

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:)
)
)

American Federation of)
Government Employees, Local 2725,)

Complainant,)

v.)

District of Columbia Department of)
Consumer & Regulatory Affairs,)

Respondent.)
)

PERB Case No. 10-U-18

Opinion No. 1335

DECISION AND ORDER

I. Statement of the Case

Complainant American Federation of Government Employees, Local 2725 (“Union” or “Complainant”) filed the above-captioned Unfair Labor Practice Complaint (“Complaint”), against Respondent District of Columbia Department of Consumer and Regulatory Affairs (“Agency” or “Respondent”) for an alleged violation of section 1-617.04(5) of the Comprehensive Merit Protection Act (“CMPA”). Respondent did not file an answer.

The issue before the Board is whether the Agency violated the CMPA by refusing to bargain in good faith by failing to fully implement a settlement agreement.

II. Discussion

Complainant is the exclusive bargaining representative for employees in the Agency’s Building and Land Regulation Administration, Office of the Surveyor. (Complaint at 1). On or about April 4, 2008, the Union submitted a grievance on behalf of three employees. *Id.* On or about September 9, 2009, the parties executed a settlement agreement, which provided for promotion and back pay for the grievants. *Id.*

Complainant states that as of the date of the Complaint, the grievants have not received any amount of back pay, nor has the Union received any documents indicating compliance or attempted compliance with the settlement agreement. (Complaint at 2). Complainant alleges that the Agency's failure to fully comply with the settlement agreement constitutes a refusal to bargain in good faith, in violation of D.C. Code § 1-617.04(5). *Id.*

Board Rule 544.7 states that "[a] respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing. The failure to answer an allegation shall be deemed an admission of that allegation." The Agency has not filed an answer, so the Board will deem the facts alleged in the Complaint as admitted.

The Board has held that failure to timely implement a negotiated agreement where no dispute exists over its terms constitutes a failure to bargain in good faith, and is an unfair labor practice under the CMPA. *See Doctors Council of the District of Columbia v. District of Columbia Office of the Chief Medical Examiner*, Slip Op. No. 993, PERB Case Nos. 05-U-47 and 07-U-22 (Sept. 30, 2009); *American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority*, 46 D.C. Reg. 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1996); *American Federation of State, County, and Municipal Employees, District Council 20, Locals 1959 and 2921 v. District of Columbia Public Schools and District of Columbia Government*, 59 D.C. Reg. 3258, Slip Op. No. 796, PERB Case No. 05-U-06 (1995).

As the Agency did not file an answer, the terms of the settlement agreement are considered undisputed, and the settlement agreement was not fully implemented. Therefore, the Agency has violated D.C. Code § 1-617.04(5) by failing to bargain in good faith.

As part of its requested remedy, Complainant asks the Board to order the Agency to pay appropriate fees and costs. (Complaint at 2). D.C. Code § 1-617.13(d) provides that "[t]he Board shall have 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." The Board addressed the criteria for determining whether costs should be awarded in *AFSCME, D.C. Council 20, Local 2776 v. District of Columbia Department of Finance and Revenue*, 73 D.C. Reg. 5658, Slip Op. No. 245 at pp. 4-5, PERB Case No. 98-U-02 (2000):

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 fact 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.

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... What we can say here is that among the

situation 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 representative.

In the instant case, Complainant was successful in its case, and an award of reasonable costs is in the interest of justice. The Board is not authorized to grant attorneys' fees. *American Federation of Government Employees, Local 631 v. District of Columbia Department of Public Works*, Slip Op. No. 1001 at p. 12, PERB Case No. 05-U-43 (Dec. 31, 2009); *see also American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, Slip Op. No. 1003 at p. 6 n. 6, PERB Case No. 09-U-65 (Dec. 30, 2009) ("The Board has made it clear that attorney fees are not a cost.").

Therefore, Complainant's Unfair Labor Practice Complaint is granted, and Respondent is directed to fully comply with the terms of the September 9, 2009, settlement agreement. Additionally, Respondent will post a notice and pay Complainant's reasonable costs.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant AFGE Local 2725's Unfair Labor Practice Complaint is granted.
2. Respondent D.C. Department of Consumer and Regulatory Affairs will fully comply with the terms of the September 9, 2009, settlement agreement within fifteen (15) days of the issuance of this Decision and Order. Specifically, Respondent will:
 - a. Promote Grievant Marvin McClanahan to the CS-12 grade, retroactive to April 3, 2006, and issue Mr. McClanahan a check for his net pay out of \$21,282.23 in back pay for the period April 3, 2006 – April 4, 2008;
 - b. Promote Grievant Fouad Sleem to the CS-12 grade, retroactive to April 3, 2006, and issue Mr. Sleem a check for his net pay out of \$18,158.75 in back pay for the period April 3, 2006 – April 4, 2008;
 - c. Promote Grievant Robert Myers to the CS-11 grade, retroactive to April 3, 2006, and to the position of Lead Cartographic Technician, at the CS-12 grade, retroactive to April 4, 2008, and issue Mr. Myers a check for his net pay out of \$35,129.84 in back pay for the period April 3, 2006 – August 15, 2009, plus any additional net pay needed to cover back pay for the period after August 15, 2009, resulting from these retroactive promotions;

- d. Make all appropriate adjustments in Grievants' retirement benefits resulting from these retroactive promotions and payments.
3. Respondent will cease and desist violating D.C. Code § 1-617.04(5) by failing to fully comply with the negotiated settlement agreement;
4. Respondent shall pay reasonable costs to the Complainant;
5. Respondent shall conspicuously post within ten (10) days from the issuance of this Decision and Order the attached Notice where notices to bargaining unit members are normally posted. The Notice shall remain posted for thirty (30) consecutive days;
6. Respondent shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order that the Notice has been posted accordingly;
7. Respondent shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order that it has complied with the terms of the September 9, 2009, settlement agreement.
8. 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.

October 19, 2012



Public
Employee
Relations
Board

GOVERNMENT OF
THE DISTRICT OF COLUMBIA
DC ***
.gov

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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS ("DCRA"), 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.1335, PERB CASE NO. 10-U-18 (October 19, 2012).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered DCRA to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(5) by the actions and conduct set forth in Slip Opinion No.1335.

WE WILL cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA").

WE WILL cease and desist from refusing to bargain in good faith with AFGE Local 2725, by failing to fully implement the terms of the September 9, 2009, settlement agreement.

District of Columbia Department of Consumer
and Regulatory Affairs

Date: _____ By: _____

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 any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

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

October 19, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-U-18 was transmitted to the following parties on this the 19th day of October, 2012.

Mr. Eric Bunn
President, AFGE Local 2725
PO Box 75960
Washington, D.C. 20013

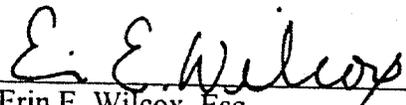
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