

**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:	)	
	)	
American Federation of State,	)	
County and Municipal Employees,	)	
District Council 20, Locals 1959 and 2921,	)	
AFL-CIO,	)	
	)	
Complainants,	)	PERB Case No. 05-U-06
v.	)	Opinion No. 815
	)	
District of Columbia Public Schools,	)	Petition for Enforcement
	)	
Respondent.	)	

**DECISION AND ORDER**

**I. Statement of the Case**

The American Federation of State, County and Municipal Employees, District Council 20, Locals 1959 and 2921 ("Complainants", "AFSCME" or "Union"), filed a document styled "Petition for Enforcement of PERB Order" ("Petition"), in the above-referenced case. The Complainants allege that the District of Columbia Public Schools ("DCPS" or "Respondent") has failed to comply with Slip Opinion No. 796 which was issued on July 14, 2005. Specifically, the Complainants claim that DCPS has failed to fully implement the terms of the parties' settlement agreement, as ordered by the Board in paragraph 4 of the July 14, 2005 Order. (Petition at p. 4). The Complainants are asking the Board to: (1) find that DCPS has failed to comply with the Board's Order in Slip Opinion No. 796; and (2) bring an action in the Superior Court of the District of Columbia to compel DCPS to comply with the Board's Order.

On September 13, 2005, DCPS filed a document styled "Respondent's Answer to Petition for Enforcement of PERB Order." In addition, on September 30, 2005, DCPS filed a document styled "Respondent's Supplemental Answer to Petition for Enforcement of PERB Order." In their submissions DCPS denies that it violated the Board's Order. As result, DCPS has requested that the

Board deny the Complainants' Motion. AFSCME's Petition and DCPS' Answer and Supplemental Answer are before the Board for disposition.

## II. Discussion

In Slip Op. No. 796 the Board found that DCPS violated the Comprehensive Merit Personnel Act. Specifically, the Board determined that DCPS violated D.C. Code § 1-617.04 (a) (1) and (5) by failing to comply with the terms of a March 12, 2004 settlement agreement which settled an unfair labor practice complaint. As a result, the Board ordered DCPS to: (1) pay the Union all retroactive service fees for all employees in Local 2921 for the period October 24, 2003 through the first full pay period following March 12, 2004; (2) pay the Union all retroactive service fees for all employees in Local 1959 for the period December 15, 2003 through the first full pay period following March 12, 2004; (3) comply with the parties' settlement agreement; (4) post a notice to employees; and (5) cease and desist from violating the Comprehensive Merit Personnel Act.

On August 25, 2005, AFSCME filed a Petition for Enforcement with the Board. AFSCME contends that DCPS has failed to comply with Slip Op. No. 796 by failing to: (1) pay the Union all retroactive service fees for all employees in Local 2921 for the period October 24, 2003 through the first full pay period following March 12, 2004; and (2) pay the Union all retroactive service fees for all employees in Local 1959 for the period December 15, 2003 through the first full pay period following March 12, 2004. (Petition at p. 4). AFSCME is requesting that the Board initiate an enforcement proceeding in the Superior Court of the District of Columbia in order to compel DCPS to comply with the terms of the Board's Decision and Order in Slip Op. No. 796.

In their submissions, DCPS acknowledges that it has failed to pay the union retroactive service fees. (See Response to Petition for Enforcement at p. 1). However, DCPS claims that the District of Columbia Government controls DCPS' finances and before service fees may be deducted, the District of Columbia Government requires that the DCPS code individuals appropriately in the CAPPs system. As a result, DCPS contends that it "has prepared lists of active employees that the school system has coded for AFSCME, Locals 1959 and 2921 ... [DCPS argues that] once employees have been coded, the D.C. Government Office of Pay [and Retirement] deducts the service fees." (DCPS' Response to Petition for Enforcement at p.1.) In their September 13<sup>th</sup> submission, DCPS notes that as of that date, "the list does not include a column with 'Union fees' because the last payroll run [did] not accurately reflect [those individuals] who are paying service fees. [DCPS claims that the reason for] this is the non-pay status of most of these employees during the summer." (Response to Petition for Enforcement at p. 1) DCPS indicated that the payroll run for the next pay period would give a more accurate reflection; however, this information would not be available until the week of September 26, 2005. As a result, DCPS noted that it would provide an updated list by September 30, 2005. As promised, on September 30<sup>th</sup> DCPS filed a document styled "Respondent's Supplemental Answer to Petition for Enforcement of PERB Order". Attached to this submission was an "updated list of AFSCME, Locals 1959 and 2921, membership as of September 30, 2005."

(See page one of the "Supplemental Answer".) Despite providing this list, DCPS acknowledged that the retroactive fees had still not been paid. Specifically, DCPS noted the following with respect to the payment of the retroactive service fees:

The District of Columbia Public School (DCPS) has been working on developing the base information needed to analyze the service fees for AFSCME, Locals 1959 and 2921. We have a programmer in the Office of Information Technology (OIT) working with personnel in Human Resources to prepare the underlying data. However, when it became apparent that this would not provide the required data, we approached a data base expert who had been working with the CAPPs system and the data base expert determined another method which should provide the information which we will require. The CAPPs Payroll system has been working on bi-weekly payroll cycles during the period under review. The system uses Gross to Net (GTN) to determine deductions to be made from an employees pay. We will determine which GTN is used for union dues for the applicable Collective Bargaining Unit (CBU) code. We will determine which employees were in that CBU during the period under review and if the union service fees were deducted. We will then provide a report showing each employee in the group, number of periods when service fees were deducted, and number of periods when service fees were not deducted. Using the amount deducted following the period(s) not deducted, we will determine the liability for each applicable employee.

The information can be seen on-line in the CAPPs system but is not currently provided to DCPS by the District of Columbia Government (who processes the CAPPs system) in a machine-readable form. We will request the applicable information from the District of Columbia Government and should have the results approximately one month after the data is received from the D.C. Government. (DCPS' Supplemental Answer to the Petition for Enforcement at pgs. 1-2)

After reviewing the parties pleadings, it is clear that DCPS has not paid the retroactive service fees to the Complainants. As a result, the Board must determine if DCPS' action is reasonable.

In the present case, the parties executed a settlement agreement on March 12, 2004 and the Board's Order directing that DCPS comply with the settlement agreement was issued on July 25,

2005. Thus, it has been twenty-three months since the parties entered into a settlement agreement and seven months since our Order was issued. We believe that DCPS has had more than a reasonable period of time to comply with the terms of the parties' settlement agreement. However, to date, DCPS has failed to: (1) pay the Union all retroactive service fees for all employees in Local 2921 for the period October 24, 2003 through the first full pay period following March 12, 2004; and (2) pay the Union all retroactive service fees for all employees in Local 1959 for the period December 15, 2003 through the first full pay period following March 12, 2004. Moreover, DCPS reason for not complying with the Board's July 25<sup>th</sup> Order is a repetition of the argument it raised in its answer to the unfair labor practice complaint. We previously rejected this argument and concluded that DCPS had no legitimate reason for its on-going refusal to comply with the terms of the settlement agreement. As a result, we directed that DCPS comply with the terms of the parties' settlement agreement.

For the reasons noted above, we find that DCPS has not complied with our Order in Slip Op. No. 796, therefore, the Complainants' Petition for Enforcement is granted. Before seeking judicial enforcement of our July 25, 2005 Decision and Order, as provided under D.C. Code § 1-617.13(b) (2001 ed.), we will grant DCPS twenty one (21) days from the issuance of this decision to finally and fully comply with our Decision and Order in Slip Op. No. 796. However, we emphasize that continued disregard of the Board's Decision and Order, will be met with prompt action for enforcement and other sanctions as the Board may deem appropriate.

### ORDER

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

1. The American Federation of State, County and Municipal Employees (AFSCME), District Council 20 Locals 1959 and 2921's "Petition for Enforcement," is granted.
2. Within ten (10) days from the issuance of this Decision and Order, DCPS shall notify the Public Employee Relations Board (PERB), in writing of the specific steps it has taken to comply with our Order in Slip Opinion No. 796.
3. The Board shall proceed with enforcement of its Order pursuant D.C. Code § 1-617.13 (b) (2001 ed.), if full compliance with the Board's Order in Slip Opinion. No. 796 is not made and documented to the Board within twenty one (21) days of the issuance of this Decision and Order.

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4. 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.**

February 15, 2006

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 05-U-06 was transmitted via U.S. Mail to the following parties on this the 15<sup>th</sup> day of February 2006.

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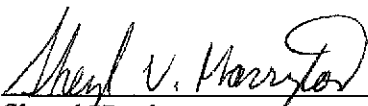
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