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**Government of the District of Columbia  
Public Employee Relations Board**

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In the Matter of:	)	
	)	
Washington Teachers' Union, Local # 6	)	
American Federation of Teachers, AFL-CIO,	)	
	)	PERB Case No. 16-U-32
Complainant,	)	
	)	Opinion No. 1611
and	)	
	)	
District of Columbia Public Schools,	)	
	)	
Respondent.	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On August 1, 2016, Washington Teachers' Union ("Union" or "Complainant") filed the above-captioned unfair labor practice complaint ("Complaint") against District of Columbia Public Schools ("DCPS" or "Respondent"). The Union alleges that DCPS has violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by failing to comply with an April 4, 2016 Arbitration Opinion and Award ("Award") issued by Arbitrator Charles Feigenbaum.<sup>1</sup> The Award sustained the Union's grievance on behalf of Mr. Thomas O'Rourke ("Grievant") and reinstated the Grievant with back pay.

The Union asserts that "By failing and refusing to comply with the Award, DCPS interfered with, restrained, and coerced employees in the exercise of their rights and refused to bargain in good faith, in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5)."<sup>2</sup> The Union requests the Board to "Order DCPS...to cease and desist from the violations described [in the

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<sup>1</sup> D.C. Official 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.

<sup>2</sup> Complaint at 4.

Complaint]; comply with the Award in all respects; and pay attorneys' fees and costs."<sup>3</sup> The Union also requests the Board to "order preliminary relief or a restraining order from the Superior Court of the District of Columbia," requiring DCPS to take the previously mentioned action "pending a final determination from the Board."<sup>4</sup>

On August 22, 2016, DCPS filed Respondent's Answer to Unfair Labor Practice Complaint, requesting that the Board dismiss the Complaint. DCPS does not dispute the material facts.<sup>5</sup> As an affirmative defense, DCPS asserts that the Union's Complaint is not ripe because the Respondent's April 25, 2016 Arbitration Review Request, contesting the Arbitrator's Award, was pending before the Board when the Complaint was filed.<sup>6</sup> DCPS moves to dismiss the Complaint as "Complainant has failed to allege facts to show that DCPS may have committed a violation of the CMPA to establish an unfair labor practice...."<sup>7</sup>

## II. Discussion

After reviewing the pleadings and applicable authority, the Board finds that the alleged violations do not turn on disputed material issues of fact, but rather on a question of law. As such, pursuant to Board Rule 520.10, this case can appropriately be decided on the pleadings. Generally, a complainant must assert allegations that, if proven, would establish the alleged statutory violations made in the complaint.<sup>8</sup> Under Board Rule 520.11, "the party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence."

The Board has held that when a party refuses or fails to implement an award or negotiated agreement where there is no dispute over its terms, such conduct constitutes a failure to bargain in good faith and thereby, an unfair labor practice.<sup>9</sup> The parties do not dispute that DCPS has not complied with the Award. The pendency of DCPS' Arbitration Review Request, however, gave DCPS a lawful and reasonable basis for declining to implement the Award. Under Board Rule 538.1 a party who is aggrieved by an arbitration award may file an arbitration review request with the Board within twenty-one (21) days after service of the award. Upon review of the record, the Board finds that DCPS filed a timely arbitration review request. As a result, the

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<sup>3</sup> Complaint at 4.

<sup>4</sup> Complaint at 5.

<sup>5</sup> See n. 7.

<sup>6</sup> Answer at 4.

<sup>7</sup> Answer at 4-5.

<sup>8</sup> *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 5427, Slip Op. No. 984 at 6, PERB Case No. 08-U-09 (2009) (citing *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at 4, PERB Case No. 96-U-22 (1996); *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994)).

<sup>9</sup> *American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority*, 46 D.C. Reg. 4398, Slip Op. 497 at 3, PERB Case No. 96-U-23 (1996).

Board concludes that DCPS's reasons for failing to implement the Award do not constitute a violation of its duty to bargain in good faith under D.C. Official Code § 1-617.04(a)(1) and (5).

Concerning the Complainant's request for attorney fees, the Board has held that D.C. Official Code § 1-617.13 does not authorize it to award attorney fees.<sup>10</sup> Therefore, the Complainant's request for attorney fees is denied. Further, in light of the Board's disposition in this case, it is not necessary to address the Complainant's requests for costs or preliminary relief.

### **III. Conclusion**

The Board finds that the material issues of fact are not in dispute. In view of the Respondent's request for review of the Arbitrator's Award in 16-A-09, the Board finds that the Complaint failed to prove a violation of the Comprehensive Merit Personnel Act. Accordingly DCPS's motion to dismiss is granted and the Complaint is dismissed.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Complaint is dismissed
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman and Douglas Warshof.

Washington, D.C.

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<sup>10</sup> See, *International Brotherhood of Police Officers, Local 1446, AFL-CIO/CLC v. District of Columbia General Hospital*, 39 D.C. Reg. 9633, Slip Op. 322, PERB Case No. 91-U-14 (1992); *UDC Faculty Association, NEA v. University of the District of Columbia*, 38 D.C. Reg. 2463, Slip Op. 272, PERB Case No. 90-U-10 (1991).

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 16-U-32, Op. No. 1611 was sent by File and ServeXpress to the following parties on this the 24<sup>th</sup> day of February, 2017.

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/s/ Sheryl Harrington  
PERB