

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 formal 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:)
)
American Federation of Government)
Employees, Local 2725,)
)
Complainant,) PERB Case No. 99-U-18
)
v.) Opinion No. 603
)
District of Columbia Housing)
Authority,)
)
Respondent.)
)
)

DECISION AND ORDER

On January 19, 1999, an arbitration award was issued sustaining a grievance filed by AFGE challenging the D.C. Housing Authority's (DCHA's) termination of a bargaining unit employee. The award reduced the termination to a 45-day suspension without pay and provided for the grievant's immediate reinstatement with back pay and benefits (minus the 45 day suspension). On January 26, 1999, AFGE requested that DCHA promptly comply with the award. On February 25, 1999, DCHA informed AFGE that it would respond to its request.

On March 11, 1999, AFGE filed an Unfair Labor Practice Complaint alleging that DCHA violated the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(1) and (5), by failing to implement the award. AFGE also filed a

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Motion seeking preliminary relief and an order directing DCHA to comply with the terms of the award. In addition, AFGE seeks attorney fees, costs, and traditional Notice posting.

Despite receiving an extension of time within which to respond, DCHA failed to file either an answer to the Complaint or a response to AFGE's request for preliminary relief. In accordance with Board Rule 520.7, by failing to file an Answer to the Complaint, DCHA is "deemed to have admitted the material facts alleged in the [C]omplaint and to have waived a hearing." Furthermore, DCHA's "failure to answer an allegation [is] deemed an admission of that allegation." Board Rule 520.7. Finally, DCHA can no longer request review of the January 19, 1999, award since the 20 days provided under Board Rule 538.1 have expired.

The Complaint allegations are supported by documentary evidence. As a result, the disposition of this case presents only a question of law as to whether or not the "deemed admitted" complaint allegations constitute the asserted unfair labor practice. Therefore, pursuant to Board Rule 520.10, this can appropriately be decided on the pleadings.

By letter dated March 29, 1999, AFGE requested that this case be held in abeyance based on verbal representations by DCHA that it intended to honor the award. On July 29, 1999, AFGE informed the Board's Staff, that DCHA had frustrated efforts to implement the award. As a result, AFGE requested that the Board proceed to process the Complaint and issue a decision on the pleadings. AFGE made no mention of its earlier request for preliminary relief; however, in view of our disposition, the motion for preliminary relief is moot.

We recently decided two cases involving these same parties and fact pattern. In the most recent decision we held that where DCHA failed to exercise its right to appeal the arbitration award with the Board, no "legitimate reason" exists for DCHA's continued refusal to implement the award. We concluded that under such circumstances, an agency's refusal to implement the award is a failure to bargain in good faith in violation of D.C. Code § 1-618.4(a)(1) and (5).

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American Federation of Government Employees, Local 2725, v. D.C. Housing Authority, Slip Op. No. 597, at p. 2, PERB Case No.99-U-23.

Similarly, in the instant case, DCHA has waived its right to appeal the January 19, 1999 award by failing to file a timely arbitration review request with the Board. Pursuant to Board Rule 538.1, the 20 day period from issuance of the award to file such a request has long expired. Notwithstanding the parties' settlement efforts, the award has still not been implemented. Moreover, DCHA can no longer appeal the award in a timely manner. As such, no legitimate reason exist for DCHA's continued refusal to implement the award.

In view of the Board's Decision and Order in American Federation of Government Employees, Local 2725, v. D.C. Housing Authority, Slip Op. No. 597, PERB Case No. 99-U-23, we find DCHA has violated D.C. Code § 1-628.4(a) (1) and (5) by refusing to implement the arbitration award. We further conclude that DCHA has established a pattern and practice of refusing to implement arbitration awards. We therefore conclude that it would be in the interest-of-justice to accord AFGE its requested costs in this proceeding for prosecuting DCHA's latest violation of this same nature. American Federation of State, County and Municipal Employees, 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). With respect to AFGE's request for attorney fees, we have held that the Board lacks the authority to award such fees. See, International Brotherhood of Police Officers v. D.C. General Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1994).

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Housing Authority (DCHA), its agents and representatives shall cease and desist from

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8. DCHA shall notify the Public Employee Relation Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, that the Notice has been posted accordingly, and what steps it has taken to comply with paragraph 3 and 7 of this Order.
9. 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 26, 1999

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refusing to bargain in good faith with the American Federation of Government Employees, Local 2725 (AFGE), by failing to implement arbitration awards rendered pursuant to the negotiated provisions of the parties' collective bargaining agreement over which no genuine dispute exists.

2. DCHA, its agents and representatives shall cease and desist from interfering, restraining or coercing its employee's by engaging in acts and conduct that abrogate employees' rights guaranteed by "Subchapter XVIII. Labor Management Relations" of the Comprehensive Merit Personnel Act (CMPA) to bargain collectively through representatives of their own choosing.
3. DCHA shall, in accordance with the terms of the award, fully implement, forthwith, the arbitration award.
4. AFGE's request for costs is granted; its request for attorney fees is denied for the reasons stated in this Opinion.
5. AFGE shall submit to the Public Employee Relations Board, within fourteen (14) days from the date of this Order, a statement of actual costs incurred prosecuting this action. The statement of costs shall be filed together with supporting documentation; DCHA may file a response to the statement within fourteen (14) days from service of the statement upon it.
6. DCHA shall pay AFGE, its 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.
7. DCHA shall, within ten (10) days from the service of this Decision and Order: (1) post for thirty (30) consecutive days the attached Notice, dated and signed, conspicuously on all bulletin boards where notices to bargaining-unit employees are customarily posted.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order on in PERB Case Nos. 99-U-18 was transmitted via Fax and/or U.S. Mail to the following parties on the 26th day of October, 1999.

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Lola Reed, Business Agent
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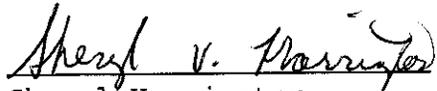
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA HOUSING AUTHORITY, 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. 603, PERB CASE NO. 99-U-18 (October 26, 1999).

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 refusing to bargain in good faith with the American Federation of Government Employees, Local 2725 (AFGE) by failing to implement arbitration awards rendered pursuant to the negotiated provisions of the collective bargaining 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 CMLA.

District of Columbia Housing
Authority

Date: _____ By: _____
Receiver

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 717-14th Street, N.W. 11th Floor, Washington, D.C. 20004. Phone: (202) 727-1822.

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

November 5, 1999