



For the reasons that follow, we find that DCPS has engaged in conduct violative of D.C. Code Section 1-618.4(a)(1) and (5) of the CMPA by its unilateral change in the manner employees' compensation is paid as reflected in and by its promulgation of its August 21, 1990 memorandum.

The Complaint stated that effective August 21, 1990, DCPS issued a memorandum effecting changes in certain terms and conditions of employment of bargaining-unit employees. WTU alleged that the memorandum made changes pertaining to compensation and leave, and was promulgated by DCPS unilaterally and without bargaining. WTU asserted that by this conduct, DCPS has deprived WTU of an opportunity to bargain over "the subject matters of the Memorandum and/or the impact and effects thereof on bargaining unit personnel." (Cmplt. at p. 1).

DCPS responded "that effective August 21, 1990, [it] promulgated a Memorandum concerning relevant compensation information and definitions of the various types of leave entitlement." (Ans. at p. 1). However, DCPS "denie[d] that said Memorandum was a change in compensation, non-leave status, excused absences, and absence-without leave (AWOL) status affecting bargaining-unit employees." (Ans., paragraph 3.) Rather, DCPS "assert[ed] that said Memorandum is a compilation of the Board of Education Rules and Regulations, currently in effect[, ] did not in any way change the terms and conditions of employment [and] is in compliance with the effective collective bargaining agreement between the parties." (Ans. paragraphs 4-5). DCPS therefore sought dismissal for failure to allege a violation of the CMPA and because the matters with which the Memorandum dealt are assertedly within DCPS' sole control via its rules and regulations rather than within the realm of collective bargaining.

On the record before us, the Memorandum did work a change in the manner in which the relevant employees are paid, and did so unilaterally. Thus, DCPS stated in response to interrogatories that "[t]he payroll system for teachers is programmed to pay teachers on a semi-monthly schedule" (Resp. to Third Set of Interrog. and Req. for Prod. of Rec. at p. 3); it also admitted not "includ[ing] the days worked in August in the teachers['] first pay check received October 1, the start of the new fiscal year" (Resp. to Second Set of Interrog. and Req. for Prod. of Rec. at p. 3); and the challenged Memorandum informed designated employees that "[c]ompensation for days worked on August 27, 28, 29, 30 and 31, 1990, will be paid on December 1, 1990." Plainly this was a change

in the payment of compensation; <sup>2/</sup> a matter explicitly within the scope of collective bargaining (see D.C. Code Secs. 1-602.6, 1-618.16, 1-618.17).

Contrary to DCPS' assertion, its unilateral publication of the material in the Memorandum was not justified as a compilation of its rules and regulations or as in compliance with the then-effective collective bargaining agreement. The contention concerning the collective bargaining agreement we reject for the reasons set forth in the footnote below. <sup>3/</sup> We have repeatedly

---

<sup>2/</sup> DCPS in effect admitted the untimeliness of the thus-scheduled payment -- i.e., that it represented a change -- in its response to the Second Set of Interrog. and Req. for Prod. of Rec. at p. 4.

In response to the Third Set of Interrog. and Req. for Prod. of Rec. at pp. 3-4, DCPS has set forth a long substantive justification for its change from the normal semi-monthly payment of employee compensation for the August days worked, so that they would be paid in December of that year. That discussion relates to the unavailability of appropriated funds as a result of rescission, and the commands of D.C. Code Sec. 47-313(e). Notwithstanding any statutory obligation DCPS may have been under to defer payment of employee compensation otherwise due for the first five workdays of the 1990-1991 school year, the cited D.C. Code provision did not relieve DCPS of its obligation to negotiate about the matter -- that is, to inform the Complainant of these matters and DCPS' view of its legal situation and at least to negotiate upon request over procedures and the impact and effect of any required deferral.

<sup>3/</sup> The agreement then in effect between the parties provided that they might consult and negotiate on matters not covered by the agreement "which are proper subjects of collective bargaining only by mutual consent." (Emphasis added.) DCPS argues that any matter here in dispute that is a negotiable matter was subject to this provision and therefore required mutual consent before it, DCPS, had an obligation to bargain. However, we have previously held that an identical provision in another DCPS collective bargaining agreement "does not constitute a 'clear and unmistakable' waiver of a statutory right to bargain, see, Metropolitan Edison Co. v. National Labor Relations Board, 460 U.S. 693 (1983), and provides no more than a mutual right to reopen the collective bargaining agreement mid-term to negotiate new terms by mutual consent." See, Teamsters Local Union Nos. 639 and 730 and District of Columbia Public Schools, 38 DCR 96, Slip Op. No. 249, at fn. 8, PERB Case No. 89-U-17 (1990). In short, such a provision may not be used to defend a unilateral change.

reminded DCPS that the CMPA is the law. See, Teamsters Local Union No. 639 and 730 and District of Columbia Public Schools, supra, Slip Op. No. 263 at pp. 22-23; Teamsters Local Union Nos. 639 and 730 and District of Columbia Public Schools, supra, Slip Op. No. 249 at pp. 6, 7 and 8; Washington Teachers' Union, Local 6, AFL-CIO and District of Columbia Public Schools, Slip Op. No. 144 at p. 3; PERB Case No. 85-U-28 (1986); and cf., American Federation of State, County and Municipal Employees Council 20, Local 1959, AFL-CIO and the District of Columbia Board of Education, 34 DCR 3623, Slip Op. No. 159, PERB Case No. 85-N-01 (1987) (where we rejected a DCPS argument that provisions of the Code of Federal Regulations limited employees' right to engage in collective bargaining under D.C. Code Section 1-618.8(b) of the CMPA). It is past time for DCPS to abandon this argument.

For the reasons stated above, we enter summary judgment for the Complainant on the compensation issue. Since there are material questions of fact on the record before us as to whether DCPS made unlawful unilateral changes with respect to employee leave, we shall schedule a hearing on that issue at the earliest opportunity.

ORDER

1. The District of Columbia Public Schools (DCPS) shall cease and desist from unilaterally making changes concerning compensation payment without notice and an opportunity to bargain with the Washington Teachers' Union, Local 6, AFL-CIO (WTU).
2. DCPS shall cease and desist from interfering, in any like or related manner, with the rights guaranteed employees by the Comprehensive Merit Personnel Act, by unilaterally implementing changes in compensation payment without notice and an opportunity to bargain with the exclusive representative, WTU.
3. DCPS shall negotiate with WTU, upon request, about any proposed change in the manner in which employee compensation is paid and the impact and effect thereof on bargaining-unit employees.
4. DCPS shall, within ten (10) days from the service of this Decision and Order, post the attached Notice conspicuously on all bulletin boards where notices to these bargaining unit employees are customarily posted, for thirty (30) consecutive days.

Decision and Order  
PERB Case No. 90-U-28  
Page 5

5. DCPS shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and order, that the Notice has been posted accordingly.

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

April 2, 1991



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 ET-15 EMPLOYEES REPRESENTED BY THE WASHINGTON TEACHERS' UNION OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 271, PERB CASE NO. '90-U-28.

WE HEREBY NOTIFY our employees that the Government of 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 unilaterally making changes concerning compensation payment without providing notice and an opportunity to bargain to the Washington Teachers' Union, Local 6, AFL-CIO (WTU).

WE WILL bargain collectively in good faith with WTU over any proposed change in the manner in which employee compensation is paid and the impact and effect thereof on bargaining-unit employees.

WE WILL NOT in any like or related manner interfere with the rights guaranteed to employees by the Comprehensive Merit Personnel Act to the ET-15 bargaining unit employees at the D.C. Public Schools.

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 the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 415-12th Street, N.W. Room 309, Washington, D.C. 20006. Phone 727-1822