GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	)	
University of the District of Columbia Faculty Association/NEA,	)	
Complainant,	)	PERB Case No. 86-U-16
v.	)	Opinion No. 307 (Clarification Order)
University of the District of Columbia,	)	
Respondent.	)	

ORDER

This Order makes explicit the Decision and Order issued by the Public Employee Relations Board (Board) in the above-captioned matter on March 10, 1992, in Opinion No. 285. [1]/

On April 6, 1992, the Board received from the parties, a Report, in accordance with paragraph 6 of our Order in Opinion No. 285. The parties requested in their Report that the Board provide guidance in resolving different interpretations held by the parties concerning paragraph 5 of our Order. Specifically, the parties disagree over (1) "the date from which the Board intends the back pay to begin accruing interest" on within-grade

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[1]/ This Order is issued in response to requests made by parties in their joint Report. This Order does not constitute the Board's Supplemental Order, noted in Opinion No. 285 which will be issued upon the Board's final consideration of the remedial issues. We had hoped that our Opinion directing the parties to meet and discuss the remedial issues would foster a more mature and harmonious collective bargaining relationship. Unfortunately, that does not appear to be the case based on the issues now presented to us. Nevertheless, the parties have represented that with the exception of the two conflicting points discussed above, they are in basic agreement on how to achieve the objectives of paragraph 6 of our Order in Opinion No. 285. Following consideration of the parties' Report, the Board shall issue its Supplemental Order regarding the remaining remedial issues.

salary increments and (2) "precisely who should be subject to the make-whole remedy". (Report at 5 & 6.)

With respect to the first point of disagreement, UDC contends that "the decision of the D.C. Superior Court on which the Board bases its award of interest authorizes interest only from the date 'of the award until payment.'" (Report at 5.) Reference is made by UDC to our citation in Opinion No. 285 of American Federation of State, County and Municipal Employees v. District of Columbia Board of Education, D.C. Superior Court, Misc. Nos. 65-86 and 93-86, decided Aug. 22, 1986, reported at 114 Wash. Law Reporter 2113 (October 15, 1986.) UDCFA maintains, however, that the Superior Court's "decision does not mandate that interest run from the date of the award in all cases" and that our Decision and Order in Opinion No. 285 "implies that interest should begin to accrue at the time the salary increments at issue went into effect, i.e., August 16, 1986." (Report at 5.) We agree.

The matters before the Superior Court in AFSCME v. DCBE, supra, concerned the awards in two grievance arbitration proceedings. As is plainly set forth in Opinion No. 285, we cited AFSCME v. DCBE for the expressed limited purpose of providing authority that our order of back pay created a "liquidated debt" and as such it was subject to the statutory "prejudgment interest" rate of four percent (4%) per annum. D.C. Code Sec. 28-3302 and D.C. Code Sec. 15-108. Slip Op. No. 285 at 17. On this point our Opinion is completely consistent with the Superior Court's holding.

Notwithstanding this statutory limitation, however, the Board's remedial authority in proceedings properly within its jurisdiction is provided under D.C. Code Sec. 1-605.2(3) and Sec. 1-618.13 of the Comprehensive Merit Personnel Act. AFSCME v. DCBE concerned the extent of the Superior Court's authority to award prejudgment interest in a grievance arbitration award confirmation proceeding under the District of Columbia Arbitration Act and thus, is neither controlling nor has relevance to the Board's remedial authority in unfair labor practice cases. [2]/ Therefore, we state, once again, that our Order expressly and specifically includes "prejudgment interest" as part of the make-whole remedy. Furthermore, that prejudgment interest begins to accrue at the time the back-pay on within-grade salary increases for AY '86-87 became due. See, e.g., Fraternal Order of

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[2]/ See, Council of School Officers, Local 4, AFSA, AFL-CIO v. Council of School Officers, 38 DCR 836, Slip Op. No. 256, PERB Case No. 90-U-28 (1991) and Hawkins v. Hall, 537 A.2d 571 (D.C. App. 1988).

Police/MPD Labor Committee v. District of Columbia Metropolitan Police Department, 37 DCR 2704, Slip Op. No. 242 PERB Case No. 89-U-07 (1990).

The parties also disagree on the scope of employees covered under the provision in our Order "making whole, with interest at 4% per annum, all employees in the bargaining unit who would have received step increases in salary for AY '86 - 87...." UDC contends that our Order extends only to employees "who are currently in the faculty bargaining unit or otherwise employed by the University." (Report at 5.) UDCFA, counters with what we perceive to be the plain meaning of our Order and purpose of any remedial order, i.e., "that the award applies to faculty [bargaining unit employees] who were wrongfully denied increases in AY 1986 - 87 [, i.e., the time of the violation,] without regard to the current relationship of such individuals to the faculty bargaining unit or whether those individuals are otherwise still employed by [UDC]." We are somewhat perplexed by UDC's apparent misinterpretation of the term "bargaining-unit" as restricting remedial entitlement to employees' current employment tenure or status. Given the very context of the case, our Order could be reasonably interpreted only as providing "all employees in the bargaining unit" at the time of the violation to the remedial relief ordered. Moreover, UDC neither cites nor are we aware of any authority to support UDC's interpretation that bargaining-unit employees that are held to be entitled to relief by virtue of the violation found, forfeit that entitlement to relief when they ceased to be employed by the agency or are not a current member of the bargaining unit. Since the class of individuals entitled to relief are those who were members of the bargaining unit at the time UDC committed the unfair labor practice, those individuals never cease to be a member of that class and, consequently, are entitled to the attending relief. [3]/

In sum, under paragraph 5 of our Decision and Order in Opinion No. 285, UDC is ordered to make whole at 4% interest, per annum, retroactive to the date the within-grade salary increases became due for each affected individual who was a member of the bargaining unit in AY '86-87, and who would have received step increases in AY '86 - 87, whether or not they are currently employed by UDC or currently included in the bargaining unit.

We also hereby direct the parties to submit to the Board, within 14 days from the issuance of this Order, their final

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[3]/ We note, however, that separation of entitled employees from UDC's employment or from inclusion in the bargaining unit does have the effect of tolling the period of time over which back-pay (not interest) is calculated.

recommendations for achieving the remedial objectives of the Board's Order in Opinion No. 285.

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

April 21, 1992