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

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| In the Matter of:<br><br>American Federation of State,<br>County and Municipal Employees,<br>District Council 20, Locals 1959 and 2921,<br>AFL-CIO,<br><br>Complainant,<br><br>v.<br><br>District of Columbia Public Schools and<br>District of Columbia Government,<br><br>Respondents. | PERB Case No. 05-U-06<br><br>Opinion No. 796 |

## DECISION AND ORDER

### I. Statement of the Case:

The American Federation of State, County and Municipal Employees, District Council 20, Locals 1959 and 2921 ("Complainant", "AFSCME" or "Union"), filed an Unfair Labor Practice Complaint and a Motion for a Decision on the Pleadings, in the above-referenced case. The Complainant alleges that the District of Columbia Public Schools ("DCPS" or "Respondent") and the District of Columbia Government violated D.C. Code § 1-617.04 (a)(1) and (5) (2001 ed.) by failing to comply with the terms of an agreement which settled an unfair labor practice complaint. (Compl. at pgs. 2-3) The Complainant is asking the Board to decide this case on the pleadings and order DCPS to: (1) pay the Union all retroactive service fees for all employees in Local 2921 for the period October 24, 2003 through the first full pay period following March 12, 2004; (2) pay the Union all retroactive service fees for all employees in Local 1959 for the period December 15, 2003 through the first full pay period following March 12, 2004; (3) provide the Union with a complete and accurate list of the Local 2921 bargaining unit; (4) comply with the settlement agreement; (5) make the Union whole for all losses, with compound interest; (6) pay attorney fees and costs; (7) post a notice to employees; and (8) cease and desist from violating the Comprehensive Merit Personnel Act.

(Compl. at p.4)

DCPS filed an answer denying that it has violated the Comprehensive Merit Personnel Act ("CMPA"). As a result, DCPS has requested that the Board dismiss the Complaint. DCPS did not file a response to the Complainant's "Motion for a Decision on the Pleadings". Also, the District of Columbia Government did not respond to either the unfair labor practice complaint or the motion for a decision on the pleadings, AFSCME's motion is before the Board for disposition.

**II. Discussion**

On July 29, 2003, the Union filed an unfair labor practice complaint against DCPS alleging that, despite numerous requests from the Union, DCPS had failed to provide an accurate list of the employees in each of the two bargaining units. The Union claimed that without such a list, it was unable to demonstrate that it had attained membership of 51% of the bargaining unit, a prerequisite to the Union's ability to collect service fees. In addition, the Union asserted that DCPS had continually failed to honor its obligation to withhold union dues from the paychecks of employees who had submitted dues authorization cards.

This matter was referred to a Hearing Examiner and a hearing was held on October 24, 2003. Subsequently, Hearing Examiner Carmel Ebb directed the parties to submit post-hearing briefs.

The Complainant claims that in an attempt to reach a settlement of the dispute, the parties requested several extensions of time within which to file their post-hearing briefs. On March 12, 2004, the parties executed a settlement agreement. As a result, on March 15, 2004, the Union filed a motion to withdraw the complaint, along with a copy of the settlement agreement. The motion was granted and the matter was withdrawn on March 18, 2004.

The Union asserts that the District of Columbia Government is responsible for providing actual payment of amounts owed by DCPS, after DCPS has authorized the expenditure. As a result, the Union contends that the District of Columbia Government is an agent of DCPS. Therefore, the Union asserts that the District of Columbia Government and DCPS are responsible for compliance with the settlement agreement. In light of the above, the Union claims that it is also necessary to join the District of Columbia Government as a party in order to obtain complete relief.

Paragraph 3 of the settlement agreement provides as follows:

> DCPS acknowledges that Local 2921 met the 51% membership threshold prior to January 1, 2001, and DCPS has taken all steps necessary and within its power to begin deduction of service fee amounts for Local 2921. DCPS agrees to pay the retroactive service fees for all covered employees from October 24, 2003, through the

> first full pay period following the execution of this Agreement After that point, any and all deductions of service fees will be taken directly from covered employees through payroll deductions.

Paragraph 4 of the settlement agreement provides as follows:

> DCPS acknowledges that Local 1959 met the 51% membership threshold as of December 15, 2003, and DCPS has taken all steps necessary and within its power to begin deduction of service fee amounts for Local 1959. DCPS agrees to pay retroactive service fees for all covered employees from December 15, 2003, through the first full pay period following the execution of this Agreement. After that point, any and all deductions of service fees will be taken directly from covered employees through payroll deduction.

The Complainant claims that on "numerous occasions since the parties executed the agreement in March 2004, both counsel for the Union and Micheal Reichert, a staff representative for the Union, have reminded DCPS of its obligations under the settlement agreement." (Compl. at p. 3). However, to date, DCPS has failed to pay any retroactive service fees for employees represented by both Local 2921 and Local 1959. (See Compl. at p. 3)

The Complaint contends that by the conduct described above, DCPS is: (1) interfering with, restraining and coercing employees in the exercise of their rights under D.C. Code § 617. 06(a)(1), and (2) refusing to bargaining in good faith, in violation of D.C. Code § 1-617.04(a)(1) and (5).[1]

DCPS does not dispute the factual allegations underlying the asserted statutory violation. Instead, DCPS claims that the "Complainant's Unfair Labor Practice Complaint should be dismissed because the complainant fails to state an unfair labor practice for which relief could be granted and [the Board] lacks jurisdiction to grant the relief requested." ( Answer at p. 5) In addition, DCPS asserts that it has "corrected the information in the CAPPS system to ensure payment of any service

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[1] D.C. Code § 1-617.04(a)(1) and (5) provide as follows:

> (a) The District, its agents, and representatives are prohibited from:
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> (1) Interfering, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;
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> * * *
>
> (5) Refusing to bargain collectively in good faith with the exclusive representative.

fees and the information was forwarded to the District of Columbia Government, Office of Pay and Retirement for implementation and payment. [As a result, DCPS contends that it] has done all that it can to ensure compliance with the Settlement Agreement, and there is no unresolved issue, or basis for the complaint." (Answer at pgs. 5-6). For the above-noted reasons, DCPS is requesting that the Complaint be dismissed.

After reviewing the pleadings, we believe that the material issues of fact and supporting documentary evidence are undisputed by the parties. As a result, the alleged violations do not turn on disputed material issues of fact, but rather on a question of law. Therefore, pursuant to Board Rule 520.10, this case can appropriately be decided on the pleadings. In light of the above, we grant the Union's motion for a decision on the pleadings.

The Board has previously considered the question of whether the failure to implement an arbitrator's award or settlement agreement constitutes an unfair labor practice. In American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority, 46 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1996), the Board held for the first time that "when a party simply refuses or fails to implement an award or negotiated agreement where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith and, thereby, an unfair labor practice under the CMPA." Slip Op. at p. 3.

In the present case, DCPS acknowledges that: (1) the parties signed a settlement agreement on March 12, 2004 and (2) it agreed to pay retroactive service fees to both Locals 2921 and 1959. However, DCPS asserts that the delayed compliance with the terms of the settlement agreement is not an unfair labor practice. (See Answer at pgs. 5-6).

After reviewing DCPS' arguments, we have determined that DCPS' reasons for failing to comply with the terms of the negotiated settlement agreement do not constitute a genuine dispute over the terms of the negotiated settlement; but rather a flat refusal to comply with the negotiated settlement. As a result, we believe that DCPS has no "legitimate reason" for its on-going refusal to comply with the terms of the settlement agreement.[2] As such, we conclude that DCPS' actions constitute a violation of its duty to bargain in good faith, as codified under D.C. Code § 1-617.04(a)(5) (2001 ed.). Furthermore, we find that by "these same acts and conduct, [DCPS'] failure to bargain in good faith with [AFSCME] constitute, derivatively, interference with bargaining unit

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[2] DCPS claims that it has corrected the information in the CAPPS system and forwarded it to the District of Columbia Government, Office of Pay and Retirement. As a result, DCPS suggests that it has done all that it can do to ensure compliance with the settlement agreement. Therefore, it asserts that it has not committed an unfair labor practice. However, we conclude that it is DCPS' obligation and responsibility to ensure compliance with the settlement agreement. In light of this finding, it is not necessary for us to consider whether the District of Columbia Government has violated the CMPA in this case.

employees rights in violation of D.C. Code § [1-617.04] (a)(1) (2001 ed.)."(Emphasis in original.) AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 8356, Slip Op. No. 597 at p. 5, PERB Case No. 99-U-33 (1999). Also see, Committee of Interns and Residents v. D.C. General Hospital, 43 DCR 1490, Slip Op. No. 456, PERB Case No. 95-U-01 (1996).

Concerning the Complainant's request for attorney fees, the Board has held that D.C. Code § 1-617.13 does not authorize it to award attorney fees. See, International Brotherhood of Police Officers, Local 1446, AFL-CIO v. District of Columbia General Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); and University of the District of Columbia Faculty Association, NEA v. University of the District of Columbia, 38 DCR 2463, Slip Op. 272, PERB Case No. 91-U-10 (1991). Therefore, the Complainant's request for attorney fees is denied.

As to the Complainant's request for reasonable costs, the Board first addressed the circumstances under which the awarding of costs to a party may be warranted in AFSCME, D.C. Council 20, Local 2776 v. D.C. Dept. of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990). In that case, the Board concluded that it could, under certain circumstances, award reasonable costs.[3] Specifically, the Board observed:

> 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 catalouged. We do not believe it possible to elaborate in any one case a complete set of rules or earmarks to govern all cases, nor would it be wise to rule out such awards in circumstances that we cannot foresee. What we can say here is that among the situations 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 action is the undermining of the union among the employees for whom it is the exclusive bargaining representative. Slip Op. No. 245, at p. 5.

In the cases which involve an agency's failure to implement an arbitration award or a negotiated settlement, this Board has been reluctant to award costs. See, AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 6278, Slip Op. No. 585 at p.5, PERB Case Nos. 98-U-20, 99-U-05, and 99-U-12 (1999) and American Federation of Government Employees, Local 2725 v. D.C. Department of Health, 51 DCR 11398, Slip Op. No. 752, PERB Case No. 03-U-18 (2004). However, we have awarded costs when an agency has demonstrated a pattern and practice of refusing to implement arbitration awards or negotiated settlements. See, AFGE Local 2725 v. D.C. Housing Authority, 46, DCR 8356, Slip Op. No. 597, PERB Case No. 99-U-33 (1999).

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[3] The Board has made it clear that attorney fees are not a cost.

In the present case, the Complainant has not asserted that DCPS has engaged in a pattern and practice of refusing to implement arbitration awards or negotiated settlements. Nor has any other persuasive case been made to justify the awarding of costs. As a result, we believe that the interest-of-justice criteria articulated in the AFSCME case, would not be served by granting the Complainant's request for reasonable costs. Therefore, we deny the Complainant's request for reasonable costs.

## ORDER

**IT IS HEREBY ORDERED THAT:**

1. The American Federation of State, County and Municipal Employees, Locals 2921 and 1959's (AFSCME) Motion for a Decision on the Pleadings, is granted.

2. The District of Columbia Public Schools (DCPS), its agents and representatives shall cease and desist from refusing to bargain in good faith with AFSCME by failing to comply with the terms of the March 12, 2004 settlement agreement.

3. DCPS, its agents and representatives shall cease and desist from interfering, restraining or coercing its employees by engaging in acts and conduct that abrogate employees' rights guaranteed by "Subchapter XVII. Labor-Management Relations" of the Comprehensive Merit Personnel Act ("CMPA") to bargain collectively through representatives of their own choosing.

4. DCPS shall, in accordance with the terms of the settlement agreement, fully implement, forthwith, the terms of the settlement agreement.

5. AFSCME's request for costs and attorney fees are denied for the reasons stated in this Opinion.

6. DCPS shall post conspicuously, within ten (10) days from the service of this Decision and Order, the attached Notice where notices to bargaining-unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days.

7. Within fourteen (14) days from the issuance of this Decision and Order, DCPS shall notify the Public Employees Relations Board ("Board"), in writing, that the Notice has been posted accordingly. Also, DCPS shall notify the Board of the steps it has taken to comply with paragraphs 4 and 6 of this Order.

9. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

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

July 15, 2005

# NOTICE

**TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS, 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. 796, PERB CASE NO. 05-S-06 (JULY 15, 2005)**

**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 D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in *Slip Opinion* No. 796.

**WE WILL** cease and desist from refusing to bargain in good faith with the American Federation of State, County and Municipal Employees (AFSCME), District Council 20, Locals 2921 and 1959, AFL-CIO, by failing to comply with the terms of a settlement agreement over which no genuine dispute exists over the terms.

**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 District of Columbia Comprehensive Merit Personnel Act.

District of Columbia Public Schools

Date:______________________ By:______________________

Superintendent

**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 may questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 717 14th Street, N.W., Suite 1150, Washington, D.C. 20005. Phone: (202) 727-1822.

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

*July 15, 2005*

## CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 05-U-06 was transmitted via U.S. Mail to the following parties on this the 15th day of July 2005.

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Sheryl V. Harrington

Sheryl Harrington
Secretary