

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:)	
)	
)	
International Brotherhood of)	
Police Officers, Local 446,)	
National Association of)	
Government Employees,)	
)	PERB Case No. 99-U-30
Complainant,)	
)	Opinion No. 622
v.)	
)	
District of Columbia Health and)	
Hospitals Public Benefit)	
Corporation, District of Columbia)	
General Hospital,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On January 20, 1998, an arbitration award (award) was issued sustaining a grievance filed by the International Brotherhood of Police Officers, Local 446, NAGE (IBPO). The award set aside the grievant's termination and provided for the grievant's reinstatement with back pay.^{1/} On February 13, 1998, the Health and Hospitals Public Benefit Corporation (PBC) filed an Arbitration Review Request (ARR), i.e., PERB Case No. 98-A-03. On April 23,

^{1/} The grievant, a special police officer employed by D.C. General Hospital, was terminated for misuse of government property and damage to private property. The arbitrator found that the PBC had cause to discipline the employee; however, he found the penalty too harsh. As a result, the arbitrator reduced the termination to a 45-day suspension and reinstated the employee with back pay.

Decision and Order
PERB Case No. 99-U-30
Page 2

1998, the Board denied the ARR.^{2/} The PBC did not file a petition for review of the Board's Decision.^{3/} However, to date, the award has not been implemented.

On July 1, 1999, IBPO filed an Unfair Labor Practice Complaint (Complaint) alleging that the PBC violated D.C. Code § 1-618.4(a) (1) and (5), by failing to implement the award. In addition, IBPO filed a Motion for Summary Judgment. IBPO is seeking that the Board issue an order: (1) granting its Motion for Summary Judgment; (2) directing the PBC to implement the award; (3) awarding attorney fees and costs; and (4) requiring a Notice posting.

The PBC does not deny the facts alleged in the Complaint. However, the PBC asserts that the Complaint should be dismissed as timed barred. (Ans. at 4-5) Furthermore, the PBC contends that it has not refused to implement the award; rather, the award has not been implemented because a dispute exists with respect to a term of the award, i.e., calculation of the grievant's back pay.

The material facts are essentially undisputed by the parties. As a result, this case presents only a question of law. Therefore, this case can appropriately be decided on the pleadings pursuant to Board Rule 520.10.

The PBC raises a threshold issue concerning the timeliness of the instant Complaint. Specifically, the PBC contends that the Complaint was filed more than ninety (90) days after IBPO became aware of the event giving rise to the Complaint allegations. As a

^{2/} In its ARR, the PBC contended that the award was contrary to the parties' Collective Bargaining Agreement (CBA) and a District Personnel Manual (DPM) regulation. The Board found that neither the DPM regulation or the CBA mandated termination for the cause found. See, PERB Case No. 98-A-03, Slip Op. 549, at p. 3. Also, the Board determined that neither the CBA or the related DPM regulation restricted the arbitrator's equitable powers to consider mitigating factors when determining whether to reduce the imposed penalty. Id.

^{3/} A party aggrieved by a final order of the Board has thirty (30) days to file a petition for review with the D.C. Superior Court. See, D.C. Code § 1-618.13(c). More than eight months have elapsed since the Board issued its decision. Therefore, a timely petition can no longer be filed.

Decision and Order
PERB Case No. 99-U-30
Page 3

result, they argue that the Complaint is not timely. Board Rule 520.4 provides that "[u]nfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred."^{4/} Therefore, the issue before the Board is whether the Complaint was filed within the 120 days currently provided by Board Rule 520.4.

The PBC suggests that the event which gave rise to the Complaint allegations was the grievant's termination date. This date clearly exceeds the 120-day time period under Board Rule 520.4. However, IBPO alleges that the PBC's failure to respond to its April 15, 1999 proposed settlement agreement served as the basis of its Complaint. Thus, IBPO contends that the alleged violation stems from conduct that occurred after April 15, 1999. IBPO's Complaint was filed on July 1, 1999, which was seventy-seven (77) days after IBPO's April 15, 1999 correspondence. Therefore, if we accept IBPO's argument, the unfair labor practice complaint was filed within 120 days of the alleged violation.^{5/} Therefore, the Complaint, would be is timely.^{6/}

^{4/} Prior to being amended in 1995, Board Rule 520.4 provided that agencies and unions had 90 days within which to file complaints and individuals had 120 days within which to file a complaint.

^{5/} Since the Board denied the agency's Arbitration Review Request, it does not appear that the agency has indicated to IBPO that it would not comply with Arbitrator Donegan's award. (Comp. at 4; Ans. at p. 3.) Furthermore, the parties agree that between the January 20, 1998 issuance of the award and the April 15, 1999 settlement proposal, they have attempted to calculate the grievant's back pay as provided under the terms of the award. Therefore, we find that any violation concerning the PBC's failure to implement the terms of the award did not give rise to a cause of action until after the parties' settlement efforts ceased, i.e., sometime after the April 15th correspondence.

^{6/} In the alternative, the PBC contends that if the entire complaint is not time-barred, then those actions which occurred on or before April 1st are time-barred because they occurred more than 90 days prior to the July 1, 1999, filing of the Complaint. (Ans at p. 5.) In view of our discussion in the text, we conclude that only the PBC's acts and conduct which occurred prior to March 2, 1999, are time-barred. However, such conduct may be considered in order to determine the existence of alleged violations which occurred within the 120-day period. See,

(continued...)

Decision and Order

PERB Case No. 99-U-30

Page 4

In light of the above, we must make a determination concerning the date the alleged violation occurred. After reviewing the parties' submissions, we find that the parties were actively trying to resolve the back pay provisions of the award. However, the parties were unable to reach an agreement. Therefore, we conclude that the event giving rise to the Complaint allegation occurred after settlement negotiations ceased on April 15th. Thus, we find that the Complaint is timely.

IBPO did not take issue with the PBC's conduct until the PBC failed to respond to its April 15, 1999 proposed settlement offer. The PBC acknowledges: (1) receiving IBPO's April 15th correspondence; and (2) that the terms of the award have not been implemented. However, the PBC asserts that the award has not been implemented because a dispute exists with respect to a term of the award. Specifically, the PBC states that the award does not provide for how the grievant's back pay is to be determined. Furthermore, the PBC asserts that the parties have and continue to disagree over this issue. The parties' disagreement over this issue is reflected in the parties' submissions.

We have held that the failure to implement an arbitrator's award does not constitute an unfair labor practice when interpretation of the award is in dispute by the parties. FOP/MPD Labor Committee v. Metropolitan Police Department, 39 DCR 9617, Slip Op. No. 295, PERB Case No. 91-U-18 (1992). However, we have held 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." (Emphasis added.) American Federation of Government Employees, Local 872, v. D.C. Water and Sewer Authority, 46 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1996). See, also, American Federation of Government Employees, Local 2725, v. D.C. Housing Authority, 46 DCR 6278, 46 DCR 7002, Slip Op. Nos. 585 and 595, respectively, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999); American Federation

⁶(...continued)

Georgia Mae Green v. D.C. Department of Corrections, 41 DCR 5991, Slip Op. No. 323 at note 3, PERB Case No. 91-U-13 (1993).

Decision and Order
PERB Case No. 99-U-30
Page 5

of Government Employees, Local 2725, v. D.C. Housing Authority, 46 DCR 8356, Slip Op. No. 597, PERB Case No. 99-U-23 (1999) and American Federation of Government Employees, Local 2725, v. D.C. Housing Authority, 46 DCR 10388, Slip Op. No. 603, PERB Case No. 99-U-18 (1999).

In the instant case, we find that the parties have established that a genuine dispute exists concerning the calculation of the grievant's back pay. (Comp. Attach. 7.) Given this fact, we find that the PBC's unwillingness to implement the grievant's back pay, involves a genuine dispute. Therefore, the PBC's failure to implement the back pay provision of the award does not constitute a statutory violation of the duty to bargain in good faith. Under the circumstances the parties' dispute remains contractual.^{7/} As such, it fails to state a statutory cause of action under the CMPA. FOP/MPD Labor Committee v. Metropolitan Police Department, 39 DCR 9617, Slip Op. No. 295, PERB Case No. 91-U-18 (1992).

In light of the above, it is clear that the parties' dispute is limited to the back pay provision of the award. Therefore, it does not extend to the other terms of the award, e.g., the grievant's reinstatement. Consistent with our prior precedent, we find that the PBC's failure to implement the award provisions over which no dispute exists, constitutes a failure to bargain in good faith in violation of D.C. Code § 1-618.4(a)(1) and (5). American Federation of Government Employees, Local 872, v. D.C. Water and Sewer Authority, 46 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23.

IBPO has requested reasonable costs. We conclude that the interest of justice criteria articulated 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), would not be served by granting IBPO's request for reasonable costs in the instant case. With respect to IBPO's request for attorney fees, we have held that the Board lacks the authority to award attorney fees. See, International Brotherhood of Police Officers v. D.C. General

^{7/} The parties should consider submitting this disputed provision of the award back to the arbitrator for resolution.

Decision and Order
PERB Case No. 99-U-30
Page 6

Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1994).

ORDER

IT IS HEREBY ORDERED THAT:

1. The International Brotherhood of Police Officers, Local 446, NAGE's (IBPO) Motion for Summary Judgement is granted.
2. The District of Columbia Health and Hospitals Public Benefit Corporation (PBC), its agents and representatives shall cease and desist from refusing to bargain in good faith with IBPO, by failing to implement the terms of the January 20, 1998 arbitration award, over which no genuine dispute exists.
3. The PBC, its agents and representatives shall cease and desist from interfering, restraining or coercing its employee's 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.
4. The PBC shall fully implement the undisputed terms of the arbitration award.
5. IBPO's request for costs and attorney fees are denied for the reasons stated in this Opinion.
6. The PBC 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.

Decision and Order
PERB Case No. 99-U-30
Page 7

7. The PBC 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 4 and 6 of this Order.
8. 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.

February 25, 2000

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-U-30 was transmitted via Fax and /or U.S. Mail to the following parties on this 25th day of February, 2000.

Edward Smith, Esq.
317 South Patrick Street
Alexandria, VA.. 22314

FAX & U.S. MAIL

Phillip Husband, Esq.
D.C. Health and Hospitals
Public Benefit Corporation
1900 Massachusetts Ave., S.E.
Washington, D.C. 20003

FAX & U.S. MAIL

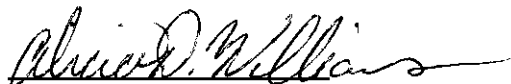
Courtesy Copies

Roscoe Ridley, Director
Labor Relations
D.C. Health & Hospitals
Public Benefit Corporation
1900 Massachusetts Ave., S.E.
Suite 1505
Washington, D.C. 20003

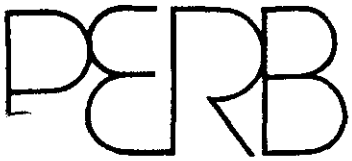
U.S. MAIL

Joanne Robinson, General Counsel
D.C. Health & Hospitals
Public Benefit Corporation
1900 Massachusetts Ave., S.E.
Suite 1505
Washington, D.C. 20003

U.S. MAIL



Alicia D. Williams
Student Intern



Public
Employee
Relations
Board

Government of the
District of Columbia



717 14th Street, NW
Suite 1150
Washington, DC 20005
[202] 727-1822/23
Fax: [202] 727-9116

NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA HEALTH AND HOSPITALS PUBLIC BENEFIT CORPORATION, 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. 622, PERB CASE NO. 99-U-30 (February 25, 2000).

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 International Brotherhood of Police Officers, Local 446, NAGE (IBPO) by failing to implement the provisions of an arbitration award (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 Health and
Hospitals Public Benefit
Corporation

Date: _____ By: _____
Director

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.