

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
The American Federation of State,)	
County and Municipal Employees,)	
AFL-CIO, Council 20, Local 2093,)	
)	
Complainant,)	PERB Case No. 86-U-08
)	Opinion No. 164
and)	
)	
The District of Columbia)	
Board of Education,)	
)	
Respondent.)	

DECISION AND ORDER

On June 6, 1986 Local 2093 of the American Federation of State, County and Municipal Employees (AFSCME) filed an Unfair Labor Practice Complaint with the Public Employee Relations Board (Board), alleging that the District of Columbia Public Schools (DCPS) violated the Comprehensive Merit Personnel Act (CMPA) D.C. Code Section 1-618.4(a)(1) and (4), by its failure and refusal to honor a settlement agreement.

Local 2093, AFSCME is the exclusive representative for a unit of maintenance employees employed by DCPS and certified by the Board for purposes of collective bargaining.

This case was presented to the Board during its regularly scheduled meeting on October 6, 1986. After thorough consideration of the parties' pleadings, it was concluded that the matter should be referred to a Hearing Examiner pursuant to the Board's Interim Rule 103.6(e).

On December 23, 1986, the Hearing Examiner issued a Report and Recommendation, concluding therein that the Complaint should be dismissed. The facts found by the Hearing Examiner are as follows. AFSCME filed a demand for arbitration on December 26, 1985, its challenge to DCPS' issuance of a thirty-day (30) suspension to the grievant-employee, David Harris.

The arbitration proceeding was scheduled by the American Arbitration Association (AAA) for March 18, 1986. On March 17, 1986, Ellis Boston, the representative for DCPS, telephoned John Dempsey, AFSCME's representative, to discuss the possibility of a settlement. The parties agreed, during their telephone conversation, to reduce the thirty day suspension to a fifteen-day (15) suspension.

The following day, as agreed upon, Mr. Dempsey forwarded a proposed settlement agreement which memorialized the reduced suspension and also included a provision for the payment of lost wages resulting from the suspension. The AAA was notified that the arbitration proceeding scheduled for March 18th should be cancelled since the parties had resolved the matter.

By letter dated April 22nd, Dempsey advised Boston that the agency had not returned a signed settlement agreement. On May 13, 1986, Boston responded by letter, advising the union that the proposed settlement agreement was unacceptable and included, under the same cover, a copy of a settlement agreement drafted by DCPS. The DCPS' agreement included a provision that the union bear the costs of the cancelled arbitration, as well as the primary provision previously agreed upon by the parties, the reduced suspension.

AFSCME contends that the parties had reached an agreement on March 17, 1986 and further argues that the issue of the union's responsibility to bear the costs of the arbitration was in contradiction to the collective bargaining agreement and not previously discussed by the parties. DCPS, the union argues, committed an unfair labor practice by failing to honor the settlement agreement.

In its denial of the commission of any unfair labor practice, DCPS asserts that an agreement was never reached by the parties because AFSCME's draft agreement included terms the parties had not discussed. Moreover, DCPS contends that the grievance procedure was the proper vehicle for resolving this dispute.

The issue, as framed by the Hearing Examiner, is whether the parties had in fact reached an agreement to resolve the underlying grievance which DCPS refused to honor and implement, thereby committing an unfair labor practice.

In concluding that the parties had not brought the entire settlement matter to the point of closure, the Hearing Examiner made the following findings:

[T]he parties agree that all provisions other than the reduction of the suspension, contained in the March 18th and May 13th documents, had not been discussed or otherwise agreed upon by the parties. Although the agency did not act promptly in returning or even responding to the draft agreement, there was no evidence presented that the delay had an adverse effect on the Union's ability to resolve the underlying dispute.

Case No. 86-U-08
Page Three

104

Accordingly, the Hearing Examiner concluded that the parties did not enter into the agreement embodied in the March 18th document. Since there was no "meeting of the minds", according to the Hearing Examiner, the failure to reach an agreement could not be attributed to either party and therefore no unfair labor practice had been committed by DCPS.

On January 7, 1987, AFSCME timely filed exceptions to the Report and Recommendations and a request for oral argument before the Board. In its Exceptions, the union contends that the Hearing Examiner erred in concluding that there was no "meeting of the minds" between the parties because of the absence of a series of negotiations culminating in a final agreement. The union argues that contrary to the Hearing Examiner's findings, there were several telephone conversations in which different settlement proposals were discussed prior to March 17th. The Hearing Examiner's decision, according to the union, ignores the fact that the only material difference in the terms proposed by the draft agreements was DCPS' inclusion of a provision that the union pay for the costs of the cancelled arbitration. In this regard, the union directs attention to the parties' collective bargaining agreement which stipulates that the parties will share equally the costs of arbitration proceedings.

The union argues that DCPS' delay of approximately seven weeks in responding to the agreement is indicative of a party acting in bad faith. This conduct, AFSCME urges, had the effect of undermining the union's effectiveness in its representational duties.

I.

The Board has carefully reviewed the entire record in this matter, including the union's Exceptions, and a majority of the Board members adopt the Hearing Examiner's recommendation to dismiss the Complaint, for the reasons stated below.

In its Complaint, AFSCME contends that the following sections of the CMPA were violated by DCPS' failure to honor the settlement agreement of March 18, 1986. Section 1-618.4(a)(1) and (4) of the D.C. Code state the following:

- (a) The District, its agents and representatives are prohibited from:
 - (1) Interfering, restraining or coercing any employee in the exercise of the rights guaranteed by this subchapter;
- * * *
- (4) Discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition or complaint or given any information or testimony under the chapter.

From a review of the record, the union has not presented any evidence that DCPS' conduct in failing and refusing to honor the settlement agreement, interfered with the grievant's exercise of his rights or constituted reprisal against the grievant for having filed a grievance.

The Board is constrained to find that the parties had not reached a settlement agreement by March 18th. DCPS' counter-proposal that the union pay the costs of the arbitration is a negotiable item for purposes of a settlement agreement as is AFSCME's proposal to include a provision for back-pay. To find otherwise, would limit the parties' ability to negotiate settlements and their unfettered choice to discuss potential terms leading to a final agreement.

The opinion expressed by the minority view of the Board disagrees with the majority on the following issues. According to the minority, DCPS committed an unfair labor practice in violation of Section 1-618.4(a)(1) by its subsequent conduct with respect to the settlement agreement reached on March 17th. After agreeing to settlement of the dispute and that the arbitration should be cancelled, DCPS failed to question the terms of the March 18th draft agreement, never offered any justification for its delay of approximately two months and then belatedly raised a new issue as a counterproposal to the parties agreement. This conduct raises the inference of bad faith. In this regard, the minority view finds that the only item in DCPS' proposal that differed from the union's draft agreement was DCPS' inclusion of a provision that the cost for the cancelled arbitration be borne by AFSCME. The parties collective bargaining agreement provides that the costs of arbitration are to be shared equally. In negotiating a settlement on March 17th, the parties therefore apparently thought it was unnecessary for the settlement agreement to include a costs provisions. The late raising of this issue by DCPS, with no explanation as to why it was not raised earlier, indicates that it was an afterthought to delay the effectuation of the agreement.

II.

The Board unanimously concludes that the allegations of a violation of Section 1-618.4(a)(4) should be dismissed on the basis that these provisions do not apply to the facts of this case, nor was there any evidence of reprisal or conduct in violation of this statutory provision.

There is no new evidence or argument presented by AFSCME's exceptions to the Hearing Examiner's recommendation. Therefore, the Board concludes that the granting of an oral argument is not warranted in this case and the motion for oral argument is denied.

Accordingly, the Complaint is hereby dismissed.

ORDER

The Complaint is dismissed.