

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD**

In The Matter Of: )

American Federation of State, )  
County and Municipal Employees, )  
D.C. Council 20, Local 2921 )  
AFL-CIO, )

Complainant, )

v. )

District of Columbia )  
Public Schools, )

Respondent. )

PERB Case No. 92-U-08  
Opinion No. 339

DECISION AND ORDER

On March 3, 1992, the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921, AFL-CIO (AFSCME) filed an Unfair Labor Practice Complaint with the Public Employee Relations Board (Board) charging that the District of Columbia Public Schools (DCPS) violated the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.4(a)(1) and (5), by refusing to provide AFSCME with a copy of a Step 3 grievance decision and refusing to implement the terms of that decision. On March 25, 1992, DCPS filed an Answer to the Complaint admitting the material acts and conduct contained in the Complaint; however, DCPS denies that by such stated acts and conduct it has committed a violation of D.C. Code Sec. 1-618.4(a)(1) and (5). DCPS further asserted that the Complaint allegations are "appropriately subject to the grievance procedure of the [parties'] collective bargaining agreement." (Ans. at 3.) By notice issued June 23, 1992, the Board ordered a hearing before a duly designated Hearing Examiner.

The Hearing Examiner, in a Report and Recommendation (R & R) issued October 27, 1992, acknowledged long-standing authority establishing management's obligation to "supply a Union with adequate information necessary to fulfill its statutory duty to fairly represent its members and process their grievances [citation omitted]" and to "furnish information to the Union (as exclusive representative) which is relevant to negotiation, or administration of their Collective Bargaining Agreement [citations omitted.]" (R & R at 10.) The Hearing Examiner found that "the Step 3 decision is not only relevant, it is imperatively essential to the Union to carry out its duty to

represent Grievant and process his grievance... ." Id. Based on this finding, the Hearing Examiner concluded that "[t]he failure to provide a Step 3 written decision within a reasonable period of time, is a violation of Management's duty to bargain in good faith" and "was and continues to be an unfair labor practice." (R & R at 13 and 14.) The Hearing Examiner further concluded that implementation of the Step 3 decision "is not a matter to be resolved in the complaint presented to PERB." (R & R at 14.) <sup>1/</sup>

AFSCME filed timely Exceptions to the Hearing Examiner's Report and Recommendation. No Response or Exception was filed by DCPS. The Board, after reviewing the entire record and relevant case law adopts the Hearing Examiner's findings of fact; however, we reject her rationale and conclusions of law finding that DCPS' acts and conduct with respect to the Step 3 grievance decision constituted an unfair labor practice under the CMPA, in violation of D.C. Code Sec. 1-618.4(a)(1) or (5). <sup>2/</sup> In so ruling, for the reasons discussed below, we have no authority to consider

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<sup>1/</sup> The Hearing Examiner notes in her Report that the Step 3 grievance hearing officer drafted a decision finding in favor of the grievant's reinstatement on procedural grounds due to DCPS' failure to participate in the Step 3 grievance hearing. (R & R at 14.) The Hearing Examiner ruled that since the grievant's termination was not challenged by AFSCME on the basis of DCPS' failure to comply with its contractual obligation under the parties' grievance procedure, implementation of the hearing officer's Step 3 decision calling for the grievant's reinstatement was not warranted. In view of our discussion in the text, we reject this rationale as the basis for finding that DCPS' failure to implement the terms of the decision is not a violation under the CMPA.

In making her findings, conclusions and recommendation in this case, the Hearing Examiner never disposes of DCPS' arguments that "the instant case should be resolved within the grievance-arbitration process mandated by the parties' collective bargaining agreement, i.e., that this matter should be deferred to an arbitrator rather than resolved by PERB... ." (R & R at 5-6.) We address this issue in note 5.

<sup>2/</sup> The Examiner also concluded that DCPS' conduct did not conform to certain provisions of the parties' collective bargaining agreement concerning Step 3 of the grievance procedure. The Board (and therefore the Examiner) is without jurisdiction to rule on such matters. We therefore do not adopt these conclusions but instead dismiss them for want of jurisdiction. See Georgia Mae Green v. District of Columbia Department of Corrections, 37 DCR 8086, Slip Op. No. 257, PERB Case No. 89-U-10 (1990).

AFSCME's Exceptions. <sup>3/</sup>

Management's duty to furnish information relevant and necessary to a union's statutory role under the CMPA as employees' exclusive representative is derived from (1) management's obligation to "bargain collectively in good faith" and (2) employees' right "[t]o engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative[.]" See D.C. Code Sec. 1-618.1(b)(2) and (c). D.C. Code Sec. 1-618.4(a)(5) protects and enforces, respectively, these employee rights and employer obligations by making their violation an unfair labor practice.

In determining a violation of this obligation, the Board has always made a distinction between obligations that are statutorily imposed under the CMPA and those obligations that are contractually agreed-upon between the parties. "The CMPA provides for the resolution of the former", we have stated, "while the parties have contractually provided for the resolution of the latter, vis-a-vis, the grievance and arbitration process contained in their collective bargaining agreement." We have concluded, therefore, that we lack jurisdiction over alleged violations that are strictly contractual in nature. American Federation Government Employees, Local Union No. 3721 v. District of Columbia; Fire Department, 39 DCR 8599, Slip Op. No. 287 at n. 5, PERB Case No. 90-U-11 (1991). See also, Washington Teachers' Union, Local 6, American Federation of Teachers, AFL-CIO v. District of Columbia Public Schools, \_\_\_ DCR \_\_\_, Slip Op. No. 337, PERB Case No. 92-U-18 (1992); International Brotherhood of Police Officers, Local 446, AFL-CIO/CLC v. District of Columbia General Hospital, \_\_\_ DCR \_\_\_, Slip Op. No. 322 at 4, PERB Case No. 91-U-14 (1992); Teamsters, Local Unions No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. District of Columbia Public Schools, \_\_\_ DCR \_\_\_, Slip Op. No. 318, PERB Case No. 92-U-04 (1992); International Brotherhood of Police Officers, Local 446 AFL-CIO v. District of Columbia General Hospital, \_\_\_ DCR \_\_\_, Slip Op. No. 312, PERB Case No. 91-U-06 (1992); and Carlease Madison Forbes v. Teamsters, Local Union 1714 and Teamsters Joint Council 55, 36 DCR 7097, Slip Op No. 205, PERB Case No. 87-U-11 (1989). We have reached this conclusion notwithstanding the fact

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<sup>3/</sup> AFSCME objects to the Hearing Examiner's rulings that: (1) issues concerning the grievant's reinstatement were not before the Hearing Examiner, and (2) the question of whether the hearing officer's verbatim decision must be issued by the Superintendent is not a matter to be resolved by the Hearing Examiner. (Except. at 1 and 2.)

that, absent coverage under provisions of an effective collective bargaining agreement, an unfair labor practice may otherwise lie under the CMPA.

The findings of the Hearing Examiner clearly establish that the parties have contractually agreed under the grievance and arbitration provisions of their collective bargaining agreement to DCPS' obligations with respect to deciding a Step 3 grievance and issuing a Step 3 decision. <sup>4/</sup> These findings establish the

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<sup>4/</sup> The Report and Recommendation is replete with findings of fact establishing the contractual nature of DCPS' obligations with respect to a Step 3 grievance decision. (R & R at 2, 3, 8, 9, and 13.) The parties' collective bargaining agreement, entered into evidence as Joint Exhibit 1, provides under Article VI. "Grievance and Arbitration Procedure", in relevant part, the following:

B. Procedure

\* \* \* \*

Grievances shall be settled as follows:

(a) When a grievance is raised by an employee:

\* \* \* \*

Step 3.

If the grievance is not settled at Step 2 within five (5) work days after the grievance meeting referred to in Step 2 above then the grievance shall be submitted, in writing, within another five (5) work days to the Superintendent of Schools. A copy of the grievance as presented at Step 2 along with the Step 2 written decision shall be forwarded to the Superintendent of Schools at the time that Step 3 is invoked. The Superintendent or her designee, and those she may further name, shall meet with the person(s) referred to in Steps 1 and 2 within ten (10) work days of the receipt of the grievance and the Superintendent or her designed shall render a

(continued...)

critical distinction between the facts of this case and the facts upon which cited Board Decisions and Orders, relied upon by AFSCME, are based, i.e., American Federation of State, County and Municipal Employees, District Council 20, Local 1939, AFL-CIO v. District of Columbia Public Schools, \_\_\_ DCR \_\_\_ Slip Op. No. 308, PERB Case No. 91-U-07 (1992); American Federation of State, County and Municipal Employees, Council 20, AFL-CIO v. District of Columbia General Hospital and the D.C. Office of Labor Relations and Collective Bargaining, 36 DCR 7101, Slip Op. No. 227, PERB Case No. 88-U-29 (1989); and International Brotherhood of Teamsters, Locals 639 and 730 v. District of Columbia Public Schools, 36 DCR 5993, Slip Op. No. 226, PERB Case No. 88-U-10 (1989). Although all three of these cases involved union requests for information made during various phases of the parties' contractual grievance and arbitration procedure, the obligation to furnish the information was not dictated by the provisions of the parties' collective bargaining agreement, as is the case here. <sup>5/</sup>

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<sup>4</sup>(...continued)

decision thereon in writing within ten (10) work days of the meeting.

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- (b) When a grievance is raised by the Union: If the grievance involves an individual employee, the Steps shall be the same as those outlined in Paragraph 2(a) above, except that the participants shall be the Union, the employee, the latter's immediate supervisor, and also the additional person(s), if any, selected by the immediate supervisor in Step 1. If the grievance involves a matter of general application, the initial Step shall be at the level which took the action which gave rise to the grievance. In all cases under Paragraph 2(b), the initiating party, if any, as outlined in Steps 3 and shall be the Union. (Emphasis added.)

<sup>5/</sup> We further note that in all three Board cases distinguished above, the information was requested to assist the union in the preparation and/or processing of a grievance. (continued...)

We further find, with respect to DCPS' alleged refusal to implement the terms of the Step 3 decision, that such conduct presents an issue for contract interpretation. Accordingly, the Board lacks the statutory authority to seek or enforce compliance with decisions rendered pursuant to the parties' contractual agreement. Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department, \_\_\_ DCR \_\_\_, Slip Op. No. 295, PERB Case No. 91-U-18 (1992).

Thus, no issue within our jurisdiction and authority remains and we therefore dismiss this Complaint. <sup>6</sup> /

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<sup>5</sup>(...continued)

Although AFSCME made assertions to this effect in its legal arguments, its claim with respect to the instant facts, as summarized by the Hearing Examiner, is that "[f]ailure to distribute, implement and honor the step 3 decision... is in effect a refusal of information by Management, in violation of the law." (R & R at 6.) The only purpose reflected in the record for AFSCME's request was to obtain a written decision of the hearing officer's Step 3 ruling and DCPS' compliance with it.

<sup>6</sup>/ With respect to issues raised by DCPS concerning the Board's deferral of this dispute to the parties' grievance and arbitration procedure, we note that we have retained jurisdiction over unfair labor practice complaints where a concurrent grievance was pending. Those complaints, however, involved allegations where interpretation of a contractual provision, vis-a-vis the grievance, was "both necessary and appropriate to a determination of whether or not a [remaining] noncontractual, statutory violation has been committed." Fraternal Order of Police, Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department, 31 DCR 2204, Slip Op. No. 72 at 6, PERB Case No. 84-U-01 (1984), See also American Federation of Government Employees, Local 872 v. District of Columbia Department of Public Works, 38 DCR 6693, Slip Op. No. 266 at n. 2, PERB Case Nos. 89-U-15, 89-U-16, 89-U-18, and 90-U-04 (1991) and American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department, 39 DCR 8599, Slip Op. No. 287 at 5 and 6, PERB Case No. 90-U-11 (1992). Here, however, the parties have agreed to allow provisions of their collective bargaining agreement to establish the obligations that govern the very acts and conduct alleged in the Complaint as violative of the CMPA. The resolution of this contractual dispute leaves no noncontractual statutory violation within our jurisdiction remaining for our determination.

(continued...)

ORDER

**IT IS HEREBY ORDERED THAT:**

The Complaint is dismissed.

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

December 4, 1992

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<sup>6</sup>(...continued)

Thus, having no jurisdiction over these allegations, we also lack the authority to direct the parties to arbitration as suggested by DCPS. However, the Board's dismissal of this matter does not foreclose AFSCME and DCPS from agreeing to continue to process this matter to arbitration including any preliminary procedural issues concerning timeliness and DCPS' obligation to furnish a copy and/or comply with the terms of the Step 3 grievance decision.