

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 formal 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 Government)
Employees. Local 2725, AFL-CIO,) PERB Case Nos. 99-U-23
)
Complainant,) Opinion No. 597
)
v.)
)
District of Columbia Housing)
Authority,)
)
Respondent,)
)
)

DECISION AND ORDER

On January 7, 1999, an arbitration award was issued sustaining a grievance filed by AFGE challenging DCHA's termination of a bargaining unit employee. The award provided for the grievant's immediate reinstatement and back pay. DCHA subsequently made an offer to AFGE that the grievant could return to work without back pay or DCHA would appeal the Award to the D.C. Superior Court. (Exh. 4.) On March 30, 1999, AFGE filed an Unfair Labor Practice Complaint alleging that DCHA violated the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a) (1) and (5), by failing to implement the award. AFGE seeks an order directing DCHA's compliance with the terms of the award, attorney fees and costs, and a Notice posting. Along with its Complaint, AFGE also filed a Motion for Preliminary Relief.

On April 13 and 14, 1999, respectively, DCHA filed an opposition to the Motion for Preliminary Relief and an Answer to the Complaint. DCHA asserts that the Complaint fails to state a claim upon which relief can be granted. DCHA further asserts that the Complaint has failed to provide a valid reason for the Board to grant preliminary relief since AFGE has only identified economic loss from its asserted refusal to fully implement the award.

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The material issues of fact and supporting documentary evidence are undisputed by the parties. Disposition of this case presents only a question of law. Therefore, pursuant to Boars Rule 520.10, this case can appropriately be decided on the pleadings. In view of our disposition, the Motion for Preliminary Relief is moot.

We recently decided a case involving these same parties and fact pattern. American Federation of Government Employees, Local 2725, v. D.C. Housing Authority, Slip Op. No. 585, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999). There, we held that DCHA had waived its right to appeal the arbitration awards in two consolidated unfair labor practice cases by failing to file a timely arbitration review request with the Board. The Board noted that any appeal of a grievance arbitration award lied exclusively within the jurisdiction of the Board. Slip Op. 585 at 4. Therefore, the Board concluded that no "legitimate reason" existed for DCHA's on-going refusal to implement the awards and we found its refusal to do so a failure to bargain in good faith in violation of D.C. Code § 1-618.4(a) (1) and (5).

Similarly, in the instant case, DCHA has filed no request to review the January 7, 1999 award. Pursuant to Board Rule 538.1, the 20 day period from issuance of the award to file such a request has long expired. DCHA threatened to appeal the award to the D.C. Superior Court if AFGE/grievant did not accept its offer to reinstatement without back pay. Notwithstanding DCHA's asserted intent to appeal the award, it can no longer do in a timely manner. As such, no legitimate reason exist for DCHA's continued refusal to implement the reward as rendered.

In view of the Board's Decision and Order in American Federation of Government Employees, Local 2725, v. D.C. Housing Authority, Slip Op. No. 585, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12, we find DCHA has violated D.C. Code § 1-628.4(a) (1) and (5) by refusing to implement the arbitration award. We further conclude that DCHA has established a pattern and practice of refusing to implement arbitration awards. We therefore conclude that it would be in the interest-of-justice to accord AFGE its requested costs in these proceedings for prosecuting DCHA's latest violation of this same nature. American Federation of State, County and Municipal Employees, 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). With respect to AFGE's request for attorney fees, we have held that the Board lacks the authority to award such fees. See, International Brotherhood of Police Officers v. D.C. General Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1994).

ORDER

IT IS HEREBY ORDERED THAT:

1. District of Columbia Housing Authority (DCHA), its agents and representatives shall cease and desist from refusing to bargain in good faith with the American Federation of Government Employees, Local 2725 (AFGE), by failing to implement arbitration awards rendered pursuant to the negotiated provisions of the parties' collective bargaining agreement over which no genuine dispute exists.
2. DCHA, 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.
3. DCHA shall, in accordance with the terms of the award, fully implement, forthwith, the arbitration award.
4. AFGE's request for costs are granted; its request for attorney fees are denied for the reasons stated in this Opinion.
5. AFGE shall submit to the PERB, within fourteen (14) days from the date of this Order, a statement of actual costs incurred prosecuting this action. The statement of costs shall be filed together with supporting documentation; DCHA may file a response to the statement within fourteen (14) days from service of the statement upon it.
6. DCHA shall pay AFGE, its reasonable costs incurred in this proceeding within ten (10) days from the determination by the Board or its designee as to the amount of those reasonable cost.
7. DCHA shall, within ten (10) days from the service of this Decision and Order: (1) post for thirty (30) consecutive days the attached Notice, dated and signed, conspicuously on all bulletin boards where notices to bargaining-unit employees are customarily posted.
8. DCHA shall notify the Public Employee Relation Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, that the Notice has been posted accordingly, and what steps it has taken to comply with paragraphs 3 of this Order.

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9. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

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

June 18, 1999



Public
Employee
Relations
Board

Government of the
District of Columbia

717 14th Street N.W.
11th floor
Washington, D.C. 20005

[202] 727-1822/23
Fax: [202] 727-9116



NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA HOUSING AUTHORITY, 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. 597, PERB CASE NO. 99-U-23 (JUNE 18, 1999).

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 refusing to bargain in good faith with the American Federation of Government Employees, Local 2725 (AFGE) by failing to implement arbitration awards rendered pursuant to the negotiated provisions of the 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 CMPA.

District of Columbia Housing
Authority

Date: _____ By: _____
Receiver

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 the 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. 11th Floor, Washington, D.C. 20004. Phone: (202) 727-1822.

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

June 28, 1999