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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
Teamsters Local Unions No. 639 and)	
730 a/w International Brotherhood)	
of Teamsters, Chauffeurs,)	
Warehousemen and Helpers of)	
America, AFL-CIO/CLC,)	
)	
Complainants,)	PERB Case No. 93-U-29
)	Opinion No. 400
)	
v.)	
)	
District of Columbia)	
Public Schools,)	
)	
Respondent.)	

DECISION AND ORDER

Complainants, Teamsters Local Unions No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters), jointly represent five units of employees of the District of Columbia Public Schools (DCPS or the Board of Education). ^{1/} Local 639 also represents a unit of attendance counselors employed by DCPS. The Unfair Labor Practice Complaint in this case arises out of the parties' negotiations for initial compensation and non-compensation agreements covering the Attendance Counselors for the years 1990-93, and successor compensation and noncompensation agreements covering the other five units for the same period (Master Agreement). The negotiations ended in impasse and, early in 1992, in arbitration awards covering both compensation and non-

^{1/} Certification Nos. 35-39, PERB Case No. 85-R-09 (1986). The employees thus represented are operating engineers, custodians, transportation and warehouse employees, cafeteria managers and cafeteria workers.

compensation issues.^{2/}

In the Complaint, filed August 16, 1993, the Teamsters allege that DCPS failed to bargain in good faith, in violation of the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.4(a)(1) and (5), by 1) failing to follow the statutory procedures for submission of the compensation awards for consideration by the Council of the District of Columbia (the Council) and entering into a Memorandum of Agreement (MOU) with the Council and Mayor Sharon Pratt Kelly that was inconsistent with the terms of the compensation awards, and 2) failing to implement the noncompensation provisions of the awarded agreements. As a remedy, Complainants ask that DCPS be directed 1) to submit a supplemental budget to the Council including funding for the compensation awards and to reimburse affected employees for lost earnings and 2) to implement the non-compensation terms of the awards.

DCPS, by Answer filed on September 9, 1993, denies that it had failed to follow the required procedures; states that it has already implemented the noncompensation terms of the two agreements, and asserts that the Teamsters' contentions fail to present a claim in violation of D.C. Code Sec. 1-618.4(a)(1) and (5). The Board solicited and the Teamsters filed a Response to DCPS' Answer on June 7, 1994.

The two complaint allegations rest on distinct factual and legal premises, and accordingly, we consider them separately.

The Compensation Awards

After reviewing the pleadings, including voluminous attachments, and the applicable statutory and decisional authority, we find that the material facts as to this allegation are not genuinely in dispute and, pursuant to D.C. Code Sec. 1-605.2(3) and Board Rule 520.10, conclude that no hearing is necessary for its disposition.

As previously noted, the compensation awards issued on February 13 (Master Agreement) and April 1, 1992 (Attendance Counselors). On June 19, 1992, Board of Education Chairman David Hall submitted to the Council the compensation awards and proposed resolutions for their adoption, stating that he was acting pursuant to D.C. Code Sec. 1-618.17(j).

At the time of the submission, Section 1-618.17(j)(1) provided

^{2/} The Awards on the Master Agreement issued on February 13, 1992 (compensation) and April 13, 1992 (noncompensation). The Attendance Counselors' Board of Arbitration issued its award on April 1, 1992.

in pertinent part as follows:

(j) Within the 60 days after the parties have reached agreement or a board of arbitration has issued its award, the management shall transmit the settlement to the Council for its review. If management fails to transmit the settlement to the Council within the 60-day period, it shall be deemed to be submitted on the 61st day. Within the 60-day review period in this subsection, the Council may accept or reject, by resolution, a settlement. All labor relations settlements negotiated or otherwise determined pursuant to this section shall become effective by their terms, unless the Council rejects the settlement by a two-thirds vote of its members within 60 calendar days of its submission by the Mayor. If the Council rejects a settlement with a two-thirds vote of its members, then the settlement shall be returned to the parties for renegotiation, with specific reasons for the rejection appended to the document disclosing the rejection of the settlement.

(1) Notwithstanding any other provision of this chapter:

Labor relations settlements for compensation earned or to be earned in fiscal years 1991, 1992 and 1993 and submitted after February 14, 1992, shall be submitted with a supplemental budget and shall take effect on the 30th day after the Mayor and the Council enact the budget request act, unless prior to the 30th day, the council accepts or rejects a settlement by resolution.

No supplemental budget was submitted with the awards. The Council took no action on the submission. ^{3/}

^{3/} DCPS denies that Section 1-618.17(j), in effect on June 19, 1992, required it to submit a supplemental budget request. However, there can be no genuine dispute that the requirement was added by D.C. Law 9-87, Act 9-150, enacted January 30, 1992, and effective from March 24 to November 4, 1992. See D.C. Code Ann., 1981 Ed., 1993 Supp. pp. 43-44.

On January 23, 1993, ^{4/} President Hall, Council Chairman John Wilson and Mayor Kelly signed a "Memorandum of Agreement" which provided for pay raises for various groups of school employees, but did not authorize the wage increases provided by the Teamsters' awards that are the subject of this proceeding.

In a memorandum dated May 3, 1993 to "All Councilmembers", Chairman Wilson stated that no Council action was scheduled with respect to the Teamster awards because, as stated in the Fiscal Year 1993 Committee of the Whole Report on the Budget, they "were not transmitted with supplemental budgets as required by law... [and f]or this reason no action on the... compensation settlements is appropriate." By letter to Hall, dated June 9, Acting Council Chairman John Ray informed Hall of the stated reason for Council inaction on the Teamster awards; asked whether the DCPS budget contained funding for the awards; whether funding could be achieved by reprogramming approved DCPS funds, and whether the Board of Education "had transmitted these contract awards to the Mayor for her transmission to the Council...." ^{5/} By letter dated June 16, Hall informed Chairman Ray that DCPS could not fund the compensation awards by reprogramming or otherwise; asked if "the city could fund them," and stated that the requirement for submission of a supplemental budget had not been in effect in June 1992, when DCPS had transmitted the compensation awards to the Council.

In a letter to Hall, dated July 28, Teamster counsel Axelrod requested resubmission of the awards with a supplemental budget request, as follows:

If the Board of Education claims that it lacks sufficient money to fund the contracts,...[it] must request additional funding. Upon receipt, the Council may approve the requested funding or can determine that the Board of Education budget already has adequate funds to take care of the Teamster contracts. However, the Board of Education cannot simply state that it has insufficient money to fund the contract. Regardless of the legal necessity of submitting a supplemental budget, we urge you to do so at once so that the employees may reap the benefit

^{4/} Further references are to 1993, unless otherwise stated.

^{5/} Effective March 17, 1993, the submission procedures were amended to require that compensation settlements, including awards, be transmitted to the Council through the Mayor. (D.C. Law 9-243, Sec. 2, 40 DCR 636; codified as D.C. Code Sec. 1-618.17(i)(1)).

of collective bargaining. Should you fail to do so, the Unions will pursue their rights under the law. We would appreciate an answer by August 15.

No response was received and on August 16, the Teamsters filed this Unfair Labor Practice Complaint. By letter dated September 7, the Board of Education transmitted to the Mayor the awarded compensation contracts and proposed resolutions for their adoption, and asked that she forward them to the Council as soon as possible with a supplemental budget. On November 12, the Mayor forwarded the contracts to the Council; did not include a supplemental budget request, and stated that she did not support the submission.^{6/} As of this date, no action has been taken by the Council.

On March 22, 1994, the Teamsters filed an action in the Superior Court of the District of Columbia (94-CA-02908) naming as defendants the District of Columbia Board of Education, the District of Columbia and Sharon Pratt Kelly as Mayor, and the Council of the District of Columbia, alleging that by operation of law the arbitration awards became effective when the Council did not reject them within sixty days of their submission; that the meeting that produced the Memorandum of Agreement was closed in violation of applicable Sunshine laws, D.C. Code Sec. 1-1504 and 1-205 and Rules of Organization for the Council and that the agreement, accordingly was invalid, and asking that the defendants be ordered to implement the compensation awards by adjusting the pay and benefits of all affected employees to the levels provided by the awards; make the employees whole for past failures to comply with the awards, and comply with the awards for the future.^{7/}

DISCUSSION

The Teamsters contend that the failure of DCPS to comply with the procedural steps required for Council consideration of the compensation awards is a failure to bargain in good faith in violation of D.C. Code Sec. 1-618.4(a)(5), as well as, Sections 1-618.1(c) and 1-618.17(b), and we agree.

While the duty to bargain in good faith imposes no duty to

^{6/} D.C. Code Sec. 1-618.17(i), as in effect in June 1992 and November 1993 permits the Mayor to withhold support from awarded settlements. D.C. Code Ann., 1992 Replacement Volume, p. 281; 1993 Supp. p. 43.

^{7/} The Mayor's November 12, 1993 letter, which is not in the record of this proceeding, is attached to the Board of Education's Motion to Dismiss the court action.

reach agreement, it includes the obligation to take reasonable efforts to insure the effectiveness of agreements actually reached. In the private sector, that duty includes the obligation to designate negotiators who are authorized to enter into agreements and to reduce agreed upon settlements to writing to better ensure their enforceability. See, e.g., Billups W. Petroleum Co., 169 NLRB 964 (1968) and H.J. Heinz v. NLRB, 311 US 514 (1941), respectively. In the public sector, where the effectiveness of a negotiated or awarded compensation settlement depends on its acceptance by the legislative authority, we have no doubt that management's obligation includes meticulous adherence to the statutory procedures for securing that acceptance or, as provided by the CMPA, D.C. Code Sec. 1-618.17(j), for rejection by the Council and a return to the parties for renegotiation, with specific reasons for the rejection. Although DCPS has repeatedly, and in our view, inexplicably maintained that it was not required to accompany its June 1992 submission with a supplemental budget request, it is clear that the statute, as then in effect, did so require, and that the defective submission was the root cause of the Council's failure to act.

We further agree with the Teamsters that the Board of Education's action in negotiating and signing the Memorandum of Agreement constituted a failure to bargain in good faith with the Teamsters. The Teamsters were not party to the negotiations or the MOU, whose effect was to unilaterally undermine the arbitration awards that the Board of Education was obligated to support.

We find that DCPS failed to bargain in good faith in violation of D.C. Code Sec. 1-618.1(c) and 618.17(b) by its failure and refusal, continuing to the date of the filing of the Complaint, to submit the compensation awards to the Council accompanied by a supplemental budget request as required by law, and by unilaterally entering into a Memorandum of Agreement whose intent and effect was to undercut the compensation awards. Having made that finding, however, we are unable to grant the Teamsters' requested relief: an order to DCPS to submit a supplemental budget to the Council, and reimbursement of affected employees for lost earnings. Section 1-618.17(i)(1), as amended March 17, 1993, provides that the Mayor, not the agency, shall transmit all settlements, including arbitration awards, to the Council with a budget request that will fully fund the settlement. We have no jurisdiction over the Mayor in this proceeding, nor do the pleadings present the question whether Section 1-618.17(i)(1) requires her to transmit a budget request for *all* settlements, including those from which she withholds support pursuant to Section 1-618.17(i)(3). Although we find that DCPS failed to bargain in good faith by failing to make the proper submission at the time when, by statute, the responsibility was clearly its own, and reiterate that the bargaining duty includes meticulous adherence to post-agreement or

post-award procedures, we will not order DCPS to take action beyond the request it has already made of the Mayor, that will not, as a practical matter, result in a properly supported submission to the Council, nor advance matters beyond their current regrettable state.

Nor can we justify any monetary award to affected employees because the arbitrated agreements were never approved by the Council. A compensation settlement, whether negotiated or awarded, is binding on a District agency only after it has been accepted by the Council, by affirmative action or by inaction as statutorily defined. The Teamsters' claim in the Superior Court that the awards became effective by virtue of the Council's failure to accept or reject them within 60 days of their submission is not presented in this proceeding, and we express no opinion on the matter.

We find that DCPS violated its duty to bargain in good faith by failing to strictly adhere to the statutory procedures for securing acceptance of the awarded compensation settlements and by unilaterally agreeing to a Memorandum of Agreement that undercut the awards it was obligated to support; direct it to cease and desist from such and similar failures to bargain in good faith, and otherwise deny the requested relief.

The Noncompensation Awards

The Teamsters allege that DCPS has failed to implement the non-compensation provisions of the arbitration awards and negotiated settlements, but furnishes no specifics as to the alleged failure. DCPS asserts that "it is already implementing the non-compensation terms of the contracts."

The Board has previously held that disputes over the meaning or application of terms of a collective bargaining agreement are matters for resolution through the grievance procedure rather than an Unfair Labor Practice Complaint. See, e.g., Fraternal Order of Police / Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department, 39 DCR 9617, Slip Op. No. 295 at n. 2, PERB Case No. 91-U-18 (1992). However, if an employer has entirely failed to implement the terms of a negotiated or arbitrated agreement such conduct constitutes a repudiation of the collective bargaining process and a violation of the duty to bargain. Cf., Electronic Reproduction Serv. Corp., 213 NLRB 758 (1974).

In the absence of any specifics indicating a repudiation of the agreement as opposed to disputes over its terms, we conclude that this portion of the Complaint does not state a statutory violation, and it is, accordingly, dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Public Schools (DCPS) shall cease and desist from refusing to bargain in good faith with the Teamsters Local Unions No. 639 and 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO/CLC (Teamsters) with respect to the compensation portion of the parties' Master Agreement and Attendance Counselors' Agreements.
2. The DCPS shall cease and desist from failing to comply with the requirements of the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.17, with respect to the compensation portion of the parties' Master Agreement and Attendance Counselors' Agreements.
3. DCPS shall cease and desist from implementing the terms of the January 23, 1993 Memorandum of Agreement (MOU) (unless otherwise agreed between the Teamsters and DCPS), to the extent that it applies to the terms and conditions of employment, including compensation, of the bargaining unit employees covered in this proceeding.
4. DCPS shall cease and desist from interfering, in any like or related manner, with the rights guaranteed employees by the Comprehensive Merit Personnel Act.
5. DCPS shall post copies of the attached Notice conspicuously at all of the affected work sites for thirty (30) consecutive days.
6. DCPS shall notify the Public Employee Relations Board, in writing, within fourteen (14) days of the date of this Order that it has complied with paragraphs 3 and 4 of this Order and that the Notices have been posted accordingly.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.
August 16, 1994

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 93-U-29 was hand-delivered and/or mailed (U.S. Mail) to the following parties on the 16th day of August, 1994:

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Certificate of Service
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