

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 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

_____)	
In the Matter of:)	
)	
WASHINGTON TEACHERS' UNION,)	
LOCAL # 6, AMERICAN FEDERATION)	
OF TEACHERS, AFL-CIO)	
Complainant,)	PERB Case No. 11-U-29
)	
v.)	Opinion No. 1211
)	
DISTRICT OF COLUMBIA PUBLIC)	Unfair Labor Practice Complaint
SCHOOLS)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

The Washington Teacher's Union, Local #6, American Federation of Teachers, AFL-CIO ("The Union") filed an Unfair Labor Practice complaint against the District of Columbia Public Schools ("DCPS"). The Complainant bases this complaint on the basis of Respondent's non-compliance with an arbitrator's award within the expressly stated 60 day "good faith" time limit.

Respondent raised affirmative defenses challenging the ripeness of the complaint which was filed before 60 days of the arbitrator's award, as well as not raising a valid cause of action under D.C. 1-617.04(a) and that there is an ARR appealing the award pending, and therefore the complaint is not ripe.

Complainant responded by providing a "Supplemental Unfair Labor Practice Complaint," ostensibly to amend their complaint to include the fact that the Respondent has still not complied with the award, even after the 60 day time limit, and therefore the complaint is ripe.

Respondent responds to "Supplemental Unfair Labor Practice Complaint," stating that the ripeness issue is not repaired with supplemental filing. The ARR appeal has since been considered and denied.

II. Discussion

In the Unfair Labor Practice Complaint, filed on April 5, 2011 complainant states the following:

2. The CBA provides in Article VI for final and binding arbitration of grievances.

3. DCPS agrees to “comply with grievance settlements and arbitration awards within 60 days of the effective date of the completion of the settlement or receipt of the arbitrator’s award and submission of all necessary paperwork submitted by the employee.”

5. On February 7, 2011, Arbitrator Charles Feigenbaum issued an Opinion and Award (AAA Case No. 16 390 00740 08) on the grievance over the termination of the probationary teachers. . .

6. Arbitrator Feigenbaum ordered DCPS to make a “60-day good faith effort to located terminated teachers [,] offer them reinstatement to an appropriate position effective to the date of termination [and] [make all] whole, minus any appropriate deductions.”

(Complaint at pgs. 1-2).

In Answer to Complaint, Respondent raises the following affirmative defenses:

First Affirmative Defense:

The Complaint fails to state a cause of action for which relief may be granted by the Public Employees Relations Board (PERB). The Complaint fails to allege any conduct that constitutes an unfair labor practice under §1-617.06(a)(1), 1-617.04(a)(1) and (5) of the D.C. Official Code (2001 ed.). Respondents, therefore, move that the complaint be dismissed in its entirety with prejudice.

Second Affirmative Defense:

The Complaint was not ripe when filed because:

(a) Fewer than 60 days had passed between the issuance and service of Arbitrator Feigenbaum’s Award on February 7, 2011, and the filing of the Complaint on April 5, 2011; and

(b) The Respondent has filed an ARR appealing the Award issue don February 7, 2011, and that ARR is pending before the PERB.

(Answer at pgs. 6-7).

On May 19, 2011, Complainant filed a "Supplemental Unfair Labor Practice Complaint" which stated:

1. As of the date of this Supplemental unfair Labor Practices Complaint, DCPS still has failed to comply with Arbitrator Charles Feigenbaum's Award ("Award"), which was issued on February 7, 2011, more than sixty days ago.
2. The Union asserts that its claim was ripe when filed on April 5, 2011. However, the Union resubmits its Complaint now that the sixty-day period for DCPS to comply with the Award has lapsed.
3. As of the date of this filing, the Union maintains that DCPS has failed to produce to the Union all letters that DCPS sent to each terminated teacher explaining the grounds of his or her termination.

("Supplemental Complaint" at pgs. 1-2).

At the time of filing, Complainant's less than the expressed 60 days had passed after the arbitrator's decision. Under PERB rules and procedure, the "Supplemental Complaint" which Complainant filed is not a valid amendment to a complaint, and does not constitute a re-filing of a complaint. Therefore, the complaint was not ripe when filed.

Nonetheless, Respondent's claim that they are not bound by an Arbitrator's award if it is appealed is not based in any statute or regulation applicable to PERB. Respondent's argument is wrong. A party must comply with an Arbitrator's award unless an injunction can be obtained before appeal.

Furthermore, Complainant does not raise an Unfair Labor Practice complaint under any bases articulated in D.C. Code § 1-617.04(a). The instant issue is not a matter of a new Unfair Labor Practice, but rather of enforcement.¹

For the above mentioned reasons, the Union's complaint is denied, without prejudice, and the Union may file a Petition for Enforcement of the Arbitrator's award.

¹ PERB Rule 560.1 - Enforcement

If any party fails to comply with the Board's decision within the time period specified in Rule 559.1, the prevailing party may petition the Board to enforce the order

ORDER

IT IS HEREBY ORDERED THAT:

1. The motion filed by The Washington Teacher's Union, Local #6, American Federation of Teachers, AFL-CIO ("The Union") is dismissed without prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

November 4, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-29 was transmitted via Fax and U.S. Mail to the following parties on this the 4th day of November 2011.

Jay P. Holland
Brian J Markovitz
Veronica D. Jackson
JOSEPH, GREENWALD & LAAKE, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770

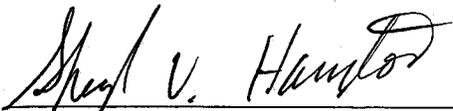
FAX & U.S. MAIL

Wendy Wahn, Director
Labor-Management Employee Relations
District of Columbia Public Schools
1200 First Street, N.E. 10th Floor
Washington D.C. 20002

FAX & U.S. MAIL

Michael Levy, Esq., Supervisory Attorney Advisor
District of Columbia
Office of Labor Relations & Collective Bargaining
441 Fourth Street, N.W., Suite 820 North
Washington, D.C. 20001

FAX & U.S. MAIL



Sheryl V. Harrington