

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:)	
)	
Council of School Officers, Local 4,)	
American Federation of School)	
Administrators, AFL-CIO,)	
)	PERB Case No. 13-U-02
Complainant,)	
)	Opinion No. 1421
v.)	
)	
District of Columbia Public Schools)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

On October 9, 2012, Complainant Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO (“CSO” or “Union”) filed an unfair labor practice complaint (“Complaint”) against Respondent District of Columbia Public Schools (“DCPS”). CSO alleged that DCPS violated D.C. Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act (“CMPA”) by failing to provide written responses regarding CSO’s compensation proposal and the matters of Janice Talley and Sharon Wells. (Complaint at ¶¶ 16-17). CSO requests that the Board order DCPS to immediately provide the requested information, post a notice informing the bargaining unit of its violation of the CMPA, award costs and fees pursuant to D.C. Code § 1-617.13(d), and take any other necessary and appropriate action the Board deems necessary. *Id.* at ¶ 19. DCPS denied the allegations in its answer (“Answer”) and stated that it had, in fact, supplied CSO with the requested information. (Answer at 4). Therefore, DCPS requests that the Board dismiss the Complaint with prejudice. *Id.* at 5.

II. Factual Background

At the time of the Complaint, CSO and DCPS were conducting collective bargaining negotiations on a successor labor contract. (Complaint at ¶ 6, Answer at 2). Around August or

September 2010, CSO notified the Board that the two parties were at an impasse in their negotiations. (Complaint at ¶ 7, Answer at 2). CSO states that the parties attempted to break the impasse with a mediation session, but were unsuccessful. (Complaint at ¶¶ 8-9). DCPS denies this, stating they have no recollection of participating in a mediation session, but admits that their lead negotiator has since left DCPS so they cannot confirm or deny with certainty. (Answer at 2-3). Notwithstanding, both parties agree that the Board has since assigned an impartial arbitrator on August 28, 2012, to conduct an impasse arbitration hearing. (Complaint at ¶¶ 10-11, Answer at 3).

During this process, the parties continued to meet in order to break the impasse on their own, and CSO claims it sent a compensation proposal covering the bargaining unit to DCPS on or about July 24, 2012. (Complaint at ¶¶ 12-13). CSO claims that DCPS indicated that it would provide a written response to the proposal and a written explanation of its own bargaining position, but that it has since failed to provide either. *Id.* at ¶ 13. DCPS claims that on October 12, 2012, Arbitrator Lois Hochhauser held a status conference where the parties agreed that the only issue left to be resolved in the successor contract negotiations was compensation; the "Arbitrator's Summary of Proceeding and Order," included as an exhibit, confirms this. (Answer at 3; Respondent's Ex. 1). At the conference, DCPS's counsel requested an additional two weeks to submit its response to CSO's proposal and its last best offer, and CSO's counsel agreed. *Id.* The Arbitrator then ordered DCPS to provide its response and last best offer by October 26, 2012. *Id.* On October 17, 2012, DCPS provided its written response to CSO's proposal, and stated its intent to proceed with its original proposal rather than accept CSO's proposal. (Respondent's Ex. 2).

CSO also claims that it has sought a written response regarding the pending matters of Talley and Wells since its August 2012 monthly meeting with DCPS. (Complaint at ¶ 14). While the Complaint does not state what the matters were about, response letters from DCPS dated October 17, 2012, indicate that both Talley and CSO expressed concerns regarding her compensation, and that Wells had filed a grievance on August 15, 2012, regarding her termination. (Respondent's Ex. 2). CSO claims that information on both matters is relevant and necessary to processing grievances for Talley and Wells. (Complaint at ¶ 18). CSO further claims it raised these matters on a number of occasions during the monthly meetings, but that DCPS failed to respond despite indicating that it would do so. *Id.* at ¶ 14. On October 17, 2012, DCPS provided written responses on both matters, agreeing to pay a lump sum of \$7,500 to Talley as a settlement, and refusing to process the Wells grievance. (Respondent's Ex. 2).

CSO alleges that DCPS violated § 1-617.04(a)(1) and (5) by failing to provide a written response to its compensation proposal and/or its last best offer and by consequently preventing CSO from being fully prepared for its impasse arbitration hearing. (Complaint at ¶ 16). CSO similarly alleges DCPS has violated § 1-617.04(a)(1) and (5) by failing to provide written responses regarding the Talley and Wells matters. *Id.* at ¶ 17. In its affirmative defenses, DCPS contended that CSO has failed to state a cause of action for which relief may be granted by the Board, and claimed that it had supplied CSO with all requested information. (Answer at 5).

III. Discussion

A. Decision on the Pleadings

The material facts of this case are undisputed. DCPS acknowledges that CSO made multiple requests for information. (Complaint at ¶¶ 13-15, Answer at 4). It is undisputed that CSO provided DCPS with a compensation proposal in July 24, 2012. (Complaint at ¶ 13, Answer at 4). The evidence shows that the requests concerning the Talley and Wells matters are undisputed as well. (Complaint at ¶ 14, Answer at 4). The Complaint alleged that CSO requested this information numerous times since the parties' monthly meeting in August, and DCPS had failed to respond despite indicating it would. (Complaint at ¶ 14). While DCPS denied the allegations in ¶ 14 of the Complaint, it only raised the defense that it did respond to both matters on October 17. (Answer at 4). The responses themselves clearly show their nature as responses to requests: the email to Talley explicitly states that it "will serve to confirm that [DCPS] has agreed to resolve the concerns you and [CSO] have expressed regarding your compensation", and the email to CSO about Wells explicitly states it "responds to your August 15th grievance regarding the termination of Ms. Wells' employment". (Respondent's Ex. 2). The fact that DCPS had not responded to CSO's information requests by October 9, the date CSO filed its Complaint, is undisputed by the parties, as the information was, in fact, provided on October 17. (Answer at 4, Respondent's Ex. 2).¹ Therefore, there are no disputes on material issues of fact or supporting evidence to warrant a hearing. This matter turns not on issues of fact but on a question of law, and can be appropriately decided on the pleadings pursuant to Board Rule 520.10.²

B. Compensation Proposal Response

The Board has previously ruled that "an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in: (1) processing of a grievance; (2) an arbitration proceeding; or (3) collective bargaining." *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 59 D.C. Reg. 6781, Slip Op. No. 1131, PERB No. 09-U-59 at p.4 (2011); *see also FOP/MPD Labor Committee v. MPD*, 59 D.C. Reg. 3386, Slip Op. No. 835, PERB Case No. 06-U-10 (2006); *AFGE, Local 2741 v. District of Columbia Department of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002); *Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. DCPS*, 54 D.C. Reg. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2002). The response to CSO's compensation proposal clearly qualifies under this precedent, as it was relevant and necessary to the parties' collective bargaining and their upcoming arbitration proceeding. (Answer at 3, Respondent's

¹ *See also AFGE, AFL-CIO Local 2978 v. DC DOH*, 60 D.C. Reg. 2551, Slip. Op. No. 1356, PERB Case No. 09-U-23 (2013) (the fact that DOH had not responded to AFGE's request other than to request more time to comply by the date of the Complaint is among the undisputed facts justifying deciding the case based on the pleadings).

² Board Rule 520.10 provides as follows:

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.

Ex. 1). Both parties agreed at the Arbitrator's status conference that compensation was the only issue that required resolution in their impasse regarding their successor contract. *Id.*

The Board has also previously ruled that "it is not enough that an agency respond, but it must do so in a timely manner". *DC DOH*, Slip Op. No. 1003 at p. 4; *see also CSO*, Slip Op. No. 977 at p. 8. The Board has ruled that periods of time as short as one and one-half months are a "more than reasonable" period of time to respond to information requests. *AFGE, Local 631 v. District of Columbia Water and Sewer Authority*, Slip Op. No. 924, PERB Case No. 08-U-04 at p. 5 (2007).³ Here, CSO waited over two and a half months from July 24 to October 9 before filing its Complaint, and as previously stated, DCPS's primary defense is that it provided the information on October 17, eight days after the complaint was filed. (Complaint at ¶ 13, Answer at 5). However, the Board has previously ruled, in a case involving these very same parties, "that an agency does not satisfy its statutory obligations by eventual but belated responses, particularly responses that are provided only after an unfair labor practice complaint has been filed." *CSO v. DCPS*, 59 D.C. Reg. 5378, Slip Op. No. 977, PERB No. 08-U-53 at pp. 7-8 (2009) (emphasis added); *see also American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, 59 D.C. Reg. 6003, Slip Op. No. 1003, PERB Case No. 09-U-65 at p. 4 (2009); *Doctors' Council of D.C. General Hospital v. D.C. Health and Hospitals Public Benefit Corp.*, 47 D.C. Reg. 10108, Slip Op. No. 641, PERB Case No. 00-U-29 (2000). Under this precedent, DCPS' belated response to CSO's information requests cannot justify its delay.

DCPS had more than a reasonable period of time to respond to CSO's compensation proposal, and its failure to do so constitutes a violation of the duty to bargain in good faith under D.C. Code § 1-617.04(a)(5). *See CSO*, Slip Op. No. 977 at p. 8 (citing *Psychologists Union, Local 3758 of the D.C. Department of Health, 1199 National Union of Hospital and Health Care Employees, American Federation of State County and Municipal Employees, AFL-CIO v. District of Columbia Department of Mental Health*, 54 D.C. Reg. 2644, Slip Op. No. 809 at p. 7, PERB Case No. 05-U-41 (2005)). This violation also derivatively constitutes a violation of "the counterpart duty not to interfere with the employees' statutory rights to organize a labor union free from interference, restraint or coercion; to form, join or assist any labor organization or to refrain from such activity; and to bargain collectively through representatives of their own choosing" as protected by D.C. Code § 1-617.04(a)(1). *CSO*, Slip Op. No. 977 at p. 8 (quoting *AFSCME, Local 2776 v. D.C. Department of Finance and Revenue*, 37 D.C. Reg. 5658, Slip Op. No. 245, PERB Case No. 89-U-02 at p. 2 (1990)).

However, it is undisputed that the parties brought the matter of compensation before an impartial arbitrator in the October 12, 2012, status conference. (Answer at 3, Respondent's Ex. 1). The parties agreed that in regards to their impasse on the successor contract, this was the only issue that needed resolution. *Id.* This led to the Arbitrator's order that DCPS submit its written response to CSO's last best offer as well as their own by October 26, 2012. *Id.* The Arbitrator also ordered that the hearing on this matter take place on November 28, 2012. *Id.*

³ *See also Woodland Clinic v. Engineers and Scientists of California, MEBA, AFL-CIO*, 331 NLRB 735 (2000) (rejecting contention that a seven week delay in providing requested information is insufficient to support an unfair labor practice finding).

According to a letter filed by DCPS's counsel in response to a request by the Board, the arbitration hearing has not taken place as of September 3, 2013. Letter from Dennis J. Jackson to Erin Wilcox (September 3, 2013). The Board will take no action on a case where arbitration is pending; the proper course of action is to hold complaints in abeyance pending voluntary arbitration of identical facts. *See AFSCME, Local 2093 v. District of Columbia Board of Education*, Slip Op. No. 10, PERB Case No. 80-U-05 (April 17, 1981).⁴ Therefore, the Board rules that the allegation regarding CSO's compensation proposal be held in abeyance pending the outcome of the impasse arbitration hearing.

C. Talley and Wells Responses

Both the Talley and Wells matters are concerns that are relevant and necessary to CSO's role in processing grievances, which DCPS is obligated to provide information about. *See FOP*, Slip Op. No. 1131 at p. 4; *MPD*, Slip Op. No. 835; *DC DPR*, Slip Op. No. 697; *Teamsters*, Slip Op. No. 804. The Complaint refers to both matters as grievances, and DCPS does not dispute this classification in its Answer. (Complaint at ¶ 18, Answer at 5). Furthermore, DCPS' October 17 response about the Wells matter explicitly refers to it as a grievance, and the response about the Talley matter agrees to pay her a lump sum of \$7,500 in exchange for closing the matter to "any further appeals, claims or actions, administrative or legal of any kind." (Respondent's Ex. 2).

CSO alleges it has sought a written response on the Talley and Wells matters since its August 2012 monthly meeting with DCPS. (Complaint at ¶ 14). As stated previously, this fact is undisputed by DCPS, and the evidence provided shows that CSO made a request for a response on both matters, with the response on the Wells matter specifically referring to "your August 15th grievance". (Respondent's Ex. 2). CSO waited almost two months for responses on these matters before filing its Complaint; per Board precedent, this is a more than reasonable time to respond to an information request. *See DC WASA*, Slip Op. No. 924 at p. 5.

The matter of arbitration prevented the Board from ruling on the matter of CSO's compensation proposal, due to precedent of deference to the arbitration process. *See DC BOE*, Slip Op. No. 10. However, the arbitration process does not affect the allegations regarding the Talley and Wells matters. Both parties agreed that the only matter to be resolved by arbitration is that of compensation. (Answer at 3, Respondent's Ex. 1). Therefore, the allegations concerning the Talley and Wells matters can be decided by the Board.

Under the facts and evidence of this case, DCPS has failed to meet its statutory duty of good faith bargaining, thereby violating D.C. Code § 1-617.04(a)(5). *See CSO*, Slip Op. No. 977 at p. 8 (citing *Psychologists*, Slip Op. No. 809 at p. 7). As stated previously, DCPS's failure to

⁴ *See also AFGE, AFL-CIO, et al. v. District of Columbia, et al.*, 45 D.C. Reg. 8071, Slip Op. No. 502, PERB Case No. 97-U-01 at p. 2 (1996) (granting a Motion to Hold Hearing in Abeyance pending the Completion of Mediation/Arbitration); *District of Columbia v. AFGE, District 14, et al.*, 33 D.C. Reg. 3918, Slip Op. No. 142, PERB Case No. 86-U-03 (1986) (dismissing a Complaint on the ground that the issues raised were previously decided by an Arbitrator in a case involving dual jurisdiction or an arbitrator in a contract dispute and the Board in a statutory dispute arising from the same factual circumstances).

bargain in good faith derivatively violates D.C. Code § 1-617.04(a)(1) as well. *Id.* (quoting *DC DFR*, Slip Op. No. 245 at p. 2).

Since we have determined that DCPS has violated the CMPA by not providing the requested information regarding the Talley and Wells matters to CSO in a timely manner, we now turn to the issue of the appropriate remedy. CSO asks that the Board order DCPS to: (1) provide CSO with the information it seeks concerning the Talley and Wells matters; (2) post an appropriate notice that DCPS violated D.C. law and will cease and desist from future violations; (3) award costs and fees pursuant to D.C. Code § 1-617.13(d)⁵; and (4) take any other action the Board deems necessary to remedy the unfair labor practice. (Complaint at ¶ 19).

The fact that DCPS provided the requested information regarding the Talley and Wells matters on October 17 is undisputed. (Answer at 4, Respondent's Ex. 2). Therefore, CSO's request that the Board order DCPS to provide the requested information regarding the Talley and Wells matters is moot.

DCPS shall post a notice acknowledging that it has violated the CMPA. Board precedent states that "when a violation is found, the Board's order is intended to have therapeutic as well as remedial effect. Moreover, the overriding purpose and policy of relief afforded under the CMPA for unfair labor practices, is the protection of rights and obligations." *CSO*, Slip Op. No. 977 at p. 9 (quoting *National Association of Government Employees, Local R3-06 v. DC WASA*, 47 D.C. Reg. 7551, Slip Op. No. 635, PERB Case No. 99-U-04 at pp. 15-16 (2000)). Moreover, "it is the furtherance of this end, i.e., the protection of employees rights, ... [that] underlies [the Board's] remedy requiring the posting of a notice to all employees concerning the violation found and the relief afforded..." *Id.* (quoting *Bagenstose v. DCPS*, 41 D.C. Reg. 1493, Slip Op. No. 283, PERB Case No. 88-U-33 at p. 3 (1991)). Furthermore, "a notice posting requirement serves as a strong warning against future violations." *Id.* (quoting *Cunningham v. FOP/MPD Labor Committee*, 49 D.C. Reg. 7773, Slip Op. No. 682, PERB Case Nos. 01-U-04 and 01-S-01 at p. 10 (2004)).

CSO has also requested that reasonable costs be awarded pursuant to § 1-617.13(d). (Complaint at ¶ 19). The Board has ruled that it may, under certain circumstances, award reasonable costs, stating:

First, any such award of costs necessarily assumes that the party to whom the payment is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part. Second, it is clear on the face of the statute that it is only those costs that are "reasonable" that may be ordered reimbursed... Last, and this is the [crux] of the matter, we

⁵ D.C. Code § 1-617.13(d) provides as follows:

The Board shall have the authority to require the payment of reasonable costs incurred by a party to a dispute from the other party or parties as the Board may determine.

believe such an award must be shown to be in the interest of justice.

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 catalogued... What we say here is that among the situation 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 reasonable[y] foreseeable result of the successfully challenged action is the undermining of the union among the employees for whom it is the exclusive bargaining representative.

DC DFR, Slip Op. No. 245 at pp. 4-5.⁶

In the present case, the Board has found that DCPS failed to respond for two months to CSO's information requests regarding the Talley and Wells matters. Though DCPS eventually responded on October 17, it could not fulfill its statutory obligations with a belated response, particularly because an unfair labor practice complaint on those matters had already been filed eight days prior. See *CSO*, Slip Op. No. 977 at pp. 7-8; *DC DOH*, Slip Op. No. 1003 at p. 4; *Doctors' Council*, Slip Op. No. 641. Therefore, DCPS has not articulated a viable defense or countervailing concern which outweighs its duty to disclose the requested information. (Answer at 5). The Board finds that under the circumstances of this case: (1) DCPS' position was wholly without merit; and (2) a reasonably foreseeable result of DCPS' conduct was the undermining of CSO among the employees for whom it is the exclusive representative.

In view of the above, we believe that the interest-of-justice criteria articulated in Slip Op. No. 245 would be served by granting CSO's request for reasonable costs in the present case. Therefore, the Board grants CSO's request for reasonable costs. However, calculation of the reasonable costs shall be deferred until the resolution of the remaining allegation in this proceeding.

For the reasons discussed above, the Board concludes that DCPS has violated the CMPA by failing to provide information to the CSO. The remaining allegation concerning DCPS' failure to timely respond to CSO's compensation proposal shall be held in abeyance pending the outcome of the parties' impasse arbitration hearing.

⁶ The Board has previously ruled that § 1-617.13 does not authorize it to award attorney fees. See *CSO*, Slip Op. No. 977 at p. 9; *International Brotherhood of Police Officers, Local 1445, AFL-CIO/CLC v. District of Columbia General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); *University of the District of Columbia Faculty Association NEA v. University of the District of Columbia*, 38 D.C. Reg. 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991).

ORDER

IT IS ORDERED THAT:

1. DCPS, its agents and representatives shall cease and desist from interfering with, 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.
2. 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.
3. Within fourteen (14) days from the issuance of this Decision and Order, DCPS shall notify the Public Employee Relations Board ("Board"), in writing, that the Notice has been posted accordingly.
4. For the reasons stated in this Slip Opinion, the CSO's request for reasonable costs is granted with respect to the costs associated in this proceeding for prosecuting DCPS' violation for failure to timely respond to CSO's requests for information regarding the Talley and Wells matters. However, calculation of the reasonable costs shall be deferred until the Board issues a decision on the remaining allegation concerning DCPS' alleged failure to timely respond to CSO's July 24, 2012 compensation proposal.
5. The remaining allegation concerning DCPS' alleged failure to timely respond to CSO's July 24, 2012 compensation proposal shall be held in abeyance pending the outcome of the parties' impasse arbitration hearing.
6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

September 24, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-02 was transmitted via File & ServeXpress to the following parties on this the 24th day of September, 2013.

Mr. Mark Murphy, Esq.
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS ("DCPS"), 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. 1421, PERB CASE NO. 13-U-02 (September 24, 2013).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered DCPS 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. 1421.

WE WILL cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA").

WE WILL cease and desist from refusing to bargain collectively in good faith with the Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO ("CSO").

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 CMPA.

WE WILL NOT, in any like or related manner, refuse to bargain collectively in good faith with CSO.

District of Columbia Public Schools

Date: _____ By: _____

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 any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

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

September 24, 2013