

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:	)	
	)	
Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO,	)	
Petitioner,	)	PERB Case No. 12-E-05
v.	)	Opinion No. 1318
District of Columbia Public Schools,	)	
Respondent.	)	
	)	

**DECISION AND ORDER**

Before the Board is a “Petition to Enforce Decision and Order” (“Petition”) that the Council of School Officers, Local 4, American Federation of School Administrators (“Petitioner” or “Union”) filed against the District of Columbia Public Schools (“Respondent” or “DCPS”) in PERB Case Number 11-U-28 seeking enforcement of the decision and order the Board had previously issued in that case. The Petition has been assigned PERB Case Number 12-E-05 and is before the Board for disposition.

PERB Case Number 11-U-28 was an unfair labor practice case in which the Union asserted that it had requested from DCPS descriptions of job titles covered by the collective bargaining agreement but DCPS never provided them. The Board found that DCPS had failed to provide the requested descriptions and determined that such failure was an unfair labor practice. The Board ordered DCPS to post a notice of the unfair labor practice it had committed and within fourteen days of service of the decision and order provide the requested information and inform the Board that the notice had been posted and the information provided. *Council of Sch. Officers, Local 4 v. D.C. Pub. Schs.*, Slip Op. No. 1257, PERB Case No. 11-U-28 (Mar. 27, 2012)(“Slip Opinion No. 1257”). Slip Opinion No. 1257 and the notice were served on the parties April 20, 2012.

On June 22, 2012, the Union filed its Petition, alleging that DCPS had failed to comply with the requirements set forth in Slip Opinion No. 1257. The time prescribed by Board Rule 560.2 for responding to the Petition has expired, and the Respondent has filed no response to the Petition. In accordance with Rule 560.3 the Board construes the Respondent’s failure to file an answer as an admission of the allegations in the Petition. A review of the file confirms the

Respondent's admission because the file does not contain a notification of compliance with the order, which the Respondent was ordered to send the Board. Accordingly, we find that that the Respondent has not complied with Slip Opinion No. 1257. Therefore, the Petition is granted. The Board will seek judicial enforcement of Slip Opinion No. 1257, as provided under D.C. Code § 1-617.13(b).

Further, the Petitioner has requested "pursuant to D.C. Code § 1-617.13(d), an award of costs and attorneys fees for bringing this action and initiating this enforcement action." The Board notes that section 1-617.13(d) does not authorize an award of attorneys' fees, but it does authorize an award of costs. We have awarded costs where, as here, the agency has neither provided the information requested by the Union nor articulated a viable defense or countervailing concern which outweighs its duty to disclose the requested information. *Am. Fed'n of Gov't Employees, Local 631 v. D.C. Water & Sewer Auth.*, Slip Op. 924 at p. 8, PERB Case No. 08-U-04 (Nov. 21, 2007). In the leading case of *AFSCME, District Council 20 v. Department of Finance and Revenue*, the Board wrote: "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 catalogued. 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 now 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. . . ." 37 D.C. Reg. 5658, Slip Op. No. 245 at p. 5, PERB Case No. 89-U-02 (1990). Even after being ordered to by the Board, the Respondent has failed to provide information to which the Union is entitled. Furthermore, the Respondent has offered no defense for its failure. The Board concludes that the Respondent's position is wholly without merit.

In the light of the Respondent's conduct, the interest-of-justice criteria articulated in the *AFSCME* case are served by granting the Union's request for reasonable costs. Therefore, we grant the Union's request for costs.

### ORDER

#### IT IS HEREBY ORDERED THAT:

1. The Union's "Petition to Enforce Decision and Order" is granted.
2. The Board shall proceed with enforcement of Slip Op. No. 1257 pursuant to D.C. Code § 1-617.13(b) if full compliance with Slip Op. No. 1257 is not made and documented to the Board within ten (10) days of the issuance of this Decision and Order.
3. The Petitioner shall submit to the Board, within fourteen (14) days from the date of this Decision and Order, a statement of the costs sought from the Respondent together with supporting documentation. The Respondent may file a response to the statement within fourteen (14) days from service of the statement upon it.

4. The Respondent shall pay to the Petitioner its reasonable expenses incurred in this proceeding within ten (10) days from the determination by the Board as to the amount of those reasonable costs.
5. 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.

August 23, 2012

**CERTIFICATE OF SERVICE**

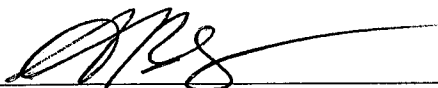
This is to certify that the attached Decision and Order in PERB Case No. 12-E-05 is being transmitted via U.S. Mail to the following parties on this the 24th day of August, 2012.

Mark J. Murphy  
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**U.S. MAIL**

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