

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,)	
Country and Municipal Employees,)	PERB Case No. 03-U-17
District Council 20,)	
Local 2921, AFL-CIO,)	Opinion No. 731
)	
Complainant,)	Motion for Compliance and Enforcement
)	
)	
v.)	
)	
District of Columbia Public Schools,)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case:

The American Federation of State, County and Municipal Employees, District Council 20, Local 2921 (“Complainant”, “AFSCME” or “Union”), filed a Motion for Compliance and Enforcement (“Motion”), in the above-referenced case. The Complainant alleges that the District of Columbia Public Schools (“DCPS” or “Respondent”) has failed to comply with Slip Opinion No. 712. Specifically, the Complainant claims that DCPS “has failed and refused ... to [provide the Grievant Davette Butler with her] backpay, as ordered by the Board.” (Motion at p. 1). The Complainant is asking the Board to: (1) find that DCPS has failed to comply with the Board’s Order in Slip Opinion No. 712; and (2) bring an action in the District of Columbia Superior Court to compel DCPS to comply with the Board’s Order.

DCPS filed a response to the Motion denying that it has violated the Board’s Order. As a result, DCPS has requested that the Board deny the Complainant’s Motion. AFSCME’s Motion is 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On December 20, 2002, Arbitrator Donald Wasserman issued an award which rescinded the termination of Ms.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. Pursuant to the arbitrator's award, Ms. Butler's termination was rescinded and she was to be reinstated "as soon as possible."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, as of March 2003, Ms. Butler had not been reinstated. Also, Ms. Butler's insurance was allowed to lapse on March 1, 2003. (Compl. at p. 4.)

In view of the above, AFSCME filed an unfair labor practice complaint and a request for preliminary relief. AFSCME asked the Board to grant its request for preliminary relief. Also, AFSCME requested that the Board order DCPS to: (1) comply with the terms of the award; (2) pay attorney fees and costs; (3) cease and desist from violating the Comprehensive Merit Personnel Act ("CMPA"); and (4) post a Notice.

DCPS did not dispute the factual allegations underlying the asserted statutory violation. Therefore, pursuant to Board Rule 520.10, the Board concluded that this case could be decided on the pleadings.

After reviewing the pleadings, the Board found that DCPS' reasons for failing to implement the terms of the arbitrator's award did not constitute a genuine dispute over the terms of the award. Furthermore, the Board noted that DCPS 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. In view of the above, the Board determined that DCPS did not have a "legitimate reason" for its on-going refusal to implement the award. Therefore, in Slip Opinion No. 712 (issued May 16, 2003), the Board concluded that DCPS' actions constituted a violation of its duty to bargain in good faith, as codified under D.C. Code § 1-617.04(a)(5) (2001 ed.). In addition, the Board found that these same acts and conduct, constituted interference with bargaining unit employees' rights, in violation of D.C. Code § 1-617.04(a)(1) (2001 ed.).

The Board's Order (issued on May 16, 2003) provided, among other things, that the arbitration award be fully implemented. In addition, the Board directed that any disputes related to Ms. Butler's proper placement, should be referred to Arbitrator Donald Wasserman.

In their Motion, AFSCME claims that DCPS has failed to comply with the Board's May 16th Order. Specifically, AFSCME argues that it has been three months since the Board issued Slip Opinion No. 712. However, to date, Ms. Butler has not received her backpay. AFSCME asserts that

DCPS' failure to provide Ms. Butler with backpay, has created a huge financial burden on Ms. Butler's family. (Motion at p.3).

In view of the above, AFSCME is asking the Board to: (1) find that DCPS has failed to comply with the Board's Order and (2) bring an enforcement action in the District of Columbia Superior Court to compel DCPS to comply with the Board's Order. The Complainant's Motion is before the Board for disposition.

The parties agree that DCPS has not provided Ms. Butler with backpay. As a result, the Board must determine if DCPS' action is reasonable.

In the present case, the arbitrator's award was issued in December 2002 and the Board's Order directing that DCPS comply with the award was issued in May 2003. In light of the above, it has been nine months since the arbitrator's award was issued and four months since our Order was issued. However, to date, DCPS has not provided Ms. Butler with backpay. Furthermore, DCPS has failed to provide a legitimate and convincing explanation concerning their failure to provide Ms. Butler with her backpay. As a result, we are inclined to grant AFSCME's Motion. However, we will hold this matter in abeyance for thirty (30) days in order to allow DCPS to submit proof of compliance. At the expiration of the thirty (30) day period, we will again consider AFSCME's Motion.

ORDER

IT IS HEREBY ORDERED THAT:

1. This matter will be held in abeyance for thirty days.
2. Within thirty (30) days from the issuance of this Decision and Order, the District of Columbia Public Schools shall provide proof to the Public Employee Relations Board, that the Grievant Davette Butler has received her backpay.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

September 30, 2003