GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of Government Employees, Local 872, AFL-CIO,	
Complainant,	
v.	PERB Case Nos. 96-U-23 Opinion No. 497
District of Columbia Water and Sewer Authority,	
Respondent.	

DECISION AND ORDER

On July 31, 1996, an Unfair Labor Practice Complaint was filed in the above-captioned case by the American Federation of Government Employees, Local 872, AFL-CIO, (AFGE). AFGE asserts that the District of Columbia Water and Sewer Authority (WASA) has committed certain unfair labor practices under the Comprehensive Merit Personnel Act (CMPA). Specifically, AFGE alleges that by "failing to process the payments negotiated in settlement of arbitration proceedings and/or mid-term bargaining obligations, the Respondents have interfered with, restrained and coerced employees in the exercise of their rights to bargain collectively under D.C. Code § 1-618.6(a)(3) with the purpose and or result of discouraging membership in the labor organization, in violation of D.C. Code § 1-618.4(a)(1) and (3)." (Compl. at 5.) Complainant further alleges that by the same acts and conduct, WASA has failed to bargain in good faith in violation of D.C. Code § 1-618.4(a)(5).

By letter dated August 5, 1996, the Executive Director dismissed the Complaint for failure to state a basis for a claim under the CMPA. On August 9 and 12, 1996, Complainant filed a Motion and Supplement to the Motion, respectively, requesting that the Board reconsider the Executive Director's administrative dismissal and reinstate the Complaint. The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of WASA, filed a response concurring with the Executive Director's administrative dismissal of the Complaint.

For the reasons that follow, we reverse the Executive Director's administrative dismissal and reinstate the Complaint for further processing.

Complainant's Motion turns on its contention that the Executive Director's dismissal narrows the Board's "jurisdiction in a manner that is inconsistent with law." (Mot. at p. 2.) In the very limited context presented by the Complaint, we agree. In general, claims alleging a violation of the parties' collective bargaining agreement are not unfair labor practices under the CMPA. Carlease Madison Forbes v. Teamsters, Local Union 1714 and Teamsters Joint Council 55, 36 DCR 7097, Slip Op. No. 205, PERB Case No. 87-U-11. "While some state and local laws make the breach of a collective bargaining agreement[,i.e., contract] by employer or union an unfair labor practice, the CMPA contains no such provision, nor do we find such a necessary connection implicit in the Act." Id, Slip at p. 3.

This holding was followed in American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1991), and D.C. Fire Dep't in Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department, 39 DCR 9617, Slip Op. 295, PERB Case No. 91-U-18 (1992), the two cases cited in the administrative dismissal.

However, we have held that a party's refusal to implement a viable collective bargaining agreement is an unfair labor practice. See, Teamsters, Local Union No. 639 and 730, IBTCWHA v. D.C.Public Schools, Slip Op. No. 400, PERB Case No. 93-U-29 (1994).[1]/ In Teamsters, 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." Id.,

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[1]/ The Labor-management subchapter of the CMPA as codified under D.C. Code § 1-618.15(a) provides that collective bargaining agreements, if not disapproved within a prescribed period, "shall be binding on the parties." As a part of the CMPA administered by the Board, this statutory provision further supports our holding that a failure to accept negotiated agreements as binding constitutes an unfair labor practice under this subchapter. The Board has held, that by agreeing to arbitrate a matter, the parties also agreed to be bound by the arbitrator's award. University of the District of Columbia Faculty Association/NEA and University of the District of Columbia, 39 DCR 9628, Slip Op. 320, PERB Case No. 92-A-04 (1992). We find this same reasoning equally applicable to a negotiated settlement agreement.

Slip Op. at p. 7. We find, similarly, 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. [2]/

While we did not expressly address this issue in Metropolitan Police Department, we note now that in that case the parties had different interpretations concerning the applicability of the award to certain employees in question. Here, on the other hand, there appears to be no issue of interpretation but rather a flat refusal to implement agreed-upon grievance settlements. Such a refusal is inconsistent with the statutory duty to bargain in good faith. Indeed, such conduct renders the entire collective bargaining process meaningless.

Based on the foregoing, the administrative dismissal by the Executive Director is reversed. The Complaint is reinstated and shall continue to be processed consistent with this Decision.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Executive Director's administrative dismissal of the

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[2]/ AFGE does not make the issues that served as the basis of the administrative dismissal the subject of its Motion. Rather, AFGE raises new allegations that WASA's conduct in reaching the disputed agreements should be viewed as the actual basis of its cause of action. These allegations were not made in its Complaint. In its Complaint, AFGE took issue with WASA's post-agreement conduct with respect to implementing the terms of the settlement agreements in question. With the exception of an April 2, 1996 agreement, the alleged violations made in AFGE's Motion appear time-barred pursuant to Board Rule 520.4.

The Complaint was filed on July 31, 1996. Any act or conduct involved in reaching these settlement agreements that occurred prior to April 2, 1996, the date the most recent agreement was reached, exceeds our 120-day time limit. We lack jurisdiction to find a violation from acts that exceed our mandatory time limit. However, such acts can be considered to determine a violation from related acts that occurred within our jurisdiction time limit. Georgia Mae Green v. D.C. Dept of Correction, 41 DCR 5098, Slip Op. No. 323, PERB Case No. 91-U-13 (1994). Further processing of the Complaint is required to determine which alleged violations contained in the Complaint are timely.

Complaint is reversed; the Complainant's request that the Complaint be reinstated is granted.

2. The Respondent's Answer is due within 10 days after service of this Decision and Order.

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

December 13, 1996