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

In the Matter of:)	
)	
Washington Teachers Union,)	
Local 6, American Federation of Teachers,)	
AFL-CIO,)	
Complainant,)	PERB Case No. 05-U-07
v.)	Opinion No. 1414
)	
District of Columbia Public Schools,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

Complainant Washington Teachers Union, Local 6 (“Union” or “Complainant”) filed the above-captioned Unfair Labor Practice Complaint (“Complaint”), against Respondent District of Columbia Public Schools (“Agency” or “Respondent”) for alleged violations of sections 1-617.04(a)(1) and (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 violations and raises the following affirmative defenses:

- (1) The Complaint fails to state an unfair labor practice for which relief may be granted;
- (2) The Board lacks jurisdiction to grant the requested relief because the Respondent has complied with the arbitration award the Union seeks to enforce; and
- (3) An award of attorneys’ fees is contrary to Board precedent.

(Answer at 4). On December 15, 2004, Complainant filed a Motion for Decision on the Pleadings (“Motion”), in which it alleged that the Respondent failed to file a timely answer, and requested the Board render a decision on the pleading.

The Complaint, Answer, and Motion are before the Board for disposition.

II. Discussion

A. Facts

The material facts of this case are undisputed. On April 11, 2002, the Agency notified Helen Morse, an elementary school teacher at Winston Education Center, that she was to be terminated for grave misconduct. (Complaint at 1; Answer at 2). The Union filed a grievance on behalf of Ms. Morse, and the matter was appealed to arbitration. (Complaint at 1; Answer at 2). Arbitration hearings were held on March 3 and 19, 2004. (Complaint at 2; Answer at 2). In an award dated June 10, 2004, the arbitrator sustained the grievance and ordered the Agency to reinstate the grievant with no break in service or loss of pay and benefits, and to remove all references to the disciplinary action from the grievant's file. (Complaint at 2; Answer at 2).

The parties agree that on September 13, 2004, the Union wrote to the Agency to demand compliance with the arbitration award, and that on October 25, 2004, the Union sent an e-mail to the Agency to demand compliance with the arbitration award. (Complaint at 2; Answer at 2-3). Further, the parties agree that the grievant has not been reinstated, and that the Agency did not seek review of the arbitration award, in accordance with D.C. Code § 1-605.02(6). (Complaint at 2; Answer at 3).

B. Motion for Decision on the Pleadings

In its Motion, the Union contends that the Agency failed to file a timely response to the Complaint, and that in accordance with Board Rule 520.7, the Agency should be deemed to have admitted the material facts alleged in the Complaint and waived a hearing. (Motion at 1). Further, the Union alleges that if there are no disputed issues of material fact, the Board may render a decision on the pleadings, in accordance with Board Rule 520.10. (Motion at 2).

Board Rule 520.6 states that a respondent "shall file, within fifteen (15) days from service of the complaint, an answer containing a statement of its position with respect to the allegations set forth in the complaint." Respondents who fail to file a timely answer are "deemed to have admitted the material facts alleged in the complaint and to have waived a hearing." Board Rule 520.7. The Complaint was filed on November 22, 2004. Including the five additional days due to service by U.S. Mail (provided for by Board Rule 501.4), the Answer was due on December 13, 2004. The Answer was filed with the Board on December 13, 2004, and thus was not untimely.

Notwithstanding, as there are no disputed issues of material fact, a decision on the pleadings is appropriate in this case. 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 on the pleadings or may requests briefs and/or oral argument."); see also *Goodine v. Fraternal Order of Police/Dep't of Corrections Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476, PERB Case No. 96-U-16 (1996).

C. Unfair Labor Practice Complaint

In its Complaint, and more fully in its Motion, the Union contends that the Agency committed an unfair labor practice by failing to comply with the arbitration award. (Motion at 3). The Union asserts that the Agency has not filed a timely request for review of the arbitrator's award, nor is there a genuine dispute over the language or terms of the award. (Motion at 3-4). Absent these factors, the Union alleges that the Agency's failure to comply with the arbitration award is an unfair labor practice. (Motion at 4).

The Agency does not dispute the Union's allegation that the grievant was not reinstated to her position, as ordered by the arbitrator. (Answer at 3). Instead, the Agency raises the affirmative defense that the Complaint fails to state an unfair labor practice for which relief can be granted. (Answer at 4). Specifically, the Agency states that during the process of reinstating the grievant, the Agency's Office of Human Resources discovered that the grievant did not possess a teaching license. *Id.* Via letter dated September 27, 2004, the Agency notified the grievant that according to its records she did not possess a valid teaching license, and had never possessed a valid teaching license. *Id.*; Answer Attachment 1. The letter instructed the grievant to notify the Agency if its information was incorrect and provide the appropriate documentation. *Id.* As of the date of the Answer, the Agency states that the grievant had not provided the Agency with proof of a valid teaching license, and the Agency asserts that it cannot reinstate the grievant until she provides such information. *Id.* In support of this assertion, the Agency cites District of Columbia Municipal Regulations, Title 5, Chapter 10, General Personnel Policies, 1001 Certification, section 1001.2, which requires employees to "satisfy the requirements of the applicable license as approved by the Board of Education as well as all applicable testing requirements," and Chapter 13, Conditions of Employment, section 1319.4, which provides that "failure to maintain a valid professional certificate shall result in ineligibility for employment in the field of the certificate and may result in termination." (Answer at 4). Further, the Agency states that the grievant was expected to receive her back pay on January 1, 2005. (Answer at 5). It contends that it has complied with the arbitration award, and there is no unresolved issue or basis for the Complaint. *Id.*

The Union has not disputed the Agency's assertion that the grievant lacks a valid teaching license, or that District of Columbia Municipal Regulations requiring the grievant to possess a valid teaching license are applicable in this case.

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 v. D.C. Water and Sewer Authority*, 46 D.C. Reg. 4398, Slip Op. No. 497 at p. 3, PERB Case No. 96-U-23 (1996), the Board held 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." (emphasis added). However, in *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Committee v. D.C. Dep't of Youth Rehabilitation Services*, 59 D.C. Reg. 6755, Slip Op. No. 1127, PERB Case No. 11-U-31 (2011), the Board found that an agency did not act in bad faith in refusing to reinstate an employee as a

part of a negotiated agreement when it learned during the reinstatement process that reinstating the employee would be in violation of District law. *Id.* The Board concluded that such a scenario constitutes a genuine dispute over the terms of an agreement, and an agency does not violate the CMPA by failing to implement the terms of the agreement. *Id.*

The facts of the instant case are similar to those of *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Committee*. Although that case involved a negotiated agreement and the instant case involves an arbitration award, the Board uses the same analysis under *AFGE Local 872*. *AFGE Local 872* at p. 3. In each case, an agency was obligated to reinstate an employee, and in each case the agency learned during the reinstatement process that District law prohibited the employee from being returned to his or her former position. Consistent with the precedent set by *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Committee*, the Board concludes that the Agency did not bargain in bad faith when it refused to reinstate the grievant to her former position as an elementary school teacher because it learned during the reinstatement process that the grievant did not possess a valid teaching license. Therefore, the Union's unfair labor practice complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Washington Teachers Union, Local 6'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.

September 10, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 05-U-07 was transmitted via U.S. Mail and e-mail to the following parties on this the 10th day of September, 2013.

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