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. 05-U-18
v.	
	Opinion No. 848
District of Columbia Public Schools,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case:

The Washington Teachers' Union, Local #6, American Federation of Teachers, AFL-CIO ("Complainant", "WTU" or "Union"), filed an Unfair Labor Practice Complaint and a Motion for a Decision on the Pleadings, in the above-referenced case. In its Complaint, WTU alleges that the District of Columbia Public Schools ("DCPS") violated D.C. Code § 1-617.04 (1) and (5).

DCPS filed an answer denying that it has violated the Comprehensive Merit Personnel Act ("CMPA") and has requested that the Board dismiss the Complaint. DCPS did not file a response to the Complainant's "Motion for a Decision on the Pleadings". WTU's "Motion for a Decision on the Pleadings" is before the Board for disposition.

II. Discussion

On June 28, 2000, DCPS sent a letter to Brenda Williams, an ET-15 Teacher at Neval Thomas Elementary School, notifying her that she was being terminated, effective September 13, 2000. The reason for the termination was alleged inefficiency, incompetence, and inability to satisfactorily perform the duties of her position. (See Compl. at p. 2) WTU filed a Step 3 grievance on behalf of Ms. Williams. The Step 3 grievance was denied. As a result, WTU invoked arbitration.

answer was filed one (1) day late. Also, we note that DCPS did not either request an extension of time or provide a legitimate reason as to why their answer was late.

As noted above, DCPS did not file a timely answer to the Complaint. "Board Rule 520.7 provides in relevant part [that]: '[a] respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing." Unions in Compensation Unit 20 v. D.C. Department of Health, 49 DCR 11131, Slip Op. No. 688, at p. 3, PERB Case No. 02-U-13 (2000). Consistent with Board Rule 520.7, we find that the material issues of fact and supporting documentary evidence are undisputed by the parties. As a result, the alleged violation is a question of law. Therefore, pursuant to Board Rule 520.10, this case can appropriately be decided on the pleadings. In light of the above, we grant the Union's motion for a decision on the pleadings.

"Although the material facts alleged in the complaint are deemed admitted, the Board must still determine whether the Complainant has met [its] burden of proof concerning whether an unfair labor practice has been committed." Unions in Compensation Unit 20 v. D.C. Department of Health, 499 DCR 11131, Slip Op. No. 688, at p. 3, PERB Case No. 02-U-13 (2000). Also see, Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06, 46 DCR 6876, Slip Op. No. 491 at p.4, PERB Case No. 96-U-22 (1996). Furthermore, the Board has determined that "[to] maintain a cause of action, [a] complainant must [allege] the existence of some evidence that, if proven, would tie the Respondent's actions to the asserted [statutory violation]." Goodine v. FOP/DOC Labor Committee, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

The Board has previously considered the question of whether the failure to implement an arbitrator's award or settlement agreement constitutes an unfair labor practice. In American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority, 46 DCR 4398, Slip Op. No. 497 at p. 3, PERB Case No. 96-U-23 (1996), 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."

In the present case, the evidence submitted by the Union demonstrates that: (1) the parties signed a settlement agreement on August 26, 2003, and (2) DCPS agreed to make Ms. Williams whole for any losses resulting from her termination. However, to date, Ms. Williams has not received her back pay.

After reviewing WTU's pleadings and exhibits, we have determined that DCPS' failure to comply with the terms of the negotiated settlement agreement is not based on a genuine dispute over the terms of the settlement agreement, but rather on a flat refusal to comply with the agreement. We believe that DCPS has no "legitimate reason" for its on-going refusal to make Ms. Williams whole

by providing her with back pay as required by the terms of the settlement agreement.[2] In addition, we conclude that DCPS' actions constitute a violation of its duty to bargain in good faith, as codified under D.C. Code § 1-617.04(a)(5) (2001 ed.). Also, we find that by "these same acts and conduct, [DCPS'] failure to bargain in good faith with [WTU] constitutes, derivatively, interference with bargaining unit employees' rights in violation of D.C. Code § [1-617.04] (a)(1) (2001 ed.)." (Emphasis in original.) AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 8356, Slip Op. No. 597 at p. 5, PERB Case No. 99-U-33 (1991). Also see, Committee of Interns and Residents v. D.C. General Hospital, 43 DCR 1490, Slip Op. No. 456, PERB Case No. 95-U-01.

Having determined that DCPS has violated D.C. Code §1-617.04] (a)(1) and (5) (2001 ed.), we now turn to what is the appropriate remedy in this case. The Complainant is asking that the Board order DCPS to: (1) comply with the terms of the settlement agreement; (2) make Ms. Williams whole for all losses, with compound interest; (3) pay attorney fees and costs; and (4) post a notice to employees.

"We recognize that when a violation is found, the Board's order is intended to have therapeutic as well as remedial effect. Moreover, the overriding purpose and policy of relief afforded under the CMPA for unfair labor practices, is the protection of rights and obligations." National Association of Government Employees, Local R3-06 v. D.C. Water and Sewer Authority, 47 DCR 7551, Slip Op. No. 635 at pgs. 15-16, PERB Case No. 99-U-04 (2000). In light of the above, we are requiring that DCPS post a notice to all employees concerning the violations found and the relief afforded, notwithstanding the fact that all employees may not have been directly affected. By requiring that DCPS post a notice, "bargaining unit employees . . . would know that DCPS has been

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[2] WTU claims that it took DCPS over one year to reinstate Ms. Williams' health benefits. WTU suggests that this conduct constitutes an unfair labor practice. We believe that DCPS was tardy with respect to the reinstatement of Ms. Williams' health benefits. However, WTU has failed to establish that this conduct constitutes an unfair labor practice.

In addition, WTU alleges that DCPS has violated the CMPA by failing to place Ms. Williams at the appropriate grade. We find that WTU has failed to provide any evidence to substantiate its claim that DCPS has violated the agreement by failing to place Ms. Williams at the appropriate grade. Specifically, neither WTU's pleadings nor the parties' agreement identify what the correct placement should be. As a result, we believe that a dispute exists over this issue. Thus, we cannot determine at this time whether DCPS' conduct with respect to this issue constitutes a failure to bargain in good faith and, thereby, an unfair labor practice under the CMPA. In view of the above, we suggest that the parties meet in order to resolve the issue of Ms. Williams' proper salary placement. If within thirty (30) days of this Decision and Order, the parties are unable to resolve this issue, then this question will be referred to a hearing examiner in order to determine whether DCPS has violated the agreement and committed an unfair labor practice by not placing Ms. Williams at the appropriate salary level.

Prior to the arbitration hearing, the parties in August 2003 "executed a binding settlement agreement, in full resolution [of the grievance.]" (Compl. at p. 2)

The parties' settlement agreement was executed on August 2003. WTU claims that pursuant to the settlement agreement, DCPS was required to: (1) reinstate Ms. Williams; (2) transfer Ms. Williams to another school; (3) rescind Ms. Williams' termination; (4) remove any documents from Ms. Williams' personnel file concerning the termination; and (5) make Ms. Williams whole for all losses suffered as a result of her discharge. (See Compl. at p. 2)

Ms. Williams has been reinstated and transferred to another school. However, the Union asserts that "DCPS has failed to pay Ms. Williams any back pay it had agreed to pay her and is paying her current salary at an improper step rate." (Compl. at p. 2) WTU contends that it has "contacted DCPS on numerous occasions following the execution of the [August 26, 2003] agreement . . . demanding that DCPS comply with the agreement." (Compl. at p. 2 and Motion at p. 3) WTU claims that, to date, DCPS has failed to provide Ms. Williams with back pay and is paying her current salary at an improper step rate. (See Compl. at p. 2) In addition, WTU claims that DCPS did not reinstate Ms. Williams' health benefits "until more than one year after the execution of the settlement agreement." (Compl. at p. 2 and Motion at p. 3)

In its complaint, WTU alleges that DCPS is: (1) interfering with, restraining and coercing employees in the exercise of their rights under D.C. Code § 617. 06(a)(1), and (2) refusing to bargain in good faith, in violation of D.C. Code § 1-617.04(a)(1) and (5).[1] WTU is requesting that the Board issue a decision on the pleadings. In addition, WTU is asking that the Board order DCPS to: (1) comply with the terms of the settlement agreement; (2) make Ms. Williams whole for all losses, with compound interest; (3) pay attorney fees and costs; (4) post a notice to employees; and (5) cease and desist from violating the Comprehensive Merit Personnel Act ("CMPA").

In accordance with Board Rule 520.6, DCPS' answer to the complaint was due on January 17, 2005. However, DCPS did not file their answer until January 18, 2005. Therefore, DCPS'

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[1] D.C. Code § 1-617.04(a)(1) and (5) provide as follows:

> (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;
> >
> > • • •
> >
> > (5) Refusing to bargain collectively in good faith with the exclusive representative.

directed to comply with their bargaining obligations under the CMPA." Id. at p. 16. "Also, a notice posting requirement serves as a strong warning against future violations." Wendell Cunningham v. FOP/MPD Labor Committee, Slip Op. No. 682 at p. 10, PERB Case Nos. 01-U-04 and 01-S-01 (2002).

Concerning the Complainant's request for attorney fees, this Board has held that D.C. Code § 1-617.13 does not authorize it to award attorney fees. See, International Brotherhood of Police Officers, Local 1446, AFL-CIO v. District of Columbia General Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); and University of the District of Columbia Faculty Association, NEA v. University of the District of Columbia, 38 DCR 2463, Slip Op. 272, PERB Case No. 91-U-10 (1991). Therefore, the Complainant's request for attorney fees is denied.

As to the Complainant's request for reasonable 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). In that case, the Board concluded that it could, under certain circumstances, award reasonable costs.[3]

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[3]In the AFSCME case we noted as follows:

> First any such award of costs necessarily assumes that the party to whom the payment is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part. Second, it is clear on the face of the statute that it is only those costs that are "reasonable" that may be ordered reimbursed. . . . Last, and this is the [crux] of the matter, we believe such an award must be shown to be in the interest of justice.
>
> Just what characteristics of a case will warrant the finding that an award of costs will be in the interest of justice cannot be exhaustively cataloged. 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 such an award is appropriate are those 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 action is the undermining of the union among the employees for whom it is the exclusive bargaining

In cases which involve an agency's failure to implement an arbitration award or a negotiated settlement, this Board has been reluctant to award costs. See, AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 6278, Slip Op. No. 585 at p. 5, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999), and American Federation of Government Employees, Local 2725 v. D.C. Department of Health, Slip Op. No. 752, PERB Case No. 03-U-18 (2004). However, we have awarded costs when an agency has demonstrated a pattern and practice of refusing to implement arbitration awards or negotiated settlements. See, AFGE Local 2725 v. D.C. Housing Authority, 46 DCR 8356, Slip Op. No. 597 at p. 2, PERB Case No. 99-U-23 (1991).

In the present case, WTU asserts that DCPS has engaged in a pattern and practice of refusing to implement arbitration awards or negotiated settlements.[4] (See Motion at pgs. 4-5). We conclude that DCPS has established a pattern and practice of refusing to implement settlement agreements. We therefore find that it would be in the interest of justice to accord WTU its requested reasonable costs in these proceedings for prosecuting DCPS' latest violation of this same nature. In light of the above, we grant WTU's request for reasonable costs. [5]

The Complainant has also requested that the Board order DCPS to make Ms. Williams whole for all losses, including back pay with compound interest. We have previously considered the question of whether the Board can award interest as part of the its "authority to 'make whole' 'those who the Board finds [have] suffered adverse economic effects in violation of . . . the Labor-Management Relations Section of the CMPA. . . '." University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, 39 DCR 8594, Slip Op. No. 285 at p. 15, PERB Case No. 86-U-16 (1992). In the *UDCFA* case we stated the following:

> The D.C. Superior Court has held that an "award requiring [that]. . . employee[s] be given back pay for a specific period of time establishes . . . a liquidated debt" and therefore is subject to the provisions of D.C. Code Sec. 15-108 which provides for prejudgment interest on liquidated debts at the rate of four percent (4%) per annum. See American Federation of Government

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representative. Slip Op. No. 245, at p. 5.

[4] In support of its argument, WTU cites AFSCME, District Council 20, Local 2921 v. DCPS, Slip Op No. 712, PERB Case No. 03-U-17 (2000), and WTU v. DCPS, PERB Case Nos. 05-U-07, 05-U-13, 05-U-14 and 05-U-15.

[5] The Board has made it clear that attorney fees are not a cost.See Cassie Lee v. AFGE, Local 872, Slip Op. No. 802, PERB Case No. 04-S-07 (2006); AFGE, Local 2725 v. D.C. Department of Health and Office of Labor Relations and Collective Bargaining, Slip Op. No. 841, PERB Case No. 05-U-30 (2006).

> Employees, Local 3721 v. District of Columbia Fire Department, 36 DCR 7857, PERB Case No. 88-U-25 (1989) and American Federation of State, County and Municipal Employees v. District of Columbia Bd. of Education, D.C. Superior Court. Misc. Nos. 65-86 and 93-86, decided Aug. 22, 1986, reported at 114 Wash. Law Reporter 2113 (October 15, 1986). Id at p. 17.

Consistent with our holding in the *UDCFA* case, "we state, once again, that [an order directing back pay] expressly and specifically includes 'prejudgement interest' as part of [the Board's] make-whole remedy. Furthermore, that prejudgment interest begins to accrue at the time the back-pay . . . became due" and shall be computed at the rate of four percent (4%) per annum. University of the District of Columbia Faculty Association, NEA v. University of the District of Columbia, 41 DCR 1914, Slip Op. No. 307 at p. 2, PERB Case No. 86-U-16 (1992). See also, Fraternal Order of Police/MPD Labor Committee v. District of Columbia Metropolitan Police Department, 37 DCR 2704, Slip Op. No. 242 PERB Case No. 89-U-07 (1990).

Pursuant to the parties' settlement agreement, DCPS was required to make Ms. Williams whole by reinstating her and providing her with back pay retroactive to September 13, 2000. (See Settlement Agreement at p. 1) As previously discussed, DCPS has failed to provide Ms. Williams with her retroactive back pay. We find that DCPS' failure to fully implement the parties' settlement agreement has resulted in Ms. Williams suffering an adverse economic effect in violation of the CMPA. Therefore, as part of the Board's make whole remedy, DCPS is ordered to pay Ms. Williams her back pay retroactive to September 13, 2000 with interest at the rate of 4%, per annum.[6]

ORDER

IT IS HEREBY ORDERED THAT:

1. The Washington Teachers' Union, Local #6, American Federation of Teachers, AFL-CIO's ("WTU") Motion for a Decision on the Pleadings, is granted.

2. The District of Columbia Public Schools ("DCPS"), its agents and representatives shall cease and desist from refusing to bargain in good faith with WTU by failing to comply with the terms of the August 26, 2003 settlement agreement.

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[6] Pursuant to the parties' settlement agreement, Ms. Williams was to be reinstated "back to the effective date of her termination, September 13, 2000." (Settlement Agreement at p. 1) Thus, the interest in this case shall begin to accrue at the time the back-pay became due, namely September 13, 2000.

3. DCPS, 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 XVII. Labor-Management Relations" of the Comprehensive Merit Personnel Act ("CMPA") to bargain collectively through representatives of their own choosing.

4. DCPS shall within ten (10) days from the issuance of this Decision and Order fully implement the terms of the settlement agreement by providing Ms. Williams with back pay retroactive to September 13, 2000 with interest at the rate of 4% per annum. The interest in this case shall begin to accrue at the time the back-pay became due, namely September 13, 2000.

5. WTU's request for attorney fees is denied for the reasons stated in this Slip Opinion.

6. WTU's request for reasonable costs is granted for the reasons stated in this Slip Opinion.

7. DCPS shall post conspicuously, within ten (10) days from the service of this Decision and Order, the attached Notice where notices to bargaining-unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days.

8. Within fourteen (14) days from the issuance of this Decision and Order, DCPS shall notify the Public Employees Relations Board (Board), in writing, that the Notice has been posted accordingly. Also, DCPS shall notify the Board of the steps it has taken to comply with paragraph 4 of this Order.

9. If within thirty (30) days of this Decision and Order, the parties are unable to resolve the issue of Ms. Williams' salary placement, then this question will be referred to a hearing examiner in order to determine whether: (1) DCPS has violated the August 26, 2003 settlement agreement by failing to place Ms. Williams at the proper salary level and (2) an unfair labor practice has been committed with respect to Ms. Williams' salary placement.

10. WTU shall submit to the Board, within fourteen (14) days from the date of this Decision and Order, a statement of actual costs incurred processing this complaint. The statement of costs shall be filed together with supporting documentation. DCPS may file a response to WTU's statement of costs within fourteen (14) days from service of the statement upon it.

11. DCPS shall pay WTU the 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.

12. 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.

October 12, 2006

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 05-U-18 was transmitted via Fax and U.S. Mail to the following parties on this the 12th day of October 2006.

Loretta Blackwell, Director
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS, 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. 848, PERB CASE NO. 05-U-18 (October 12, 2006)

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 D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 848.

WE WILL cease and desist from refusing to bargain in good faith with the Washington Teachers' Union, Local #6, American Federation of Teachers, AFL-CIO, by failing to comply with the terms of a settlement 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 District of Columbia Comprehensive Merit Personnel Act.

District of Columbia Public Schools

Date:_____ By:_____