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

In the Matter of:)	
American Federation of Government Employees, Local 3721,)	PERB Case No. 12-U-33
Complainant,)	Opinion No. 1427
v.)	
District of Columbia Department of Fire and Emergency Medical Services,)	Decision and Order
and)	
District of Columbia Office of Labor Relations And Collective Bargaining,)	
Respondents.)	

DECISION AND ORDER

I. Statement of the Case

Complainant American Federation of Government Employees, Local 3721 (“Complainant” or “AFGE” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Department of Fire and Emergency Medical Services (“FEMS” or “Agency”), and the District of Columbia Office of Labor Relations and Collective Bargaining (“OLRCB”) (collectively, “Respondents”) alleging FEMS violated D.C. Code §§ 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act (“CMPA”) by refusing and failing to comply with the Public Employee Relations Board’s (“PERB”) Order in *District of Columbia Department of Fire and Emergency Medical Services v. American Federation of Government Employees, Local 3721*, 59 D.C. Reg. 9757, Slip Op. No. 1258, PERB Case No. 10-A-09 (2012) (“Order”), and by failing and refusing to provide documents in

response to an information request. (Complaint, at 1-8). In addition, AFGE stated that it believed OLRCB's attorneys advised FEMS to not comply with the Order and thus further violated the CMPA. *Id.*, at 5-6.

In their Answer, Respondents denied that they refused to comply with the Order and information requests. (Answer, at 1-7). Furthermore, Respondents denied the allegation that OLRCB's attorneys advised FEMS not to comply with the Order. *Id.*, at 5.

The parties thereafter filed various motions and requests, which PERB resolved in *American Federation of Government Employees, Local 3721 v. District of Columbia Department of Fire and Emergency Medical Services and District of Columbia Office of Labor Relations*, 60 D.C. Reg. 12110, Slip Op. No. 1408, PERB Case No. 12-U-33 (2013). PERB's Decision and Order granted AFGE's motions to amend the Complaint to: 1) add the additional allegations that Respondents had refused and failed to comply with the Arbitrator's Award as to the payment of attorneys' fees and that Respondents had failed to provide documents and information in accordance with another information request AFGE sent on September 27, 2012; and 2) add the additional requested remedy of interest on the amount owed under the Award and Order from the time that liquidated damages ceased to accumulate. Slip Op. No. 1408, *supra*. As a result of PERB's granting of AFGE's motions to amend its Complaint, PERB provided Respondents additional time to answer AFGE's Amended Complaint. *Id.*

In their Answer to the Amended Complaint, Respondents asserted that FEMS paid the attorneys' fees owed under the Award and Order on February 12, 2013; asserted that all of the documents AFGE asked for in its various information requests had been provided; denied AFGE's request for the additional remedy of interest on the amount owed from the time that liquidated damages ceased to accumulate; and asserted that funds for the payment of the back-pay owed had been secured and that it was planning to coordinate with AFGE to determine the method by which it will begin making the payments. (Amended Answer, at 1-6).

II. Background

On November 24, 2009, AFGE prevailed over FEMS in an arbitration proceeding regarding uncompensated overtime hours for approximately 232 paramedics and EMT's dating back to October 31, 2006 ("Award"). (Complaint, at 1-3, 7). Specifically, the Arbitrator ordered:

The Agency shall compensate the FEMS paramedics and EMT's appropriate overtime pay for the previously uncompensated hours worked over 40 hours in a workweek from October 31, 2006,

forward. An amount equal to the overtime [backpay] ordered herein is ordered to be paid those employees as liquidated damages. The Agency is directed to pay the Union reasonable attorney's fees and costs associated with this grievance.

Id., at 3.

FEMS thereafter filed an Arbitration Review Request asking PERB to review the Award. *Id.*, at 4. On April 25, 2012, PERB issued its Order sustaining the award. *Id.*; and Slip Op. No. 1258, *supra*. FEMS did not appeal the Order. *Id.* In the months that followed, AFGE sent multiple emails to FEMS demanding compliance with the Order. *Id.*, at 4-5. Additionally, AFGE submitted an information request to OLR CB seeking documents to help it determine for itself the exact amounts owed pursuant to the Award. *Id.*

On August 13, 2012, AFGE filed the instant Complaint, alleging that Respondents had failed to comply with both the Order and the information request. *Id.*, at 5. AFGE further alleged that, upon information and belief, OLR CB's Director, Natasha Campbell ("Director Campbell"), and OLR CB Attorney-Advisor Dennis Jackson ("Mr. Jackson"), "advised DC FEMS that it should not pay the amounts owed to the employees until the PERB issued an enforcement order¹ of [Slip Op. No. 1258, *supra*]." *Id.*, at 5-6.

On July 29, 2013, PERB granted AFGE's motions to amend the Complaint, and on August 21, 2013, Respondents filed their Answer to the newly Amended Complaint, as outlined above.

III. Discussion

While a complainant does not need to prove its case on the pleadings, it must plead or assert allegations that, if proven, would establish a statutory violation of the CMPA. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department, et al.*, 59 D.C. Reg. 5427, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09 (2009). If the record demonstrates that the allegations do concern violations of the CMPA, then the Board has jurisdiction over those allegations and can grant relief accordingly if they are proven. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 9212, Slip Op. No. 1391 at p. 22, PERB Case Nos. 09-U-52 and 09-U-53 (2013).

¹ In addition to the instant Unfair Labor Practice Complaint, AFGE also filed an Enforcement Petition ("PERB Case No. 12-E-06") with PERB on August 10, 2012, alleging that FEMS had failed to comply with the Order by the deadline set by PERB's Rules.

In addition, PERB Rule 520.8 states: “[t]he Board or its designated representative shall investigate each complaint.” Rule 520.10 states that “[i]f 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.” However, Rule 520.9 states that in the event “the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board shall issue a Notice of Hearing and serve it upon the parties.” (Emphasis added).

Here, Respondents asserted in their original Answer that they did not deny that FEMS was required to comply with the Award and Order and AFGE’s information requests. (Answer, at 5-6). Rather, Respondents contended that they had not violated the CMPA because, due to the voluminous and complicated nature of the information, AFGE did not give FEMS a reasonable amount of time to fully comply with the Award and Order and the information requests before filing its Complaint. *Id.* Respondents now assert that as of August 21, 2013, the only portion of the Award and Order that remained unfulfilled was the payment of the back-pay, which they contend FEMS will begin paying soon. (Amended Answer, at 5).

Even if Respondents’ assertions are true, and even if FEMS does fulfill its uncontested obligation to pay all of the back-pay owed in the coming months, it is still possible that Respondents violated D.C. Code §§ 1-617.04(a)(1) and (5) of the CMPA if AFGE can prove that Respondents’ delay in fully complying with the Award and Order was unreasonable or intentional, and/or that Respondents delay in producing and delivering the documents AFGE asked for in their information requests was unreasonable or intentional, and/or if AFGE can prove that OLRCB’s attorneys did advise FEMS to not comply with the Order. Respondents’ denial of these allegations creates an issue of fact in accordance with PERB Rule 520.9. (Amended Answer, at 1-6).

While PERB precedent and D.C. law provide for an award of interest to be included with an arbitrator’s award of back-pay, it is unclear whether such can be “implied” in an arbitrator’s award without it being expressly granted by the award, and/or whether PERB can grant such an award of interest pursuant to its power to provide remedies in unfair labor practice disputes, as AFGE contends. See (Second Motion to Amend, at 1-3); and *FOP v. MPD*, *supra*, Slip Op. No. 1391 at p. 22, PERB Case Nos. 09-U-52 and 09-U-53; see also *University of the District of Columbia and University of the District of Columbia Faculty Association/NEA (On Behalf of Barbara Green)*, 41 D.C. Reg. 2738, Slip Op. No. 317, PERB Case No. 92-A-02 (1992) (in which a Grievant returned to the arbitrator to obtain an express supplemental award of interest on back-pay she had been previously awarded). Respondents deny that AFGE is entitled to the relief requested and further assert that because they have “engaged [AFGE] in good faith,

provided all information requested, and have substantially complied with the award ... an interest award in the present case in unwarranted. (Amended Answer, at 5).

The Board finds that all of the foregoing constitutes an issue of fact that cannot be resolved on the pleadings alone. Therefore, pursuant to PERB Rule 520.9, the Board refers this matter to an unfair labor practice hearing to develop a factual record and make appropriate recommendations. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 5957, Slip Op. No. 999 at p. 9-10, PERB Case 09-U-52 (2009).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Executive Director shall refer the Unfair Labor Practice Complaint to a Hearing Examiner to develop a factual record and present recommendations in accordance with said record.
2. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

September 26, 2013

CERTIFICATE OF SERVICE

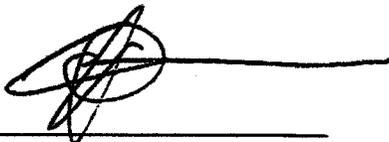
This is to certify that the attached Decision and Order in PERB Case No. 12-U-33, Slip Op. No. 1427, was transmitted via File & ServeXpress™ and e-mail to the following parties on this the 10th day of October, 2013.

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