

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
Washington Teachers' Union, Local)	PERB Case No. 98-U-07
6, American Federation of)	Opinion No. 552
Teachers, AFL-CIO,)	
)	(Motion to Dismiss)
Complainant,)	
)	
)	FOR PUBLICATION
)	
v.)	
)	
District of Columbia Public)	
Schools,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On February 12, 1998, the Washington Teachers' Union, Local 6, American Federation of Teachers, AFL-CIO (WTU or Complainant) filed an Unfair Labor Practice Complaint in the above-captioned case against the Respondent, the District of Columbia Public Schools (DCPS). WTU alleges that DCPS committed an unfair labor practice by deleting and failing to implement certain provisions in the parties' negotiated grievance-arbitration procedure without first bargaining in good faith. (Comp. at p. 3-4.) WTU asserts that by these acts, DCPS has violated the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code Sec. 1-618.4(a)(1) and (5).

On February 26, 1998, DCPS filed an Answer to the Complaint and a Motion to Dismiss. DCPS requests that "the Complaint be dismissed in its entirety for failure to show a prima facie case of Unfair Labor Practice and failure to seek redress in the proper forum." (Mot. at p. 1.) On April 7, 1998, the Complainant filed an Opposition to the Motion.

The Board, after reviewing the pleadings in the light most favorable to the Complainant, and considering the Motion, Response thereto, and applicable law, hereby grants DCPS' Motion to Dismiss the Complaint for the reasons discussed below.

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WTU states that the parties are signatories to a collective bargaining agreement (Agreement). Pursuant to the grievance-arbitration procedure contained in the Agreement, WTU filed and advanced a grievance from Step 1 through to Step 4 (arbitration). WTU states that DCPS raised for the first time at arbitration, that "failure to strictly follow the time limits in the Agreement in fact caused the grievance to dissipate..." (Comp. at p.3.) WTU further states that "[t]he full participation by DCPS in Step 2 and Step 3 of the negotiated procedure with respect to this particular grievance, with no mention by Respondent at either step of the grievant's alleged untimely delay in initially raising the matter vis-a-vis the Agreement, unmistakably constituted, in accordance with past practice, consent by DCPS to the extension of any applicable timelines for the grievance pursuant to Article VI(C)(2) of the Agreement." (Comp. at 3.) WTU contends that DCPS has not bargained in good faith with respect to certain contractual grievance procedures by unilaterally deleting and failing to implement portions of the procedures when it declared that a grievance filed by WTU was untimely.

DCPS fulfilled its duty to bargain by entering into a collective bargaining agreement with WTU which included, among other provisions, a grievance-arbitration procedure. Having bargained for an arbitrator's interpretation of grieved matters under the parties' collective bargaining agreement, DCPS did not commit an unfair labor practice by asking the arbitrator to decide whether a grievance was timely. Therefore, WTU's subsequent contention that notwithstanding the arbitrator's resolution of this issue, DCPS committed an unfair labor practice when it failed to implement or unilaterally deleted the disputed contractual obligation fails to state a cause of action under the CMPA. International Brotherhood of Teamsters, Local 639 and 730 v. D.C. Public Schools, 39 DCR 9625, Slip Op. No. 318, PERB Case No. 92-U-04 (1992). See also, University of the District of Columbia/NEA v. University of the District of Columbia, 43 DCR 5595, Slip Op. No. 387, PERB Cases Nos. 93-U-22 and 93-U-23 (1994); Washington Teachers' Union v. D.C. Public Schools, 42 DCR 5488, Slip Op. 337, PERB Case No. 92-U-18 (1992); Washington Teachers' Union v. D.C. Public Schools, 42 DCR 3426, Slip Op. No. 329, PERB Case No. 90-U-28 (1992); and International Brotherhood of Teamsters, Local 639 and 730 v. D.C. Public Schools, 39 DCR 9625, Slip Op. No. 318, PERB Case No. 92-U-04 (1992).

We note that WTU had appealed the resultant arbitration award to the Board pursuant to our narrow authority to review

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grievance arbitration awards.^{1/} We denied WTU's Arbitration Review Request (PERB Case No. 98-A-02, Opinion No. 543), finding that the Arbitrator did not exceed his jurisdictional authority in making the Award. We further note that WTU neither asserted in its appeal nor did we find that the Award was contrary to law, e.g., the CMPA.

Based upon the pleadings as presented, the Motion to Dismiss is granted based on a failure to state a cause of action.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion to Dismiss the Complaint is granted.
2. The Complaint is dismissed.

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

April 29, 1998

^{1/} WTU asserts that the alleged "unilateral deletions" by DCPS were in certain provisions of the parties' Agreement. WTU also asserts that DCPS' alleged contractual transgressions were presented as an issue for the arbitrator which, as discussed, is the appropriate forum for such alleged violations. Additional arguments by WTU in this proceeding that past practice supports its contentions concerning DCPS' obligations under the contractual provisions in question are arguments that should have been advanced in the grievance-arbitration forum.