

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:)	
)	
Barbara Milton,)	
)	
Complainant,)	PERB Case Nos. 98-U-24
)	and 98-U-28
v.)	
)	Opinion No. 639
District of Columbia Water)	
and Sewer Authority,)	Motion to Amend the Board's Remedial
)	Order
Respondent.)	

DECISION AND ORDER

This matter involves a "Motion to Amend the Board's Remedial Order" filed by the District Columbia Water and Sewer Authority (WASA or Respondent). The Respondent is requesting that the Board amend the Order issued on October 26, 1999 (Slip Opinion No. 606). In Slip Opinion No. 606, the Board found that the Respondent committed an unfair labor practice by retaliating against the Complainant for: (1) filing a complaint; and (2) engaging in union activity. The Respondent claims that WASA and the Complainant have settled all outstanding issues related to the above-referenced matters. As a result, the Respondent is requesting that the Board relieve WASA of the notice-posting obligation contained in paragraph 6 of the Board's Order in Slip Opinion No. 606. The Complainant did not file a response to WASA's motion.

The Complainant filed two unfair labor practice complaints alleging that WASA violated D. C. Code §1-618.4(a)(1), (2), (3) and (4). On October 26, 1999, the Board issued a Decision and Order (Slip Opinion No. 606) concerning these matters. In Slip Opinion No. 606, the Board determined that WASA committed unfair labor practices in violation of the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a) (1), (2), (3) and (4).^{1/}

^{1/} The Complainant requested preliminary relief in PERB Case No. 98-U-28. The Board granted the Complainant's request for preliminary relief (Slip Opinion No. 566). WASA filed a Motion for Reconsideration which was denied (Slip Opinion No. 574). In addition, PERB Case Nos. 98-U-24 and 98-U-28 were consolidated and referred to a hearing examiner.

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As a remedy, the Board ordered WASA to: (1) cease and desist from violating the Complainant's employee rights; (2) rescind the Complainant's unlawful transfer; (3) return the Complainant to her former position and regular assignment; (4) make the Complainant whole by compensating her for loss back pay which resulted from the unlawful transfer; (5) post a notice advising employees that WASA violated the CMPA; and (6) pay the Complainant's reasonable costs.

WASA did not file a motion for reconsideration. Therefore, the Decision and Order became final. Subsequently, the Complainant filed a "Motion to Enforce" and an "Amended Motion to Enforce", alleging that WASA had failed to comply with the Board's Order.^{2/} However, on March 22, 2000, the Complainant informed the Board that the parties had reached an agreement concerning the issue of back pay. As a result, the Complainant withdrew her motions.

In light of the Complainant's withdrawal letter, it is clear that WASA has complied with those provisions of the Order which impact directly on the Complainant (i.e. back pay). Nonetheless, pursuant to paragraph 6 of the Board's Order, WASA was required to post a notice advising employees that WASA violated the CMPA. In addition, pursuant to paragraph 7 of the Order, WASA was required to inform the Board that the required notice had been posted. However, WASA did not submit information concerning its compliance with paragraphs 6 and 7 of the Board's Order. As a result, the Board's Executive Director, requested that WASA submit information concerning the steps it had taken to comply with paragraphs 6 and 7. Instead of submitting the requested information, WASA filed their motion to amend. WASA claims that, the basis for their request is the fact that the parties have settled all outstanding issues related to this proceeding. (Mot. at p.1). Also, WASA notes that it did not post the notice "during the time period that the parties were engaged in negotiations because one of the issues that was the subject of the negotiations was [WASA's] satisfaction of the posting obligation." *Id.* Furthermore, WASA contends that the Complainant is aware of the motion and does not object to WASA's request for modification. (Mot. at p. 2). The Complainant did not file a response to WASA's motion.

There is no dispute that WASA failed to file for reconsideration of the Board's Decision and Order issued on October 26, 1999. Also, it is clear that at the time the Complainant filed her two motions for enforcement, WASA had not complied with the terms of the Board's Order. In fact, the steps taken by WASA to implement the back pay provision of the Order, were only taken after the Complainant asked the Board to enforce the Order. Furthermore, approval/processing of the Complainant's back pay, was not initiated until nearly five months after the Board's Decision and Order was issued.

^{2/} The "Motion to Enforce" and the "Amended Motion to Enforce" were filed on November 16, 1999 and December 27, 1999, respectively.

In their motion, WASA fails to identify Board precedent or any other authority in support of its request. Instead, WASA asserts that the "parties have resolved the posting issues to each sides's agreement and satisfaction." (Mot. at p.2). We believe that WASA's argument would have merit if the settlement had been reached prior to the Board's decision. However, once the Board issued its decision, the parties were not free to modify the Board's Order. Specifically, only the Board could modify the Order. As a result, WASA's argument lacks merit.

The Board has previously noted that, "the overriding purpose and policy of relief afforded under the CMPA, for unfair labor practices which violate employee rights, is the protection of rights that inure to all employees". Charles Bagentose v. D.C. Public Schools, 41 DCR 1493, Slip Op. No. 283 at p.3, PERB Case No. 88-U-33 (1991). Moreover, "it is the furtherance of this end, i.e., the protection of employee rights, . . . [that] underlies [the Board's] remedy requiring the posting of a notice to all employees concerning the violation found and the relief afforded, notwithstanding the fact that all employees may not have been directly affected". Id. In the instant case, WASA has complied with those provisions of the Board's Order, which directly impact on the Complainant. However, WASA only took steps to comply, after a motion for enforcement was filed. As a result, we find that WASA has not presented a compelling reason for removing the notice posting requirement.

In the present case, WASA has violated the CMPA and subsequently complied with most of the provisions contained in the Board's Order. In a similar case, the Board determined that when an agency violates the CMPA and later complies with its contractual obligations, the agency must still post a notice. See, American Federation of Government Employees, Local 383, 1015, 2737 and 2798 v. D.C. Department of Human Services, 28 DCR 3458 Slip Op. No. 13, PERB Case No. 80-U-11 (1981). In view of the above, we believe that it is appropriate to require WASA to post a notice. If WASA is not required to post a notice, the CMPA's policy and purpose of guaranteeing the rights of all employees is undermined. Specifically, those employees who are most aware of WASA's illegal conduct and thereby affected by it, would not know that exercising their rights under the CMPA is indeed fully protected. Also, a notice posting requirement, serves as a strong warning against future violations.

We find that WASA has not presented evidence which supports its request for modification of the October 26th Order. As a result, there is no valid reason for WASA's failure to comply with the notice posting requirement of the Order. Therefore, WASA's motion is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's Motion to Amend the Board's Remedial Order in Slip Opinion No. 606 is denied.

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2. *The District of Columbia Water and Sewer Authority (WASA)* shall post conspicuously within ten (10) days from the service of this Opinion the attached Notice where notices to employees are normally posted.
3. WASA shall notify the Public Employee Relations Board (PERB), in writing, within fourteen (14) days from the date of this Order that the Notice has been posted accordingly.
4. Pursuant to Board Rule 559.1, and for purposes of D.C. Code § 1-618.13(c), this Decision and Order is effective and final upon issuance.

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

October 4, 2000

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Nos. 98-U-24 and 98-U-28 was transmitted via Fax and U.S. Mail to the following parties on this 4th day of October, 2000.

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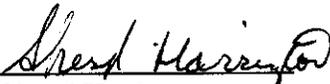
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY (WASA), 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. 606, PERB CASE NO. 98-U-24 AND 98-U-28 (October 26, 1999).

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 Barbara Milton's employee rights under D.C. Code § 1-618.6(a) and (b) in violation of D.C. Code § 1-618.4(a)(1), (2) and (3) by the acts and conduct set forth in Slip Opinion No 606.

WE WILL cease and desist from transferring Barbara Milton because she filed an unfair labor practice complaint with the District of Columbia Public Employee Relations Board as proscribed by D.C. Code § 1-618.4(a)(4).

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) to freely: (a) form, join, or assist any labor organization and (b) bargain collectively through representatives of their own choosing.

WE WILL cease and desist from dominating, interfering, or assisting in the formation, existence or administration of any labor organization by threatening to transfer Barbara Milton in order to preclude her from participating on the collective bargaining team during negotiations between WASA and the American Federation of Government Employees, Local 631, AFL-CIO.

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 CMPA.

District of Columbia Water and Sewer
Authority

Date: _____ By: _____
General Manager

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.