Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2725,	
Complainant,	PERB Case No. 99-U-18
v.	Opinion No. 627
District of Columbia Housing Authority,	MOTION FOR RECONSIDERATION
Respondent.	

On November 9, 1999, the District of Columbia Housing Authority (DCHA) filed a Motion for Reconsideration in the above-referenced matter. DCHA is requesting that the Board vacate its Decision and Order issued on October 26, 1999 (Opinion No. 603). In Opinion No. 603, the Board found that DCHA's refusal to implement an arbitration award, constituted a violation of D.C. Code §1-618.4(a) (1) and (5). The Board ordered DCHA to: (1) fully implement the arbitration award; (2) cease and desist from committing the noted violation; (3) post an appropriate notice; and (4) pay the American Federation of Government Employees its reasonable costs. DCHA claims that it has substantially complied with the arbitration award. As a result, DCHA is requesting that the Board vacate its Decision. In the alternative, DCHA is requesting that the Board hold its Decision in abeyance for 60 days. The American Federation of Government Employees, Local 2725 (AFGE) objects to DCHA's Motion arguing that DCHA has not yet implemented the arbitration award.

An arbitration award (award) issued January 19, 1999, reduced the termination of a bargaining unit employee to a 45-day suspension, and directed the employee's immediate reinstatement to his job with back pay and restoration of benefits. DCHA did not seek review of this award.

On March 11, 1999, AFGE filed an Unfair Labor Practice Complaint alleging that DCHA violated D.C. Code §1-618.4(a) (1) and (5) by failing to implement the award. Despite receiving an

extension of time within which to respond, DCHA failed to file an Answer to the Complaint. By letter dated March 29, 1999, AFGE requested that the case be held in abeyance based on oral representations by DCHA that it intended to honor the award. On July 29, 1999, AFGE informed the Board's staff that DCHA had frustrated efforts to implement the award. As a result, AFGE requested that the Board process the Complaint and issue a Decision on the pleadings.

The Board issued its Decision and Order (Opinion No. 603). On November 9, 1999, DCHA filed its Motion for Reconsideration. DCHA is requesting that the Board vacate the October 26, 1999, Decision and Order. The basis for this request is the fact that DCHA has substantially complied with the arbitration award. In addition, DCHA notes that at the time of the Board's Decision, there were several facts that it claims were not known to the Board. First, DCHA notes that on September 20, 1999, the employee was reinstated as a "materials handler" at the same grade and rate of pay he held at the time of his termination. Second, DCHA claims that the employee's back pay had been approved.

DCHA concedes that the employee has not yet been returned to his former position of motor vehicle operator. However, they claim that this has not happened due to the outstanding issue concerning whether the employee has a valid driver's license. As an alternative to vacating the Decision and Order, DCHA asks the Board to hold the Decision and Order in abeyance for 60 days in order to allow the parties time to complete their negotiations over the employee's return to a position as a motor vehicle operator.

AFGE opposes the Motion. AFGE notes that the employee was not returned to work until September 20, 1999. This reinstatement occurred eight months after the issuance of the January 19, 1999, arbitration award. Furthermore, AFGE contends that as of November 17th (the date of AFGE's Opposition), it had not been provided with proof that the back pay had actually been received. Also, AFGE asserts that, to date, the employee has not been returned to his former job and work location, or received his lost benefits. AFGE asks that DCHA's Motion be denied in its entirety.

There is no dispute that DCHA failed to appeal the January 19, 1999, arbitration award. Also, it is clear that at the time the Unfair Labor Practice Complaint was filed by AFGE, DCHA had not complied with the terms of the award. Furthermore, when AFGE asked the Board to reinstate and complete processing of the complaint (July 29, 1999), DCHA had still not implemented the award. In fact, the only steps taken by DCHA toward implementation of the arbitration award, were only taken after AFGE asked the Board to reinstate its processing of the Complaint.

Even if the factual assertions made by DCHA – that it has reinstated the employee and ordered payment of back pay and restoration of benefits – are fully accepted by the Board, these actions were not taken until long after the issuance of the arbitration award and the filing of the

Unfair Labor Practice Complaint. In addition, prior to the Board's Decision, DCHA had an opportunity to notify the Board of its compliance with the award. However, DCHA chose not to file an Answer. Therefore, pursuant to Board Rule 520.7, DCHA is deemed to have admitted the material facts alleged in the Complaint. Also, DCHA did not reinstate the employee until September 20, 1999, eight months after the arbitration award directed his reinstatement, and nearly two months after AFGE asked the Board to reinstate processing of the Complaint. Furthermore, approval of the payment of back pay to the employee was not initiated (approved) until nearly two months after his reinstatement.

By its own admission, DCHA has not returned the employee to his former job as a motor vehicle operator, as required by the arbitration award. DCHA claims that there was a question concerning whether the employee had a valid driver's permit. As a result, the employee could not be returned to his former position. However, DCHA acknowledges that in June 1999, it received verification that the employee's suspension was no longer in effect. Despite this verification the employee has not been reinstated to his former position.

In a recent decision involving these same parties, we held that where DCHA failed to exercise its right to appeal the arbitration award, no "legitimate reason" exists for DCHA's continued refusal to implement the award. Under those circumstances, we concluded that the failure to implement the award was a violation of D.C. Code §1-618.4(a)(1) and (5). AFGE, Local 2725 v. DCHA, 46 DCR 8356, Slip Op. No. 597 at p. 2, PERB Case No. 99-U-23 (1999). This reasoning served as the basis for the Board's October 26. 1999, Decision and Order. None of the facts asserted by DCHA in its Motion for Reconsideration alter this conclusion. Similarly, neither the partial compliance already undertaken nor any future full compliance would support holding the Board's October 26, 1999, Decision and Order in abeyance.

In light of the above, we find that there is no valid reason for DCHA's failure to comply with the terms of the award. In addition, DCHA has not presented evidence which supports reversal of our October 26, 1999, Decision and Order. Therefore, based on the above discussion, the Motion for Reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

April 5, 2000

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-U-18 was served by first class mail, on the following parties on this 5th day of April, 2000.

Ralph Conte, Esq.
Assistant General Counsel
1133 North Capitol Street, N.E.
Suite 215
Washington, D.C. 22002

U.S. MAIL

Lola Reed
Business Agent
AFGE, Local 2725
1133 North Capitol Street, N.E.
Suite G-2
Washington, D.C. 20002-7599

U.S. MAIL

Courtesy Copies:

David Gilmore
Receiver
D.C. Housing Authority
1133 North Capitol Street, N.E.
Washington, D.C. 20002-7599

U.S. MAIL

Eric Bunn, President
AFGE, Local 2725
1133 North Capitol Street, N.E.
Suite G-2
Washington, D.C. 20002-7599

U.S. MAIL

JoAnn B. Jones
General Counsel
D.C. Housing Authority
1133 North Capitol Street, N.E.
Washington, D.C. 20002-7599

U.S. MAIL

Sheryl Harrington
Secretary