Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Doctors' Council of the District of Columbia,	
Complainant,	PERB Case No. 07-U-19
v.	
	Opinion No. 884
District of Columbia Department of Youth Rehabilitation Services,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case:

On February 15, 2007, the Doctors' Council of the District of Columbia ("Union"), filed an Unfair Labor Practice Complaint, in the above-referenced case. The Union alleges that the District of Columbia Department of Youth Rehabilitation Services ("DYRS" or "Agency") violated D.C. Code § 1-617.04(a)(1) and (5) by failing to implement the terms of a settlement agreement that resolved a grievance filed by the Union on behalf of Dr. Adrienne E. Charles.

DYRS filed an answer denying that it has violated the Comprehensive Merit Personnel Act ("CMPA") and requested that the Board dismiss the Complaint. The Union's Complaint and the Agency's Answer are before the Board for disposition.

II. Discussion

On December 12, 2005, "[t]he Union filed a Step 1 Grievance. . . regarding Non-Bargaining Unit Employees Performing the Work of Bargaining Unit Members." (Compl. at p. 2). As a remedy, the "Grievance sought, among other things, that two affected individuals be placed in the bargaining unit with all the rights and privileges thereto." (Compl. at p. 2).

The Union contends that DYRS "agreed to a monetary settlement for one of the affected individuals named in the grievance, Dr. Adrienne Charles." (Compl. at p. 2). The parties' settlement agreement was signed in October of 2006.[1] Pursuant to the settlement agreement, DYRS was required to pay Dr. Charles certain amounts of money, credit her with accrued sick leave and provide her with back retirement contributions to the District of Columbia Defined Contribution Pension Plan. (See Settlement Agreement at p. 2).

The Union claims that "[a]lthough not included in the express terms of the Settlement Agreement, the Agency - through its then-labor relations advisor Mustafa Dozier - agreed to attempt to expedite the processing and implementation of the Settlement Agreement." (Compl. at p. 2). The Union asserts that DYRS has not complied with the terms of the parties' settlement agreement. (See Compl. at p. 3). The Union contends that its counsel has contacted DYRS on numerous occasions following the execution of the October 2006 Agreement requesting information on the status of the agreement and urging that DYRS comply with the parties' agreement. (See Compl. at pgs. 2-3).

In its complaint, the Union alleges that by refusing to implement the terms of Paragraphs 3a-d of the parties' settlement agreement, DYRS is: (a) interfering with employees' rights under D.C. Code § 617. 04(a)(1), and (b) refusing to bargain in good faith, in violation of D.C. Code § 1-617.04(a)(5).[2]

DYRS filed an answer to the Unfair Labor Practice Complaint denying that it violated the CMPA. DYRS does not dispute the factual allegations underlying the asserted statutory violation. Instead, DYRS claims that it "has made every effort to secure settlement funds, has submitted appropriate paperwork to the D.C. Office of Personnel and is currently awaiting a response. . . [DYRS] has not refused to comply with the terms of the settlement agreement. [DYRS] has made a good faith effort to exercise every aspect within its control. [DYRS] is in fact complying with the terms of the settlement agreement. The steps [DYRS] must take have been completed. This is not a failure or refusal to comply with the terms of the settlement agreement. Therefore, this does not

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[1]The Union notes that one of the signatories was DYRS's Director.

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

> (a) The District, its agents, and representatives are prohibited from:
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> > (1) Interfering, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;
> >
> > • • •
> >
> > (5) Refusing to bargain collectively in good faith with the exclusive representative.

constitute an Unfair Labor Practice." (Answer at p. 3).

After reviewing the pleadings, we find that the material issues of fact and supporting documentary evidence are undisputed by the parties. 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.

The Board has previously considered the question of whether the failure to implement an arbitrator's award or settlement agreement constitutes an unfair labor practice. In 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), the Board held for the first time 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."

In the present case, the evidence submitted by the Union demonstrates that the parties' settlement agreement was signed on various dates from October 24, 2006 - October 28, 2006. Also, pursuant to Paragraphs 3a-d of the parties' settlement agreement, DYRS was required to: (1) provide Dr. Charles with back pay equal to the amount of $48,000 less appropriate deductions; (2) provide Dr. Charles with back retirement contributions to the District of Columbia Defined Contribution Pension Plan in the amount of $2,017.26; (3) credit Dr. Charles with accrued annual leave in the amount of 92 hours, which would be paid out in accordance with the District's personnel regulations and its approximated value is $5,424.95; (4) credit Dr. Charles with accrued sick leave in the amount of 116 hours; and (5) reimburse Dr. Charles (upon submission of qualifying documentation) for continuing education expenses in an amount not to exceed $500. (See Settlement Agreement at p. 2). However, "[a]s of February 13, 2007, Dr. Charles had not received the back pay due her under Para[graph] 3a of the Agreement, had not been credited with the pension contributions due her under Para[graph] 3b of the Agreement[,] had not received the dollar value for 92 hours of annual leave due her under Para[graph] 3c of the Agreement, and had not been credited with sick leave as required by Para[graph 3d of the Agreement." (Compl. at p. 3).

DYRS claims that it "has made every effort to secure settlement funds, has submitted appropriate paperwork to the D.C. Office of Personnel and is currently awaiting a response." (Answer at pgs. 2-3) DYRS suggests that it has done all that it can do to ensure compliance with the settlement agreement. Therefore, DYRS asserts that it has not committed an unfair labor practice.

We have previously considered and rejected a similar argument in another case involving a failure to comply with the terms of a settlement agreement. In that case, the District of Columbia Public Schools ("DCPS") argued that it did not violate the Comprehensive Merit Personnel Act because it had prepared all the necessary paperwork to ensure compliance and the information was forwarded to the Office of Pay and Retirement for processing. We rejected DCPS' argument and

concluded "that it [was] DCPS' obligation and responsibility to ensure compliance with the settlement agreement. In light of this finding, [we determined that] it [was] not necessary for us to consider whether the [Office of Pay and Retirement] ha[d] violated the CMPA in [that] case." AFSCME, District Council 20, Locals 1959 and 2921 v. D.C. Public Schools, Slip Op. No. 796 at p. 4, n. 2, PERB Case No. 05-U-06 (2005). Consistent with our holding in the *DCPS* case, we conclude that in the present case, DYRS has the obligation and responsibility to ensure compliance with the parties' October 2006 settlement agreement. Therefore, we do not find DYRS' argument persuasive.

We have determined that DYRS' failure to comply with the terms of the negotiated settlement agreement is not based on a genuine dispute over the terms of the settlement agreement, but rather on a failure to do everything necessary to comply with the agreement. As a result, we believe that DYRS has no "legitimate reason" for its ongoing failure to comply with the terms of the settlement agreement. We conclude that DYRS' actions constitute a violation of its duty to bargain in good faith, under D.C. Code § 1-617.04(a)(5) (2001 ed.). Also, we find that by "these same acts and conduct, [DYRS'] failure to bargain in good faith with [the Union] constitutes, derivatively, interference with bargaining unit employees' rights in violation of D.C. Code § [1-617.04] (a)(1) (2001 ed.)." (Emphasis in original.) AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 8356, Slip Op. No. 597 at p. 5, PERB Case No. 99-U-33 (1991). Also see, Committee of Interns and Residents v. D.C. General Hospital, 43 DCR 1490, Slip Op. No. 456, PERB Case No. 95-U-01.

Having determined that DYRS has violated D.C. Code §1-617.04] (a)(1) and (5) (2001 ed.), we now turn to what is the appropriate remedy in this case. The Union is requesting that the Board order DYRS to: (1) cease and desist from violating the CMPA; (2) provide Dr. Charles with back pay in the amount of $48,549.30 plus interest; (3) provide back retirement contributions to the District of Columbia Defined Contribution Pension Plan for Dr. Charles in the amount of $2,017.26 plus interest; (4) pay Dr. Charles $5,424.95 with interest as payment for 92 hours of annual leave; (5) credit Dr. Charles' sick leave account in the amount of 116 hours, said crediting to take place within 30 days of the Board's Order; (6) post a notice ; (7) pay the Union an amount equal to the dues Dr. Charles would have paid had DYRS not excluded him from the bargaining unit; and (8) pay the reasonable costs incurred by the Union in attempting to gain implementation of the settlement agreement. (See Compl. at pgs. 4-5).

"We recognize that when a violation is found, the Board's order is intended to have therapeutic as well as remedial effect. Moreover, the overriding purpose and policy of relief afforded under the CMPA for unfair labor practices, is the protection of rights and obligations." National Association of Government Employees, Local R3-06 v. D.C. Water and Sewer Authority, 47 DCR 7551, Slip Op. No. 635 at pgs. 15-16, PERB Case No. 99-U-04 (2000). In light of the above, we are requiring that DYRS post a notice to all employees concerning the violations found and the relief afforded, notwithstanding the fact that all employees may not have been directly affected. By requiring that DYRS post a notice, "bargaining unit employees . . . would know that [DYRS] has been directed to comply with their bargaining obligations under the CMPA." Id. at p. 16. "Also, a

notice posting requirement serves as a strong warning against future violations." Wendell Cunningham v. FOP/MPD Labor Committee, Slip Op. No. 682 at p. 10, PERB Case Nos. 01-U-04 and 01-S-01 (2002).

Concerning the Union'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 concluded that it could, under certain circumstances, award reasonable costs.[3]

In cases which involve an agency's failure to implement an arbitration award or a negotiated settlement, this 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), and American Federation of Government Employees, Local 2725 v. D.C. Department of Health, Slip Op. No. 752, PERB Case No. 03-U-18 (2004). However, we have awarded costs when

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[3]In the AFSCME case we noted as follows:

> First any such award of costs necessarily assumes that the party to whom the payment is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part. Second, it is clear on the face of the statute that it is only those costs that are "reasonable" that may be ordered reimbursed. . . . Last, and this is the [crux] of the matter, we believe such an award must be shown to be in the interest of justice.
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> 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 cataloged. 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 action is the undermining of the union among the employees for whom it is the exclusive bargaining representative. Slip Op. No. 245, at p. 5.

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 at p. 2, PERB Case No. 99-U-23 (1991).

In the present case, the Union has not asserted that DYRS has engaged in a pattern and practice of refusing to implement arbitration awards or negotiated settlements.[4] 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 Union's request for reasonable costs. Therefore, we deny the Union's request for costs.

The Union has also requested that the Board order DYRS to provide Dr. Charles back pay with interest. We have previously considered the question of whether the Board can award interest as part of its "authority to 'make whole' 'those who the Board finds [have] suffered adverse economic effects in violation of . . . the Labor-Management Relations Section of the CMPA. . . '." University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, 39 DCR 8594, Slip Op. No. 285 at p. 15, PERB Case No. 86-U-16 (1992). In the *UDCFA* case we stated the following:

> The D.C. Superior Court has held that an "award requiring [that]. . . employee[s] be given back pay for a specific period of time establishes . . . a liquidated debt" and therefore is subject to the provisions of D.C. Code Sec. 15-108 which provides for prejudgment interest on liquidated debts at the rate of four percent (4%) per annum. See American Federation of Government Employees, Local 3721 v. District of Columbia Fire Department, 36 DCR 7857, PERB Case No. 88-U-25 (1989) and American Federation of State, County and Municipal Employees v. District of Columbia Bd. 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). Id at p. 17.

Consistent with our holding in the *UDCFA* case, "we state, once again, that [an order directing back pay] expressly and specifically includes 'prejudgement interest' as part of [the Board's] make-whole remedy. Furthermore, that prejudgment interest begins to accrue at the time the back-pay . . . became due" and shall be computed at the rate of four percent (4%) per annum. University of the District of Columbia Faculty Association, NEA v. University of the District of Columbia, 41 DCR 1914, Slip Op. No. 307 at p. 2, PERB Case No. 86-U-16 (1992). See also, Fraternal Order of 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).

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[4] In support of its argument, WTU cites AFSCME, District Council 20, Local 2921 v. DCPS, Slip Op No. 712, PERB Case No. 03-U-17 (2000), and WTU v. DCPS, PERB Case Nos. 05-U-07, 05-U-13, 05-U-14 and 05-U-15.

Pursuant to the parties' settlement agreement, DYRS was required to pay Dr. Charles "back pay equal to the amount of $48,000, less appropriate deductions. . . , for the period January 10, 2005 through June 2, 2006." (Settlement Agreement at p. 1) As previously discussed, DYRS has failed to provide Dr. Charles with her back pay. We find that DYRS' failure to implement the parties' settlement agreement has resulted in Dr. Charles suffering an adverse economic effect in violation of the CMPA. Therefore, as part of the Board's make whole remedy, DYRS is ordered to provide Dr. Charles her back pay for the period January 10, 2005 through June 2, 2006 with interest at the rate of 4%, per annum.[5]

The Union is also requesting that the Board order DYRS to provide Dr. Charles with the dollar value with interest for 92 hours of annual leave. Pursuant to Paragraph 3c of the parties' settlement agreement, DYRS is required to "[c]redit accrued annual leave in the amount of 92 hours, which would be paid out in accordance with the District's personnel regulations. Approximated value calculated at $5,424.95 (92 hrs. x 58.97)." (Settlement Agreement at p. 2). As a result, we direct that DYRS comply with the parties' agreement by making the agreed upon payment. However, based on the information provided in the parties' pleadings, the Board is unable to make a determination concerning the Union's request that DYRS pay interest with respect to the annual leave payment. Therefore, we are directing that the parties brief the issue of whether the Board can order DYRS to pay interest with respect to the payment for accrued annual leave. In their briefs, the parties should state their positions and provide any legal authority (i.e. case law, Board precedent, etc.) in support of their positions.

With respect to the Union's request that the Board order DYRS to pay the Union an amount equal to the dues Dr. Charles would have paid had DYRS not excluded him from the bargaining unit, the evidence submitted does not demonstrate that the parties agreed to such payment. Therefore, we deny the Union's request.

Finally, the Union has asked that the Board order DYRS to provide Dr. Charles back retirement contributions with interest. Pursuant to Paragraph 3b of the parties' settlement agreement, DYRS is required to "[p]rovide back retirement contributions to the District of Columbia Defined Contribution Pension Plan". (Settlement Agreement at p. 2). As a result, we direct that DYRS comply with the parties' agreement by making the agreed upon contribution. Concerning the Union's request that DYRS pay interest with respect to the retirement contribution, we find that the Union has failed to identify any legal authority in support of its request. Therefore, we are directing that the parties brief the issue of whether the Board can order DYRS to pay interest with respect to the

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[5]Pursuant to the parties' settlement agreement, DYRS was required to provide Dr. Charles with back pay for the period January 10, 2005 through June 2, 2006. (See Settlement Agreement at p. 2) Thus, the interest in this case shall begin to accrue at the time the back-pay became due, namely January 10, 2005.

retirement contribution. In their briefs, the parties should state their positions and provide any legal authority (i.e. case law, Board precedent, etc.) in support of their positions.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Youth Rehabilitation Services ("DYRS"), its agents and representatives shall cease and desist from refusing to bargain in good faith with the Doctors' Council of the District of Columbia ("Union") by failing to comply with the terms of the parties' settlement agreement signed on various dates from October 24, 2006 - October 28, 2006.

2. DYRS, 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 XVII. Labor-Management Relations" of the Comprehensive Merit Personnel Act to bargain collectively through representatives of their own choosing.

3. DYRS shall within fourteen (14) days from the issuance of this Decision and Order fully implement the terms of the parties' October 2006 settlement agreement by providing Dr. Charles with back pay equal to the amount of $48,549.30, less appropriate deductions, for the period January 10, 2005 through June 2, 2006 with interest at the rate of 4% per annum. The interest in this case shall begin to accrue at the time the back-pay became due, namely January 10, 2005.

4. DYRS shall within fourteen (14) days from the issuance of this Decision and Order fully implement the terms of the parties' October 2006 settlement agreement by: (1) providing Dr. Charles with back retirement contributions to the District of Columbia Defined Contribution Pension Plan in the amount of $2,017.26; (2) crediting Dr. Charles with accrued annual leave in the amount of 92 hours, which would be paid out in accordance with the District's personnel regulations and its approximated value is calculated at $5,424.95; and (3) crediting Dr. Charles with accrued sick leave in the amount of 116 hours.

5. The Union's request for reasonable costs is denied for the reasons stated in this Slip Opinion.

6. The Union's request that DYRS pay the Union an amount equal to the dues Dr. Charles would have paid had DYRS not excluded her from the bargaining unit, is denied for the

reasons stated in this Slip Opinion.

7. DYRS 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.

8. Within fourteen (14) days from the issuance of this Decision and Order, DYRS shall notify the Public Employees Relations Board (Board), in writing, that the Notice has been posted accordingly. Also, DYRS shall notify the Board of the steps it has taken to comply with paragraphs 3 and 4 of this Order.

9. The parties shall brief the issue of whether the Board can order DYRS to pay interest with respect to the payment for accrued annual leave. In their briefs, the parties should state their positions and provide any legal authority (i.e. case law, Board precedent, etc.) in support of their positions. The parties' briefs are due within fourteen (14) days of the service of this Decision and Order.

10. The parties shall brief the issue of whether the Board can order DYRS to pay interest with respect to the retirement contribution. In their briefs, the parties should state their positions and provide any legal authority (i.e. case law, Board precedent, etc.) in support of their positions. The parties' briefs are due within fourteen (14) days of the service of this Decision and Order.

11. 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.

April 17, 2007

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-19 was transmitted via Fax and U.S. Mail to the following parties on this the 17th day of April 2007.

Andrea Bentley, Esq.
Attorney Advisor
Office of Labor Relations
and Collective Bargaining
441 4th Street, N.W.
Suite 820 North
Washington, DC 20001

FAX & U.S. MAIL

Wendy Kahn, Esq.
Zwerdling, Paul, Leibig, Kahn
& Wolly, P.C.
1025 Connecticut Ave., N.W.
Suite 712
Washington, D.C. 20008

FAX & U.S. MAIL

Natasha Campbell, Director
Office of Labor Relations
and Collective Bargaining
441 4th Street, N.W.
Suite 820 North
Washington, D.C. 20001

FAX & U.S. MAIL

Jonathan K O'Neill, Esq.
Office of Labor Relations
and Collective Bargaining
441 4th Street, N.W.
Suite 820 North
Washington, D.C. 20001

FAX & U.S. MAIL

Sheryl V. Harrington
Secretary

PERB
Public Employee Relations Board
Government of the District of Columbia
717 14th Street, N.W.
Suite 1150
Washington, D.C. 20005
[202] 727-1822/23
Fax: [202] 727-9116

NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES, 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. 884, PERB CASE NO. 07-U-19 (April 17, 2007)

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. 884.

WE WILL cease and desist from refusing to bargain in good faith with the Doctors' Council of the District of Columbia by failing to comply with the terms of a settlement 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 the Labor-Management subchapter of the District of Columbia Comprehensive Merit Personnel Act.

District of Columbia Department of Youth Rehabilitation Services

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 may 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.

April 17, 2007