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. 03-U-18
	Opinion No. 752
v.	(CORRECTED COPY)
District of Columbia Department of Health,	
Respondent.	

DECISION AND ORDER[1]

I. Statement of the Case:

On March 11, 2003, the American Federation of Government Employees, Local 2725 ("Complainant", "AFGE" or "Union"), filed an Unfair Labor Practice Complaint, in the above-referenced case. The Complainant alleges that the District of Columbia Department of Health ("Respondent" or "DOH") violated D.C. Code § 1-617.04 (a)(5) (2001 ed.) by failing to comply with the terms of a negotiated settlement agreement. (Compl. at p. 2).

DOH filed an answer to the Complaint denying that it violated the Comprehensive Merit Personnel Act. As a result, DOH has requested that the Board dismiss the Complaint. The Complaint is before the Board for disposition.

[1]On March 31, 2004, this office transmitted a Decision and Order to the parties concerning the above-referenced matter. Subsequently, this Decision and Order was published in the D.C. Register (51 DCR 5152 (2004)). Unfortunately, the Opinion Number originally assigned to this case (Opinion No. 742) was not accurate. The Opinion Number which should have been assigned to this case is "Opinion Number 752." As a result, please disregard the earlier Decision and Order and substitute this "corrected copy" in its place. Also, please be advised that the "corrected copy" will be published again in the D.C. Register.

II. Discussion

AFGE contends that Nicholas Kauffman was hired by DOH as a DS-9 environmental specialist. Subsequently, Mr. Kauffman was detailed to an unclassified position of higher responsibility and authority. Mr. Kauffman's detail was for more than ninety days. As a result, AFGE asserts that Mr. Kauffman should have been compensated at a higher grade. However, AFGE claims that DOH did not adjust Mr. Kauffman's salary. AFGE contends that DOH's actions violate the parties' collective bargaining agreement. In view of the above, AFGE filed a grievance on behalf of Mr. Kauffman in May 2001. AFGE claims that at Step 2 of the grievance, DOH granted partial relief to the Grievant by agreeing to promote him from a DS Grade 9 to a DS Grade 11. (Compl. at p. 1). Despite the promotion, AFGE asserts that the grievance was not completely resolved at Steps 2 and 3 of the grievance process. Therefore, AFGE filed a Step 4 grievance. AFGE contends that prior to the disposition of the Step 4 grievance, the parties negotiated a settlement agreement. The settlement agreement was signed by DOH's Director on April 29, 2002 and was signed by both the Union and the Grievant in May 2002. (Compl. at p. 2) The settlement agreement "provides for back pay and establishment of a career ladder from DS-1301-11 to DS-1301-12, and DS-1301-13 for the Complainant's position description." (Answer at p. 3). In addition, paragraph two of the agreement provides that within 60 days of the execution of the agreement: (1) Mr. Kauffman shall receive his back pay and (2) DOH shall establish a career ladder description for the employee's position. However, to date, DOH has not complied with the terms of the settlement agreement.

AFGE asserts that DOH's failure to comply with the terms of the settlement agreement constitutes a violation of D.C. Code § 1-617.04(a)(5) (2001 ed.).[2] (Compl. at p.2). As a result, AFGE filed an unfair labor practice complaint. AFGE is requesting that the Board order DOH to: (1) comply with the terms of the settlement agreement; (2) pay costs; (3) cease and desist from violating the Comprehensive Merit Personnel Act ("CMPA"); and (4) post a Notice to employees.

DOH filed an answer to the unfair labor practice complaint denying that it violated the CMPA. DOH does not dispute the factual allegations underlying the asserted statutory violation. Instead, DOH claims that the agency's Director "submitted memoranda dated January 15, 2003, February 14, 2004, and March 3, 2003, requesting preparation of the appropriate documentation to effectuate

---

[2]D.C. Code § 1-617.04(a)(5) provides as follows:

> (a) The District, its agents, and representatives are prohibited from:
>
> • • •
>
> (5) Refusing to bargain collectively in good faith with the exclusive representative.

compliance with the terms of the alleged Settlement Agreement. In addition, [the Respondent asserts that its Director] has signed a 'Request for Personnel Action' to effect the back pay for the Complainant. " (Answer at p. 4). For the above-noted reasons, DOH is requesting that the complaint be dismissed.

After reviewing the pleadings, we believe that the material issues of fact and supporting documentary evidence are undisputed by the parties.[3] As a result, the alleged violations do not turn on disputed material issues of fact, but rather on a question of law. Therefore, pursuant to Board Rule 520.10, this case can appropriately be decided on the pleadings.[4]

The Board has previously considered the question of whether the failure to comply with the terms of a negotiated settlement agreement constitutes an unfair labor practice. In Teamsters, Local Union No. 639 and 730, IBTCWHA v. District of Columbia Public Schools, 43 DCR 6633, Slip Op. No. 400 at p.7, PERB Case No. 93-U-29 (1994), the Board observed that "[i]f an employer has entirely failed to implement the terms of a negotiated or arbitrated agreement, such conduct constitutes a repudiation of the collective bargaining process and a violation of the duty to bargain." In addition, the Board has held that "when a party simply refuses or fails to implement an award or negotiated agreement where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith and, thereby, an unfair labor practice under the CMPA." American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority, 46 DCR 4398, Slip Op. No. 497 at p. 3, PERB Case No. 96-U-23 (1996).

In the present case, DOH acknowledges the existence of the settlement agreement. Furthermore, DOH does not dispute the factual allegations underlying the asserted statutory violation. Instead, DOH claims that DOH's Director "submitted memoranda dated January 15, 2003, February 14, 2004, and March 3, 2003, requesting preparation of the appropriate documentation to effectuate compliance with the terms of the alleged Settlement Agreement. In addition, [the Respondent asserts that its Director] has signed a 'Request for Personnel Action' to effect the back pay for the Complainant. " (Answer at p. 4). For the above-noted reasons, DOH is requesting that the complaint

---

[3]The Respondent claims that the "Settlement Agreement contains a determination that the grievance would be partially resolved upon [Mr. Kauffman's] promotion to DS-grade 11." (Answer at p. 3. However, we did not find this language in the settlement agreement. Therefore, there is no genuine dispute concerning the terms of the settlement agreement.

[4]At the parties request, this matter was held in abeyance from July 31, 2003 until February 7, 2004, in order to allow the parties an opportunity to resolve this matter. However, on February 10, 2004, AFGE informed the Board that there "has been no viable progress in compliance with the Step 4 Settlement Agreement." As a result, AFGE requested that a hearing be scheduled as soon as possible. For the reasons noted above, this case can be decided on the pleadings. Therefore, it is not necessary to consider AFGE's request for a hearing.

be dismissed, despite the undisputed fact that most of the terms of the settlement agreement remain unfulfilled. In addition, DOH offers no further explanation for its failure to fully comply with the terms of the settlement agreement.

After reviewing DOH's arguments, we have determined that DOH's reasons for failing to comply with the terms of the negotiated settlement agreement do not constitute a genuine dispute over the terms of the settlement agreement; but, rather a flat refusal to comply with the negotiated grievance settlement. As a result, we believe that DOH has no "legitimate reason" for its on-going refusal to comply with the settlement agreement. As such, we conclude that DOH's actions constitute a violation of its duty to bargain in good faith, as codified under D.C. Code § 1-617.04(a)(5) (2001 ed.). Furthermore, we find that by these same acts and conduct, DOH's failure to bargain in good faith with AFGE constitute, derivatively, interference with bargaining unit employees' rights in violation of D.C. Code § 1-617.04(a)(1) (2001 ed.). See, Committee of Interns and Residents v. D.C. General Hospital, 43 DCR 1490, Slip Op. No. 456, PERB Case No. 95-U-01.

As to the Complainant's request for reasonable costs, the Board first addressed the circumstances under which the awarding of costs to a party may be warranted in AFSCME, 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). In that case the Board observed:

> Just what characteristics of a case will warrant the finding that an award of costs will be in the interest of justice cannot be exhaustively catalogued. We do not believe it possible to elaborate in any one case a complete set of rules or earmarks to govern all cases, nor would it be wise to rule out such awards in circumstances that we cannot foresee. What we can say here is that among the situations in which such an award is appropriate are those in which the losing party's claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith, and those in which a reasonably foreseeable result of the successfully challenged conduct is the undermining of the union among the employees for whom it is the exclusive bargaining representative. Slip Op. No. 245, at p.5.

In cases which involve an agency's failure to implement an arbitration award or a negotiated settlement, the Board has been reluctant to award costs. See, AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 6278, Slip Op. No. 585 at p. 5, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999). However, the Board has awarded costs when an agency has demonstrated a pattern and practice of refusing to implement arbitration awards or negotiated settlements. See, AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 8356, Slip Op. No. 597, PERB Case No. 99-U-33 (1991).

In the present case, the Complainant has not asserted that DOH has engaged in a pattern and practice of refusing to implement arbitration awards or negotiated settlements. Nor has any other persuasive case been made to justify the awarding of costs. As a result, we believe that the interest-

of-justice criteria articulated in the AFSCME case, would not be served by granting the Complainant's request for reasonable costs. Therefore, we deny the Complainant's request for reasonable costs.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Health (DOH), its agents and representatives shall cease and desist from refusing to bargain in good faith with the American Federation of Government Employees, Local 2725 (AFGE), by failing to comply with the terms of the negotiated settlement agreement rendered pursuant to the negotiated provisions of the parties' collective bargaining agreement.

2. DOH, its agents and representatives shall cease and desist from interfering, restraining or coercing its employees by engaging in acts and conduct that abrogate employees' rights guaranteed by "Subchapter XVIII Labor-Management Relations", of the Comprehensive Merit Personnel Act, to bargain collectively through representatives of their own choosing.

3. DOH shall fully implement the terms of the negotiated settlement agreement.

4. AFGE's request for costs is denied for the reasons stated in this Opinion.

5. DOH shall post conspicuously, within ten (10) days from the service of this Decision and Order, the attached Notice where notices to bargaining-unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days.

6. Within fourteen (14) days from the issuance of this Decision and Order, DOH shall notify the Public Employee Relations Board ("PERB"), in writing, that the Notice has been posted accordingly. Also, DOH shall notify PERB of the steps it has taken to comply with paragraphs 3 and 5 of this Order.

7. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

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

March 31, 2004

PERB Public Employee Relations Board

Government of the District of Columbia

415 Twelfth Street, N.W.
Washington, D.C. 20004
[202] 727-1822/23
Fax: [202] 727-9116

NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH, 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. 752, PERB CASE NO. 03-U-18 (March 31, 2004)

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 violating D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 752.

WE WILL cease and desist from refusing to bargain in good faith with the American Federation of Government Employees, Local 2725, AFL-CIO, by failing to comply with the terms of a negotiated settlement agreement rendered pursuant to the negotiated provisions of the parties' 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 Subchapter XVII-Labor-Management Relations, of the District of Columbia Comprehensive Merit Personnel Act.

District of Columbia Department of Health

Date:_____ By:_____
Director

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 nay questions concerning this 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., Suite 1150, Washington, D.C. 20005. Phone: (202) 727-1822.

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

March 31, 2004