

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:)	
)	
American Federation of Government)	
Employees, AFL-CIO Local 1403,)	
)	
Complainant,)	PERB Case No. 09-U-17
)	
v.)	Opinion No. 1232
)	
District of Columbia,)	
the Office of the Attorney General)	Unfair Labor Practice Complaint
for the District of Columbia,)	
)	
Respondent. ¹)	
_____)	

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, AFL-CIO Local 1403² (“Complainant,” “AFGE” or “Union”) filed a Protective Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia, Office of the Attorney General for the District of Columbia (“Respondent,” “OAG,” “Employer” or “Agency”). The Complaint alleges that the

¹ On or about December 3, 2008, Petitioner filed an action in the Superior Court for the District of Columbia against the Office of the Attorney General for the District of Columbia, Peter Nickles in his capacity as the Attorney General for the District of Columbia, and the District of Columbia. Petitioner sought enforcement of the arbitration award at issue in the current matter. The Respondent filed a motion to dismiss the matter “for lack of jurisdiction upon the ground that the collective bargaining agreement of which the award would become a part must first be submitted for review and signature by the Mayor pursuant to D.C. Official Code § 1-617.15(a).” (Answer at pg. 1). On April 28, 2011, the Superior Court for the District of Columbia dismissed the action for lack of jurisdiction.

² AFGE is the exclusive representative of “certain attorneys in the Office of the Attorney General[,] as well as certain attorneys in the District of Columbia agencies.” (Complaint at pg. 2).

Respondent violated D.C. Code § 1-617.04(a)(5) by refusing to comply with an interest arbitration award issued on September 27, 2008. (Complaint at pgs. 1-2).

The OAG filed Respondent's Answer to Petitioner's Protective Unfair Labor Practice Complaint ("Answer"), admitting the factual allegations contained in the Complaint, but denying that it engaged in conduct that constituted an unfair labor practice and requesting that the Complaint be dismissed. See, Answer at pg. 2.

II. Discussion

In 2004, Complainant and Respondent entered into a collective bargaining agreement ("CBA") that was scheduled to expire on September 30, 2007. Prior to the expiration of the CBA, the parties entered negotiations for the purpose of creating a new agreement. See, Complaint at pg. 2; see also, Answer at pg. 2.

In a letter dated August 20, 2007, the Union advised PERB that the parties had reached an impasse with respect to three terms. See, Complaint at pg. 2; see also, Answer at pg. 2. On January 10, 2008, PERB issued a letter, sending the parties to interest arbitration. See, Complaint at pg. 3; see also, Answer at pg. 2. Dr. Andree McKissick was then appointed to conduct the interest arbitration hearing. See, Complaint at pg. 3; see also, Answer at pg. 3. On May 28, 2008, Arbitrator McKissick conducted the hearing, and, on September 27, 2008, Dr. McKissick issued an Opinion and Award ("Award") in favor of the Complainant. See, Complaint at pg. 3; see also, Answer at pg. 3.

~~On October 24, 2008, the Union requested that the Respondent comply with the Award and sign the new CBA. See, Complaint at pg. 4. On or about October 29, 2008, Respondent informed the Union that OAG would most likely appeal the Award. See, Complaint at pg. 4. As of January 26, 2009, the Respondent had failed to comply with AFGE's requests to abide by the Arbitrator's Award. See, Complaint at pg. 4.~~

Complainant asserts that Respondent's failure to comply with Award constitutes an unfair labor practice in violation of D.C. Code § 1-617.04(a)(5). See, Complaint at pg. 4. In addition, Complainant alleges that OAG effectively refused to bargain collectively in good faith with AFGE. See, Complaint at pg. 5. The Union requests the PERB require OAG to comply with the arbitration award and "sign a non-compensation collective bargaining agreement incorporating the provisions in the [A]ward." (Complaint at pg. 5).

In its Answer, Respondent admits the factual allegations contained within the Complaint, but denies that it engaged in conduct constituting an unfair labor practice. See, Answer at pg. 2. Respondent asserts that Complainant alleges OAG failed to comply with an arbitration award, and, under *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Police Department*, refusing to comply with an arbitration award does not constitute an unfair labor practice. 39 DCR 9617, PERB Case No. 91-U-18. See, Answer at pgs. 4-5.

In addition, Respondent asserts that PERB lacks jurisdiction over the Complaint. See, Answer at pg. 3. OAG alleges that while D.C. Code § 1-605.02 dictates that PERB may consider "appeals from arbitration awards pursuant to a grievance procedure," the provision does not provide any authority for PERB to decide appeals from interest arbitration or to enforce arbitration awards. See, Answer at pg. 3. Again citing *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Police Department*, Respondent asserts that PERB previously held it has no explicit statutory authority to enforce awards or decisions handed down by third parties, and recognized that while the refusal to comply with an interest arbitration award constituted an unfair labor practice under the Federal Service Labor-Management Relations Statute, there was no equivalent provision within the CMPA. See, Answer at pgs. 3-4.

In *American Federation of Government Employees, Local 2725 v. District of Columbia Housing Authority*, the Board determined that an agency's failure to implement an arbitration award was a failure to bargain in good faith in violation of D.C. Code § 1-618.4(a)(1) and (5).³ 46 DCR 10388, Slip Op. No. 603 at pgs. 2-3, PERB Case No. 99-U-18 (1999). In that case, the Board stated:

[I]n the instance case, DCHA has waived its right to appeal the January 19, 1999 award by failing to file a timely arbitration review request with the Board. Pursuant to Board Rule 538.1, the 20 day period from issuance of the award to file such a request has long expired. Notwithstanding the parties' settlement efforts, the award has still not been implemented. Moreover, DCHA can no longer appeal the award in a timely manner. As such, no legitimate reason exist[s] for DCHA's continued refusal to implement the award.

In view of the Board' Decision in Order in *American Federation of Government Employees, Local 2725 v. D.C. Housing Authority*, Slip Op. No. 597, PERB Case No. 99-U-23, we find DCHA has violated D.C. Code § 1-6[17].4(a)(1) and (5) by refusing to implement the arbitration award.

(*AFGE, Local 2725 v. DCHA* at pg. 3).⁴

Similarly, in the instance case, Respondent failed to file a timely arbitration review request with the Board, and it can no longer appeal the award in a timely manner. As in the previously stated case, the Board finds no legitimate reason for the Agency's continued refusal to implement the arbitration award. Under the previously cited case law, the Board determines that OAG's failure to implement the arbitration award constitutes a failure to bargain in good faith in violation of D.C. Code § 1-617.4(a)(1) and (5).

Therefore, the Board grants the Union's Unfair Labor Practice Complaint.

³ Now cited as Section 1-617.04 of the CMPA.

⁴ See also, *American Federation of Government Employees, Local 2725 v. D.C. Housing Authority*, Slip Op. No. 585, PERB Case Nos. 98-U-20, 99-U-25 and 99-U-12 (1999) (The Board held that a failure to implement an arbitration award, after the losing party failed to timely file an arbitration review request or an appeal, constituted an unfair labor practice under D.C. Code § 1-617.04(a)(1) and (5).)

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, AFL-CIO, Local 1403's (AFGE) Unfair Labor Practice Complaint is granted.
2. The District of Columbia, the Office of the Attorney General for the District of Columbia (OAG), its agents and representatives shall cease and desist from refusing to bargain in good faith with AFGE.
3. OAG shall, in accordance with the terms of the award, fully implement, forthwith, the arbitration award.
4. OAG 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.
5. OAG 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, and what steps it has taken to comply with paragraph 3 and 7 of this Order.
6. 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.

December 20, 2011

NOTICE

TO ALL MEMBERS OF THE DISTRICT OF COLUMBIA, THE OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA, 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. 1232, PERB CASE NO. 09-U-17 (December 20, 2011)

WE HEREBY NOTIFY our members that the District of Columbia Public Employee Relations Board has found that we violated the law and has orders us to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. ____.

WE WILL cease and desist from interfering with or restraining the District in its exercise of management rights or to refuse to bargain collectively in good faith.

District of Columbia, the Office of the Attorney General
for the District of Columbia

Date: _____ By: _____
Attorney General

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 this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
December 20, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-17 was transmitted via Fax and U.S. Mail to the following parties on this the 20th day of December 2011.

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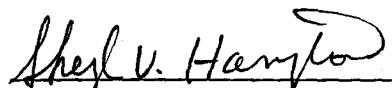
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