Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Washington Teachers' Union, Local No. 6 American Federation of Teachers, AFL-CIO,	
Complainant,	
v.	PERB Case No. 05-U-18
	Opinion No. 881
District of Columbia Public Schools,	Motion for Reconsideration
Respondent.	

DECISION AND ORDER

I. Statement of the Case

This case involves a Motion for Reconsideration filed by the District of Columbia Pubic Schools ("DCS"). In Slip Opinion. No. 848[1], the Board found that DCS had committed an unfair labor practice by failing to fully comply with an August 2003 Settlement Agreement. Pursuant to the Settlement Agreement, DCS was required to: (1) reinstate Brenda 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 foe all losses suffered as a result of her discharge. (See Complaint at p. 2).

In its Complaint, the Washington Teachers' Union, Local No. 6, American Federation of Teachers, AFL-CIO ("WTU" or "Union"), alleged that DCS was violating D.C. Code § 1-617.04(a)(1) and (5)[2] by failing to fully implement the August 2003 Settlement Agreement. The

[1]Slip Opinion 848, PERB Case No. 05-U-18 (issued October 12, 2006).

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

Union requested that the Board issue a decision on the pleadings. In addition, the Union asked that the Board order DCS 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").

DCS filed an Answer, however, the Board found that the Answer was untimely. The Board noted that DCS did not either request an extension of time or provide a legitimate reason as to why their answer was late.

Consistent with Board Rule 520.7, the Board found that the material issues of fact supporting documentary evidence were undisputed by the parties. As a result, the Board concluded that the alleged violation involved a question of law. Therefore, pursuant to Board Rule 520.10, the Board determined that the case could be appropriately decided on the pleadings. Based on the above, the Board granted the Union's motion for a decision on the pleadings.

The Board notes that in Slip Opinion No. 848, issued on October 12, 2006, the Board found that DCS had violated the CMPA by failing to fully comply with the Settlement Agreement. As a remedy, the Board directed DCS to fully comply with the Settlement Agreement and pay Ms. Williams her back pay. On October 24, 2006, DCS filed a Motion for Reconsideration requesting that the Board find that DCS did not commit an unfair labor practice and reverse its Decision and Order. The Union filed an opposition to the Motion for Reconsideration. In addition, the Union filed a submission which was styled "Motion to Strike and Supplemental Opposition to [DCS'] Motion for Reconsideration" ("Motion to Strike"). DCS' submission and the Union's submissions are now before the Board for disposition.

II. Discussion

On October 24,2006, DCS filed the instant Motion alleging that the Board relied on inaccurate facts in making its decision. In addition, DCS asserts that the Union failed to establish that DCS violated the CMPA. In its Motion, DCS does not specifically argue that the Board erred as a matter of law in granting the Motion for a Decision on the Pleadings. Instead, DCS alleges that it had complied with the 2003 settlement Agreement on December 30, 2004, by issuing a check to Ms. Williams for her back pay in the amount of $ 19,838 .31. (See Motion Attachment "B", Motion

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(a) The District, its agents, and representatives are prohibited from:

(1) Interfering, restraining, or coercing any employee in the exercise of its rights guaranteed by this subchapter;

. . .

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

at p. 3). Consequently, DCS argues that the Board should vacate Slip Opinion No. 848.

The Union opposes the motion. The Union contends that DCS had failed to fully comply with the Settlement Agreement prior to its filing the Complaint. In addition, the Union asserts that DCS did not inform the Board or the Union that it had attempted to comply with the Settlement Agreement by issuing a check to Ms. Williams for her back pay until the instant Motion for Reconsideration (See Opposition at p. 6).

There is no dispute that the Settlement Agreement was signed on August 26, 2003, and that prior to the filing of the complaint on December 27, 2004, DCS had failed to fully implement the Settlement Agreement by paying Ms. Williams her full back pay. It appears that DCS did issue a check to Ms. Williams on or about December 30, 2004.[3] The issue is whether DCS' alleged compliance with the Settlement Agreement negates the Board's previous determination that DCS had committed an unfair labor practice in violation of the CMPA.

The Board has previously considered this issue in a motion for reconsideration involving the American Federation of Government Employees, Local 2725 and the District of Columbia Housing Authority. In that case the Board observed:

> Even if the factual assertions made by DCHA - that it has reinstated the employee and ordered payment of back pay and restoration of benefits - are fully accepted by the Board, these actions were not taken until long after the issuance of the arbitration award and the filing of the Unfair Labor Practice Complaint. In addition, prior to the Board's Decision, DCHA had an opportunity to notify the Board of its compliance with the award. However, DCHA chose not to file an Answer. Therefore, pursuant to Board Rule 520.7, DCHA is deemed to have admitted material facts alleged in the complaint.

American Federation of Government Employees, Local 2725 v. District of Columbia Housing Authority, 47 DCR 5318, Slip Op. No. 627, pgs. 2 -3, PERB Case No. 99-U-18 (2000).

In *AFGE, Local 2725 v. DCHA*, we held that since DCHA had failed to provide any legitimate reason for its failure to comply with the arbitration award, its motion for reconsideration was denied. We believe that the holding in *AFGE, Local 2725 v .DCHA* applies equally here. For the reasons discussed below, DCS' Motion is denied.

As in the *AFGE v. DCHA* case, the Board finds that DCPS has failed to provide any

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[3]DCS asserts that Ms. Williams received the check prior to the Union's filing of the Unfair Labor Practice Complaint. However, we note that the unfair labor practice complaint was filed on December 27, 2004.

legitimate reason for failing to fully comply with the 2003 Settlement Agreement. None of the facts alleged in the Motion alter the conclusion that, as of the date of the filing of the Complaint, DCS had failed to fully comply with the Settlement Agreement. Even taking the allegations raised in the Motion as true, DCS has failed to provide a valid reason for its failure to fully comply or for reversing the Board's previous Decision and Order. Consequently, the Board denies DCS' Motion for Reconsideration.

Finally, DCS' argument that it fully complied with the Settlement Agreement on December 30, 2004, was not raised before this Board or the Union until DCS' Motion for Reconsideration was filed. We note that prior to filing its Motion for Reconsideration, DCS had ample opportunity to provide the Board and the Union with information regarding the fact that DCS had attempted to comply with the Settlement Agreement. Furthermore, even in the answer that DCS filed untimely, DCS made no mention that it had complied with the Settlement Agreement by issuing a check to Ms. Williams. This Board has held that it "will not permit evidence presented for the first time in a motion for reconsideration to serve as a basis for reconsidering [a Decision and Order] when the respondent failed to provide any evidence at the afforded time." *Mack, Simmons, Lee and Ott v. Fraternal Order of Police/Department of Corrections Labor Committee*, 45 DCR 1472, Slip Op. No. 521 at p. 3, PERB Case No. 97-S-01 (1998). Whereas the claim that DCS issued a check to Ms. Williams was made for the first time in DCS' Motion for Reconsideration, the Board finds that DCS' argument lacks merit.

III. The Union's Motion for Additional Costs

In the Union's Opposition to the Motion for Reconsideration, it requests that the Board grant additional costs as a result of responding to DCPS's Motion. In Slip Opinion No. 848 (at p. 6), the Board granted the Union's request for costs. There, the Board found that:

> [the Union] 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 [the Union] its requested reasonable costs in these proceedings for prosecuting DCPS' latest violation of this same nature. In light of the above, we grant [the Union's] request for reasonable costs.

We believe that reasonable costs are also applicable here. This Board has previously

[4] In support of its argument, WTU cites *AFSCME, District Council 20, Local 2921 v. DCPS*, 50 DCR 5077, Slip Op. No. 712, PERB Case No. 03-U-17 (2000), and WTU v. DCPS, PERB Case No.'s 05-U-07, 05-U-13, 05-U-14 and -5-U-15 (2006).

addressed the issue of reasonable costs in *AFSCME, District 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 *AFSCME v. D.C. Dept. Of Revenue*, the Board opined:

> 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 amongst the employees for whom it is the exclusive bargaining representative. (Slip Op. No. 245, at p. 5).

The reasoning in *AFSCME v. D.C. Dept. Of Revenue* is applicable here. By settling the underlying issue in this case without notice of any sort to the Union, if indeed the settlement agreement has been fully complied with, the reasonably foreseeable result of that action would be to undermine the union amongst the employees it represents. Particularly, in light of DCPS' pattern of noncompliance with arbitration awards and settlement agreements, the Board believes that it would be in the interest of justice to grant the Union's reasonable costs associated with responding to DCPS' Motion.

IV. The Union's Motion to Strike

The Union filed a submission titled "Motion to Strike and Supplemental Opposition of [the Union] to [DCPS' Motion]." The Union's Motion asks that the Board remove certain attachments to DCPS' Motion concerning the personnel file of Ms. Williams. In support of its Motion, the Union cites DCPS' regulations which provide: "All official personnel records of employees of the Board of Education shall be established, maintained, and disposed of in a manner designed to ensure the greatest degree of applicant or employee privacy, while providing adequate, necessary, and complete information for the Board of Education to carry out its functions." (5 D.C.M.R. § 1315.1).

Consistent with 5 D.C.M.R. § 1315.1, the Board believes that it would be appropriate to remove those attachments relating to Ms. Williams' personnel records from the case file. By removing those attachments from the case file, they will not be subject to public disclosure. The Union's Motion is granted. Therefore, the Attachments specified by the Union's Motion will be removed and shredded.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The District of Columbia Public Schools' ("DCPS") Motion or Reconsideration is denied.

(2) The Washington Teachers' Union, Local No. 6, American Federation of Teachers, AFL-CIO's ("WTU" or "Union") request for additional reasonable costs is granted for the reasons stated in this Decision and Order.

(3) 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 WTU's Opposition to DCPS' Motion for Reconsideration. 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.

(4) 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.

(5) WTU's Motion to Strike the personnel records of Ms. Williams from the record is granted.

(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, 2006