

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 1000,)	
)	PERB Case No. 13-U-15
Complainant,)	
)	Opinion No. 1368
v.)	
)	
District of Columbia)	
Department of Employment Services,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

Complainant American Federation of Government Employees, Local 1000 (“Union” or “Complainant”) filed the above-captioned Unfair Labor Practice Complaint (“Complaint”), against Respondent District of Columbia Department Employment Services (“Agency” or “Respondent”) for alleged violations of sections 1-617.04(a)(1) and (5) of the Comprehensive Merit Protection Act (“CMPA”). Respondent filed an Answer (“Answer”), denying the alleged violations and raising the following affirmative defenses: (1) the Arbitrator retained jurisdiction to address any disputes that may arise in implementing the underlying Award; and (2) the Complaint is not ripe. (Award at 4).

II. Discussion

The parties do not dispute the essential facts of this case. On December 27, 2011, the Agency sent a letter to employee Sheila Myers, notifying her of her termination, effective December 28, 2011. (Complaint at ¶ 4; Answer at ¶ 4). Complainant filed a grievance over the termination, and advanced the matter to arbitration. *Id.* Arbitration hearings were held on June 4 and 20, 2012. *Id.*

On November 13, 2012, Arbitrator Elliot H. Shaller issued an award sustaining the grievance. (Complaint at ¶ 5; Answer at ¶ 5). The Arbitrator ordered the Agency to reinstate Ms. Myers to the position she held at the date of her discharge, without back pay or benefits. (Complaint at ¶ 6; Answer at ¶ 6). As of the date the Complaint was filed, the Agency had not reinstated Ms. Myers, nor has it appealed the arbitration award. (Complaint at ¶¶ 7-8; Answer at ¶¶ 7-8).

The Union asserts that by failing to adhere to the terms of the Arbitrator's Award, the Agency has interfered with, restrained, and coerced employees in the exercise of their rights under D.C. Code § 1-617.06(a)(1), and refused to bargain in good faith, in violation of D.C. Code §§ 1-617.04(a)(1) and (5). (Complaint at ¶¶ 7, 9).

In its first affirmative defense, the Agency states that PERB lacks jurisdiction to resolve a dispute arising from the implementation of the Award because the Arbitrator retained jurisdiction "to address any such application and/or any disputes that may arise in implementing this Award." (Answer at 4, Answer Exhibit 4 at p. 34). In its second affirmative defense, the Agency contends that due to the Arbitrator's reserved jurisdiction to resolve disputes arising from the implementation of the Award, the Union's Complaint is not ripe. (Answer at 4).

The parties do no dispute that the Agency has not implemented the Arbitrator's Award. (Complaint at ¶¶ 7-8; Answer at ¶¶ 7-8). In the Award, the Arbitrator retained jurisdiction to address "any disputes that may arise in implementing this Award." (Complaint Exhibit B at p. 34). The Board respects the jurisdiction reserved by arbitrators to resolve disputes pertaining to arbitration awards. *See, e.g., University of the District of Columbia v. American Federation of State, County, and Municipal Employees, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. No. 1333, PERB Case No. 12-A-01 (2012) (arbitrator retained jurisdiction for the purpose of resolving disputes over the implementation of remedies; dispute over market rate for calculating attorneys' fees not properly before the Board); *Fraternal Order of Police/Dep't of Corrections Labor Committee v. District of Columbia Dep't of Corrections*, 59 D.C. Reg. 6175, Slip Op. No. 1022 at fn. 4, PERB Case No. 10-E-03 (2010). Arbitrators enjoy wide latitude in drafting their awards, which may only be limited by the Board if the arbitrator was without or exceeded his or her jurisdiction, if the award is on its face contrary to law and public policy, or if the award was procured by fraud, collusion, or other similar and unlawful means. D.C. Code § 1-605.02(6).

The Board has authority to enforce its own orders, but not the orders of third parties, such as arbitrators. *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. Metropolitan Police Dep't*, 39 D.C. Reg. 9617, Slip Op. No. 295, PERB Case No. 91-U-18 (1992). Notwithstanding, when a party refuses or fails to implement an arbitration award where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith, and thus is an unfair labor practice under the CMPA. *Teamsters Local Union No. 639 v. District of Columbia Public Schools*, 59 D.C. Reg. 6162, Slip Op. No. 1021 at p. 5, PERB Case No. 08-U-42 (2010).

A party has no genuine dispute over the terms of an award if they fail to either implement the award or bring the matter before the arbitrator who has retained jurisdiction. *Fraternal*

Order of Police/Dep't of Corrections Labor Committee, Slip Op. No. 1022 at fn. 4. Hence, this case is not yet ripe for resolution by the Board. The arbitrator retained jurisdiction to address disputes that arise in implementing the Award in this case. (Complaint Exhibit B at p. 34). As a dispute has arisen regarding the implementation of the Award, the proper forum for such a dispute is with the Arbitrator. (Answer at 3-4). In short, the proper forum for the adjudication of this dispute is before Arbitrator Shaller. Therefore, the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 1000's Unfair Labor Practice Complaint is dismissed.
2. 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.

March 14, 2013

CERTIFICATE OF SERVICE

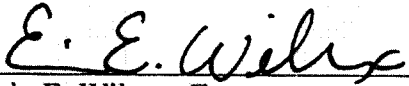
This is to certify that the attached Decision and Order in PERB Case No. 13-U-15 was transmitted via File & ServeXpress to the following parties on this the 14th day of March, 2013.

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