GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: American Federation of Government Employees, Local 3721, Complainant, and District of Columbia Fire Department, Respondent.	PERB Case No. 88-U-25 Opinion No. 202 (Clarification Order)

ORDER

The purpose of this Order is to clarify the Decision and Order issued by the Public Employee Relations Board (Board) in the above-captioned matter on December 22, 1988, Opinion No. 202.

On February 7, 1989, the Board received a letter from Counsel for the American Federation of Government Employees, Local 3721 (AFGE) pointing out that, inter alia, the Board did not specify in its Decision the appropriate interest rate to be applied to the monies owned to the Union as a result of the failure of the District of Columbia Fire Department (DCFD) to timely deduct an authorized increase in dues deductions from the employees in the bargaining unit represented by AFGE, Local 3721.

The method that is utilized by the National Labor Relations Board (NLRB) of calculating interest on monetary awards was determined in its decision New Horizons for the Retarded, Inc., 283 NLRB No. 181 (1987), wherein it abandoned the adjusted prime rate as a basis for computing interest on back pay in favor of using the "short term Federal rate" that the Tax Reform Act of 1986 requires the Internal Revenue Service to use in computing interest on the underpayment of Federal taxes.[1] The Board adopts the NLRB method of calculating the interest rate for the reasons stated in New Horizons (supra).

The NLRB method produced interest rates on monetary awards

[1]/ A copy of New Horizons is attached hereto as an appendix.

during the period - January 1, 1988 through March 31, 1988 of eleven per cent (11%) and during the period - April 1, 1988 through September 30, 1988 of ten per cent (10%). [General Counsel Opinion 89-1, (January 4, 1989)]. Those rates are applicable here since the Respondent failed to deduct the increase in dues deductions during a period within these two quarters of the calendar year 1988.

It was implicit in the Board's Decision and Order of December 22, 1988, and we now make explicit, that while DCFD or its designee is responsible for properly and in a timely fashion administering the dues check-off under the parties' agreement and D.C. Code Section 1-618.7, the obligation to pay dues, including any increases, remains with the Union members.

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

April 13, 1989

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: American Federation of Government Employees, Local 3721, Complainant, v. District of Columbia Fire Department, Respondent.	PERB Case No. 88-U-25 Opinion No. 202 (Motion For Reconsideration)

DECISION AND ORDER

On April 18, 1989, the District of Columbia Fire Department (DCFD) filed a Motion For Reconsideration requesting that the Board reconsider its Clarification Order in the above-captioned matter issued on April 13, 1989. In its Clarification Order, the Board specified the appropriate interest rate to be applied to monies that DCFD owed to the American Federation of Government Employees, Local 3721 (AFGE) because of failure to timely honor an authorized increase in dues deductions from bargaining unit members.

To determine the appropriate interest rate, the Board adopted the method utilized by the National Labor Relations Board (NLRB) in New Horizons for the Retarded, Inc., 283 NLRB No. 181 (1987), whereby the "short term federal rate" as derived from the Tax Reform Act of 1986 is applied to monies owed. The Board therefore calculated the interest rate for the period from January 1, 1988 through March 31, 1988 at eleven per cent (11%) and appropriate interest rate for the period from April 1, 1988 through September 30, 1988 at ten percent (10%).

DCFD argues two points in support of its Motion For Reconsideration. First, DCFD claims that the Board's reliance on New Horizons, supra, is misplaced because the issue in that case was the interest on backpay, which "justifies charging interest based on an enrichment to the employer, not the failure to timely deduct an increase in Union dues, whereby the employer is not enriched." (Motion at p. 2). Second, DCFD argues that pursuant to D.C. Code Section 28-3302(b) the interest rate on judgments or decrees against the District of Columbia is not to exceed four

percent (4%) per annum.[1]/ Third, DCFD offers an argument derived from D.C. Code Section 28-3302(c) that the rate applied by the Internal Revenue Service is not applicable to the District of Columbia or its officers and employees acting within the scope of their employment.

AFGE counters that the Motion is untimely. [2]/ On the merits, AFGE points out that the NLRB in Georgia Kraft Company, 288 NLRB No. 9 (1988) applied the interest rate calculation methodology of New Horizons to interest on union dues deductions that the Employer had improperly withheld. AFGE also notes that the NLRB had applied its pre-New Horizons interest formula in cases where an employer had failed to properly deduct dues deductions. (See, e.g., Stackpole Components Company, 232 NLRB No. 117, p. 723 (1977). Moreover, AFGE avers that Title 28 of the D.C. Code is by its terms applicable only to Commercial Instruments and Transactions, not matters within the remedial

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[1]/ D.C. Code Section 28-3302. Rate of interest not expressed and on judgments.

(a) The rate of interest in the District upon the loan or forbearance of money, goods, or things in action in the absence of expressed contract, is six percent (6%) per annum.

(b) Interest, when authorized by law, on judgments or decrees against the District of Columbia or its officers or its employees acting within the scope of their employment, is at the rate of not exceeding four percent (4%) per annum.

(c) The rate of interest on judgments and decrees, where the judgment or decree is not against the District of Columbia or its officers or its employees acting within the scope of their employment or where the rate of interest is not fixed by contract, shall be seventy percent (70%) of the rate of interest set by the Secretary of the Treasury pursuant to Section 6621 of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2744; 26 U.S.C. 6621), for underpayments of tax to the Internal Revenue Service, rounded to the nearest full percent, or if exactly 1/2 of 1%, increased to the next highest full percent: Provided, that a court of competent jurisdiction may lower the rate of interest under this subsection for good cause shown or upon a showing that the judgment debtor in good faith is unable to pay the judgment. In the case of the judgments entered prior to the effective date of the Consumer Credit Interest Rate Amendment Act of 1981, that are not satisfied until after the effective date of the Consumer Credit Interest Rate Amendment Act of 1981, the rate of interest thereon shall be the rate of interest prescribed in this subsection from the effective date of the Consumer Credit Interest Rate Amendment Act of 1981, until the date of satisfaction.

[2]/ The Board has accepted for filing motions for Reconsideration filed within fifteen (15) days of the issuance of a Board Decision and Order (See, e.g., Doctors' Council of D.C. and Dept. of Human Services, Slip Op. #187, PERB Case No. 87-R-05) Therefore, we reject AFGE's assertion that Respondent's Motion, which was filed five (5) days from the date that the Board's Opinion was issued, is untimely.

authority of the Board. Finally, AFGE, argues that the interest rate set forth in D.C. Code Section 28-3302(b) and (c) applies only to the District of Columbia and its officers or employees acting within the scope of their employment, not to a PERB remedial Decision directed to the employing agency, DCFD, that the PERB found to have violated the CMPA.

The Board, having reviewed the parties' pleadings and the applicable District of Columbia law, grants the Motion For Reconsideration for the reasons set out below.

At the outset, the Board notes that New Horizons has been applied by the NLRB in cases analogous to the instant matter. See Georgia Kraft Company, 288 NLRB No. 9, footnote 1 (August 31, 1987). Furthermore, New Horizons did not change substantive law; it does no more than alter the methodology previously utilized by the NLRB in determining the appropriate interest rate on monies owed to a union by an employer as a result of an unfair labor practice. Thus there is no question as to the applicability of New Horizons to cases of this type under the National Labor Relations Act.

However, this Board is governed by the laws of the District of Columbia. Thus the issue here is whether interest imposed by the Board against a D.C. Government agency is restricted by D.C. Code Section 28-3302(b). Specifically, we must determine (1) whether the scope of D.C. Code Section 28-3302(b) is limited strictly to commercial instruments and transactions and, (2) whether this section applies to District government agencies.

Our answer to the first question is compelled by a recent decision of the District of Columbia Court of Appeals. In District of Columbia v. Mitchell, 533 A.2d 629 (D.C. Ct. App. 1987), our highest court dealt with a challenge to the application of D.C. Code Section 28-3302(b). The claim there was that by limiting interest to four percent (4%) in judgments against the District while permitting interest at the prevailing rate on all other judgments, the statute violated the equal protection guarantee in the Fifth Amendment. In concluding that "the challenged statute does not offend the Constitution," the Court assumed its applicability in that action, which was a negligence suit against the District of Columbia concerning treatment of an inmate at Lorton Reformatory. 533 A.2d at 654. We are therefore constrained to treat Section 28-3302(b) as not limited to commercial transactions. (We note that this statute had previously been applied, albeit apparently without analysis of its scope, to a tax refund action against the District of Columbia, Andrews v. District of Columbia, 443 A.2d 566, 570-71 (D.C. Ct. App. 1982)), and to employment discrimination judgment against the D.C. Department of Corrections, King v. Palmer, 641 F. Supp. 186, 188 (D.D.C. 1986).

Turning to AFGE's remaining contention -- that Section 28-3302(b) is by its own terms applicable only against the District of Columbia or its officers or employees -- we observe that the District typically acts not as a municipal corporation entirely

but through a department or agency. If the Council thought the four percent (4%) limit should apply against the District where the named actor was an officer or employee acting within the scope of his or her employment, surely it cannot have intended at the same time (and without so stating) to exempt actions and final orders against the agencies that are run by the District's officers or its employees." Cf ., King v. Palmer, supra. We therefore conclude that this contention is without merit.

ORDER

IT IS HEREBY ORDERED:

The Motion For Reconsideration is granted and the Board's Clarification Order is withdrawn. It is ordered that interest on the amount owed to the Union be paid at a rate of four percent (4%) per annum.

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

October 4, 1989

NEW HORIZONS —

NEW HORIZONS FOR THE RETARDED, INC., Ellenville, N.Y. and PROFESSIONAL & COMMERCIAL EMPLOYEES UNION, a/w LADIES' GARMENT WORKERS, AFL-CIO. Case Nos. 3-CA-12852, -12852-2, and -12965, May 28, 1987, 283 NLRB No. 181 [supplementing 282 NLRB No. 110, 124 LRRM 1181]

Before NLRB: Dotson, Chairman; Johansen, Babson, Stephens, and Cracraft, Members.

BACK PAY Sec. 10(c)

— Interest rate — 'Short-term Federal rate' ▸56.448

NLRB abandons "adjusted prime rate" as basis for computing interest on back pay and decides to use "short-term Federal rate" that Tax Reform Act of 1986 requires Internal Revenue service to use in computing interest charged on underpayment of Federal taxes. Short-term rate has many of characteristics that prompted Board lopt adjusted prime rate, where (1) ough short-term rate is not direct- nked to interest rates in private money market, it is based on average market yields on marketable Federal obligations and is influenced by private economic market forces; (2) while interest rate may change four times a year because short-term rate is determined quarterly, this does not pose any greater administrative burden for Board because back pay usually is computed quarterly; and (3) any adjustment in rate will be known well ahead of its date of effectivity, and rate is rounded to nearest whole percent.

[Text] On 14 January 1987 the Board issued its decision in this case.[1] On 25 February 1987 the General Counsel filed a "Motion for Clarification."

The National Labor Relations Board has considered the motion and its earlier decision in light of the Tax Reform Act of 1986[2] and has decided to grant the General Counsel's motion. The General Counsel asserts that clarification of the method used by the Board to compute interest on backpay is required because of the recent change in the method used by the Internal Revenue Service (IRS) to compute interest charged or paid on the underpayment or overpayment of Federal taxes. We agree that the current method of computing interest on backpay is no longer appropriate an[illegible] the reasons set out below we adopt th[illegible]hod currently used by the IRS to c[illegible]e interest charged on the underpay- n[illegible] Federal taxes.

In order to keep in line with current economic conditions, the Board in Florida Steel Corp., 231 NLRB 651, 96 LRRM 1070 (1977), abandoned the 6-percent interest rate it had established in Isis Plumbing Co.[3] and adopted the sliding interest scale charged or paid by the IRS on the underpayment or overpayment of Federal taxes. This sliding rate was embodied in §6621 of the Internal Revenue Code.[4] The rate was fixed at the adjusted prime rate[5] recalculated periodically by the Secretary of the Treasury to reflect changes in the money market. The Board chose a rate keyed to the private sector money market in order to encourage timely compliance with Board orders, discourage the commission of unfair labor practices, and more fully compensate discriminatees for their economic losses.

A number of factors led to the selection of the IRS "adjusted prime rate" as the Board's interest rate. First, it was directly tied to interest rates in the private money market. It also was subject to periodic semiautomatic adjustment and, finally, it was easy to administer.[6]

The Tax Reform Act of 1986 changes the method by which the interest rate is calculated under §6621.[7] As of 1 January 1987, the IRS no longer calculates interest on tax underpayments and overpayments based on the adjusted prime rate, but rather uses the "short-term Federal rate."[8] The Secretary of the Treasury determines the short-term Federal rate on a monthly basis; however, the IRS applies the rate quarterly.[9] Thus, the short-term Federal rate for any quarter is the rate determined by the Secretary of the Treasury for the first month of the previous calendar quarter. Any such rate so determined by the Secretary must be rounded to the nearest full percent.[10] The Tax Reform Act also imposes different rates for the underpayment and overpayment of Federal taxes. The overpayment rate (paid by the IRS on refunds) is the short-term Federal rate plus 2 percent, while the underpayment rate (paid by the taxpayer on additional taxes) is the short-term Federal rate plus 3 percent.

The General Counsel urges that we adopt the method for computing interest set out in the amendments to §6621 and that we select the underpayment rate for calculat-

[1] 282 NLRB No. 110, 124 LRRM 1181.
[2] Pub. L. 99-514, 100 Stat. 2085 (1986).

[3] 138 NLRB 716, 51 LRRM 1122 (1962).
[4] 26 U.S.C. §6621, added 3 Jan. 1975 (Pub. L. 93-625 §7(a)(1), 88 Stat. 2114).
[5] The adjusted prime rate was defined as "90 percent of the average predominant prime rate quoted by commercial banks to large businesses as determined by the Board of Governors of the Federal Reserve System" rounded to the nearest full percent. 26 U.S.C. §6621(c). After the Florida Steel decision issued, §6621 was amended to require the adjusted prime rate to be changed every 6 months, instead of every 2 years, and to eliminate the 10-percent reduction.
[6] Florida Steel, 231 NLRB at 651-652.
[7] Pub. L. 99-514 §1511, 100 Stat. 2744 (1986).
[8] The short-term rate is determined by the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less. 26 U.S.C. §1274 (d)(1)(C)(i) (Supp. 1985).
[9] Pub. L. 99-514 §1511(b)(2)(A), 100 Stat. 2744 (to be codified at 26 U.S.C. §6621(b)(2)(A)).
[10] Id. at §1511(b)(3) (to be codified at §6621(b)(3)).
Id. at §1511(a)(1) and (2) (to be codified at §6621(a)(1) and (2))

ing interest on backpay awards. We agree with the General Counsel. The short-term Federal rate has many of the characteristics which prompted the Board in Florida Steel to adopt the adjusted prime rate as used by the IRS pursuant to 26 U.S.C. §6621. Thus, while it is not directly linked to interest rates in the private money market, the short-term Federal rate is based on average market yields on marketable Federal obligations and is influenced by private economic market forces. Further, it is subject to periodic adjustment and is relatively easy to administer. Under the method used in Florida Steel, the adjusted prime rate was determined semiannually, for the 6-month periods ending on September 30 and March 31, with the rate for September 30 determinations taking effect on the following January 1, and for March 31 determinations the following July 1. By contrast, the short-term Federal rate is determined quarterly, with the rate for any calendar quarter being the rate determined by the Secretary of the Treasury on the first month of the previous calendar quarter (e.g., the rate determined in January would be effective for the following April through June). While the interest rate may change four times a year rather than twice a year, this does not pose any greater administrative burden for the Board because backpay is usually computed quarterly.[11] As in Florida Steel, any adjustment in the rate will be known well ahead of the effective date (in the short-term Federal rate case, 2 months, rather than 3 months in Florida Steel); and the rate is rounded to the nearest whole percent. As noted, we find that the underpayment rate is the appropriate one to use in computing interest on backpay awards.[12]

Therefore, on the backpay due in this case, we shall require that the Respondent pay interest to accrue commencing with the last day of each calendar quarter of the backpay period for the amount due and owing for each quarterly period and continuing until compliance with the Order is achieved, such interest to be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. §6621.

[11] F. W. Woolworth Co., 90 NLRB 289, 26 LRRM 1185 (1950). In Ogle Protection Service, 183 NLRB 682, 683, 76 LRRM 1715 (1970), however, the Board held that backpay owing from the repudiation and failure to apply the terms of a collective-bargaining agreement will not be computed using the Woolworth formula because cessation of the employment status and interim earnings are not involved. We shall, nevertheless, use the quarterly method for computing interest on backpay due in all backpay situations, because the determination of the rate of interest to be applied in any given backpay period is not affected by the methods used to compute backpay.

[12] We note that at the present time, adoption of the underpayment rate will result in no change from the interest computed under the Florida Steel formula which was 9 percent through March 1987. The underpayment rate for the first quarter of 1987 was 9 percent and it has remained so through the current quarter: See Rev. Rul. 86-146, 1986-50 Internal Revenue Bulletin 5 (Dec. 15, 1986) (first quarter rate); and Rev. Rul. 87-23, 1987-13 Internal Revenue Bulletin 46 (Mar. 30, 1987) (second quarter rate).

EMSING'S SUPERMARKET —

EMSING'S SUPERMARKET, INC., ROCKY'S SUPERMARKET, INC., A SINGLE EMPLOYER, Griffith and Hammond, Ind. **and** FOOD & COMMERCIAL WORKERS, AFL-CIO, CLC, LOCAL 1460, Case No. 13-CA-24609, June 18, 1987, 284 NLRB No. 41

Alan Hellman, Chicago, Ill., for General Counsel; J. Charles Sheerin (Hoeppner, Wagner & Evans), Valparaiso, Ind., for employer; Jairus M. Gilden (Karmel & Rosenfeld), Chicago, Ill., for union; Administrative Law Judge Richard J. Linton.

Before NLRB: Dotson, Chairman; Johansen and Babson, Members.

REFUSAL TO BARGAIN Sec. 8(a)(5)

— Unilateral action ▸54.652 ▸54.733 ▸54.673 ▸54.64

Employer violated LMRA by unilaterally discontinuing payments to contractually established benefit funds and terminating payments for vacations. (1) It is immaterial that contract had expired and had not been renewed; (2) even assuming that union was aware that employer had implemented certain changes mentioned during contract negotiations, this does not constitute waiver of payments in question, where discontinuance of payments never was discussed by parties; (3) union did not abandon bargaining unit, where employer saw union representative post notices of union meetings before employer's unilateral actions.

— Closure of operation — Bargaining over effects ▸54.667 ▸54.651

Employer violated LMRA by failing to give union adequate notice of decision to close operations, thereby precluding meaningful bargaining over effects of closure on employees. Employer failed promptly to notify union of decision to close operations; by the time union learned of situation, closure was almost complete.

EMPLOYER Sec. 2(2)

— Single employer ▸44.113

Employer and another company that closed operations constitute single employer. Both firms have common ownership and management and there is common control of their labor relations; there is not only financial interdependency between both firms,

NEW HORIZONS

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Pub. L. 99-514, 100 Stat. 2085 (198[illegible])

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Florida Steel, 231 NLRB at 651-652.

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Pub. L. 99-514 §1511 [illegible] [illegible] codified at 26 U.S.C. [illegible]

[illegible] at §1511(b)(3) [illegible]

[illegible] at §1511(a) [illegible]

ing interest on backpay awards. We agree with the General Counsel. The short-term Federal rate has many of the characteristics which prompted the Board in Florida Steel to adopt the adjusted prime rate as used by the IRS pursuant to 26 U.S.C. §6621. Thus, while it is not directly linked to interest rates in the private money market, the short-term Federal rate is based on average market yields on marketable Federal obligations and is influenced by private economic market forces. Further, it is subject to periodic adjustment and is relatively easy to administer. Under the method used in Florida Steel, the adjusted prime rate was determined semiannually, for the 6-month periods ending on September 30 and March 31, with the rate for September 30 determinations taking effect on the following January 1, and for March 31 determinations the following July 1. By contrast, the short-term Federal rate is determined quarterly, with the rate for any calendar quarter being the rate determined by the Secretary of the Treasury on the first month of the previous calendar quarter (e.g., the rate determined in January would be effective for the following April through June). While the interest rate may change four times a year rather than twice a year, this does not pose any greater administrative burden for the Board because backpay is usually computed quarterly.[9] As in Florida Steel, any adjustment in the rate will be known well ahead of the effective date (in the short-term Federal rate case, 2 months, rather than 3 months in Florida Steel); and the rate is rounded to the nearest whole percent. As noted, we find that the underpayment rate is the appropriate one to use in computing interest on backpay awards.[10]

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[10] We note that at the present time, adoption of the underpayment rate will result in no change from the interest computed under the Florida Steel formula which was 9 percent through March 1987. The underpayment rate for the first quarter of 1987 was 9 percent and it has remained so through the current quarter. See Rev. Rul. 86-146, 1986-50 Internal Revenue Bulletin 5 (Dec. 15, 1986) (first quarter rate); and Rev. Rul. 87-23, 1987-13 Internal Revenue Bulletin 46 (Mar. 30, 1987) (second quarter rate).

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Employer and another company that closed operations constitute single employer. Both firms have common ownership and management and there is common control of their labor relations; there is not only financial interdependency between both firms,

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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In the matter of:	
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v.	PERB Case No. 88-U-25 Opinion No. 202
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DECISION AND ORDER

On April 22, 1988, the American Federation of Government Employees, Local 3721 (Union) filed this Unfair Labor Practice Complaint alleging that the D.C. Fire Department (DCFD) failed to timely honor the Union's request to increase dues withholdings in violation of, inter alia, Sections 1-618.4(a)(1) and (5) of the D.C. Code (Comprehensive Merit Personnel Act (CMPA), Section 1701 et seq.). In response to the Complaint, the D.C. Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DCFD, denies the commission of any unfair labor practice in its compliance with the Union's request to increase dues withholdings.

The facts in this case are not in dispute. 1/ The parties' Collective Bargaining Agreement, Article 5, Section F, provides that DCFD "agrees to withhold the payment of dues to the Union from the wages of unit employees."

In a letter dated January 15, 1988, the Union advised Russell Carpenter of OLRCB that in accordance with the Union's new Constitution and Bylaws union dues had increased from five dollars ($5) to eleven ($11) per payroll and requested that the dues withholdings be increased to reflect this change.

1/ Because there are no facts in dispute, the Board grants the Union's uncontested request that this case proceed without a hearing. The Board finds that a hearing would serve no purpose in resolving the issue presented in this case.

The Union asserts, and OLRCB does not dispute, that on or about February 23, 1988 the Union's Treasurer, William Jones, called Carpenter and left a message regarding DCFD's failure to increase the amount of dues deducted. On or about February 29, 1988, Jones again called Carpenter and left a message with regard to the increase in dues withholdings. Mark Levitt of OLRCB telephoned Jones and informed him that DCFD's failure to increase the deduction for dues and service fees was an administrative problem which would be corrected by the payroll period ending March 26, 1988. At the time the Complaint in this proceeding was filed on April 22, 1988, DCFD had not implemented the increase in the dues withholdings. 2/

The Union alleges that DCFD's failure to implement in a timely manner the increase in dues withholdings violates Sections 1-618.1(b) (2), 1-618.4(a)(1) and (5), 1-618.6(a)(3), 1-618.7 and 1-618. 11(a) of the D.C. Code. DCFD responds that Article 5 of the parties' agreement does not address procedures for implementing increases in dues withholdings and that no date as to when the increased dues would be deducted had been agreed. DCFD further asserts that the delay was not attributable to malice or intentional anti-union animus, but rather to "a payroll process delay." DCFD claims that the Union has no legal or equitable claim to reimbursement of dues and service fees in the absence of an agreement or a showing of bad faith.

The issue before the Board is whether the Respondent's failure to implement a dues withholding increase, as requested by the Union, for approximately two and one half months violates the above cited provisions of the D.C. Code.

The Board concludes that the delay in the implementation of the Union's request to increase dues withholdings interferes with employees' rights under Sections 1-618.6(a)(3) and 1-618.7 of the D.C. Code and thus violates Section 1-618.4(a)(1). 3/ Section 1-618.6(a)(3) of the D.C. Code provides that employees have a right to bargain collectively through representatives of their own choosing. Section 1-618.7 of the D.C. Code provides a union that is the exclusive representative of employees in the

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2/ OLRCB stated in its Answer to the Complaint that the increase was implemented for the payroll period beginning April 10, 1988, which was reflected in the May 3, 1988 payroll checks.

3/ Inasmuch as the Board finds that DCFD's actions constitute a violation of Section 1-618.4(a)(1), it is unnecessary to address the issue of whether they also violate Section 1-618.4 (a)(5) or the other cited provisions of the D.C. Code.

bargaining unit with the right, upon request, to dues withholdings by the agency. We find that the timely collection of dues is critical to the union's ability to discharge effectively its duties on behalf of employees who have chosen the union as their exclusive representative. Therefore, where withholding is in force, an agency is obligated under Section 1-618.7 to honor a union's request to increase dues withholdings in a timely manner. The failure of an agency to timely honor the union's request to increase dues under Section 1-618-7 interferes with the employees' Section 1-618.6(a)(3) right to bargain collectively, thereby violating Section 1-618.4(a)(1) of the D.C. Code.

In this case, the Union requested OLRCB, as the agent of DCFD with which it had an agreement including dues withholding, to implement the increase in dues withholdings in a letter dated January 15, 1988. 4/ Despite repeated inquiries as to when DCFD would implement the request, DCFD did not honor the request until the payroll period ending April 10, 1988. Under the circumstances of this case, a two and one half (2 1/2) month delay coupled with the failure of OLRCB to give an adequate justification for the delay, the Board concludes that DCFD's action in honoring the Union's request was untimely and thus improper. In so finding, the Board is not applying a per se standard. Rather, the Board's decision in this case is based on the length of time coupled with the absence of an assertion by DCFD of any reasonable explanation.

Contrary to DCFD's argument, it is not necessary for the parties to have an agreement specifying the manner in which dues will be withheld before the duty to honor the Union's request arises. Section 1-618.7 grants unions the right to have dues withheld upon request. 5/

Accordingly, the Board concludes that DCFD violated Section 1-618.4(a)(1) of the D.C. Code.

To remedy the violation found, the Board orders DCFD to reimburse the Union for all dues which the Union did not receive as a result of DCFD's failure to timely implement the Union's request including any interest accrued on this amount.

4/ OLRCB represents the Department in certain aspects of its labor relations program.

5/ Because Section 1-618.7 placed an obligation on DCFD to honor the requested dues withholding increase in a timely manner, it is unnecessary for the Union to establish that the delay was motivated by anti-union animus or malice.

ORDER

IT IS ORDERED THAT:

1) DCFD shall post Notices conspicuously at the affected employee work sites stating that, in the future, it will refrain from interfering with, restraining or coercing employees in any like or related manner in the the exercise of their rights under the Comprehensive Merit Personnel Act;

2) DCFD shall reimburse the Union for all increased dues deductions plus the accrued interest, which the Union did not receive as a result of DCFD's failure to timely honor the Union's request for increased dues withholdings from unit employees' paychecks.

3) DCFD shall notify the Public Employee Relations Board, in writing, within 14 days of this Order as to what steps have been taken to comply with this Order.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.
December 22, 1988

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

GOVERNMENT OF THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEE RELATIONS BOARD

We hereby notify our employees that the Government of 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 NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of rights guaranteed them by the Comprehensive Merit Personnel Act.

WE WILL, upon request, timely honor the Union's request for dues withholdings.

WE WILL reimburse the Union for all increased dues withholdings plus interest, which the Union did not receive as a result of our failure to timely honor the Union's request to increase the dues withholdings.

District of Columbia Fire Department

Dated: _____ 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.

The Director, or designee, must notify the Public Employee Relations Board, in writing, within 14 days of the date of this Decision as to what steps have been taken to comply with the Order.

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: 415 12th Street, N.W., Room 309, Washington, D.C., 20006.