)	
v.)	
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF FIRE AND EMERGENCY)	
MEDICAL SERVICES,)	
)	
)	
Respondent.)	

DECISION AND ORDER

This matter involves an Unfair Labor Practice Complaint filed by the International Association of Firefighters, Local 36 ("Complainant", "IAFF" or "Union") against the D.C. Department of Fire and Emergency Medical Services ("Respondent", "FEMS" or "Agency"). The Complainant contends that FEMS violated D.C. Code §1-617.04(a)(1¹) and (5) (2001ed.) by failing to engage in compensation bargaining with IAFF prior to the budget mark up period for FY2001.²

¹Specifically, IAFF alleges that FEMS interfered with and coerced employees in the exercise of their statutory rights in violation of D.C. Code §1-617.04(a)(1) (2001 ed.), by failing to engage in compensation bargaining with the Union.

In addition, IAFF alleges that FEMS violated D.C. Code §1-617.04(a)(5) (2001 ed.) and the duty to bargain in good faith by these same acts.

² In their complaint, IAFF asserts that the Union originally requested to bargain with the Agency on December 7, 1999. However, the Union did not have their first bargaining session until March 27, 2000. Additionally, IAFF argues that this delay in meeting until March 27, 2000, when the budget mark up period had ended, negatively affected its members. This was the case because no money was budgeted for firefighters' pay increases. As a result, IAFF contends
(continued...)

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IAFF argues that because of the delay, *inter alia*, its firefighters were denied a pay increase.³

The Respondent denies the allegations. First, FEMS asserts that IAFF's complaint should be dismissed because it was not timely filed.⁴ In addition, FEMS claims that the time period between the initial request to bargain and the time that the parties met was not unreasonable. Furthermore, the Agency contends that any delay which occurred was caused by a change in administration at the Office of Labor Relations and Collective Bargaining (OLRCB) during this time period.⁵ Finally, OLRCB argues that the allegations made in IAFF's complaint are *moot* because the parties *did* eventually negotiate until they reached an impasse.

A hearing was held, and the Hearing Examiner issued a Report and Recommendation

²(...continued)

that the Agency's delay was an effective refusal to bargain and a violation of the duty to bargain in good faith. IAFF relies on J.H. Rutter-Rex Mfg. Co. to support its position that the refusal to bargain does not necessarily require some affirmative negative act, nor does it require a deliberate scheme to cause delay. 86 NLRB 470 (1949). It is sufficient that the employer simply fails to "make expeditious and prompt arrangements within reason for meeting and conferring." Id. IAFF also relies on the Little Rock Downtowner, Inc. case to support its position that the refusal to meet with the Union, despite repeated requests to come to the bargaining table, adequately meets the threshold for being considered a violation of the duty to come to the table. See, 145 NLRB 1286, 1305 (1964).

³A major issue in these negotiations was a pay increase for firefighters. IAFF alleges that the last compensation agreement which was negotiated between the parties expired in 1995. In addition, IAFF argued that the last pay increase that the firefighters received in 1998, occurred not as a result of negotiation, but as a result of the Union's fight to be included in federal legislation requiring a pay increase for firefighters. (Complaint at p.3).

⁴ Board Rule 520.4 requires that an unfair labor practice complaint be filed "not later than 120 days after the date on which the alleged violations occurred." FEMS, through its representative, the Office of Labor Relations and Collective Bargaining (OLRCB), contends that IAFF's complaint is untimely because it was filed more than 120 days after December 7, 1999, the date of IAFF's first bargaining request.

⁵ OLRCB alleges that the delay in bargaining was caused by a change in their office's administration. Mary Leary had recently been hired as the Director of OLRCB in May of 2000, and requested additional time to review the matter before commencing compensation bargaining with the Union. James Baxter was the Director of OLRCB when the request for bargaining was originally made.

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(Report). In her Report, the Hearing Examiner found that: (1) the Complaint *was* timely and (2) FEMS had committed an unfair labor practice by delaying the start of negotiations past the budget mark up period. As a result, the Hearing Examiner concluded that the Respondent had violated D.C. Code §1-617.04(a)(1) and (5) (2001 ed).

In reaching her decision, the Hearing Examiner looked at the “overall conduct of the parties”⁶ in order to see whether there had been a violation of the duty to bargain in good faith. D.C. Code §1-617.01(c) (2001 ed.), requires that the Mayor or appropriate personnel authority “shall meet at reasonable times with exclusive employee representatives to bargain collectively in good faith.” What is sufficient to constitute good faith will depend on the diverse facts of each specific case. See, National Labor Relations Board v. American National Insurance Co., 343 U.S. 395, 72 S. Ct. 824, 30 L.R.R.M. (1952). A statutory standard such as “good faith” can have meaning only in its application to the particular facts of a particular case. See, National Labor Relations Board v. American National Insurance Co., 343 U.S. 395, 72 S. Ct. 824, 30 L.R.R.M. (1952).

In view of the above, the Hearing Examiner determined that the Respondent had a duty to make prompt and reasonable efforts to confer with the Union, but failed to do so. In addition, she found that a 3-month lapse of time between the initial request to bargain in December 1999, and the first meeting date of March 27, 2000, was unreasonable.⁷ On these facts, the Hearing Examiner concluded that because of the delay in bargaining, IAFF had “in effect been shut out of the budget process during the time that funds were being made available for other similarly situated workers.” (Report at p. 20). “Thus, the Complainant is being forced to seek an increase retroactively from funds that were not reserved for them in the City’s Budget when the City Council went through the budget process.” (Report at p. 20). The Hearing Examiner also considered the fact that the Agency met with the Union on March 27, 2000 and agreed to participate in expedited interested based bargaining. Then subsequently, on April 5, 2000, the Agency withdrew its offer to bargain.⁸ Finally, the Hearing Examiner found that “the fact that the Respondent subsequently bargained to

⁶The NLRB has held that the finder of fact must review the parties’ overall conduct to determine whether the parties bargained in good faith. See also, NLRB v. Fitzgerald Mills Corp., 133 NLRB 877, enforced, 313 F2d 260 (2nd Cir. 1963), cert. den., 375 U.S. 834 (1963).

⁷In her report, the Hearing Examiner stated that “given the totality of circumstances, this (March 27th meeting date) was a very late response, especially in light of the fact that the budget was supposed to be submitted in April.” (Report at p. 17).

⁸Evidence in the record indicates that OLRCB Director James Baxter advised the Union that District of Columbia officials would not approve or authorize OLRCB to come to the table and bargain over the compensation issue. In making her finding, the Hearing Examiner noted the testimony of the Union’s chief negotiator, Jeremiah Collins, who indicated that Baxter had contacted him and told him that OLRCB was instructed not to bargain with IAFF at that time and that negotiations would not resume in the “foreseeable future.” (Report at p.17).

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impasse with the Union does not negate the validity of Complainant's claim or moot the compensation issue." (Report at p.20). Based on the foregoing, the Hearing Examiner concluded that the Respondent's refusal to come to the table in a timely manner was a refusal to bargain in good faith, and thus, an unfair labor practice in violation of the Comprehensive Merit Personnel Act (CMPA).

IAFF filed no Exceptions concerning the Hearing Examiner's finding that the Agency violated the duty to bargain in good faith; however, FEMS did. In its Exceptions, FEMS asserted that the Hearing Examiner erred in finding that it violated the duty to bargain in good faith. The Agency argued, *inter alia*: (1) that the time delay between the initial request and the initial bargaining session was *not* unreasonable; (2) that the Hearing Examiner impermissibly considered evidence of the parties' prior bargaining history in 1997 and 1998; and (3) that the Hearing Examiner's reliance upon incorrect and unsupported assumptions regarding the District's budgetary process and cycles resulted in an incorrect conclusion.⁹ (Exceptions at pgs. 2-4).

A review of the record reveals that the Agency's Exceptions amount to no more than a disagreement with the Hearing Examiner's findings of fact. This Board has held that mere disagreement with the Hearing Examiner's findings is not grounds for reversal of the Hearing

⁹The Agency also raised a procedural argument concerning a Hearing Examiner's ruling. The Hearing Examiner, over the Agency's objection, allowed Jeremiah Collins, IAFF's Counsel, to also act as a witness and give testimony in a narrative form. (Exceptions at p. 16). The Agency asserted that this ruling created a "highly unusual and prejudicial" hearing situation and asked that the Board make a clear ruling that a party's representative could not act as a witness in their case. For the reasons discussed below, the Board finds that this Exception has no merit. Under the Board's Rules, hearings are investigatory in nature, not adversarial. Hatton v. Fraternal Order of Police/Department of Corrections Labor Committee, 47 DCR 769, Slip Op. No. 451, PERB Case No. 95-U-02 (1995) aff'd sub. nom. Fraternal Order of Police/Department of Corrections Labor Committee v. PERB, MPD 95-15(1998). To that end, the Hearing Examiner has a responsibility to provide as much information as possible in order to develop a full and factual record upon which the Board can make its decision concerning a case. See, Board Rule 520.11 (Purpose of a Hearing); §550 of the Board's Rules (Hearings); and Pratt v. D.C. Department of Administrative Services, 43 DCR 2943, Slip Op. No. 457, PERB Case No. 95-U-06 (1995)(where the Board held that the Hearing Examiner is authorized to conduct a hearing and assess the probative value of evidence.). The Board's Rules give the Hearing Examiner many powers and much latitude to accomplish its mission of developing a full and factual record. See, Board Rules 550.12 and 550.13 (Authority of the Hearing Examiner). Furthermore, the Agency had an opportunity to cross examine Mr. Collins concerning his testimony. As a result, the Board finds that the Agency has not demonstrated how they were prejudiced by the Hearing Examiner's ruling which allowed Mr. Collins to testify. Therefore, the Board declines to make a ruling that party representatives are barred from acting as witnesses.

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Examiner's findings where the findings are fully supported by the record. American Federation of Government Employees, Local 874 v. D. C. Department of Public Works, 38 DCR 6693, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-18 and 90-U-04 (1991). The Board has also rejected challenges to the Hearing Examiner's findings based on: (1) competing evidence; (2) the probative weight accorded evidence; and (3) credibility resolutions. American Federation of Government Employees, Local 2741 v. D. C. Department of Recreation and Parks, 46 DCR 6502, Slip Op. No. 588, PERB Case No. 98-U-16 (1999).

After reviewing the record in the present case, we find that the Hearing Examiner's findings are reasonable and supported by the record. The Board's law is clear that an Employer violates the duty to bargain in good faith by unreasonably delaying negotiations over compensation.¹⁰ In addition, the Board has interpreted D.C. Code §1-617.17(b)¹¹ to require that the start of compensation bargaining should occur before the conclusion of the fiscal year for which bargaining is sought. International Brotherhood of Teamsters, Local 639 v. D.C. Public Schools, 38 DCR 6698, Slip Op. No. 267, PERB Case No. 90-U-05 (1991). The Hearing Examiner found that the Agency did not decide to begin bargaining with the Union until the fiscal year's budget markup period had almost ended and the fiscal year budget allotments for salary were made. In view of the above, we conclude that the Hearing Examiner's finding that FEMS violated its duty to bargain in good faith is reasonable, supported by the record, and consistent with Board precedent. Where the Hearing Examiner's Report and Recommendation is supported by record evidence, exceptions challenging those findings lack merit. American Federation of Government Employees, Local 2725 v. District of Columbia Housing Authority, 45 DCR 4022, Slip Op. No. 544, PERB Case No. 97-U-07 (1998). On this basis, we conclude that the Agency's Exceptions lack merit. Therefore, we adopt the Hearing Examiner's finding that FEMS committed an unfair labor practice by violating

¹⁰ In International Brotherhood of Teamsters, Local 639 v. D.C. Public Schools, the Board held that delaying compensation bargaining until 89 days after the duty to bargain began was unreasonable. 38 DCR 6698, Slip Op. No. 267, PERB Case No. 90-U-05 (1991). The duty to bargain in IBT Local 639 v. DCPS began when the compensation bargaining unit had been certified. In view of the fact that D.C. Code §1-617.17(m) requires that compensation bargaining between parties begin no later than ninety (90) days after a unit is certified, the Board found that the Employer's delay was deliberate and unreasonable. In the case presently before the Board, the duty to bargain began with IAFF's first request in December 1999. The first bargaining session did not take place until approximately 110 days later. Applying the Board's holding in IBT Local 639 v. DCPS to the facts in the present case, we find that FEMS's delay in bargaining was also unreasonable.

¹¹D.C. §1-617.17(b) (2001 ed.) provides, in pertinent part, that: "The Mayor...shall meet with labor organizations which have been authorized to negotiate compensation at reasonable times in advance of the District's budget making process to negotiate in good faith with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and other compensation matters."

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the duty to bargain in good faith.

Since we have adopted the Hearing Examiner's finding that FEMS violated the CMPA, we now turn to the issue of what is the appropriate remedy. As relief, IAFF seeks an order requiring that: (1) the Department begin bargaining immediately with the Union; (2) any economic improvements negotiated between the parties be retroactive to October 1, 1999; and (3) the Agency pay the Union's attorney fees in this matter. (Complaint at p. 4).

To remedy this unfair labor practice, the Hearing Examiner recommended that the Board issue an order directing the parties to confer and bargain over the issue of compensation. In addition, the parties were scheduled to participate in interest arbitration at the time of the Hearing Examiner's Report. As a result, the Hearing Examiner encouraged the parties to "enter interest arbitration in good faith with the purpose and goal of resolving their compensation dispute to finality."¹² However, the Hearing Examiner did not award any retroactive payment to make up for the Agency's refusal to bargain in 1999, as was requested in IAFF's complaint. The Hearing Examiner also did not address the issue of attorney fees in her Report.

IAFF filed an Exception to the Hearing Examiner's recommended remedy. This Exception challenged the Hearing Examiner's failure to grant the retroactive relief it originally requested in its complaint. However, IAFF later withdrew its Exception. IAFF filed a "Withdrawal of Exception to the Hearing Examiner's Recommended Decision" because the Arbitrator in the Interest Arbitration case between the parties had issued an Award concerning the firefighters' wages, which the D.C. City Council later approved." As a result, IAFF withdrew its Exception and stated that: "in the interest of labor harmony, IAFF has decided not to pursue its request that PERB consider a compensatory remedy in this case." (Withdrawal at p. 2).

When a violation is found, the Board's order is intended to have therapeutic as well as remedial effect. AFSCME, Local 2401 and Neal v. D.C. Department of Human Services, 48 DCR 3207, Slip Op. No. 644, PERB Case No. 98-U-05 (2001); D.C. Code §1-605.02(3) and 1-617.13 (a) (2001 ed.). Moreover, the overriding purpose of relief afforded under the CMPA for unfair labor practices is the protection of rights and obligations. Id. In view of the fact that the parties' compensation issues have been resolved through interest arbitration, a decision ordering the parties to bargain over this issue would be *moot*, and would have no therapeutic or remedial effect. Therefore, we limit the Board's remedy to posting a notice indicating that FEMS has committed an unfair labor practice. In addition, we decline to grant IAFF's request for attorney fees because the Board has held that it lacks authority to grant attorney fees. American Federation of Government Employees, Local 872 v. D.C. Department of Public Works, 49 DCR 1145, Slip Op. No. 439, PERB Case Nos. 94-U-02 and 94-U-08 (1995). We believe that this remedy will achieve the goals of the

¹²Subsequent to this unfair labor practice complaint being filed, the parties did bargain until they reached impasse. They later participated in an interest arbitration.

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Board's remedies, as outlined in the CMPA and the above mentioned Board precedent.

Pursuant to D.C. Code §1-605.2(3)(2001 ed.) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and for the reasons discussed above, we adopt the Hearing Examiner's findings and modify the Hearing Examiner's recommended remedy, as noted above.

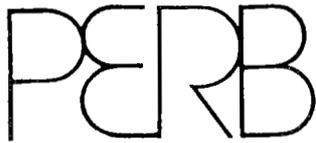
ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Fire and Emergency Services (FEMS), its agents and representatives shall cease and desist from violating D.C. Code §1-617.04(a)(1) and (5) (2001 ed.) by refusing to bargain on request concerning compensation with the International Association of Firefighters, Local 36.
2. FEMS shall post conspicuously within ten (10) days from the service of this Opinion the attached Notice where notices are normally posted. The Notice shall remain posted for thirty (30) consecutive days.
3. FEMS shall notify the Public Employee Relations Board (PERB), in writing, within fourteen (14) days from the date of this Order that the Notice has been posted.
4. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

November 26, 2002



Public Employee Relations Board

Government of the District of Columbia

415 Twelfth Street, N.W. Washington, D.C. 20004 [202] 727-1822/23 Fax: [202] 727-9116



NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF FIRE AND EMERGENCY SERVICES (FEMS), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 696, PERB CASE NO. 00-U-28 (November 26, 2002).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employees Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from refusing to bargain in good faith with the International Association of Firefighters, Local 36 concerning compensation by the conduct set forth in Slip Opinion No. 696.

WE WILL NOT, in any like or related manner, interfere, restrain or coerce, employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

District of Columbia Department of Fire and Emergency Services

Date: _____ By: _____
Director

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 717 14th Street, N.W., Suite 1150, Washington, D.C. 20005. Phone: (202) 727-1822.

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

November 26, 2002

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

_____)	
In the Matter of:)	
)	
AMERICAN FEDERATION OF GOVERNMENT)	
EMPLOYEES, LOCAL 2741,	)	PERB Case No. 00-U-22
)	
	)	Opinion No. 697
Complainant,)	
)	
	)	FOR PUBLICATION
)	
)	
v.)	
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF PARKS AND RECREATION)	
AND ROBERT NEWMAN, DIRECTOR,)	
)	
)	
Respondents.)	
)	
_____)	

DECISION AND ORDER

This case involves an Unfair Labor Practice Complaint filed by the American Federation of Government Employees, Local 2741 ("Complainant" or "AFGE") against the District of Columbia Department of Parks and Recreation and its Director, Robert Newman ("Respondents", "Agency" or "DPR"). The Complainant is alleging that the Respondents violated D.C. Code § 1-617.04 (a)(1) and (5) (2001 ed.)¹ by: (1) interfering with, restraining and coercing an employee during his testimony

¹D.C. Code §1-617.04 (a)(1) and (5)(2001 ed.) provide as follows:

(a) The District, its agents and representatives are prohibited from:

(1) Interfering, restraining, or coercing any employee in the exercise of the rights guaranteed by the subchapter...; and

(continued...)

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at an arbitration hearing; (2) reprimanding the employee after his testimony; (3) failing to provide the Complainant with a list of bargaining unit employees that was needed in connection with the arbitration proceeding; and (4) failing to make employee witnesses available to attend and testify at the arbitration hearing.²

In its Answer and Motion to Dismiss, the Respondents deny the allegations. DPR, through its representative, the Office of Labor Relations and Collective Bargaining (OLRCB), asserts that: (1) AFGE does not have standing to assert that the rights of the witness (a supervisor) were violated and (2) no collective bargaining members' rights were affected by the exchange between the witness and DPR's representative. In addition, DPR claims that it made witnesses available for the hearing; however, instead of releasing all seventeen employees from duty simultaneously, DPR agreed to allow them to be excused as needed. Furthermore, DPR asserts that it provided three versions of the requested information to the Union, thus fulfilling its obligation with respect to the document request.

At a hearing held on October 23, 2000, Respondents' Motion to Dismiss was granted pursuant to the Hearing Examiner's authority under Board Rule 550.13(c).³ (R & R at p. 2). Specifically, the Hearing Examiner found that the Respondents did *not* violate D.C. Code §1-617.04⁴ (a)(1) and (5) (2001 ed). On November 15, 2000, the Respondents filed a Motion for Sanctions and Other Relief. Subsequently, the Complainant filed an Opposition to Respondents' Motion for Sanctions and Other Relief. The Hearing Examiner addressed both the Complaint and the various motions concerning sanctions in his Report. The Complainant filed Exceptions to the Hearing Examiner's Report and Recommendation (R & R) and the Agency filed a Response to those Exceptions.

The Hearing Examiner's R & R, the Complainant's Exceptions, the Agency's Response, and the Motions for Sanctions are before the Board for disposition.

¹(...continued)

(5) Refusing to bargain collectively in good faith with the exclusive representative.

Prior codification at D.C. Code § 1-618.4 (a)(1) (5) (1981 ed.).

²The Complainant claims that the Respondents ordered bargaining unit witnesses not to report to the hearing until directed to do so by the Respondents.

³Board Rule 550.13 (c) provides, in relevant part, that the Hearing Examiner shall have the power to rule on Motions.

⁴Prior codification at D.C. Code §1-618.4(a)(1) and(5) (1981 ed.).

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I. Background:

The facts of this case arise out of an arbitration proceeding to resolve a grievance filed by AFGE⁵ on behalf of wage grade employees of DPR. These employees were seeking to receive hazardous duty and environmental pay pursuant to the parties' collective bargaining agreement. A hearing commenced before Arbitrator Ira Jaffe on February 9, 1999 and was continued on March 24, 2000, March 25, 2000 and April 17, 2000.⁶ Most of the events giving rise to the present complaint occurred in preparation for or at the March 24, 2000 hearing. A brief description of those events follows:

On March 14, 2000, AFGE, Local 2741 requested a list of "all wage grade employees and any other employees performing wage grade tasks." The request specified that the list "must contain the official classified position of these employees." (R & R at p. 3). The Complainant contends that it repeated this request orally on several occasions, but as of the filing of the unfair labor practice complaint, the information had not been provided, or rather had not been provided in a complete and accurate form. The Respondents claim that they have provided three versions of the requested list to the Complainant.⁷

On March 17, 2000, the Complainant submitted a list of witnesses to the Respondent, Robert Newman, requesting that seventeen (17) employees, including five supervisors and twelve other employees, be granted administrative leave in order to attend the arbitration hearing. On March 23, 2000, DPR's Chief of Maintenance called each of the Complainant's witnesses at home and instructed

⁵The Complainant, American Federation of Government Employees, Local 2741, is the exclusive representative for wage grade employees at DPR. AFGE and DPR are parties to a collective bargaining agreement. Pursuant to the parties' collective bargaining agreement, AFGE filed for arbitration in this matter on January 6, 1998. Robert Newman was the Director of DPR at the time of the events giving rise to the grievance. Mr. Newman subsequently resigned his position.

⁶The Board's staff contacted the parties and learned that to date, no decision has been issued in the above noted grievance arbitration proceeding. The Board's staff also contacted the Arbitrator to learn the status of this decision and was informed that neither party has completed presenting its case. As a result, the hearing has been in adjournment since April 2000. The Arbitrator added that he has been waiting for the parties to contact him to schedule other hearing dates.

⁷The Respondents noted that one such version of the requested list was provided to the Complainant on April 21, 2000. (Motion to Dismiss at ¶12).

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them to report to work as usual on March 24th and wait until called before reporting to the arbitration hearing. Claude Hill, an Electrician Foreman, was the first witness at the hearing. Mr. Hill had not been informed of the instruction to report directly to work. The Complainant alleges that DPR's representative, Tina Curtis, gestured and signaled to Hill throughout his testimony. The Complainant also claims that DPR's representative pursued and berated Hill for having ruined DPR's case. According to the Complainant, the pursuit did not stop outside of the hearing room. Finally, the Union claims that DPR's representative (Tina Curtis) followed Hill into the men's room and later into the parking lot until he drove away.

In light of the above, AFGE filed this complaint.

II. The Hearing Examiner's Report and Recommendations

Based on the pleadings and the record developed in the hearing, the Hearing Examiner identified two main issues. These issues, and his findings and recommendations are as follows:

- 1. Did DPR commit an unfair labor practice in this matter?*
- 2. Should either party be sanctioned as a result of the Cross Motions for Sanctions that were filed by the parties?*

Based on his review of the evidence in the record, the Hearing Examiner concluded that the Complainant's allegations did not state a cause of action under the Comprehensive Merit Personnel Act (CMPA). He based his determination on the fact that the actions alleged arose in the context of an arbitration proceeding. In the Hearing Examiner's view, the right of employees to a grievance arbitration is provided pursuant to the parties' collective bargaining agreement, not the CMPA.⁸ Furthermore, he noted that the Board distinguishes between those obligations that are statutorily imposed under the CMPA and those that are contractually agreed upon between the parties. See, American Federation of State, County, and Municipal Employees, Local 2921 v. District of Columbia Public Schools, 42 DCR 5685, Slip Op. No. 339, PERB Case No. 92-U-08 (1992). Relying on the holding in AFSCME, Local 2921 v. DCPS, the Hearing Examiner also observed that the Board's authority only extends to resolving statutorily based obligations under the CMPA. Id. On the other

⁸ Specifically, he stated that the CMPA does not guarantee employees the right to a fair arbitration. He noted that the only place that grievance arbitration is mentioned in the CMPA is in D.C. Code §1-605.02(6)(2001 ed.), where the Board has the authority to consider appeals from arbitration award pursuant to a grievance procedure. (R & R at p.7).

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hand, he pointed out that the Arbitrator is vested with the authority to resolve disputes that are contractually based pursuant to the parties' negotiated agreement. See also, American Federation of Government Employees, Local 3721 v. District of Columbia Fire Department, 39 DCR 8599, Slip Op. No. 287 at n. 5, PERB Case No. 90-U-11 (1991) and Washington Teachers' Union, Local 6, American Federation of Teachers, AFL-CIO v. District of Columbia Public Schools, 42 DCR 5488, Slip Op. No. 337, PERB Case No. 92-U-18 (1995)⁹. In view of the above, the Hearing Examiner asserted that any disputes arising out of the arbitration proceeding are contractual in nature and should be resolved by the Arbitrator. (R & R at p.2 and 9).

The Board does not agree with the Hearing Examiner's view that the allegations are contractual in nature and do not present a cause of action under the CMPA. We find that the allegations made in this complaint *do*, in fact, concern statutory violations, even though these alleged statutory violations arose in the context of the Union exercising its contractual right to a grievance arbitration. The CMPA grants employees the right to file a grievance.¹⁰ Therefore, it logically follows that the CMPA protects employees as they seek to exercise this right. As a result, the Board finds that the Hearing Examiner should make findings of fact concerning whether the CMPA was violated in this case.

Individual Unfair Labor Practice Allegations

Contrary to the Hearing Examiner's finding that the Union's allegations do not present causes of actions under the CMPA, we find that the Board has jurisdiction to hear and decide the allegations raised in the Union's complaint. Specifically, the statutory violations raised in this unfair labor practice complaint have been considered and addressed before by this Board and the NLRB. Specifically, both PERB and the NLRB, have addressed allegations of unfair labor practices being committed during the course of an arbitration proceeding. Therefore, we find *no* merit to the Hearing

⁹In both cases, the Board declined to consider issues that it determined were properly before the Arbitrator and arose from the parties' collective bargaining agreement. The Board reasoned that the Board lacked jurisdiction to hear the claims since the issues raised failed to assert violations of the CMPA. See, AFGE, Local 3721 v. D.C. Fire Department, 39 DCR 8599, Slip Op. No. 287 at n. 5, PERB Case No. 90-U-11 (1991) and WTU, Local 6, AFT, AFL-CIO v. DCPS, 42 DCR 5488, Slip Op. No. 337, PERB Case No. 92-U-18 (1995).

¹⁰ The Board finds that D.C. Code §1-617.06 (2001 ed.) protects employees in the exercise of their right to pursue a grievance. Specifically, D.C. Code §1-617.06(a)(2), (3) and (b) (2001 ed.), respectively, give employees the right to: (1) "form, join, or assist any labor organization... (2) bargain collectively through representatives of their own choosing... and (3) present a grievance at any time..."

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Examiner's conclusions¹¹ that: (1) these allegations raise no claims under the CMPA and (2) the Board has no jurisdiction to hear these claims.¹² The specific reasons for the Board's conclusion that the Union's allegations *do*, in fact, raise claims under the CMPA follow below.

Documents

This Board has found that an Agency commits an unfair labor practice by failing to provide relevant documents in response to a request made during an arbitration proceeding. See, International Brotherhood of Teamsters Locals 639 and 730 v. D.C. Public Schools, 37 DCR 5993, Slip Op. No. 226, PERB Case No. 88-U-10 (1990). In the present case, the Complainant alleges that DPR failed to provide a complete list of wage grade employees to the Union. The Complainant contends that these actions constitute a failure to bargain in good faith in violation of D.C. Code §1-617.04 (a)(1) and (5) (2001 ed.).¹³ The Respondent denies the allegations stating that it had complied with the request and had even submitted three versions of the list to the Union. Based on the precedent cited above, we find that this Board is empowered to decide whether DPR committed an unfair labor practice concerning the Union's document request, even though the document request was made during an arbitration proceeding.

Alleged Retaliatory Behavior Toward Supervisor Hill

This Board has also addressed the issue of whether an Agency commits an unfair labor practice by allegedly retaliating against an employee for participating in the grievance arbitration process or testifying on behalf of another employee in a grievance arbitration. See, Bagenstose and Borowski v. D.C. Public Schools, 38 DCR 4254, Slip Op. No. 415 at pg. 9, PERB Case Nos. 88-U-33 and 88-U-34 (1991) (where the Board found that the Complainant was unlawfully retaliated against for testifying on behalf of another employee); See also, Valerie A. Ware v. D.C. Department of Consumer and Regulatory Affairs, 46 DCR 3367, Slip Op. No. 571, PERB Case No. 96-U-21 (1999) (where the Complainant alleged that DCRA retaliated against her for filing a grievance and where the Board found that supervisors may bring claims alleging retaliation in violation of the

¹¹The Hearing Examiner bases his conclusions on the fact that the events giving rise to the unfair labor practice complaint occurred during an arbitration proceeding.

¹²The Complainant's Exceptions also disagree with the Hearing Examiner's position that the alleged unfair labor practices do not present statutory causes of action under the CMPA. The Complainant relies on PERB and NLRB precedent in support of its position.

¹³Prior codification at D.C. Code § 1-618.4 (a)(1) and (5) (1981 ed.).

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CMPA for participating in grievance process); and See, Parker Robb Chevrolet v. Automobile Salesmen Union, Local 1095, 262 NLRB 402 (where the NLRB considered whether a supervisor was terminated for giving testimony adverse to an employer's interest at an NLRB proceeding). On this basis, we find that the Board has jurisdiction to determine whether Supervisor Hill was retaliated against for providing testimony in this matter.¹⁴ As a result, the Hearing Examiner should be directed to make specific findings concerning: (1) what was actually said to supervisor Hill; (2) who heard the statements; (3) how Hill was affected; and (4) whether any other employees refused to testify as a result of hearing about Hill's treatment.¹⁵

Reporting to Work First

Finally, this Board has not addressed whether it is an unfair labor practice for an employer to refuse to simultaneously release several employees to attend an arbitration hearing due to work coverage concerns. However, this Board has addressed whether an Arbitrator exceeded his authority by ruling that a sequestration clause¹⁶, which only allowed a certain number of witnesses to be present

¹⁴We find that this is the case even though supervisor Hill is not a member of the bargaining unit represented by AFGE. The Hearing Examiner found that even though Supervisor Hill retained rights under D.C. Code §1-617.01(b)(1) (2001 ed) to assist a labor organization, AFGE had no legal authority to assert a violation of his rights on his behalf. Furthermore, the Hearing Examiner found that nothing in the records indicated that Hill had asserted the violations on his own behalf. Therefore, "under these circumstances, the Respondent's treatment of Hill did not present a cause of action under D.C. Code §1-617.04(a)(1) (2001 ed.)." We disagree. Notwithstanding the Hearing Examiner's finding on this issue, we find that Supervisor Hill is protected from retaliation pursuant to D.C. Code §1-617.04(a)(4) (2001 ed.), which prohibits the District and its agents from taking reprisal against an employee for giving testimony. In addition, we conclude that the above noted PERB and NLRB precedent protect a supervisor/employee, such as Hill, from being retaliated against for pursuing grievances or providing testimony in an arbitration hearing. See, Id.

¹⁵ The Complainant alleges that two supervisors, Herbert Williams and Glen Tapscott, gave very guarded and vague testimony after hearing about Hill's treatment. In addition, the Complainant claims that two other supervisors, James Boone and Darnell Thompson did not return to testify as scheduled after hearing about Hill's treatment. (Opposition to the Respondent's Motion to Dismiss at p. 10).

¹⁶The parties' collective bargaining agreement limited witnesses to being present at the grievance hearing "only at such time as their personal testimony is presented". See, Washington Teachers' Union, Local 6, AFT, AFL-CIO v. District of Columbia Public Schools, 49 DCR 4357, (continued...)

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to testify at a time, was discretionary. Washington Teachers' Union, Local 6, AFT, AFL-CIO v. District of Columbia Public Schools, 49 DCR 4357, Slip Op. No. 432, PERB Case No. 95-A-07 (2002). In the present case, no provision of the parties' contract is cited as requiring sequestration. In addition, the Agency indicated that it merely wanted its employees to be called one by one so that the work area would be covered. Therefore, the Washington Teachers' Union, Local 6, AFT, AFL-CIO v. District of Columbia Public Schools, would not be applicable to the facts of the present case. Id.

When this Board does not have precedent on an issue, it looks to the decisions of other labor relations authorities, such as the National Labor Relations Board (NLRB), for guidance. Forbes v. IBT Local 1714, 36 DCR 7107, Slip Op. No. 229, PERB Case No. 88-U-20 (1989). In BMC America, Inc. and Genino Garcia, the NLRB considered whether an Employer commits an unfair labor practice by citing work coverage concerns as a reason for refusing to release employees to participate in an NLRB proceeding. 304 NLRB 362 (1991). In BMC America, Inc. and Genino, the NLRB found that management committed an unfair labor practice and interfered with the rights of employees to seek representation where management refused to allow a group of employees to attend an unfair labor practice proceeding. Id. The NLRB reasoned that the Employer's behavior was unlawful because it discouraged employees from participating in the collective bargaining process. See, Id.

This Board follows NLRB precedent where relevant. See, Forbes v. IBT Local 1714, 36 DCR 7107, Slip Op. No. 229, PERB Case No. 88-U-20 (1989). Since the NLRB has addressed this issue of releasing employees to attend Board proceedings, we find that by analogy, this Board could assert jurisdiction in the present case to decide whether or not DPR committed an unfair labor practice by refusing to release seventeen employees simultaneously to attend an arbitration proceeding. However, whether DPR's actions constitute an unfair labor practice is a question of fact. Therefore, we find that the present case should be remanded to the Hearing Examiner for findings on: (1) whether the Agency's action of ordering employees to report to work and releasing employees only as needed to testify constituted an effective "refusal" to allow employees to participate in the arbitration proceeding; (2) whether DPR's action coerced or discourage participation in the arbitration¹⁷; and (3) whether the Agency's action of releasing the employees as needed was taken for a legitimate business reason to ensure that there was proper coverage in the work area.

¹⁶(...continued)

Slip Op. No. 432 at p. 3, PERB Case No. 95-A-07 (2002).

¹⁷We find that this is an issue of fact that the Hearing Examiner must decide because the Agency asserts that it did not refuse to allow employees to attend; it merely directed that they only be released to attend when their actual testimony was needed.

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Only after making a finding on these threshold issues will the Board have the necessary information to make a determination on the ultimate issue of whether the Agency committed an unfair labor practice by the actions alleged in AFGE's Complaint. As a result, we order that this case be remanded to the Hearing Examiner for an appropriate finding on these issues.

Motion for Sanctions

The Respondents' Motion for Sanctions alleges that the Complainant's claim was: (1) filed in bad faith; (2) frivolous; and (3) lacked merit. DPR also alleged that the Complainant's representative, Beverly Crawford, "engaged in unprofessional and inappropriate conduct in an effort to create undue confusion, delay and expense to the District." In addition, the Respondents argue that the Complainant should be sanctioned because the Complainant, through its representative, Beverly Crawford, refused to stipulate to the factual allegations of the Complaint. On this basis, the Respondents assert that it should receive costs pursuant to the Board's decision in AFSCME, D.C. Council 20, Local 2776 v. D.C. Department of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990). The Complainant's Motion for Sanctions asserted, *inter alia*, that: (1) Respondents' Motion was filed as an attempt to punish a zealous advocate and (2) DPR should be sanctioned for forcing Complainant's representative, Beverly Crawford, to defend herself and her actions, in response to DPR's Motion for Sanctions.

The Hearing Examiner determined that neither party pointed to any statutory authority for imposing any sanctions other than the costs allowed pursuant to the Board's precedent in AFSCME 2776 v. D.C. Department of Finance and Revenue. In AFSCME, D.C. Council 20, Local 2776 v. D.C. Department of Finance and Revenue, the Board held that costs are allowable where: (1) the losing party's claim or position was wholly without merit; (2) the challenged action was taken in bad faith, and (3) a reasonable foreseeable result of the successfully challenged conduct is the undermining of the union. Id. Under this test, the Hearing Examiner determined that *neither* party had met the standard required for costs to be awarded pursuant to AFSCME, D.C. Council 20, Local 2776 v. D.C. Department of Finance and Revenue. Id. As a result, the Hearing Examiner recommended that both parties' Motions be denied.

Both parties excepted to the Hearing Examiner's finding on this issue by merely disagreeing with the Hearing Examiner's finding and reiterating the arguments previously raised in their original motions. The Board has held that merely disagreeing with the Hearing Examiner's finding without authority or other support for a position is not sufficient to meet the standard for reversible error. Hoggard v. District of Columbia Public Schools, 46 DCR 4837, Slip Op. No. 496, PERB Case No. 95-U-20 (1996).

Consistent with the above, the Board concludes that the Hearing Examiner's findings on both

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Motions for Sanctions are reasonable and supported by the record. Therefore, we adopt these findings.

Pursuant to D.C. Code §1-605.02(3) (2001 ed.) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendation of the Hearing Examiner. Accordingly, we reject the Hearing Examiner's Report and Recommendation, as it relates to the unfair labor practice allegations and order that the case be remanded to the Hearing Examiner for findings consistent with this Opinion. In addition, the Board adopts the Hearing Examiner's findings with respect to the parties' Motions for Sanctions.

ORDER

IT IS HEREBY ORDERED THAT:

1. PERB Case No. 00-U-22 is remanded to a Hearing Examiner for findings consistent with this Opinion. The Board shall schedule a hearing on this matter within (30) days of this Order.
2. The District of Columbia Department of Parks and Recreation's Motion for Sanctions is denied.
3. The American Federation of Government Employees, Local 2741's Motion for Sanctions is denied.
4. Pursuant to Board Rule 559.1, this Decision and Order shall be final upon issuance.

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

November 26, 2002

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

In the Matter of:)	
)	
FRATERNAL ORDER OF POLICE/)	
DEPARTMENT OF CORRECTIONS	)	PERB Case No. 01-U-16
LABOR COMMITTEE,	)	Opinion No. 698
(On behalf of Georgia Green,)	
William Dupree)	
and Earnest Durant),)	
)	
	)	FOR PUBLICATION
)	
Complainant,)	
)	
)	
v.)	
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF CORRECTIONS,)	
)	
)	
Respondent.)	
)	
)	

Decision and Order

This matter involves an Unfair Labor Practice Complaint filed by the Fraternal Order of Police/Department of Corrections Labor Committee ("Complainant", "Union" or "FOP") against the District of Columbia Department of Corrections ("Respondent", "DOC" or "Agency"). FOP filed this Complaint on behalf of Georgia Green, William Dupree and Earnest Durant based on separate allegations raised by the parties. On behalf of Georgia Green, FOP alleges that DOC committed an unfair labor practice by wrongfully proposing a suspension action against her. On behalf of William Dupree and Earnest Durant, FOP alleges that DOC committed unfair labor practices against them by: (1) attempting to reduce their outstanding performance ratings in their criminal investigator positions to excellent ratings and (2) removing their fire arms and assigning them to administrative duties. FOP claims that the factual record in this case supports a conclusion that the Respondent violated D.C. Code §1-617.04 (a)(1), (3) and (4) (2001 ed.)¹ by the acts alleged above.

Respondent denies the allegations. In addition, the Respondent asserts that the Complaint should be dismissed with prejudice because neither of the individuals represented by FOP has

¹Prior codification at D.C. Code §1-618.4(a)(1), (3) and (4) (1981 ed.).

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demonstrated any link between his or her union activities and the actions taken by the Respondent. Furthermore, DOC contends that it acted pursuant to a reasonably held good faith belief regarding the individual Complainant's conduct. Finally, DOC claims that it would have taken the challenged actions regardless of their union affiliation, consistent with the management rights provided in D.C. Code § 1-617.18(a)(1)-(6) (2001 ed.).²

A hearing was held. The Hearing Examiner found that the Respondent did *not* violate D.C. Code § 1-617.04(a)(1), (3) and (4) (2001 ed.) by proposing to suspend Georgia Green or by attempting to reduce the performance ratings of William Dupree and Earnest Durant.³ However, the

²Prior codification at D. C. Code § 1-618.8(a)(1)-(6) (1981 ed.).

³In both cases, the Hearing Examiner determined that Green, Dupree and Durant did not meet their burden of showing a nexus between the Respondent's actions and their individual union activities. As a result, the Hearing Examiner recommended that both of these complaint allegations be dismissed. The Complainant filed Exceptions concerning the Hearing Examiner's finding on both of these issues. Specifically, the Complainant claims that the Hearing Examiner erred in his findings because, *inter alia*, "the entire record in this case supports the Complainant's allegations." (Complainant's Exceptions at p.3).

As it relates to Green's suspension, the Complainant argues that the record showed that this disciplinary action was unfounded from its inception and that the Agency's reponse was the result of Green's involvement as an employee representative in the Bessye Neal, et al. v. D.C. Department of Corrections, et al. case. The Bessye Neal, et al. v. D.C. Department of Corrections, et al. case held, *inter alia*, that the Respondent cannot make changes in the terms and conditions of employment of members of this protected class without first obtaining the approval of the Special Master. (R & R at p. 2). In addition, Green claims that her involvement in Public Employee Relations Board cases was well-known to DOC officials and prompted the Agency's actions against her. (Complainant's Exceptions at p. 10).

Concerning Dupree and Durant's performance appraisal allegation, the Union claims that the Agency's reliance on the District Personnel Manual's requirement that employees be in their positions for one year before becoming eligible to receive an outstanding rating was unfounded. In addition, the Union claims that the actions taken against Durant and Dupree were, *inter alia*, directed to coerce Dupree and Durant, and all other bargaining unit employees, in light of impending reduction-in-force actions at DOC.

This Board has found that in order to sustain an unfair labor practice claim based on anti-union animus, a Complainant must prove that the Agency's actions were motivated by the Complainant's lawful union activity. Doctors Council of the District of Columbia and Skopek v. D.C. Commission on Mental Health Services, 47 DCR 7568, Slip Op. No. 636, PERB Case No.

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Hearing Examiner determined that the Respondent violated D.C. Code §1-617.04 (2001 ed.) by removing firearms from Complainants Dupree and Durant and assigning them to administrative duties. Both parties filed Exceptions concerning the Hearing Examiner's findings. The Hearing Examiner's Report and Recommendation and the parties' Exceptions are before the Board for disposition. The one allegation in which the Hearing Examiner found a violation will be discussed in more detail in the following paragraphs.

The substance of the allegation for which the Hearing Examiner found a violation of D.C. Code §1-617.04 (2001 ed.) concerned the Agency's decision to take William Dupree and Earnest Durant's weapons. The Agency claims that William Dupree and Earnest Durant exhibited threatening behavior in the presence of two management personnel, Clydie Smith, Executive Assistant to the Director and Pamela Chisholm, while discussing labor-management issues. The Agency claims that because of this threatening conduct, they took steps to get the permission of the Special Master to have Dupree and Durant's weapons removed and to have them assigned to administrative duties while the matter was being investigated. Furthermore, the Agency contends that the rise in workplace violence prompted them to take this action against Dupree and Durant. Dupree and Durant deny that they exhibited threatening behavior toward Chisholm or Smith.

As noted earlier, the Hearing Examiner found that the evidence shows that DOC committed a violation of D.C. Code §1-617.04 (a)(1)(2001 ed.) when it removed weapons from Dupree and Durant and placed them on administrative duty. In reaching this finding, the Hearing Examiner observed that both Dupree and Durant were clearly engaged in protected activity when they went to the Grimke Building because they went there in their capacity as union officials, to complain to management about what they regarded as a unilateral change in working conditions, i.e., the change in parking arrangements. He further concluded that there was no dispute over whether the decision

99-U-06 (2000). In the present case, as in the Skopek case, the Hearing Examiner found that the individuals represented by the Complainant failed to make this showing. Based on our review of the record in the present case, we conclude that the Hearing Examiner's findings are reasonable and supported by the record. Therefore, we find that the Union's Exceptions amount to no more than a disagreement with the Hearing Examiner's findings of fact. This Board has held that mere disagreement with the Hearing Examiner's findings is not grounds for reversal of the Hearing Examiner's findings where the findings are fully supported by the record. American Federation of Government Employees, Local 872 v. D. C. Department of Public Works, 38 DCR 6693, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). The Board has also rejected challenges to the Hearing Examiner's findings based on: (1) competing evidence; (2) the probative weight accorded evidence; and (3) credibility resolutions. American Federation of Government Employees, Local 2741 v. D. C. Department of Recreation and Parks, 46 DCR 6502, Slip Op. No. 588, PERB Case No. 98-U-16 (1999). In view of the above, we find that the Complainant's Exceptions lack merit. Therefore, we dismiss the allegations pertaining to Green's suspension and Durant and Dupree's performance appraisals.

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to remove firearms from Dupree and Durant was a direct consequence of their behavior exhibited in their capacities as union officials.

The Hearing Examiner identified the relevant issue as being *whether the behavior exhibited by Dupree and Durant was so extreme as to deprive them of the protections of D.C. Code §1-617.04(a)*(2001 ed.).⁴ The Hearing Examiner first determined that the evidence did not support a finding that Durant's behavior was in any way aggressive or hostile. He considered the fact that there was conflicting testimony between management's witnesses on whether Durant exhibited threatening behavior. Only Chisholm suggested that Durant was hostile. By contrast, the evidence seemed to suggest that he was essentially uninvolved. On this basis, the Hearing Examiner concluded that the evidence suggested that Durant's behavior was not hostile or aggressive at all. Furthermore, he noted that the Agency's own internal investigation reached this same conclusion.

As the evidence relates to Dupree, the Hearing Examiner determined that even though evidence suggests that Dupree was not nearly as calm and respectful toward Chisholm as he remembers himself to have been, "Chisholm's testimony that she felt seriously threatened by Dupree was not credible." (R & R at p. 16). The Hearing Examiner considered the fact that Chisholm did not raise the issue of threats by Dupree and Durant with anyone else in the immediate aftermath of the episode, even though she did report a verbal confrontation to the Executive Director via e-mail. The Hearing Examiner determined that the mention of a verbal confrontation did not imply that this confrontation had been loud, much less threatening.

In determining that the record did not support a finding that management was threatened by Dupree and Durant's behavior, the Hearing Examiner highlighted the fact that it took nearly a week to remove the weapons. The Hearing Examiner did not "find it credible that the personnel management protections afforded Dupree and Durant through the *Neal* case demanded such a delay in the face of a perceived serious threat." (R & R at p. 16). Furthermore, the Hearing Examiner observed that even if we accept Chisholm's description of Dupree's behavior as "loud and boisterous", or even rude and disrespectful, as the Respondent's investigator concluded, we must examine whether such activity exhibited by him in his capacity as a union official is nevertheless protected. The Hearing Examiner indicated that this Board has not previously ruled on this issue. As a result, he noted that where the Board has no precedent on an issue, it looks to National Labor Relations Board (NLRB) precedent for guidance. The Hearing Examiner stated that the NLRB has held that the purposes of the National Labor Relations Act (NLRA) require that management sometimes tolerate behavior exhibited in the course of exercising protected rights that it might not otherwise tolerate. The behavior that management might be required to tolerate is broad, but not infinite. The Hearing Examiner relied on *Union Fork and Hoe Co.* for the standard on what conduct is egregious enough to deprive union officials of their protection. 241 NLRB 907 (1979). In *Union Fork and Hoe Co.*, the NLRB held that the line is drawn in those flagrant cases where the misconduct

⁴Prior Codification at D.C. Code §1-618.4(a) (1981 ed.).

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is so violent or is of such a character as to render the employee unfit for further service. *Id.* In view of the above, the Hearing Examiner concluded that “nothing... beyond the conclusory statements of Smith and Chisholm, supports a conclusion that Dupree’s behavior exceeded the accepted norms of the labor-management relationship.” 241 NLRB 907, 908 (1979). (R & R at p.17). Therefore, he found that Dupree’s conduct was still protected and that DOC committed a violation of D.C. Code §1-617.04 (a)(1) (2001 ed.).⁵ However, he did *not* find violations of D.C. Code § 1-617.04(a)(3) or (4) (2001 ed.).⁶

Both parties filed Exceptions concerning the Hearing Examiner’s finding on this issue. In its Exceptions, the Agency asserts that the Hearing Examiner erred in finding that DOC violated the CMPA by removing Dupree and Durant’s weapons. Specifically, DOC disagrees with the factual findings and the weight the Hearing Examiner gave certain evidence. In addition, the Agency cites the Occupational Safety Health Act’s (OSHA) workplace safety rules for the proposition that it is the Employer’s duty to keep the workplace safe, and although there may not have been a threat this time, there could have been. (Respondent’s Exceptions at p. 13). Therefore, the Agency asserts that it did what any reasonable employer would have done by “taking precautionary measures.” (Respondent’s Exceptions at p. 14). In its Exceptions, the Complainant contends that the Hearing Examiner erred in failing to find violations of D.C. Code §1-617.04(a)(3) or (4) (2001 ed.). However, FOP also asserts that the record supports the Hearing Examiner’s findings that DOC violated D.C. Code §1-617.04(a)(1) (2001 ed.).

Notwithstanding the Exceptions raised by both parties, the Board finds that the Hearing Examiner’s findings are reasonable and supported by the record. In addition, we find that the Agency’s Exceptions amount to a mere disagreement with the Hearing Examiner’s findings. As stated earlier, a mere disagreement with the Hearing Examiner’s findings is not grounds for reversal of the Hearing Examiner’s findings where the findings are fully supported by the record. American Federation of Government Employees, Local 872 v. D. C. Department of Public Works, 38 DCR 6693, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). Furthermore, where the Hearing Examiner’s Report and Recommendation is supported by record evidence, exceptions challenging those findings lack merit. American Federation of Government Employees, Local 2725 v. District of Columbia Housing Authority, 45 DCR 4022, Slip Op. No. 544, PERB Case No. 97-U-07 (1998). We therefore, adopt the Hearing Examiner’s finding that DOC

⁵Prior codification at D.C. Code §1-617.04(a)(1) (1981 ed.).

⁶The Hearing Examiner stated that there was no showing that Respondent’s action was intended to discourage, or actually had the effect of discouraging membership in the Labor Committee; both Dupree and Durant continued to serve in their union capacities. Similarly, the Hearing Examiner did not find that the Respondent’s action was in reprisal for either Dupree or Durant having “signed or filed an affidavit, petition or complaint or given any information or testimony under this subchapter.” (R & R at p.17).

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violated the CMPA by taking Dupree and Durant's weapons and giving them administrative duties.

Since we have adopted the Hearing Examiner's finding that DOC violated the CMPA, we now turn to the issue of what is the appropriate remedy. As a remedy, the Hearing Examiner recommended that the Respondent be ordered to: (1) cease and desist from violating Dupree and Durant's right to engage in protected activity; (2) pay Dupree and Durant's costs to the extent such costs are reasonable and associated with the charge concerning the removal of weapons; and (3) make Dupree and Durant whole, for economic losses, if any, suffered as a consequence of the Respondent's violation of their rights.⁷ Finally, the Hearing Examiner concluded that attorney fees cannot be awarded because the Board lacks authority under D.C. Code §1-617.13⁸ (2001 ed.) to award such fees. International Brotherhood of Police Officers v. D.C. General Hospital, 39 DCR 9633, Slip Op. No. 322 at page 6, footnote 6, PERB Case No. 91-U-14 (1992).

Both parties filed Exceptions concerning the Hearing Examiner's recommended remedy. FOP's Exceptions simply reiterate its claim that the Hearing Examiner should have found CMPA violations for the other allegations concerning Green's suspension and Dupree and Durant's performance appraisals. On this basis, the Complainant asserts that it should be awarded costs, attorney fees and other appropriate remedies for those other allegations. The Respondent's Exceptions assert that the "make whole" remedy for Dupree and Durant is not valid, since they suffered no losses while they were given administrative duties during the internal investigation.

When a violation is found, the Board's order is intended to have therapeutic as well as remedial effect. AFSCME, Local 2401 and Neal v. D.C. Department of Human Services, 48 DCR 3207, Slip Op. No. 644, and PERB Case No. 98-U-05 (2001); D.C. Code §§1-605.02(3) and 1-617.13 (a) (2001 ed.). Moreover, the overriding purpose of relief afforded under the CMPA for unfair labor practices is the protection of rights and obligations. Id. We believe that the Hearing Examiner's recommended remedy will achieve the goals of the Board's remedies, as outlined in the CMPA and the above mentioned Board precedent. As a result, we adopt the Hearing Examiner's recommended remedy, with one caveat.

On the issue of the "make whole" remedy, it is unclear what losses Dupree and Durant suffered during the time period when their weapons were taken pending the Agency's investigation. The Agency argues that there were no losses since the employees were given administrative duties during this period. The Union argues that Dupree and Durant did suffer losses and that a make whole

⁷Although the most immediate remedy sought by FOP when this Complaint was filed—restoration of weapons to Dupree and Durant—is now *moot*, the Hearing Examiner found that the other remedies noted above were appropriate. The remedy is moot because both Dupree and Durant later had their weapons restored.

⁸Prior codification at D.C. Code §1-617.13 (1981 ed.).

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remedy is appropriate.

Without knowing what the actual losses were, it is difficult for the Board to fashion an appropriate "make whole" remedy in this case. Therefore, we are requesting that FOP submit to the Board a list of any losses that Dupree and Durant incurred during the time period that their weapons were taken. At that point, the Board will be better able to decide whether a "make whole" remedy is appropriate. If the Complainant can demonstrate any losses for which Dupree and Durant should be made whole, the Hearing Examiner's recommended remedy will be adopted in its entirety and without reservation. If not, then the Hearing Examiner's remedy will be modified to exclude the "make whole" order.

Pursuant to D.C. Code §1-605.02(3) (2001 ed.) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and for the reasons discussed above, we adopt the Hearing Examiner's findings and recommended remedy.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Corrections (DOC), its agents and representatives shall cease and desist from violating William Dupree and Earnest Durant's employee rights under D.C. Code §1-617.04(a)(1) (2001 ed.) by the acts and conduct set forth in this Opinion.
2. DOC, its agents and representatives shall cease and desist from interfering with, restraining or coercing the Complainant's members in the exercise of their rights under the Comprehensive Merit Personnel Act (CMPA) in any like or related manner.
3. DOC shall make Dupree and Durant whole for economic losses, if any, suffered as a result of Respondent's violations of their rights pursuant to paragraph 6 of this Order.
4. DOC shall post conspicuously within ten (10) days from the service of this Opinion the attached Notice, admitting the above noted violations, where notices to employees are normally posted. The Notice shall remain posted for thirty (30) consecutive days.
5. DOC shall notify the Public Employee Relations Board (PERB), in writing, within fourteen (14) days from the date of this Order that the Notice has been posted, accordingly.

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6. The Complainant shall submit to the Board, within (14) days from the date of this Order, a statement of actual losses incurred during the period that William Dupree and Earnest Durant's weapons were removed and they were placed on administrative duty pending an internal investigation by DOC. The statement of losses shall be filed together with any supporting documentation. DOC may file a response to the statement within (14) days from service of the statement upon it.
7. The Complainant shall submit to the Board, within (14) days from the date of this Order, a statement of actual costs incurred in processing this action, as it relates to the William Dupree and Earnest Durant's weapon removal allegation. The statement of costs shall be filed together with any supporting documentation. DOC may file a response to the statement within (14) days from service of the statement upon it.
8. DOC shall pay Complainant's costs, to the extent that such costs are reasonable and associated with the charge concerning the removal of weapons.
9. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

January 14, 2003



Public
Employee
Relations
Board

Government of the
District of Columbia



415 Twelfth Street, N.W.
Washington, D.C. 20004
[202] 727-1822/23
Fax: [202] 727-9116

NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS (DOC), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 698, PERB CASE NO. 01-U-16 (January 14, 2003).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from violating William Dupree and Earnest Durant's employee rights under D.C. Code §1-617.04(a)(1) (2001 ed.) by the acts and conduct set forth in Slip Opinion No. 698.

WE WILL NOT, in any like or related manner, interfere, restrain or coerce, employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

District of Columbia Department of Corrections

Date: _____ By: _____
Director

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 717 14th Street, N.W., 11th Floor, Washington, D.C. 20005. Phone: (202) 727-1822.

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

January 14, 2003

Decision on Unit Determination
and Direction of Election
PERB Case No 02-RC-03
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The unit sought by AFGE is as follows:

All customer service specialists employed by the Office of the City Administrator, Mayor's City Wide Call Center; excluding managers, confidential employees, supervisors, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.²

D.C. Code § 1-617.09(a) (2001ed.), requires that a community of interest exist among employees in order for a unit to be found appropriate by the Board for collective bargaining over terms and conditions of employment. An appropriate unit must also promote effective labor relations and efficiency of agency operations.

Our review of the Petition and attached exhibits reveals that the proposed unit consists of all "customer service specialists" employed by the Mayor's City Wide Call Center. The "customer service specialists" are all assigned to the Mayor's City Wide Call Center and share a common mission. In addition, all of the customer service specialists are covered by the same pay schedule and are subject to the same rules and regulations.

In view of the above, we believe that sufficient factors exist for the Board to find that these employees share a community of interest. Such a unit of employees sharing a common mission, would in our view, promote effective labor relations and efficiency of agency operations, and thereby constitute an appropriate unit under the Comprehensive Merit Personnel Act.

Regarding the question of representation, the Board finds that an election should be held to determine the will of the eligible employees (in the unit described above), regarding their desire to be represented by AFGE for purposes of collective bargaining with the Mayor's City Wide Call Center. Also, due to the size of the proposed unit and the nature of the work performed by the individuals in the proposed unit, we believe a mail ballot election is appropriate in this case.

²AFGE's Petition did not contain the phrase "all customer service specialists." Instead, it contained the phrase "all employees." However, the Office of Labor Relations and Collective Bargaining (OLRCB), submitted a comment on behalf of the agency. In their comment, OLRCB noted that the agency does not oppose the Recognition Petition. Also, OLRCB indicated that all of the individuals in the proposed unit are "customer service specialists." Therefore, OLRCB requested that the unit description contain the specific job title of "customer service specialists." AFGE did not oppose OLRCB's request. As a result, the parties agreed that the specific job title of "customer service specialist" should be included in the unit description. There were no other comments received.

Decision on Unit Determination
and Direction of Election
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ORDER

IT IS HEREBY ORDERED THAT:

1. The Following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

All customer service specialists employed by the Office of the City Administrator, Mayor's City Wide Call Center; excluding managers, confidential employees, supervisors, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

2. A mail ballot election shall be held in accordance with the provisions of D.C. Code § 1-617.10 (2001 ed.) and Board Rules 510-515, in order to determine whether or not all eligible employees desire to be represented for propose of collective bargaining on compensation and terms and conditions of employment, by either the American Federation of Government Employees, AFL-CIO or No Union.

3. 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.

May 16, 2003

Decision

PERB Case No. 03-U-28

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relief. The "Motion for Preliminary and Injunctive Relief" is before the Board for disposition.

II. Discussion

WTU claims that on or about "February 28, 2003, representatives of DCPS met with representatives from WTU and other unions at DCPS to solicit ideas for how to make up for the snow days that exceeded this school year's two snow day allotment." (Compl. at p. 2). WTU asserts that on March 21, 2003, "DCPS announced that the extra snow days would be dealt with by lengthening the school days by 45 minutes each day for 40 days, and by making May 14, 2003, a scheduled staff development day, a regular school day." (Compl. at p. 2). Furthermore, WTU contends that "DCPS' March 21, 2003 announcement also stated that DCPS' extended day would go into effect on March 27, 2003." (Compl. at p.2). Finally, WTU claims that on March 27, 2003, DCPS implemented their decision (concerning the extended school day) without first giving WTU notice and the opportunity to bargain. In view of the above, WTU asserts that DCPS has failed and refused to bargain with the Union over a matter affecting terms and conditions of employment.

The Complainant argues that DCPS' actions violate D.C. Code § 1-617.04(a)(1) and (5) (2001 ed.). As a result, the Complainant filed an unfair labor practice complaint and a motion for preliminary relief.

The criteria the Board employs for granting preliminary relief in unfair labor practice cases is prescribed under Board Rule 520.15.

Board Rule 520.15 provides in pertinent part as follows:

The Board may order preliminary relief ... where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged unfair labor practice is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy will be clearly inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. See, AFSCME, D.C. Council 20, et al. v. D.C. Government, et al., 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). In determining whether or not to exercise its discretion under Board Rule 520.15, the Board has adopted the standard stated in Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1971). There, the Court of Appeals - addressing the standard for granting relief before judgment under Section 10(j) of the National Labor Relations Act - held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by pendente lite relief." *Id.* at 1051. "In those instances where [PERB] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been] restricted to

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the existence of the prescribed circumstances in the provisions of Board Rule [520.15] set forth above.” Clarence Mack, et al. v. FOP/DOC Labor Committee, et al., 45 DCR 4762, Slip Op. No. 516 at p.3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

In its response to the Motion, DCPS disputes the material elements of all the allegations asserted in the Motion. Specifically, DCPS claims that at the February 28th meeting, the parties discussed the number of days to be made up and various options for doing so. For example, DCPS asserts that “one proposed option included adding fifteen (15) minutes to the beginning of the school day and forty five (45) minutes to the end of the school day for the number of days needed to make up the six days of instruction lost due to inclement weather.” [McCullough Declaration, ¶4].² However, DCPS alleges that “[d]uring the meeting, the WTU representative . . . indicated that a proposal to lengthen each school day one (1) hour would not be their choice. Instead they recommended that each day be lengthened forty-five (45) minutes . . . fifteen (15) minutes in the morning and thirty (30) minutes in the afternoon.” [McCullough Declaration, ¶5]. Moreover, DCPS contends that “the WTU leadership indicated that they preferred to lengthen the school day rather than add days to the school year, or cancel some spring break vacation days.” [McCullough Declaration, ¶6].

In view of the above, DCPS asserts that the Superintendent’s plan for making up snow days, incorporated the recommendations and preferences of the WTU. [McCullough Declaration, ¶8]. Furthermore, DCPS claims that during the week of March 10, 2003, WTU’s leadership was informed of the final plan and provided information concerning the March 27th implementation date. [McCullough Declaration, ¶9].

In light of the above, it is clear that DCPS disputes the material elements of the allegations in this case. We have held that preliminary relief is not appropriate where material facts are in dispute. See, DCNA v. D.C. Health and Hospitals Public Benefit Corporation, 45 DCR 6067, Slip Op. No. 550, PERB Case Nos. 98-U-06 and 98-U-11 (1998).

Also, DCPS contends that by lengthening the school day, it is exercising a management right. The Board has held that “management’s rights under D.C. Code § 1-617.08(a) (2001 ed.) do not relieve an agency of its obligation to bargain with the exclusive representative of its employees over the impact or effect of, and procedures concerning, the implementation of these management right decisions.” IBPO, Local 446, AFL-CIO v. D.C. General Hospital, 41 DCR 2321, Slip Op. No. 312 at p. 3, PERB Case No. 91-U-06 (1994). The effect and impact of non-bargainable management decisions on terms and conditions of employment are, however, bargainable only upon request. Teamsters, Local 639 v. D.C. Public Schools, 30 DCR 96, Slip Op. No. 249, PERB Case No. 89-U-

²All references to “McCullough Declaration” refer to the declaration of Janie McCullough dated April 25, 2003. Janie McCullough is the Director of Labor Management Partnerships for the District of Columbia Public Schools.

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17 (1991). Furthermore, the Board has held that absent a request to bargain concerning the impact and effect of the exercise of a management right, an employer does not violate D.C. Code § 1-617.04(a)(1) and (5) (2001 ed.) by unilaterally implementing a management right decision under D.C. Code § 1.617.08(a) (2001 ed.), without notice or bargaining.³ University of the District of Columbia Faculty Association v. University of the District of Columbia, 43 DCR 5594, Slip Op. No. 387, PERB Case Nos. 93-U-22 and 93-U-23 (1994). The issues concerning whether a labor organization has requested bargaining and whether bargaining occurred, are generally questions of fact to be determined after the establishment of a factual record. Therefore, the question of whether DCPS' actions occurred as the Complainant claims or whether such actions constitute violations of the CMPA, are matters best determined after the establishment of a factual record through an unfair labor practice hearing.

In the present case, the Complainant's claim that DCPS' actions meet the criteria of Board Rule 520.15, are little more than repetition of the allegations contained in the Complaint. Even if the allegations are ultimately found to be valid, it does not appear that DCPS' actions constitute clear-cut or flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. DCPS' actions presumably affect all bargaining unit members, who are affected by the lengthening of the work day. However, DCPS' actions stem from a single action (or at least a single series of related actions), and do not appear to be part of a pattern of repeated and potentially illegal acts. While the CMPA asserts that District agencies are prohibited from engaging in unfair labor practices, the alleged violations, even if determined to be valid do not rise to the level of seriousness that would undermine public confidence in DCPS' ability to comply with the CMPA. Finally, while some delay inevitably attends the carrying out of the Board's dispute resolution processes, the Complainant has presented no evidence that these processes would be compromised, or that eventual remedies would be inadequate, if preliminary relief is not granted.⁴

Under the facts of this case, the alleged violations and their impact, do not satisfy any of the criteria prescribed by Board Rule 520.15. Therefore, we believe that the facts presented do not

³By contrast, when management unilaterally and without notice implements a change in established and bargainable terms and conditions of employment, a request to bargain is not required in order to establish a failure to bargain in good faith. Under such circumstances, management's right to bargain attaches to the matter implemented or changed, and management's unilateral action precludes any opportunity to make a request to bargain prior to implementation or change. See, AFGE, Local 3721 v. D.C. Fire Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1992).

⁴The Board notes that the unfair labor practice complaint and the motion for preliminary relief were not filed prior to DCPS implementing the extended school day. Therefore, the Board could not act on the Complainant's request for preliminary relief prior to the Respondent's implementation of the extended school day.

Decision

PERB Case No. 03-U-28

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appear appropriate for the granting of preliminary relief.

In conclusion, the Complainant has failed to provide evidence which demonstrates that the allegations, even if true, are such that the remedial purposes of the law would be served by pendente lite relief. Moreover, should violations be found in the present case, the relief requested can be accorded with no real prejudice to the Complainant following a full hearing. In view of the above, we deny the Complainant's Motion for Preliminary Relief.

For the reasons discussed above, the Board: (1) denies the Complainant's Motion for Preliminary Relief; and (2) directs the development of a factual record through an unfair labor practice hearing which will be scheduled before May 23, 2003.

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

May 16, 2003

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

_____)	
In the Matter of:)	
)	
Washington Teachers' Union,)	
Local #6, AFT, AFL-CIO,)	
)	
Complainant,		)	PERB Case No. 03-U-28
)	
v.		)	Opinion No. 710
)	
District of Columbia Public Schools,)	
)	
Respondent.)	
_____)	

ORDER

In view of the time sensitive posture of this case, the Board has decided to issue its Order now. A decision will follow. The Board, having considered the Complainant's Motion for Preliminary Relief, hereby denies the Complainant's Motion. In addition, this case is to be scheduled for a hearing to begin no later than May 23, 2003.

IT IS HEREBY ORDERED THAT:

1. The Complainant's Motion for Preliminary Relief is denied.
2. This case is scheduled for a hearing to begin no later than May 23, 2003.

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

May 2, 2003

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

_____)	
In the Matter of:)	
))	
American Federation of State,)	
Country and Municipal Employees,)	PERB Case No. 03-U-17
District Council 20,)	
Local 2921, AFL-CIO,)	Opinion No. 712
))	
Complainant,)	Motion for Preliminary Relief
))	
v.)	FOR PUBLICATION
))	
District of Columbia Public Schools,)	
))	
Respondent.)	
_____)	

DECISION AND ORDER

I. Statement of the Case:

On March 10, 2003, the American Federation of State, County and Municipal Employees, District Council 20, Local 2921 ("Complainant", "AFSCME" or "Union"), filed an Unfair Labor Practice Complaint and a Motion for Preliminary and Injunctive Relief, in the above-referenced case. The Complainant alleges that the District of Columbia Public Schools ("DCPS" or "Respondent") violated D.C. Code § 1-617.04 (a)(1) and (5) (2001 ed.) by failing to implement an arbitration award which rescinded the termination of Ms. Davette Butler. (Compl. at p. 5). The Complainant is asking the Board to grant their request for preliminary relief¹ and order DCPS to: (1) immediately reinstate Ms. Butler; (2) reinstate Ms. Butler's health insurance; (3) confer with the Union concerning a suitable placement for Ms. Butler; (4) make Ms. Butler whole for all losses, with compound interest; (5) pay attorney fees and costs; (6) post a notice to employees; and (7) cease and desist from violating the Comprehensive Merit Personnel Act.

DCPS filed an answer to the Complaint denying that it violated the Comprehensive Merit Personnel Act ("CMPA"). As a result, DCPS has requested that the Board dismiss the Complaint. In addition, DCPS filed a response opposing the Complainant's Motion for Preliminary Relief. The "Motion for Preliminary and Injunctive Relief" and the parties' other motions are before the Board

¹Alternatively, the Complainant requests that the Board issue a decision on the pleadings.

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PERB Case No. 03-U-17
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for disposition.

II. Discussion

On December 20, 2002, Arbitrator Donald Wasserman issued an award which rescinded the termination of Ms. Davette Butler and reinstated her “will full compensation for all lost time.” (Award at p. 14). Pursuant to the arbitrator’s award, Ms. Butler was to be reinstated “as soon as possible.” (Award at p. 14). In addition, the arbitrator indicated that “DCPS must not permit [Ms. Butler’s] health insurance coverage to lapse as a result of COBRA expiring.” (Award at p. 14). However, to date, Ms. Butler has not been reinstated.² Also, AFSCME contends that DCPS allowed Ms. Butler’s health insurance to lapse on March 1, 2003. (Compl. at p. 4.)

AFSCME asserts that DCPS’ failure to implement the arbitration award constitutes a violation of D.C. Code § 1-617.04(a)(1) and (5) (2001 ed.).³ As a result, AFSCME filed an unfair labor practice complaint and a request for preliminary relief. AFSCME is asking the Board to grant its request for preliminary relief. Alternatively, AFSCME is requesting that the Board issue a decision on the pleadings. Also, AFSCME is requesting that the Board order DCPS to: (1) immediately reinstate Ms. Butler; (2) reinstate Ms. Butler’s health insurance; (3) confer with the Union concerning a suitable placement for Ms. Butler; (4) make Ms. Butler whole for all losses, with compound interest; (5) pay attorney fees and costs; (6) post a notice to employees; and (7) cease and desist from violating the Comprehensive Merit Personnel Act.

²On May 1, 2003, DCPS submitted a copy of a letter dated April 24, 2003, which was addressed to Ms. Butler. The April 24th letter informed Ms. Butler that she has been assigned to Ballou Senior High School and directed her to report to the Office of Human Resources. However, the Board notes that the April 24th letter was forwarded to Ms. Butler after AFSCME filed the unfair labor practice complaint and the request for preliminary relief. Moreover, as of May 1, 2003 (the date the Board considered the Complainant’s Motion for Preliminary Relief), Ms. Butler had not been reinstated.

³D.C. Code § 1-617.04(a)(1) and (5) provide as follows:

(a) The District, its agents, and representatives are prohibited from:

(1) Interfering, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;

• • •

(5) Refusing to bargain collectively in good faith with the exclusive representative.

Decision and Order

PERB Case No. 03-U-17

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DCPS filed an answer to the Unfair Labor Practice Complaint denying that it violated the CMPA. In addition, DCPS filed a response opposing the Complainant's Motion for Preliminary Relief. Specifically, DCPS asserts that the Complainant's "request for preliminary and injunctive relief should be dismissed based on their failure to meet the threshold criteria that the Board has [established] for granting preliminary and injunctive relief." (Answer at pgs. 10-11.)

DCPS does not dispute the factual allegations underlying the asserted statutory violation. Instead, DCPS claims that "the delayed implementation of [the] arbitration award [does] not [constitute] an unfair labor practice" because DCPS is actively seeking a vacancy in which to place Ms. Butler. (Answer at p. 9.) Moreover, DCPS asserts that the award does not "specify a time frame, only that [Ms. Butler be returned to work] as soon as possible." (Answer at p. 9). For the above-noted reasons, DCPS is requesting that the Complaint be dismissed.

After reviewing the pleadings, we believe that the material issues of fact and supporting documentary evidence are undisputed by the parties. As a result, the alleged violations do not turn on disputed material issues of fact, but rather on a question of law. Therefore, pursuant to Board Rule 520.10, this case can appropriately be decided on the pleadings.

The Board has previously considered the question of whether the failure to implement an arbitrator's award constitutes an unfair labor practice. In American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority, 46 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1996), the Board held for the first time that "when a party simply refuses or fails to implement an award or negotiated agreement where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith and, thereby, an unfair labor practice under the CMPA." Slip Op. at p. 3. In addition, the Board has noted that an agency waives its right to appeal an arbitration award when it fails to file: (1) a timely arbitration review request with the Board; and (2) for judicial review of the award, pursuant to D.C. Code § 1-617.13(c) (2001 ed.). See, AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 6278, Slip Op. No. 585 at p. 5, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999). Furthermore, the Board has determined that if an agency waives its right to appeal an arbitration award, "no legitimate reason exists for [the agency's] on-going refusal to implement the award and . . . [the agency's] refusal to do so [constitutes] a failure to bargain in good faith in violation of D.C. Code § 1-617.04 (a)(1) and (5)." AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 8356, Slip Op. No. 597 at p. 2, PERB Case No. 99-U-23 (1999).

In the present case, DCPS acknowledges that the December 20, 2002 arbitration award has not been implemented. However, DCPS asserts that "[t]he delayed implementation of [the] arbitration award is not an unfair labor practice." (Answer at p. 9) In addition, DCPS contends that the "[arbitration] decision does not specify a time frame for reinstating Ms. Butler, only that it be as soon as possible." (Answer at p. 9.) Also, DCPS claims that it continues to actively seek a vacancy in which to place Ms. Butler. Furthermore, DCPS asserts that Ms. Butler's health insurance was

Decision and Order

PERB Case No. 03-U-17

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reinstated as of March 17, 2003. Finally, DCPS claims that the District of Columbia Office of Compensation and Benefits is working on refunding insurance premiums retroactively to Ms. Butler.

After reviewing DCPS' arguments, we have determined that DCPS' reasons for failing to implement the terms of the award do not constitute a genuine dispute over the terms of the award. Furthermore, DCPS has waived its right to appeal the award by failing to file either a timely arbitration review request with the Board or a petition for review with the District of Columbia Superior Court. As a result, the Board opines that DCPS has no "legitimate reason" for its on-going refusal to implement the arbitration award. As such, we conclude that [DCPS'] actions constitute a violation of its duty to bargain in good faith, as codified under D.C. Code § 1-617.04(a)(5) (2001 ed.). Furthermore, we find that by "these same acts and conduct, DCPS' failure to bargain in good faith with AFSCME, constitute derivatively, interference with bargaining unit employees' rights in violation of D.C. Code § 1-617.04(a)(1) (2001 ed.)." AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 6278, Slip Op. No. 585 at p. 5, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999).⁴

Concerning the Complainant's request for attorney fees, the Board has held that D.C. Code § 1-617.13 does not authorize it to award attorney fees. See, International Brotherhood of Police Officers, Local 1446, AFL-CIO/CLC v. District of Columbia General Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); and University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, 38 DCR 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991). Therefore, the Complainant's request for attorney fees is denied.

As to the Complainant's request for reasonable costs, the Board first addressed the circumstances under which the awarding of costs to a party may be warranted in AFSCME, D.C. Council 20, Local 2776 v. D.C. Dept. of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990). In that case, the Board concluded that it could, under certain circumstances, award reasonable costs.⁵ In the present case, we believe that the interest-of-justice criteria articulated in the AFSCME case, would not be served by granting the Complainant's request for reasonable costs. As a result, we deny the Complainant's request for reasonable costs.

In light of our disposition of this case, it is not necessary to rule on the Complainant's Motion for Preliminary Relief.

⁴See also, Committee of Interns and Residents v. D.C. General Hospital, 43 DCR 1490, Slip Op. No. 456, PERB Case No. 95-U-01 (1995).

⁵The Board has made it clear that attorney fees are not a cost.

Decision and Order
PERB Case No. 03-U-17
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ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of State, County and Municipal Employees's, Local 2921 (AFSCME) Motion for Judgement on the Pleadings is granted.
2. The District of Columbia Public Schools' (DCPS) Motion to Dismiss is denied.
3. DCPS, its agents and representatives shall cease and desist from refusing to bargain in good faith with AFSCME by failing to implement the December 20, 2002 arbitration award rendered pursuant to the negotiated provisions of the parties' collective bargaining agreement.
4. DCPS, its agents and representatives shall cease and desist from interfering, restraining or coercing its employees by engaging in acts and conduct that abrogate employees' rights guaranteed by "Subchapter XVIII. Labor-Management Relations" of the Comprehensive Merit Personnel Act (CMPA) to bargain collectively through representatives of their own choosing.
5. DCPS shall, in accordance with the terms of the award, fully implement, forthwith, the arbitration award. Also, any disputes related to Ms. Butler's proper placement, should be referred to Arbitrator Donald Wasserman.
6. AFSCME's request for costs and attorney fees are denied for the reasons stated in this Opinion.
7. DCPS shall post conspicuously, within ten (10) days from the service of this Decision and Order, the attached Notice where notices to bargaining-unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days.
8. Within fourteen (14) days from the issuance of this Decision and Order, DCPS shall notify the Public Employee Relations Board ("PERB"), in writing, that the Notice has been posted accordingly. Also, DCPS shall notify PERB of the steps it has taken to comply with paragraphs 5 and 7 of this Order.
9. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

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

May 16, 2003



Public Employee Relations Board

Government of the District of Columbia

415 Twelfth Street, N.W. Washington, D.C. 20004 [202] 727-1822/23 Fax: [202] 727-9116



NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 712, PERB CASE NO. 03-U-17 (MAY 16, 2003)

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 712.

WE WILL cease and desist from refusing to bargain in good faith with the American Federation of State, County and Municipal Employees (AFSCME), District Council 20, Local 2921, AFL-CIO by failing to implement arbitration awards rendered pursuant to the negotiated provisions of the parties' collective bargaining agreement over which no genuine dispute exists over the terms.

WE WILL NOT, in any like or related manner, interfere, restrain or coerce, employees in their exercise of rights guaranteed by the Labor-Management subchapter of the District of Columbia Comprehensive Merit Personnel Act.

District of Columbia Public Schools

Date: _____

By: _____

Superintendent

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 717 14th Street, N.W., Suite 1150, Washington, D.C. 20005. Phone: (202) 727-1822.

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

May 16, 2003

Office of the Secretary of the
District of Columbia

June 5, 2003

Notice is hereby given that the following named persons have been appointed as Notaries Public in and for the District of Columbia, effective on or after July 1, 2003.

Austin, Kira Lynn	New	Grand Hyatt Washington 1000 H St,NW 20001
Blackwell, Nicole Y.	New	Jewish Women Internat'l 2000 M St,NW#720 20036
Boucher, Kimberly	New	Justice Fed Credit Union 950 Pa Ave,NW 20530
Chowdhry, Najmul	Rpt	DHS/Youth Services Admin 2700 MLK Ave,SE 20001
Coleman, Esther D.	New	LawOffice/Michelle Smith 433 Kennedy St,NW#2 20011
Coulter, Sanya R.	New	Comcast 900 Michigan Ave,NE 20017
Darius, Annie S.	Rpt	Howard University Hosp 2041 Ga Ave,NW 20060
Eisen, Richard	Rpt	Eisen & Rome 1 Thomas Circle,NW 20005
Felder, Corlis B.	Rpt	Cafritz Company 1825 K St,NW 20006
Fitch, Laura Macary	Rpt	EmployeeRelocationCouncil 1717 Pa Ave,NW#800 20006

Foster, Ruth E.	New	Kotz & Kotz 2828 Conn Ave, NW#215 20008
Gardner, Yvette J.	Rpt	3423 5 th St, SE#21 20032
Hara, Jennifer	New	Taylor - DeJongh 1101 17 th St, NW12thFl 20036
Henry, Claudette B.	Rpt	Perkins Coie 607 14 th St, NW#800 20005
Hobson, Frances A.	New	Spiegel & McDiarmid 1333 N H Ave, NW 20036
Holland, Janis A.	Rpt	Shaw Bransford et al 1100 Conn Ave, NW#900 20036
Hopkins, Calvin	New	3424 25 th St, SE #114 20020
Jacobs, Amina	New	Douglas Development Corp 702 H St, NW#400 20001
Jelen, Susan L.	Rpt	Diversified Reporting 1101 16 th St, NW 20036
Jimenez-Iyow, Evelyn M.	Rpt	D H H S/General Counsel 200 Indep Ave, SW#700E 20201
Johnson, Cynthia M.	Rpt	1313 Belmont St, NW 20009
Jura, Desirae S.	New	H O R/Official Reporters 1718 LHOB 20515
Keefer, Darla A.	New	Carnegie Inst of Wash 1530 P St, NW 20005
Kight, Patricia C.	Rpt	Goulston & Storrs 1717 Pa Ave, NW 20006

Konidis, Jennifer L.	New	CitiBank 5001 Wisc Ave,NW 20016
Lucas, Nichelle M.	New	Consumers Energy Company 1016 16 th St,NW#100 20036
McCray, Quinsola N.	New	Phyllis Outlaw & Assoc 412 H St,NE 20002
McGee, Kimberly J.	Rpt	5361 Ames St,NE 20019
Mardis, Janice L.	New	National Bar Association 1225 11 th St,NW 20001
Mathias, Roda K.	New	Carnegie Inst of Wash 1530 P St,NW 20005
Mauer, Jeffrey F.	New	2816 O St,NW 20007
Muse, Agnes M.	Rpt	Gallaudet University 800 Fla Ave,NE 20002
Ogunsola, Sarah A.	New	CitiBank 5001 Wisc Ave,NW 20016
Ortiz-Olivencia, Aida S.	Rpt	Holland & Knight 2099 Pa Ave,NW#100 20006
Poole, Christine	Rpt	University of D.C. 4200 Conn Ave,NW 20008
Pugliesi, Natasha V.	New	Winslow Partners 1300 Conn Ave,NW#850 20036
Quinn, Catherine A.	Rpt	Goodwin Procter 1717 Pa Ave,NW#500 20006
Redfern, Patricia	New	R A P 1949 4 th St,NE 20002

Rice, Deborah Myers	Rpt	Arent Fox 1050 Conn Ave, NW 20036
Rich, L. Lola	Rpt	Foley & Lardner 3000 K St, NW#500 20007
Roberts, Michael	New	Patton Boggs 2550 M St, NW 20037
Rodriguez, Lori J.	Rpt	Economists Inc 1200 N H Ave, NW#400 20036
Sadrzadeh-Jolgeh, Farid	New	Z G Ventures 1250 Conn Ave, NW#200 20036
Sanborn, Richard M.	Rpt	Alderson Reporting 1111 14 th St, NW 20005
Scott, Catherine L.	Rpt	Stinson Morrison Hecker 1150 18 th St, NW#800 20036
Scott, Queen Esther V.	Rpt	S B A 409 3 rd St, SW7thFl 20416
Shatrowsky, Kimberly D.	New	Dilworth Paxson 1818 N St, NW#400 20036
Shipley, Ruby C.	Rpt	S C Herman & Associates 1120 Vt Ave, NW#900 20005
Sisk, Carolyn R.	New	Gordon Silberman et al 7 Dupont Circle, NW 20036
Tamonte, Emma L.	New	Baum Hedlund et al 1250 24 th St, NW#300 20037
Taylor, Brenda S.	New	U S D A/Stop 1590 1400 Indep Ave, SW 20250
Trimmer, Cynthia K.	New	J Moretz-Edmisten & Assoc 4530 Wisc Ave, NW#210 20016

Usual, Delshonia L.	New	G M M B 1010 Wisc Ave, NW#800 20007
Vactor, Brenda J.	Rpt	William C. Smith & Co 1220 L St, NW#300 20005
Watt, Sara A.	Rpt	Esquire Deposition Serv 1020 19 th St, NW#620 20036
Works, Trilvey	New	NatlBlackCaucus/StateLeg 444 N Cap St, NW#622 20001

**WVSA SCHOOL FOR ARTS IN LEARNING
PUBLIC CHARTER SCHOOL**

REQUEST FOR PROPOSALS/BIDS

Invitation of open bidding for public charter school lunch program under National School Lunch program guidelines. K - 6th grades, approximately 125 children. Must be able to serve lunches in our building. Start date of Sept 4, 2003.

Forward all bids to WVSA/SAIL by July 20, 2003; Attn: Kimberly Morton, Principal, SAIL, 1100 16th Street, NW, Washington, DC 20036, Fax: 202-261-0235.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Change in July 2003 Monthly Meeting Date

The Zoning Commission of the District of Columbia, in accordance with subsection 3005.1 of the District of Columbia Municipal Regulations, Title 11, Zoning, hereby gives notice that it has rescheduled the July monthly meeting from July 14, 2003 at 1:30 P.M., to **Thursday, July 31, 2003 at 1:30 P.M.**

For additional information, please contact Alberto P. Bastida, AICP, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ORDER NO. 02-29
Z.C. Case No. 02-29
(Map Amendment - Square N-1448, Lot 803)
May 12, 2003

The Lucy Webb Hayes Training School for Deaconesses and Missionaries, doing business as Sibley Memorial Hospital ("Sibley"), pursuant to 11 DCMR § 102.2(a), filed an application with the Zoning Commission on August 2, 2002, to amend the Zoning Map for Lot 803 in Square N-1448, from unzoned to R-5-A. After a public hearing, the Commission took action to rezone the property R-5-A.

PROCEDURAL BACKGROUND

Public Notice. The Office of Zoning published a notice of the filing of the application in the *D.C. Register* on August 13, 2002, at 49 DCR 8257. The notice of the public hearing on the application was published in the *D.C. Register* on January 17, 2003, at 50 DCR 549. A copy of the notice was posted in the Office of Zoning, and copies were provided to the District of Columbia public library system.

By letter dated August 13, 2002, the Office of Zoning mailed a notice of the application to the owners of all property within 200 feet of the subject property; the District of Columbia Office of Planning; Advisory Neighborhood Commission (ANC) 3D, the ANC for the area within which the property is located; the Office of the Advisory Neighborhood Commissions; the single member ANC district for the subject property; the Ward 3 Councilmember; and the Zoning Administrator.

The applicant submitted an affidavit of posting, dated February 13, 2003, indicating that it posted the property with four zoning notices. However, this date was only thirty days before the hearing, whereas the Commission's Rules of Practice and Procedure in 11 DCMR § 3015.4 require posting at least 40 days before the hearing. The applicant indicated that, in addition to the notice that had been provided, it had presented its proposal to the ANC and had engaged in numerous meetings and discussions with community members regarding the application. At the applicant's request, the Commission waived the 40-day requirement pursuant to § 3000.8, determining that, given the extensive notice provided through other means, the waiver would not prejudice the rights of any party and was not otherwise prohibited by law. The applicant testified at the hearing, in accordance with 11 DCMR § 3015.9, that these posters had been maintained.

D.C. Office of Planning (OP) Reports. In its preliminary report dated August 27, 2002, OP recommended set down of the proposed map amendment for the zoning of Square N-1448, Lot

803 to the R-5-A zone. The Commission voted on October 28, 2002, to set the matter for hearing to consider establishing the proposed zoning.

In its final report dated February 19, 2003, OP noted that Sibley had just recently purchased the 8.54-acre property from the United States Government (2.09 acres of the property are deed restricted for parking purposes). OP recommended that the Commission approve the map amendment. OP stated that the proposed uses and restrictions on the property are consistent with the R-5-A zone district and with the Comprehensive Plan. The Commission, which is required under D.C. Code, 2001 Ed., 6-623.04 to give great weight to OP's recommendations, agrees that for the reasons stated in OP's report, the application should be approved.

ANC 3D. By letter dated February 7, 2003, ANC 3D indicates that at a regularly-scheduled meeting, with a quorum present, the ANC voted to appoint Chairman Finney as its representative in this case.

Public Hearing. The Commission held a public hearing on the application on March 13, 2003. John Finney, ANC 3D-04 Single-Member District Commissioner and ANC 3D's designated representative, stated that ANC 3D did not object to the requested zoning but had some concerns regarding future development as a result of the addition of this new property to the hospital. The principal concern expressed by Mr. Finney was whether the hospital could build a doctor's office building without zoning relief. Mr. Finney was informed that this issue was not before the Commission, but that such a building would require a special exception in an R-5-A district. Additionally, Mr. Finney was concerned that the Commission's action would affect the public use of the Little Falls Road. Mr. Jerry Price, Sibley's Chief Operating Officer, stated that the hospital did not intend to discontinue public use of Little Falls Road. The Commission also received testimony from Mr. Andrew Dean, who endorsed the zoning requested by the hospital. No other oral or written comments on the application were received.

Proposed Action. At the conclusion of the public hearing on March 13, 2003, the Commission took proposed action to approve the zoning of the property as R-5-A.

NCPC Review. The National Capital Planning Commission, by letter dated April 10, 2003, found that the proposed rezoning would neither adversely affect the identified federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

Final Action. The Commission took final action to approve the amendment at its regularly scheduled meeting held May 12, 2003.

FINDINGS OF FACT

1. The Subject property, Lot 803 in Square N-1448, adjoins the northern property line of Sibley Memorial Hospital, which is on the north side of Loughboro Road, N.W. and is bounded by the Dalecarlia Parkway on its east side and MacArthur Boulevard on its west side.

2. The property encompasses an area of 8.54 acres and was previously owned by the United States Government.
3. The property is currently unzoned.
4. Sibley Hospital property is zoned R-5-A. The neighborhood south of Loughboro Road is zoned R-1-B and is primarily one-family residential in character. The areas east of Dalecarlia Parkway are zoned R-1-A.
5. Pursuant to 11 DCMR § 359.1, the R-5-A District is designed to include health care facilities for sixteen (16) to three hundred (300) persons, not including resident supervisors or staff and their families. Section 359.3 permits the Board of Zoning Adjustment to approve a facility for more than three hundred (300) persons, not including resident supervisors or staff and their families, or if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of the area on the District of Columbia. Pursuant to § 402.4 the maximum permitted density in the R-5-A district is 0.9 floor area ratio (FAR) and pursuant to § 403.4 the maximum percentage of lot occupancy is forty percent (40%).
6. Sibley Memorial Hospital has been in operation for more than 100 years as a private, non-profit, full-service 344-bed community hospital.
7. The Comprehensive Plan Generalized Land Use Map indicates institutional use for the Sibley Hospital site. The prominent uses of the institutional designation are “[L]ands and facilities occupied by colleges, universities, hospitals, religious institutions and similar facilities” The subject lot is adjacent to the hospital site and is identified as Parks, Recreation and Open Space on the Generalized Land Use Map.
8. The Ward 3 Plan identifies the reservoir property as a public facility and the hospital as an established institutional use (§§ 1405.1 and 1401.2 (c)). No specific language is provided regarding expansion of the hospital within the Ward 3 Plan. However, there is general language regarding sensitive development and minimizing impacts on residential neighborhoods. This application does not contradict either of these principles.
9. The use of the property by the hospital for parking and the new oncology wing, and the continued use of the perpetual easement for Little Falls Road fit into the character of the community and are not inconsistent with the Generalized Land Use Map or the Comprehensive Plan.

CONCLUSIONS OF LAW

1. The Zoning Commission is authorized under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended, D.C. Code, 2001 Ed. § 6-641.02), to amend the Zoning Map.

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2. The public notice, public hearing, and NCPC referral requirements for the map amendment, including the requirements in 11 DCMR §§ 102.6 - 102.9, 3015, and 3028, have been met.
3. The Commission concludes that the requested map amendment will promote the general welfare of the District of Columbia and further its planning and orderly development as the national capital, in that it will allow for the development of a critical care facility that has operated in the City for more than 100 years. The map amendment will contribute to the overall health initiatives of the City, and will not result in objectionable traffic conditions or the overcrowding of land.
4. The proposed map amendment is not inconsistent with the designations of the Generalized Land Use Map for institutional use for the abutting property and as Parks, Recreation and Open Space for the subject property.
5. Based upon the above findings and conclusions, the Zoning Commission concludes that the requested map amendment is in the best interests of the District of Columbia, consistent with the Zoning Regulations and Map, and not inconsistent with the Comprehensive Plan for the National Capital.

DECISION

In consideration of the findings and conclusions set forth in this order, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the following amendment to the District of Columbia Zoning Map:

Change the zoning of Lot 803 in Square N-1448, located at north side of Little Falls Parkway, west of Dalecarlia Parkway and east of MacArthur Boulevard, from unzoned to R-5-A.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D. C. Official Code § 2-1401.01 *et seq.*(Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is also prohibited by the Act. In addition, harassment based on any of the above-protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

Vote of March 13, 2003

Vote of the Zoning Commission taken after the public hearing held on March 13, 2003, to **APPROVE** the proposed map amendment: 4-0-1 (Anthony J. Hood, James H. Hannaham, Peter G. May and Carol J. Mitten, to approve; John G. Parsons, not present, not voting).

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Vote of May 12, 2003

The Zoning Commission at its public meeting held on May 12, 2003, **ADOPTED** this order by a vote of 4-0-1 (Carol J. Mitten, Peter G. May, Anthony J. Hood, and James H. Hannaham to adopt; John G. Parsons, not voting, having not heard the case).

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Order No. 02-46

Z.C. CASE NO. 02-46

(Map Amendment – Parcel 0169/0111-3200 Benning Road, N.E.)

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

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