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

In the Matter of:)	
)	
District of Columbia Water & Sewer Authority,)	
)	
Complainant,)	PERB Case No. 05-U-10
)	
v.)	Opinion No. 813
)	
American Federation of Government Employees, Local 872,)	
)	MOTION FOR DECISION
Respondent.)	ON THE PLEADINGS
)	
)	
)	

DECISION AND ORDER

I. Statement of the Case

The District of Columbia Water and Sewer Authority ("Complainant" or "WASA"), filed a document styled "Amended Unfair Labor Practice (ULP) Complaint and Motion for Preliminary Relief." The Complainant alleged that the American Federation of Government Employees, Local 872 ("Union", "Respondent" or "Local 872"), violated D.C. Code § 1-617.04(b)(1) and (3) (2001 ed.) by failing to pay arbitration fees for those cases that it lost, effectively cancelling the grievance resolution process in the parties' collective bargaining agreement (CBA). The Complainant requested that the Board: (1) grant its request for preliminary relief; (2) order the Respondent to cease and desist from failing to bargain; (3) order the Respondent to pay its share of all outstanding arbitration costs; and (4) order a make whole remedy.

The Union filed an answer denying the allegations. In addition, the Union filed an Opposition to the Motion for Preliminary Relief. In its Opposition, the Respondent claimed that all the arbitration bills that formed the basis of the original complaint had been paid. Therefore, the Union argued that WASA had not demonstrated that preliminary relief was warranted.

The Union also filed a document styled "Respondent's Motion to Dismiss Amended Unfair Labor Practice Complaint" on June 17, 2005.¹ Pursuant to Board Rule 553.2, the Complainant's Opposition was due on June 29, 2005, the day that the Board was scheduled to have its regular meeting. However, the Board meeting was rescheduled and held on July 5, 2005. Unfortunately, in a letter dated June 27, 2005, the Board's staff informed the Complainant that the Opposition to the Motion to Dismiss was due on July 8, 2005. As a result, the Board meeting was held prior to the date that the opposition was due. Therefore, the Board could not consider the Motion to Dismiss at the July 5th meeting. Instead, we referred the Motion to Dismiss to a Hearing Examiner.

In Slip Op. No. 801, dated July 29, 2005, the Board denied WASA's request for preliminary relief. In denying WASA's request for preliminary relief, we noted that there were material facts in dispute. As a result, this case was referred to a Hearing Examiner. Subsequently, on August 4, 2005, the Respondent filed a "Motion for Decision on the Pleadings". In light of our holding in Slip Op. No. 801, we believe that the Respondent's current motion amounts to a motion for reconsideration. After reviewing the pleadings, we find that there are still issues of fact in this case. Therefore, we are denying the "Motion for Decision on the Pleadings".

In view of the above, the "Motion for a Decision on the Pleadings" is denied and the "Respondent's Motion to Dismiss Amended Unfair Labor Practice Complaint" is referred to a Hearing Examiner.

¹In the Respondent's June 17, 2005 Motion to Dismiss, the Union claims that the arbitration bills in question have been paid. Further, the Union argued that where there is only an alleged violation of the parties' contract, the PERB must dismiss the Complaint for lack of jurisdiction. The Union asserts that in the present case, WASA's claims are based entirely on its assertion that the Union violated the collective bargaining agreement by not paying arbitral fees. (Motion to Dismiss at p. 4). In addition, the Union asserted that WASA had no legally protected interest in negotiated arbitration and therefore, no standing to file a claim. (Motion to Dismiss at p. 5).

In its Opposition to the Motion to Dismiss, WASA stated that it was not only the Union's violation of the collective bargaining agreement, but the failure of the Union to resolve this matter through negotiation that resulted in the parties' inability to proceed with further arbitrations involving the Union. WASA also argued that none of the cases cited by the Union involved allegations of a refusal to bargain concerning the possible resolution of problems that were raised by the original contract violation of the opposing party. (As explained above, this Opposition was filed on July 8, 2005).

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ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 872's Motion for Decision on the Pleadings is denied.
2. The American Federation of Government Employees, Local 872's Respondent's Motion to Dismiss Amended Unfair Labor Practice Complaint is referred to a Hearing Examiner.
3. 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.**

November 23, 2005

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No.05-U-10 was transmitted via Fax and U.S. Mail to the following parties on this the 23rd day of November 2005.

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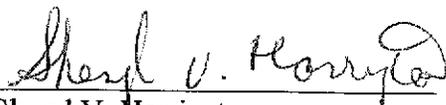
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