Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 383,	
Complainant,	PERB Case No. 10-U-48
v.	Opinion No. 1423
District of Columbia Department of Youth Rehabilitation Services,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant American Federation of Government Employees, Local 383 ("Union" or "Complainant") filed the above-captioned Unfair Labor Practice Complaint ("Complaint"), against Respondent District of Columbia Department of Youth Rehabilitation Services ("Agency" or "Respondent") for alleged violations of section 1-617.04(a)(5) of the Comprehensive Merit Protection Act ("CMPA"). Respondent filed a document styled Answer to Unfair Labor Practice Complaint ("Answer") in which it denies the alleged violation.

II. Discussion

The facts of this case are undisputed, and therefore this case is appropriate for decision on the pleadings. *See* Board Rule 520.10 ("If the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.").

On December 8 and 10, 2009, Complainant and Respondent participated in an arbitration proceeding on behalf of grievant Antonio White ("Grievant"). (Complaint at 2; Answer at 3). On April 2, 2010, the Arbitrator issued a final and binding decision in favor of the Grievant, and directed the Respondent to "return Grievant Antonio White to his former position from which he

was improperly removed, and restore all his rights and benefits including back pay, less a 60 day suspension period." (Complaint at 2; Answer at 3). On or about May 26, 2010, Complainant contacted Respondent's Human Resource Officer, who informed Complainant that the Respondent expected to return the Grievant to his position by June 21, 2010. (Complaint at 3; Answer at 3). Complainant contacted Respondent on June 29, 2010, and August 6, 2010, demanding compliance with the Arbitrator's Award, but as of the date the Complaint was filed (August 17, 2010), the Grievant had not been reinstated. (Complaint at 3; Answer at 3).

In its Complaint, the Union contends that by failing to implement the terms of the Arbitrator's Award, the Agency has violated D.C. Code § 1-617.04(a)(5) by failing to bargain in good faith. (Complaint at 4). In its Answer, the Agency admits that it had not yet complied with the Award, and states that it "always intended to comply with the Arbitrator's award, including returning the Complainant to work, restoring benefits, and paying back pay, and did not act in bad faith." (Answer at 3-4). The Agency notes that on August 25, 2010, it provided the Grievant with the necessary personnel forms for reinstatement, and expects that the Grievant will be reinstated on September 13, 2010. (Answer at 4).

Failure to implement the terms of an arbitration award where no genuine dispute exists over its terms constitutes a failure to bargain in good faith and, consequently, an unfair labor practice under the CMPA. *Int'l Brotherhood of Police Officers, Local 446 v. D.C. Health & Hospitals Public Benefit Corp.*, 47 D.C. Reg. 7184, Slip Op. No. 622 at p. 4, PERB Case No. 99-U-30 (2000); *see also Psychologists' Union Local 3758 v. D.C. Dep't of Mental Health*, 59 D.C. Reg. 9770, Slip Op. No. 1260 at p. 2, PERB Case No. 06-U-40 (2012). In the instant case, there is no genuine dispute over the terms of the Arbitrator's Award, nor does the Respondent allege that a dispute exists. (Answer at 1-4). While the Respondent asserts, at the time its Answer was filed, that it had begun the reinstatement process and expected to return the Grievant to work by September 13, 2010, over four (4) months had elapsed between the date the Arbitrator's Award was issued and the date the Respondent provided the Grievant with the forms necessary to begin the reinstatement process. (Complaint at 2; Answer at 4).

The question the Board must address is whether the Respondent's delay is reasonable. *See Watkins v. D.C. Dep't of Corrections*, 48 D.C. Reg. 8542, Slip Op. No. 655 at p. 3, PERB Case No. 99-U-28 (2001). Pursuant to Board Rule 538.1, the Respondent had twenty (20) days after service of the Arbitration Award to file a request for review with the Board. The Respondent did not file an arbitration review request, and did not even begin the process of implementing the Arbitration Award for another four (4) months after the period for review expired. The Board finds this delay unreasonable, and accordingly the Union's unfair labor practice complaint is granted.

In its Complaint, the Union requests the Board order the Agency to reimburse the Union for all costs incurred in filing and prosecuting the Complaint. (Complaint at 4). As we noted in *American Federation of Government Employees, Local 2725*, "[i]n cases which involve an agency's failure to implement an arbitration award or a negotiated settlement, this Board has been reluctant to award costs." Slip Op. No. 945 at p. 5. However, an award of costs is in the interest of justice in a case of a failure to implement a settlement agreement or arbitration award

where the respondent has shown a pattern and practice of failure to implement arbitration awards or settlement agreements in previous cases. *DiAngelo v. D.C. Office of the Chief Medical Examiner*, 59 D.C. Reg. 6399, Slip Op. No. 1006 at p. 2, PERB Case Nos. 05-U-47 at 07-U-22 (2009). In the instant case, the Union has not alleged a pattern or practice by the Agency of refusing to implement the Arbitration Award. Without such an allegation, the interest-of-justice criteria stated above would not be served by granting the Union's request for costs.

Therefore, the Respondent is directed to fully comply with the terms of the April 2, 2010, Arbitration Award within ten (10) days of the issuance of this Decision and Order, if it has not already done so. Additionally, the Respondent will post a notice of the CMPA violation.

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 383's Unfair Labor Practice Complaint is granted.

2. The District of Columbia Department of Youth Rehabilitation Services, its agents, and representatives shall cease and desist from violating D.C. Code § 1-617.04(a)(5) by failing to implement the April 2, 2010, Arbitration Award.

3. Within ten (10) days from the issuance of this Decision and Order, the District of Columbia Department of Youth Rehabilitation Services shall fully comply with the terms of the April 2, 2010, Arbitration Award, if it has not already done so.

4. The District of Columbia Department of Youth Rehabilitation Services 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.

5. Within fourteen (14) days from the issuance of this Decision and Order, the District of Columbia Department of Youth Rehabilitation Services shall notify the Board, in writing, that the Notice has been posted accordingly.

6. 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.

September 30, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-U-48 was transmitted via U.S. Mail and e-mail (where indicated) to the following parties on this the 30th day of September, 2013.

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