

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:)	
)	
American Federation of State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO,)	PERB Case No. 03-U-17
)	Opinion No. 712
Complainant,)	Motion for Preliminary Relief
)	
v.)	
)	
District of Columbia Public Schools,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case:

On March 10, 2003, the American Federation of State, County and Municipal Employees, District Council 20, Local 2921 ("Complainant", "AFSCME" or "Union"), filed an Unfair Labor Practice Complaint and a Motion for Preliminary and Injunctive Relief, in the above-referenced case. The Complainant alleges that the District of Columbia Public Schools ("DCPS" or "Respondent") violated D.C. Code § 1-617.04 (a)(1) and (5) (2001 ed.) by failing to implement an arbitration award which rescinded the termination of Ms. Davette Butler. (Compl. at p. 5). The Complainant is asking the Board to grant their request for preliminary relief¹ and order DCPS to: (1) immediately reinstate Ms. Butler; (2) reinstate Ms. Butler's health insurance; (3) confer with the Union concerning a suitable placement for Ms. Butler; (4) make Ms. Butler whole for all losses, with compound interest; (5) pay attorney fees and costs; (6) post a notice to employees; and (7) cease and desist from violating the Comprehensive Merit Personnel Act.

DCPS filed an answer to the Complaint denying that it violated the Comprehensive Merit Personnel Act ("CMPA"). As a result, DCPS has requested that the Board dismiss the Complaint. In addition, DCPS filed a response opposing the Complainant's Motion for Preliminary Relief. The

¹Alternatively, the Complainant requests that the Board issue a decision on the pleadings.

“Motion for Preliminary and Injunctive Relief” and the parties’ other motions are before the Board for disposition.

II. Discussion

On December 20, 2002, Arbitrator Donald Wasserman issued an award which rescinded the termination of Ms. Davette Butler and reinstated her “with full compensation for all lost time.” (Award at p. 14). Pursuant to the arbitrator’s award, Ms. Butler was to be reinstated “as soon as possible.” (Award at p. 14). In addition, the arbitrator indicated that “DCPS must not permit [Ms. Butler’s] health insurance coverage to lapse as a result of COBRA expiring.” (Award at p. 14). However, to date, Ms. Butler has not been reinstated.² Also, AFSCME contends that DCPS allowed Ms. Butler’s health insurance to lapse on March 1, 2003. (Compl. at p. 4.)

AFSCME asserts that DCPS’ failure to implement the arbitration award constitutes a violation of D.C. Code § 1-617.04(a)(1) and (5) (2001 ed.).³ As a result, AFSCME filed an unfair labor practice complaint and a request for preliminary relief. AFSCME is asking the Board to grant its request for preliminary relief. Alternatively, AFSCME is requesting that the Board issue a decision on the pleadings. Also, AFSCME is requesting that the Board order DCPS to: (1) immediately reinstate Ms. Butler; (2) reinstate Ms. Butler’s health insurance; (3) confer with the Union concerning a suitable placement for Ms. Butler; (4) make Ms. Butler whole for all losses, with compound interest; (5) pay attorney fees and costs; (6) post a notice to employees; and (7) cease and desist from violating the Comprehensive Merit Personnel Act.

²On May 1, 2003, DCPS submitted a copy of a letter dated April 24, 2003, which was addressed to Ms. Butler. The April 24th letter informed Ms. Butler that she has been assigned to Ballou Senior High School and directed her to report to the Office of Human Resources. However, the Board notes that the April 24th letter was forwarded to Ms. Butler after AFSCME filed the unfair labor practice complaint and the request for preliminary relief. Moreover, as of May 1, 2003 (the date the Board considered the Complainant’s Motion for Preliminary Relief), Ms. Butler had not been reinstated.

³D.C. Code § 1-617.04(a)(1) and (5) provide as follows:

(a) The District, its agents, and representatives are prohibited from:

(1) Interfering, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;

• • •

(5) Refusing to bargain collectively in good faith with the exclusive representative.

DCPS filed an answer to the Unfair Labor Practice Complaint denying that it violated the CMPA. In addition, DCPS filed a response opposing the Complainant's Motion for Preliminary Relief. Specifically, DCPS asserts that the Complainant's "request for preliminary and injunctive relief should be dismissed based on their failure to meet the threshold criteria that the Board has [established] for granting preliminary and injunctive relief." (Answer at pgs. 10-11.)

DCPS does not dispute the factual allegations underlying the asserted statutory violation. Instead, DCPS claims that "the delayed implementation of [the] arbitration award [does] not [constitute] an unfair labor practice" because DCPS is actively seeking a vacancy in which to place Ms. Butler. (Answer at p. 9.) Moreover, DCPS asserts that the award does not "specify a time frame, only that [Ms. Butler be returned to work] as soon as possible." (Answer at p. 9). For the above-noted reasons, DCPS is requesting that the Complaint be dismissed.

After reviewing the pleadings, we believe that the material issues of fact and supporting documentary evidence are undisputed by the parties. As a result, the alleged violations do not turn on disputed material issues of fact, but rather on a question of law. Therefore, pursuant to Board Rule 520.10, this case can appropriately be decided on the pleadings.

The Board has previously considered the question of whether the failure to implement an arbitrator's award constitutes an unfair labor practice. In American Federation of Government Employees, Local 872, AFL-CIO v. D.C. Water and Sewer Authority, 46 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1996), the Board held for the first time 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." Slip Op. at p. 3. In addition, the Board has noted that an agency waives its right to appeal an arbitration award when it fails to file: (1) a timely arbitration review request with the Board; and (2) for judicial review of the award, pursuant to D.C. Code § 1-617.13(c) (2001 ed.). See, AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 6278, Slip Op. No. 585 at p. 5, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999). Furthermore, the Board has determined that if an agency waives its right to appeal an arbitration award, "no legitimate reason exists for [the agency's] on-going refusal to implement the award and . . . [the agency's] refusal to do so [constitutes] a failure to bargain in good faith in violation of D.C. Code § 1-617.04 (a)(1) and (5)." AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 8356, Slip Op. No. 597 at p. 2, PERB Case No. 99-U-23 (1999).

In the present case, DCPS acknowledges that the December 20, 2002 arbitration award has not been implemented. However, DCPS asserts that "[t]he delayed implementation of [the] arbitration award is not an unfair labor practice." (Answer at p. 9) In addition, DCPS contends that the "[arbitration] decision does not specify a time frame for reinstating Ms. Butler, only that it be as soon as possible." (Answer at p. 9.) Also, DCPS claims that it continues to actively seek a vacancy

Decision and Order

PERB Case No. 03-U-17

Page 4

in which to place Ms. Butler. Furthermore, DCPS asserts that Ms. Butler's health insurance was reinstated as of March 17, 2003. Finally, DCPS claims that District of Columbia Office of Compensation and Benefits in working on refunding insurance premiums retroactively to Ms. Butler.

After reviewing DCPS' arguments, we have determined that DCPS' reasons for failing to implement the terms of the award do not constitute a genuine dispute over the terms of the award. Furthermore, DCPS has waived its right to appeal the award by failing to file either a timely arbitration review request with the Board or a petition for review with the District of Columbia Superior Court. As a result, the Board opines that DCPS has no "legitimate reason" for its on-going refusal to implement the arbitration award. As such, we conclude that DCPS' actions constitute a violation of its duty to bargain in good faith, as codified under D.C. Code § 1-617.04(a)(5) (2001 ed.). Furthermore, we find that by "these same acts and conduct, DCPS' failure to bargain in good faith with AFSCME, constitute derivatively, interference with bargaining unit employees' rights in violation of D.C. Code § 1-617.04(a)(1) (2001 ed.)." AFGE, Local 2725 v. D.C. Housing Authority, 46 DCR 6278, Slip Op. No. 585 at p. 5, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999).⁴

Concerning the Complainant's request for attorney fees, the Board has held that D.C. Code § 1-617.13 does not authorize it to award attorney fees. See, International Brotherhood of Police Officers, Local 1446, AFL-CIO/CLC v. District of Columbia General Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); and University of the District of Columbia Faculty Association, NEA v. University of the District of Columbia, 38 DCR 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991). Therefore, the Complainant's request for attorney fees is denied.

As to the Complainant's request for reasonable costs, the Board first addressed the circumstances under which the awarding of costs to a party may be warranted in AFSCME, D.C. Council 20, Local 2776 v. D.C. Dept. of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990). In that case, the Board concluded that it could, under certain circumstances, award reasonable costs.⁵ In the present case, we believe that the interest-of-justice criteria articulated in the AFSCME case, would not be served by granting the Complainant's request for reasonable costs. As a result, we deny the Complainant's request for reasonable costs.

In light of our disposition of this case, it is not necessary to rule on the Complainant's Motion for Preliminary Relief.

⁴See also, Committee of Interns and Residents v. D.C. General Hospital, 43 DCR 1490, Slip Op. No. 456, PERB Case No. 95-U-01(1995).

⁵The Board has made it clear that attorney fees are not a cost.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of State, County and Municipal Employees's, Local 2921 (AFSCME) Motion for Judgement on the Pleadings is granted.
2. The District of Columbia Public Schools' (DCPS) Motion to Dismiss is denied.
3. DCPS, its agents and representatives shall cease and desist from refusing to bargain in good faith with AFSCME by failing to implement the December 20, 2002 arbitration award rendered pursuant to the negotiated provisions of the parties' collective bargaining agreement.
4. DCPS, its agents and representatives shall cease and desist from interfering, restraining or coercing its employees by engaging in acts and conduct that abrogate employees' rights guaranteed by "Subchapter XVIII. Labor-Management Relations" of the Comprehensive Merit Personnel Act (CMPA) to bargain collectively through representatives of their own choosing.
5. DCPS shall, in accordance with the terms of the award, fully implement, forthwith, the arbitration award. Also, any disputes related to Ms. Butler's proper placement, should be referred to Arbitrator Donald Wasserman.
6. AFSCME's request for costs and attorney fees are denied for the reasons stated in this Opinion.
7. 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.
8. Within fourteen (14) days from the issuance of this Decision and Order, DCPS shall notify the Public Employee Relations Board ("PERB"), in writing, that the Notice has been posted accordingly. Also, DCPS shall notify PERB of the steps it has taken to comply with paragraphs 5 and 7 of this Order.
9. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC RELATIONS BOARD
Washington, D.C.**

May 16, 2003



Public
Employee
Relations
Board

Government of the
District of Columbia



415 Twelfth Street, N.W.
Washington, D.C. 20004
[202] 727-1822/23
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS, 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. 712, PERB CASE NO. 03-U-17 (MAY 16, 2003)

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us 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. 712.

WE WILL cease and desist from refusing to bargain in good faith with the American Federation of State, County and Municipal Employees (AFSCME), District Council 20, Local 2921, AFL-CIO by failing to implement arbitration awards rendered pursuant to the negotiated provisions of the parties' collective bargaining agreement over which no genuine dispute exists over the terms.

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 District of Columbia Comprehensive Merit Personnel Act.

District of Columbia Public Schools

Date: _____

By: _____
Superintendent

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: 717 14th Street, N.W., Suite 1150, Washington, D.C. 20005. Phone: (202) 727-1822.

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

May 16, 2003