Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2725 (on behalf of Saundra McNair and Gerald Roper),	
Complainant,	PERB Case Nos. 09-U-24 and 12-U-30
	Opinion No. 1411
v.	**Motion for Costs**
District of Columbia Department of Consumer and Regulatory Affairs.	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On March 4, 2009, the American Federation of Government Employees, Local 2725 ("Union" or "Movant"), filed an unfair labor practice complaint–case number 09-U-24–against the District of Columbia Department of Consumer and Regulatory Affairs ("Department" or "Respondent"). The Union alleged in that case that the Department had failed to comply with an arbitration award[1] granting retroactive promotions and back pay to Gerald Roper and Sandra McNair, two members of the bargaining unit represented by the Union who had filed grievances. The Union alleged that by this conduct the Department had failed to bargain in good faith. A hearing in 09-U-24 was convened on September 26, 2011. After opening statements of counsel, remarks by the hearing examiner, and a short recess, counsel announced that they would work together to reach an agreement. All parties agreed that they would set another hearing date if the

[1] On November 10, 2008, the Respondent filed a request for review of the arbitration award, which the Board denied due to its untimely filing. *See D.C. Dep't of Consumer & Regulatory Affairs v. AFGE*, Local 2725, 59 D.C. Reg. 5392, Slip Op. No. 978, PERB Case No. 09-A-01 (2009).

Union and the Department did not reach an agreement. Another hearing was set for December 16, 2011. On the day before the December 16 hearing, the Department filed a "Notice of Settlement," which stated: "The formal agreement is in process. The elements are agreed to. Pending final settlement agreement, the parties urge that PERB cancel the hearing presently scheduled for December 16, 2011."

On July 17, 2012, the Union filed the present case—case number 12-U-30—alleging that the Department had failed and refused to comply with the tentative agreement reached in December 2011, and thereby committed an unfair labor practice. The Board rendered a decision on the pleadings, granting the unfair labor practice complaint. *AFGE, Local 2725 (on behalf of McNair and Roper) v. D.C. Dep't of Consumer & Regulatory Affairs*, 60 D.C. Reg. 2593, Slip Op. No. 1362, PERB Case No. 12-U-30 (2013). The Board found that the Department had demonstrated a pattern and practice of failure to implement awards and agreements, and thus the Board ordered the Respondent to complete the 09-U-24 settlement agreement and awarded costs in the interests of justice. *Id.* at 6.

Pursuant to that award, on March 4, 2013, the Union filed a motion for costs supported by affidavits and records from Union president Eric Bunn and Union attorney Leisha Self. Mr. Bunn claimed costs for parking at Ms. Self's office in preparation for the 09-U-24 hearings and at the Board's offices for the September 26, 2011, 09-U-24 hearing at which he was to be a witness. These expenses totaled $48. Ms. Self claimed travel expenses involved in filing pleadings in case number 09-U-24 and in preparing for and attending the September 26, 2011, 09-U-24 hearing. These expenses totaled $64.99. The Department filed a response to the motion for costs ("Response"), and the Movant filed a reply to the Department's response. The motion for costs and the subsequent pleadings are before the Board for disposition.

II. Discussion

The Board has "the authority to require the payment of reasonable costs incurred by a party to *a dispute* from the other party or parties as the Board may determine." D.C. Code § 1-617.13(d) (emphasis added). The claimed items of costs were incurred in one of the prior cases in this matter, case number 09-U-24. Although that case has a different case number from the case in which the motion for costs was filed, it is part of the same "dispute" before the Board: a continuous effort by the Union to get the Department to comply with a five-year-old arbitration award, juxtaposed with a continuous effort by the Department to avoid compliance with that award. The particular circumstances of this case, in which an unfair labor practice case has arisen out of a failure to implement a settlement of an earlier unfair labor practice case, warrant consolidation of the two cases. *Doctors' Council of D.C. v. D.C. Gov't Office of the Chief Med. Examiner*, 59 D.C. Reg. 9730, Slip Op. No. 993 at pp. 1-5, PERB Case Nos. 05-U-47

and 7-U-22 (2009). Accordingly, case numbers 09-U-24 and 12-U-30 are hereby consolidated for all future consideration.

The Department notes that neither the Board's rules nor its cases itemize what are allowable costs. In the absence of such authorities, the Department turns to 28 U.S.C. §§ 1920 and 1821, which state what expenses are allowable in federal courts. The Department treats these statutes as controlling because "in *Harris v. Sears Roebuck and Co.*, 695 A.2d 109 (D.C. 1997) the Court of Appeals cited to [these] federal statutes and found the federal statutes persuasive." (Response at pp. 2-3). Notwithstanding, no statute or case prescribes that these federal statutes define "costs" as used in D.C. Code section 1-617.13(d) and govern proceedings before the Board. Under section 1-617.13(d), the question before the Board is whether the costs submitted by a party or parties are "reasonable."

On that question the Department's arguments are without merit. The Department objects that the transportation expenses were not supported by receipts (Response at pp. 3-4), but even the inapplicable statute it relies upon does not support its position. The federal statute requires that a witness who travels by common carrier furnish "a receipt or other evidence of actual cost." 28 U.S.C. § 1821(c)(2). The Union provided "other evidence" for the claimed transportation (which was not by common carrier) in the form of vouchers, affidavits, and internal business documents attached to its Motion for Costs. The Department also objects that the Mr. Bunn and Ms. Self did not use public transportation, which would have been less expensive. (Response at pp. 4-5). The Department offers to pay the fares Metro would have charged them. (*Id.*) This is an equally invalid objection. It is unreasonable to insist that public transportation be used by a witness or an attorney attending a hearing and possibly bringing files with work product or confidential materials. Under those circumstances, a witness or attorney can quite reasonably and prudently opt to travel in a vehicle that he or she controls. Section 1-617.13(d) authorizes the Board "to require the payment of reasonable costs." The Board finds the transportation expenses and mileage that the Union submitted to be reasonable.

The $112.99 in costs submitted is not only reasonable but also can fairly be described as nominal. Therefore, the motion for costs is granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. Case numbers 09-U-24 and 12-U-30 are consolidated.

2. The motion for costs filed by the Complainant is granted.

3. The Respondent shall pay to the Complainant costs in the amount of $112.99 within ten (10) days of the date of this Order.

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.

September 3, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-U-30 is being transmitted to the following parties on this the 3d day of September, 2013.

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