

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

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In the Matter of:)	
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)	
Barbara Milton,)	
)	
Complainant,)	PERB Case Nos. 98-U-24
)	and 98-U-28
v.)	
)	Opinion No. 606
District of Columbia Water and)	
Sewer Authority,)	
)	
Respondent.)	
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)	
)	

DECISION AND ORDER

The background and issues underlying this case are set out by the Hearing Examiner in his Report and Recommendation.^{1/} The Hearing Examiner found that Respondent District of Columbia Water and Sewer Authority (WASA) committed unfair labor practices in violation of the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(1), (2), (3) and (4).^{2/}

^{1/} The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion.

^{2/} The Complainant requested preliminary relief in PERB Case No. 98-U-28. In Opinion No. 566, PERB Case No. 98-U-28, we granted Complainant's request for preliminary relief. In addition, PERB Case Nos. 98-U-24 and 98-U-28 were consolidated and referred to a
(continued...)

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Specifically, the Hearing Examiner made findings and conclusions that WASA violated D.C. Code § 1-618.4(a)(1), (2) and (3) by the following acts and conduct:

1. March 23, 1998- the Complainant's supervisor threatened to transfer the Complainant if she ran for union president.
2. April 1, 1998- the Complainant's supervisor threatened to transfer the Complainant because the Complainant was useless to her section due to her union activity.
3. April 10, 1998- the Complainant's supervisor threatened to have the Complainant removed from the bargaining team or transferred due to her continued role in finalizing the collective bargaining agreement negotiated by WASA and AFGE after bargaining extended her unavailability for work.
4. June 4, 1998- the Complainant's supervisor's continued harassment of the Complainant concerning a leave slip to attend a WASA board meeting/contract signing ceremony after the matter had been resolved.
5. June 24, 1998- by continuing the Complainant's assignment to a work project in order to avoid on-going conflict with the Complainant's supervisor. This conflict stemmed from the Complainant's protected activity set forth above.
6. August 24-25, 1998- by removing the Complainant's Americans With Disabilities Act (ADA) accommodation and assigning the Complainant to work under supervisor Jordan in furtherance of an unlawful transfer.

²(...continued)
hearing examiner.

In our Order WASA was directed to rescind the transfer and cease and desist from retaliating against the Complainant pending our disposition of the Complaints in PERB Case Nos. 98-U-24 and 98-U-28. WASA filed a Motion for Reconsideration which was denied in Opinion No. 574.

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The Hearing Examiner further found that on July 20, 1998 WASA violated D.C. Code § 1-618.4(a)(1) and (4), when it decided and subsequently transferred the Complainant because she filed the Complaint in PERB Case No. 98-U-24 against WASA.

No violation was found with respect to the Complainant's allegation that WASA withheld her training request in order to further harass her for engaging in protected union activity.^{3/} The Hearing Examiner also concluded that WASA's alleged violations of the collective bargaining agreement failed to state a cause of action under the CMPA. Similarly, the Hearing Examiner found that the Complainant's general claim that WASA's alteration of the Complainant's leave slip was an "illegal" act, failed to state a statutory claim under the Board's jurisdiction.

Based on his findings and conclusions, the Hearing Examiner recommended, among other things, that WASA: (1) cease and desist from violating the Complainant's employee rights; (2) rescind the Complainant's unlawful transfer; (3) return the Complainant to her former position and regular assignment; and (4) make the Complainant whole by compensating her for loss back pay which resulted from the unlawful continuation of her assignment away from the Construction Management Branch. The Hearing Examiner denied the Complainant's request for attorney fees as exceeding the jurisdictional authority of the Board under the CMPA. The Complainant's request for reasonable costs was also denied.

No exceptions were filed by the parties. The matter is now before the Board for review and a Decision and Order on the findings, conclusions and recommended relief. Pursuant to D.C. Code § 1-605.2(3) and Board Rule 520.14, we have reviewed the findings and conclusions of the Hearing Examiner and find them to be adequately supported by the record. Except for the issue of costs, we hereby adopt them and the recommended relief as set

^{3/} The Hearing Examiner concluded that the WASA official handling the training request did not have a chance to address the request before the Complainant filed her Complaint.

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forth in our Order below.^{4/}

With respect to 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). We observed:

[W]e believe such an award must be in the interest of justice. Just what characteristics of a case will warrant the finding that an award of cost will be in the interest of justice cannot be exhaustively catalogued. We do not believe it possible to elaborate in any one case a complete set of rules or earmarks to govern all cases, nor would it be wise to rule out such awards in circumstances that we cannot foresee. What we can say here is that among the situations in which the losing party's claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith, and those in which a reasonably foreseeable result of the successfully challenged conduct is the undermining of the union among employees for whom it is the exclusive bargaining representative. Slip Op. No. 245, at 5

We find that the violations committed by WASA meet the above criteria. Specifically, the actions taken by WASA against the Complainant were clearly motivated by an attempt to thwart and restrain the Complainant's active involvement in union affairs. The Complainant's transfer because she pursued an action before this Board constituted interference with our processes and clearly established that WASA's action was undertaken in bad faith. Moreover, in addition to violating the Complainant's statutory employee rights, WASA's threats and acts of harassment against the Complainant (with respect to her involvement in

^{4/} As we stated in Opinion No. 566, our holding in this case does not preclude WASA from finding other transfer opportunities for the Complainant which are based on legitimate business reasons.

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legitimate union affairs) had the reasonably foreseeable result of undermining the union representing the unit in which the Complainant was a member.

Based on the violations found in this case, we find that the interest-of-justice standard has been established. We therefore reject the Hearing Examiner's finding that WASA's underlying conduct did not meet the standard for awarding costs. As a result, the Complainant's request for costs is hereby granted. However, the Board's authority to impose monetary payments is expressly and specifically limited to costs (absent attorney fees) incurred by a party. See, Committee of Interns v. D.C. Dept of Human Services, Slip Op. No. 480, PERB Case No. 95-U-22 (1996). See, also, 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) (costs under the CMPA excludes attorney fees).

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Water and Sewer Authority (WASA), its agents and representatives shall cease and desist from violating Barbara Milton's (Complainant) employee rights under D.C. Code § 1-618.6(a) in violation of D.C. Code § 1-618.4(a)(1), (2) and (3) by the acts and conduct set forth in this Opinion.
2. WASA, its agents and representatives shall cease and desist from transferring the Complainant because she filed an unfair labor practice complaint with the District of Columbia Public Employee Relations Board as proscribed by D.C. Code § 1-618.4(a)(4).
3. WASA, its agents and representatives shall cease and desist from interfering with, restraining, or coercing the Complainant in the exercise of her rights under the

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Comprehensive Merit Personnel Act (CMPA) in any like or related manner.

4. WASA shall rescind the Complainant's transfer/detail to the Utility Inspection Branch, under the supervision of Ralph Jordan, and return her to her former position and assignment in the Construction Management Branch.
5. WASA shall make the Complainant whole by compensating her for any loss of pay which resulted from the unlawful continuation of her assignment away from regular field work that denied her overtime opportunities. The Complainant shall present her claim to WASA within thirty (30) days from the issuance of this Decision and Order. WASA shall respond to the Complainant's claim within thirty (30) days from the receipt of the Complainant's claim.
6. WASA shall post conspicuously within ten (10) days from the service of this Opinion the attached Notice where notices to employees are normally posted.
7. WASA 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 and as to the steps it has taken to comply with the directives in paragraphs 4, 5, and 6 of this Order.
8. The Complainant shall submit to the PERB, within fourteen (14) days from the date of this Order, a statement of actual costs incurred processing this consolidated action. The statement of costs shall be filed together with supporting documentation; WASA may file a response to the statement within fourteen (14) days from service of the statement upon it.
10. WASA shall pay the Complainant, her reasonable costs incurred in this proceeding within ten (10) days from the determination by the Board or its designee as to the amount of those reasonable costs.

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11. Pursuant to Board Rule 559.1, and for purposes of D.C. Code § 1-618.13(c), this Decision and Order is effective and final upon issuance.

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

October 26, 1999

CERTIFICATE OF SERVICE

this is to certify that the attached decision And Order in PERB Case Nos. 98-U-24 and 98-U-28 was sent via facsimile and/or mailed (U.S. Mail) to the following parties on the 26th day of October 1999.

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Washington, D.C. 20019

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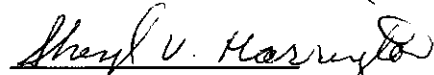
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY (WASA), 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. 606, PERB CASE NO. 98-U-24 AND 98-U-28 (October 26, 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 violating Barbara Milton's employee rights under D.C. Code § 1-618.6(a) and (b) in violation of D.C. Code § 1-618.4(a) (1), (2) and (3) by the acts and conduct set forth in Slip Opinion No 606.

WE WILL cease and desist from transferring Barbara Milton because she filed an unfair labor practice complaint with the District of Columbia Public Employee Relations Board as proscribed by D.C. Code § 1-618.4(a) (4).

WE WILL cease and desist from interfering, restraining or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act (CMPA) to freely: (a) form, join, or assist any labor organization and (b) bargain collectively through representatives of their own choosing.

WE WILL cease and desist from dominating, interfering, or assisting in the formation, existence or administration of any labor organization by threatening to transfer Barbara Milton in order to preclude her from participating on the collective bargaining team during negotiations between WASA and the American Federation of Government Employees, Local 631, AFL-CIO.

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 Water and Sewer
Authority

Date: _____ By: _____
General Manager

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

October 26, 1999