GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of Government Employees. Local 2725, AFL-CIO,	**PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12**
Complainant,	
v.	**Opinion No. 585**
District of Columbia Housing Authority,	
Respondent,	

DECISION AND ORDER [1/]

On May 21, 1998, the American Federation of Government Employees, Local 2725 (AFGE) filed an Unfair Labor Practice Complaint (PERB Case No. 98-U-20) alleging that the District of Columbia Housing Authority (DCHA) violated the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(1) and (5). Specifically, AFGE alleges that since February 12, 1997, DCHA has failed to fully implement an arbitration award by refusing to comply with aspects of the arbitrator's award concerning retroactive compensation for the affected employees.

On June 15, 1998, DCHA filed an Answer to the Complaint. DCHA admits to all the material allegations of the Complaint; however, DCHA denies that its actions constitute the asserted unfair labor practice. On October 22, 1998, AFGE filed a Motion for a Decision on the Pleadings. A Response to AFGE's Motion and Reply to DCHA's Response, respectively, were also filed by the parties.

On November 25, 1998, AFGE filed a second Unfair Labor Practice Complaint (PERB Case No. 99-U-05) alleging that DCHA has

[1/] Board Member Leroy Clark did not participate in the discussion and decision of this case.

failed to bargain in good faith by failing to implement another arbitration award that was issued on October 1, 1998. This award sustained a grieved termination filed by AFGE on behalf of a bargaining unit employee and provided for the grievant's immediate reinstatement with back pay. AFGE alleges that DCHA has failed to implement the award.

On December 23, 1998, DCHA filed an Answer to the Complaint and Motion to Dismiss in PERB Case No. 99-U-05. DCHA denies that it has committed an unfair labor practice. DCHA does not dispute many of the material factual allegations underlying the asserted violation. However, DCHA contends that a provision in the parties' collective bargaining agreement provides it with a right to appeal the award to the D.C. Superior Court. DCHA contends that this right to appeal the award suspends its obligation to implement the award during the appeal period. On February 8, 1999, AFGE filed a document styled "Emergency Motion for Summary Judgement." on February 18, 1999, DCHA filed a response opposing the Motion.

On January 12, 1999, AFGE filed yet another Unfair Labor Practice Complaint (PERB Case No. 99-U-12), alleging that DCHA, once again, failed to bargain in good faith by refusing to implement a third arbitration award. This award was issued on November 29, 1998, and sustained a grievance filed by AFGE challenging DCHA's termination of another bargaining unit employee. AFGE asserts that DCHA has not complied with the terms of the award and has failed to respond to its December 10, 1998 letter, requesting that the award be implemented.

DCHA filed an Answer to the Complaint and a Motion to Dismiss. Again, DCHA did not dispute the factual allegations underlying the asserted statutory violations. However, DCHA denied that its failure to implement the award constitutes an unfair labor practice since it intended to pursue an appeal of the award in the D.C. Superior Court pursuant to the parties' collective bargaining agreement. On February 25, 1999, AFGE filed a Motion for Summary Judgement.

In all three Complaints, AFGE asserts that DCHA's failure to implement the respective arbitration awards constitute violations of the CMPA, as codified under D.C. Code § 1-618.4(a)(1) and (5). AFGE seeks an order, with respect to each of the Complaints, finding a violation of D.C. Code § 1-618.4(a)(5) and directing DCHA to: (1) comply with the terms of the awards; (2) pay its attorney fees and costs; (3) cease and desist from such conduct; and (4) post a Notice.

After reviewing the pleadings and applicable authority, we find that 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, these cases can appropriately be decided on the pleadings. Pursuant to our holding in American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority, Slip Op. No. 497, PERB Case No. 96-U-23 (1996), we find that DCHA's acts and conduct constitute unfair labor practices under the CMPA. Therefore, for the reasons discussed below, we: (1) grant AFGE's Motions for Summary Judgement and Judgement on the Pleadings; (2) deny DCHA's Motion to Dismiss; and (3) order the remedial relief set forth in the Order below.

In American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority, 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. DCHA acknowledges that the respective arbitration awards referenced in each of the Complaints have not been implemented. However, DCHA contends that its asserted rights to appeal and/or contentions regarding its legal obligation to comply relieves it of any requirement to implement the subject terms of each award. Upon review of DCHA's contentions, we conclude that DCHA's reasons for failing to implement the terms of each of the final and binding awards does not constitute a genuine dispute over the terms of the award and therefore constitutes a failure to bargain in good faith.

In PERB Case No. 98-U-20, the parties assert no disagreement over the terms provided in the award, rather DCHA takes issue with its obligation to satisfy certain retroactive terms of the award. DCHA asserts that the award provided relief which included remuneration for acts of its predecessor, the Department of Public and Assisted Housing (DPAH). DCHA argues that it has not implemented those aspects of the arbitration award because it has and continues to maintain that it has no legal obligation to satisfy the liabilities incurred by DPAH.

However, DCHA has previously appealed the award referenced in PERB Case No. 98-U-20 on this ground in an arbitration review request filed with the Board in PERB Case No. 97-A-02. In that case, the Board denied DCHA's arbitration review request and its motion for reconsideration. Slip Op. Nos. 519 and 531. DCHA did not seek judicial review of the Board's January 22, 1998 Decision and Order within the required thirty (30) days after a final

Board order has been issued. See D.C. Code § 1-618.13(c).

With respect to the awards referenced in PERB Case Nos. 99-U-05 and 99-U-12, DCHA never pursued appeals with the Board concerning these awards and the time for filing such appeals has since passed.[2]/ Nevertheless, DCHA contends that the grievance arbitration provisions contained in the parties' collective bargaining agreement accords it the right to appeal these awards to the D.C. Superior Court pursuant to the Uniform Arbitration Act. However, we have previously held that the Board's jurisdictional authority to review grievance arbitration awards under the CMPA "supercedes the Uniform Arbitration Act's allocation of arbitration award review authority to the courts." University of the District of Columbia and University of the District of Columbia Faculty Association, 38 DCR 5024 at p. 5030, Slip Op. No. 276 at p. 7, PERB Case No. 91-A-02 (1991).[3]/

The D.C. Superior Court made this same determination in a recent Order it issued dismissing DCHA's petition to vacate the award referenced in PERB Case No. 99-U-05. The Court held that "it lacks jurisdiction over this matter since this appeal can only be brought before the PERB pursuant to D.C. Code § 1-605.2(6), and there is no legal or statutory basis for plaintiff's argument that DCHA's status as an instrumentality of the District of Columbia government somehow vests this Court with jurisdiction under the Uniform Arbitration Act in contravention of D.C. Code § 1-605.2(6)." District of Columbia Housing Authority v. Marty McMillan and American Federation of Government Employees, Local 2725, C.A. No. 98-9888 (Civil Div., February 3,

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[2]/ The awards in question in these cases were issued on October 1, 1998, and November 29, 1998, respectively. Board Rule 538.1 provides that appeals of an arbitration award be filed with the Board "not later than twenty (20) days after service of the award." Board Rule 538.1. Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such they provide the Board with no discretion or exception for extending the deadline for initiating an action. See, Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (1991).

[3]/ D.C. Code § 1-605.2(6), provides that "[t]he Board shall have the power to... [c]onsider appeals from arbitration awards pursuant to a grievance procedure:... Provided, further, that the provisions of this paragraph shall be the exclusive method for reviewing the decision of an arbitrator concerning a matter properly subject to the jurisdiction of the Board, notwithstanding any provisions of the District of Columbia Uniform Arbitration Act (D.C. Code §§ 1-16-4301 to 16-4319);" (Emphasis added.)

1999.)(Slip Opinion).

In view of the above, DCHA has waived its right to: (1) appeal the awards referenced in PERB Case Nos. 99-U-05 and 99-U-12 by failing to file a timely arbitration review request with the Board; and (2) file for judicial review of the award in PERB Case No. 98-U-20, pursuant to D.C. Code § 1-618.13(c). Therefore, we conclude that no legitimate reason exists for DCHA's on-going refusal to implement the awards. As such we find that DCHA's actions constitute a violation of its duty to bargain in good faith, as codified under D.C. Code § 1-618.4(a)(5). We further find that by these same acts and conduct, DCHA's failure to bargain in good faith with AFGE constitute, derivatively, interference with bargaining unit employees' rights in violation of D.C. Code § 1-618.4(a)(1). See, Committee of Interns and Residents v. D.C. General Hospital, 43 DCR 1490, Slip Op. No. 456, PERB Case No. 95-U-01.

In view of the fact that we have had only one other occasion to consider the issues presented by these Complaints, we conclude that the interest-of-justice criteria articulated in American Federation of State, County and Municipal Employees, 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), would not be served by imposing upon DCHA the extraordinary relief of paying Complainant's costs. With respect to AFGE's request for attorney fees, we have held that the Board lacks the authority to award such fees. See, International Brotherhood of Police Officers v. D.C. General Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1994).

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 2725 (AFGE)'s Motions for Summary Judgement and Emergency Summary Judgement in PERB Case Nos. 99-U-05 and 99-U-12 are granted; AFGE's Motion for Judgement on the Pleadings in PERB Case No. 98-U-20 is granted.

2. The D.C. Housing Authority (DCHA)'s Motions to Dismiss the Complaints in PERB Case Nos. 99-U-05 and 99-U-12 are denied.

3. DCHA, its agents and representatives shall cease and desist from refusing to bargain in good faith with AFGE by failing

to implement arbitration awards rendered pursuant to the negotiated provisions of the parties collective bargaining agreement over which no genuine dispute exists.

4. DCHA, 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 CMPA to bargain collectively through representatives of their own choosing.

5. DCHA shall, in accordance with the terms of the awards, fully implement, forthwith, the arbitration awards referenced in PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12.

6. AFGE's request for costs and attorney fees are denied for the reasons stated in this Opinion.

7. DCHA shall, within ten (10) days from the service of this Decision and Order: (1) post for thirty (30) consecutive days the attached Notice, dated and signed, conspicuously on all bulletin boards where notices to bargaining-unit employees are customarily posted.

8. DCHA 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.

9. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

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

April 21, 1999

PERB 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 HOUSING AUTHORITY, 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. 585, PERB CASE NOS. 98-U-20, 99-U-05 AND 99-U-12 (APRIL 21, 1999).

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 refusing to bargain in good faith with the American Federation of Government Employees, Local 2725 (AFGE) by failing to implement arbitration awards rendered pursuant to the negotiated provisions of the 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 CMPA.

District of Columbia Housing Authority

Date:_____ By:_____
Receiver

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. 20004. Phone: (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
May 6, 1999