

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



August 31, 1999

IN REPLY REFER TO:

Prepared by: CES: RFG
AL 99-474

OPINION OF THE CORPORATION COUNSEL

SUBJECT: Whether the Obligation to Comply with an Arbitrator's Award Under a Collective Bargaining Agreement with the District of Columbia Nurses Association Was Transferred from D.C. General Hospital to the District of Columbia Health and Hospitals Public Benefit Corporation by the Health and Hospitals Public Benefit Corporation Act of 1996

John Fairman
Executive Director
D.C. Health and Hospitals
Public Benefit Corporation
1900 Massachusetts Avenue, SE
Washington, D.C. 20003

Dear Mr. Fairman:

On April 1, 1997, an arbitrator issued an award to the D.C. Nurses Association requiring the payment of additional compensation to nurses for work performed at D.C. General Hospital ("DCGH") during fiscal years 1994 through 1997. The arbitrator was appointed pursuant to section 1113 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ("CMPA"), effective March 3, 1979, D.C. Law 2-139, D.C. Code § 1-618.17 (1999 Repl.), after the parties reached an impasse in negotiating a new collective bargaining agreement. The award was made eight days prior to the creation of the PBC, and I understand that the PBC contends that the obligation to pay this award was not transferred to the PBC under the Health and Hospitals Public Benefit Corporation Act of 1996 ("PBC Act"), effective April 9, 1997, D.C. Law 11-212, D.C. Code § 32-261.1 *et seq.* (1999 Repl.).¹ However, I conclude that the obligation to pay this award was transferred to the PBC for three reasons.

¹ The PBC was created upon the effective date of the PBC Act, which was April 9, 1997.

First, under section 207(a)(4) of the PBC Act, the “functions, assets, property, records and obligations” of the DCGH were transferred to the PBC.² (Emphasis added). The term “obligations” is not defined in the PBC Act or in the legislative history, but the dictionary definition of the term includes “a duty arising by contract: a legal liability”. *Webster's Third New International Dictionary*. In addition, *Black's Law Dictionary* includes in its definition of the term the following: “[a]s legal term word originally meant a sealed bond, but it now extends to any certain written promise to pay money or do a specific thing.”

Further, common sense and uniformly applied past practice support the view that the Council of the District of Columbia intended to transfer to the PBC, not only DCGH's assets, but also its obligations, including contractual liabilities. In the District government, liability for contract settlements and judgments, determinations by the Contract Appeals Board and the Public Employee Relations Board, and arbitration awards in contract matters have always been the responsibility of the agency receiving the goods or services which are the subject of the contractual legal dispute.³ If the term “obligations” does not include contractual liabilities, then obligations imposed, for example, by contracts entered into by DCGH would not have been transferred to the PBC. With no entity responsible for honoring the contracts, health care services could be disrupted, contrary to the Council's intent. See D.C. Code § 32-261.1(d) (“It is the intent of the Council that this transfer be carried out without any deleterious effect on the continuity and adequacy of health care services provided to the patients being served.”) Thus, I conclude that the term “obligations” includes such legal liabilities as an arbitration award.

Second, the Council specifically required the PBC to “assume and be bound by all existing collective bargaining agreements” until new agreements have been negotiated by the PBC.⁴ See section 208(h) of the PBC Act. This provision evinces the intent for the PBC to inherit the obligations imposed by collective bargaining agreements entered into by DCGH. Although the compensation package arose from an arbitration award, and not from an agreement between the parties, the award was issued as a result of the collective

² The Mayor was required to make this transfer “[a]s expeditiously as possible but no later than 6 months from the date of the first meeting of the Board held pursuant to § 32-262.4(h)”, D.C. Code § 32-262.7(a), and “[a]fter Council approval”. D.C. Code § 32-262.7(a)(4). In addition, nothing in this section required the Mayor to list specifically each and every function, asset, property, record or obligation that would be transferred to the PBC.

³ This is distinguished from tort settlements and judgments, the payment of which is separately funded in a settlement and judgment fund supervised by the Office of the Corporation Counsel.

⁴ Negotiations between the PBC and certified labor organizations were required to begin not later than 180 days after the first meeting of the PBC Board. D.C. Code § 32-262.8(h)(1999 Rep.).

bargaining process. See section 1113 of the CMPA, D.C. Code § 1-618.17. Thus, I conclude that section 208(h) of the PBC Act requires the PBC to “assume and be bound by” the award.⁵

Third, the Council knew how to exempt the transfer of liabilities to the PBC when it wished to do so, and it did not exempt arbitration awards. For example, § 219 of the PBC Act, D.C. Code § 32-262.19, specifically provides:

(a) The officer and employees of the Corporation shall be considered to be District government employees for purposes of subchapter II of Chapter 12 of Title 1, except that beginning 2 years from the date of the Board’s first meeting under § 32-262.4(h) all settlements and judgments shall be payable out of the monies of the Corporation.

(b) The District shall assume the responsibility for all settlements and judgements that result from acts or occurrences which transpired prior to the date upon which the Corporation assumes responsibility for settlements and judgements under subsection (a) of this section.

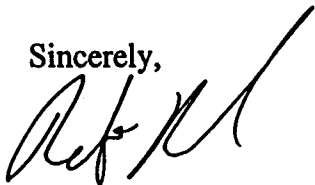
It is clear that section 219 is limited to tort claims because (1) it references D.C. Code § 1-1211 et seq., which concerns tort actions against the District government, and not claims arising from labor relations; and (2) the legislative history explains that section 219 provides that “all tort claims judgments and settlements would be payable out of the monies of the PBC except for the first 2 years”, see Committee Report on Bill 11-604, the “District of Columbia Health and Hospitals Public Benefit Corporation Act of 1996”, dated May 16, 1996, p. 9. Thus, this section does not exempt the transfer of the arbitration award to the PBC because the award is a contractual, and not a tort, liability.

Consequently, for the foregoing reasons, I conclude that the obligation to comply with the arbitration award issued on April 1, 1997 was transferred to the PBC under the PBC Act. To the extent that the PBC may have taken a contrary legal position in any proceeding, it must now withdraw that position and conform its position on the law to that announced herein as the unified position of the District of Columbia government, and all its agencies, as to the meaning of a District of Columbia statute. See Reorganization

⁵ Assuming that section 208(h) does not apply specifically to an arbitrator’s award, this section at a minimum supports the view that the Council intended the PBC to assume labor-related obligations and that, consequently, the term “obligations” in section 207(a)(4) includes an arbitration award.

Order No. 50, Office of the Corporation Counsel, dated June 26, 1953, as amended, Part IIA.(a).

Sincerely,

A handwritten signature in black ink, appearing to read "R. Rigsby", written in a cursive style.

Robert R. Rigsby
Interim Corporation Counsel

Government of the District of Columbia

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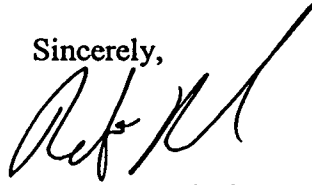
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Robert R. Rigsby
Interim Corporation Counsel