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**Government of the District of Columbia  
Public Employee Relations Board**

In the Matter of:	)	
	)	
American Federation of State, County and Municipal Employees, AFL-CIO, District Council 20,	)	
	)	
Complainant,	)	
	)	PERB Case No. 12-U-12
v.	)	
	)	Opinion No. 1246
	)	
Vincent Gray, Mayor of the District of Columbia,	)	
	)	
Respondent.	)	
	)	
	)	

**DECISION AND ORDER**

**I. Statement of the Case**

This case involves an Unfair Labor Practice Complaint (“Complaint”) filed by the American Federation of State, County and Municipal Employees, AFL-CIO, District Council 20 (“Complainant” or “AFSCME”) against Vincent Gray, Mayor of the District of Columbia (“Respondent”).<sup>1</sup> AFSCME alleges that the Respondent violated D.C. Code § 1-617.04<sup>2</sup> of the

<sup>1</sup> The dispute in this matter was previously submitted for resolution in the District of Columbia Superior Court at *Johnson v. District of Columbia*, Civil Action No. 2011 CA 003097, and is before Judge Todd E. Edelman. Judge Edelman ordered the “parties to take appropriate steps to place this dispute in front of the Public Employee Relations Board so that it can make a determination as to its jurisdiction. Nov. 16, 2011 Order at 8.” (Complaint at p. 5). A status conference before Judge Edelman is scheduled for May 11, 2012. (See Complaint at p. 5).

<sup>2</sup> Although AFSCME does not specify which provision D.C. Code § 1-617.04 it alleges the Respondent violated, paragraph (a) applies to the District government:

- (a) The District, its agents, and representatives are prohibited from:

Comprehensive Merit Personnel Act ("CMPA") and requests a decision on the pleadings. (See Complaint at p. 4). Respondent submitted an Answer to the Complaint.

The Union's Complaint and Motion on the Pleadings, as well as Respondent's Answer, are before the Board for disposition.

## II. Discussion

AFSCME's Complaint concerns allegations that Respondent has committed an unfair labor practice by failing to transmit the compensation agreement reached in December of 2010 within the 60-day time period proscribed by D.C. Code 617.17(i).<sup>3</sup>

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(1) Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;

(2) Dominating, interfering, or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to it, except that the District may permit employees to negotiate or confer with it during working hours without loss of time or pay;

(3) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, except as otherwise provided in this chapter;

(4) Discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony under this subchapter; or

(5) Refusing to bargain collectively in good faith with the exclusive representative.

<sup>3</sup> D.C. Code § 1-617.17 provides as follows:

(i)(1) The Mayor shall transmit all settlements, including arbitration awards, to the Council within 60 days after the parties have reached agreement or an arbitration award has been issued with a budget request act, a supplemental budget request act, a budget amendment act, or a reprogramming, as appropriate; except that when a settlement, including an arbitrator's award, has been fully funded by an enacted budget request act, supplemental budget request act, or budget amendment act or an approved reprogramming request, the Mayor shall submit the settlement, including an arbitrator's award, with a certification that the settlement, including arbitrator's award, is fully funded by the previously enacted budget measure or approved reprogramming. The budget request act, supplemental budget request act, budget amendment act, or reprogramming shall fully fund the settlement for the fiscal year to which it applies.

(2) At the same time the Mayor transmits a settlement, including any arbitration award, pursuant to paragraph (1) of this subsection, the Mayor shall also transmit a financial plan that includes proposed funding for both actual and annualization costs of settlements for future fiscal years contained in a multi-year compensation agreement.

AFSCME asserts the following facts:

1. The Union is the exclusive collective bargaining agent of a number of employees of the District of Columbia belonging to Compensation Units 1 and 2.
2. Compensation Units 1 and 2 form a combined bargaining unit certified by the Public Employee Relations Board ("PERB") for the purpose of engaging with the District of Columbia government as an employer with regard to compensation for the Compensation Units' 9,500 employee members who include wage grade employees working in a variety of positions at D.C. government agencies throughout the District.
3. The employees in Compensation Units 1 and 2 are represented in labor-management relations regarding working conditions at their employing agencies and within Compensation Units 1 and 2 by five national unions and over twenty local unions.
4. The Office of Labor Relations and Collective Bargaining ("OLRCB") is under the direct control and authority of the Office of the Mayor and represents the District of Columbia government and its agencies in matters pertaining to labor relations and collective bargaining.
5. Compensation Units 1 and 2 negotiate with OLRCB over matters pertaining to the compensation and benefits of the employees and unions covered by the compensation unit.
6. George T. Johnson is and has served for a number of years as the chief spokesperson and negotiator for all of the unions and employees covered by Compensation Units 1 and 2.
7. Johnson was the chief negotiator for the most recent collective bargaining agreement covering Compensation Units 1 and 2 which expired on September 30, 2010.

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(3) The Mayor shall fully support the passage of settlements by every reasonable means before all legislative bodies, except that the Mayor is not required to support Council approval of an arbitrator's award, or to support Council approval of a settlement negotiated by the Board of Education, the Board of Trustees of the University of the District of Columbia, or other independent personnel authority, unless the Mayor participated in the negotiations.

8. Prior to the expiration of the compensation collective bargaining agreement, the parties, through Johnson and OLRCB, began negotiating a successor compensation agreement in accordance with D.C. Code § 1-617.17.

9. On or about July 26, 2010, Johnson and OLRCB reached a tentative settlement for an agreement concerning compensation for Compensation Units 1 and 2.

10. The settlement was contingent on ratification by the employees in Compensation Units 1 and 2. The employees ratified the settlement at the end of 2010, and Johnson sent confirmation of that ratification to Natasha Campbell, Director of OLRCB in December 2010.

11. Mayor Gray was installed as Mayor of the District of Columbia on January 1, 2011. Mayor Gray subsequently kept Campbell in her position as Director of OLRCB, in which capacity she continues to date to serve the Mayor and his Office.

12. D.C. Code §1-617.17(i)(1) states that: "The Mayor shall transmit all settlements, including arbitration awards, to the Council within 60 days after the parties have reached agreement or an arbitration award has been issued with a budget request act, a supplemental budget request act, a budget amendment act, or a reprogramming, as appropriate; except that when a settlement, including an arbitrator's award, has been fully funded by an enacted budget request act, supplemental budget request act, or budget amendment act or an approved reprogramming request, the Mayor shall submit the settlement, including an arbitrator's award, with a certification that the settlement, including arbitrator's award, is fully funded by the previously enacted budget measure or approved reprogramming. The budget request act, supplemental budget request act, budget amendment act, or reprogramming shall fully fund the settlement for the fiscal year to which it applies."

13. D.C. Code §1-617.17(i)(2) states that: "At the same time the Mayor transmits a settlement, including any arbitration award, pursuant to paragraph (1) of this subsection, the Mayor shall also transmit a financial plan that includes proposed funding for both actual and annualization costs of settlements for future fiscal years contained in a multi-year compensation agreement."

14. D.C. Code § 1-617.17(i)(3) states in applicable part that: "The Mayor shall fully support the passage of settlements by every reasonable means before all legislative bodies..."

15. Upon information and belief, to date the Mayor has not transmitted the employee-ratified settlement to the D.C. Council.

16. Upon information and belief, to date the Mayor has not forwarded to the Council the necessary and required budget documents supporting the commitments in the settlement.

17. Upon the employee ratification of the settlement in December of 2010, the Mayor has failed to comply with the requirements of D.C. Code §1-617.17(i) for appropriately transmitting the settlement to the D.C Council.

(Complaint at pgs. 1-4).

As a remedy for the Respondents' alleged actions, AFSCME requests that the Board issue an order directing:

the Respondent Mayor Gray and his agents and representatives to comply with D.C. Code §1-617.17[(i)] by transmitting, with the appropriate documents and information, the Compensation Units 1 and 2 settlement to the D.C. Council and taking all other action required by D.C. Code § 1-617.17(i); ordering the Respondent to pay the Complainant's costs, including attorney's fees, in this matter; and granting the Plaintiff such other relief as the Board deems just and proper.

AFSCME also requests that pursuant to Board Rule 520.10<sup>4</sup> the Board issue a decision on the pleadings "because there is no issue of fact to warrant a hearing." (Complaint at p. 5).

Respondent admits to the factual allegations pled in the Complaint concerning paragraphs 1-16. (See Answer at pgs. 1-4). As to paragraph 17, however, "the Respondent denies that the Mayor has failed to comply with the requirements of the D.C. Official Code §1-617.17(i) (2001 ed.) for appropriately transmitting the settlement to the D.C. Council." (Answer at p. 4). In addition, as affirmative defenses, Respondent contends that the Complaint should be dismissed as untimely and that Respondent's failure to transmit the compensation agreement to City

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<sup>4</sup> 520.10 - Board Decision on the Pleadings

If the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.

Council is due to delays in receiving necessary financial information. Specifically, Respondent argues:

1. While PERB has subject matter jurisdiction over the Complaint, the Complaint may not be entertained because it is untimely filed. PERB Rule 520.4 requires that all unfair labor practice complaints be filed no later than 120 days after the date on which the alleged violations occurred. As recited in Allegation #12, D.C. law allows the Mayor 60 days to transmit a settlement to the Council. The 60 day period began in December 2010 when the Union notified the Director of OLRCB that the agreement was ratified. However, the instant Complaint was filed on November 22, 2011, long after the 120 day period for filing an unfair labor practice complaint had expired.
2. The timeline for filing an initial complaint with the PERB is jurisdictional and may not be waived. Rule 501.1 and 501.3 and *Gibson v. PERB* 785 A. 2d 1238 (DC App. 2001).
3. The preparation of a fiscal impact statement (FIS) is a legal prerequisite to the transmittal of legislation to the Council. The Mayor does not have control over the preparation of the FIS.
4. The Chief Financial Officer for the District is responsible for preparing the FIS, not the Mayor. D.C. Official Code § 1 - 204.24d (25) and (27) (2001 ed.).
5. On January 12, 2011, Director Natasha Campbell requested the CFO to issue a FIS. (ATT. A)
6. D.C. law provides that all permanent bills and resolutions shall be accompanied by a fiscal impact statement before final adoption by the Council. D.C. Official Code § 1 -301.47a (2001 Ed.). Collective bargaining agreements are adopted as resolutions and therefore must be accompanied by a fiscal impact statement that the CFO has not provided.
7. The Union has a process for ratifying an agreement reached at the bargaining table. That process is a vote by the membership to approve the tentative agreement. Similarly, there is an approval process on the management side that includes a review for legal sufficiency, the generation of a FIS and approval by the Council. In the absence of a FIS the agreement may not be approved by the Council.

(Answer at pgs. 4-5).

**Motion on the Pleadings**

Board Rule 520.10 - Board Decision on the Pleadings, provides that: “[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.” Consistent with that rule, we find that the circumstances presented do not warrant a decision on the pleadings.

The Board finds that two factual issues are in dispute which requires development of the record. The first issue concerns the timeliness of the Complaint. The Union’s position is that Respondent’s alleged violations occur on a continuing basis. Presumably, each day the agreement has not been transmitted to City Council, after the 60-day time period elapsed, is a continuing failure to bargain in good faith. Respondent appears to argue that if it is a violation of the CMPA to fail to transmit an agreement within the 60-day period required by D.C. Code § 1-617.17(i), then the violation occurred on the termination of the 60-day period, commencing the 120-day time period for filing an unfair labor practice complaint. The question which must, therefore, be resolved is whether the violations were in fact of a continuing nature. *See International Brotherhood of Teamsters, Locals Nos. 639 and 730 and District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20, Local 2093*, 35 D.C.R. 8155, Slip Op. No. 176, PERB Case Nos. 86-U-14 and 86-U-17 (1988); *and see Fraternal Order of Police/Department of Human Services Labor Committee v. District of Columbia Department of Human Services*, \_ D.C.R. \_, Slip Op. No. 812, PERB Case No. 02-U-24 (2009).

The second issue concerns the affirmative defense raised by the Respondent regarding the preparation of the financial information for transmittal. The Board has held that:

In the public sector, where the effectiveness of a negotiated or awarded compensation settlement depends on its acceptance by the legislative authority, we have no doubt that management’s obligation includes meticulous adherence to the statutory procedures for securing that acceptance or, as provided by the CMPA. . . .

*District of Columbia Nurses Association v. The Mayor of the District of Columbia, and District of Columbia Health and Hospitals Public Benefit Corporation, District of Columbia General Hospital Teamsters Local*, 46 DCR 2641, Slip Op. No. 565 at p. 2, PERB Case No. 95-U-03 (1999), *citing Unions No. 639 and 730 a/w IBTCWHA v. D.C. Public Schools*, 43 DCR 6633, Slip Op. No. 400, at p. 6, PERB Case No. 93-U-29 (1996). Accordingly, the record must be developed concerning the factual allegations that Respondent’s failure to transmit the agreement at issue amounted to an unfair labor practice.

Whereas development of these issues is required to address the Board’s jurisdiction and whether the Respondent’s actions rise to the level of a violation of the CMPA, this is a matter

best determined after the establishment of a factual record, through an unfair labor practice hearing. *See Ellowese Barganier v. Fraternal Order of Police/Department of Corrections Labor Committee and District of Columbia Department of Corrections*, 45 DCR 4013, Slip Op. No. 542, PERB Case No. 98-S-03 (1998). On the record before the Board, establishing jurisdiction and the existence of the alleged unfair labor practice violations requires the evaluation of evidence and the resolution of conflicting allegations. Therefore, the Board declines to do so at this time, based on these pleadings alone.

Consequently, the motion on the pleadings is denied, and the Board will continue to process the allegations against the Respondent through an expedited unfair labor practice hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The American Federation of State, County and Municipal Employees, AFL-CIO, District Council 20 ("AFSCME"), Motion on the Pleadings is denied.
2. The Board's Executive Director shall refer AFSCME's Unfair Labor Practice Complaint to a Hearing Examiner utilizing an expedited hearing schedule. Thus, the Hearing Examiner will issue the report and recommendation within twenty-one (21) days after the closing arguments or the submission of briefs. Exceptions are due within ten (10) days after service of the report and recommendation and oppositions to the exceptions are due within five (5) days after service of the exceptions.
4. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
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.

February 7, 2012

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 12-U-12 are being transmitted via Fax and U.S. Mail to the following parties on this the 7<sup>th</sup> day of February, 2012.

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Sheryl V. Harrington  
Secretary