

II. Discussion

On July 15, 2005, the Board issued Slip Op. No. 796. In that slip opinion the Board found that DCPS violated the Comprehensive Merit Personnel Act ("CMPA"). Specifically, the Board determined that DCPS violated D.C. Code § 1-617.04 (a) (1) and (5) by failing to comply with the terms of a March 12, 2004 settlement agreement which settled an unfair labor practice complaint. As a result, the Board ordered DCPS to: (1) pay the Union all retroactive service fees for all employees in Local 2921 for the period October 24, 2003 through the first full pay period following March 12, 2004; (2) pay the Union all retroactive service fees for all employees in Local 1959 for the period December 15, 2003 through the first full pay period following March 12, 2004; (3) comply with the parties' settlement agreement; (4) post a notice to employees; and (5) cease and desist from violating the CMPA.

Subsequently, on August 25, 2005, AFSCME filed a Petition for Enforcement ("Petition") with the Board. In their Petition, AFSCME asserted that DCPS failed to comply with Slip Op. No. 796 by failing to: (1) pay the Union all retroactive service fees for all employees in Local 2921 for the period October 24, 2003 through the first full pay period following March 12, 2004; and (2) pay the Union all retroactive service fees for all employees in Local 1959 for the period December 15, 2003 through the first full pay period following March 12, 2004. (See Petition at p. 4). Therefore, AFSCME requested that the Board initiate an enforcement proceeding in the Superior Court of the District of Columbia in order to compel DCPS to comply with the terms of the Board's Order Slip Op. No. 796.

On September 13, 2005, DCPS filed a response to AFSCME's Petition. In their response, DCPS acknowledged that it had failed to pay the Union retroactive service fees. (See DCPS' Response to Petition for Enforcement at p. 1). However, DCPS asserted that the District of Columbia Government controls DCPS' finances and before service fees may be deducted, the District of Columbia Government requires that DCPS code individuals appropriately in the CAPPS system. Therefore, DCPS argued that it "prepared lists of active employees that the school system ha[d] coded for AFSCME, Locals 1959 and 2921 ... [Furthermore, DCPS claimed that] once employees [are] ... coded, the D.C. Government Office of Pay [and Retirement] deducts the service fees." (DCPS' Response to Petition for Enforcement at p. 1.) In their September 13th submission, DCPS noted that as of that date, "the list [prepared by the school system did] not include a column with 'Union fees' because the last payroll run [did] not accurately reflect [those individuals] who are paying service fees. [In addition, DCPS asserted that the reason for] this is the non-pay status of most of these employees during the summer." (DCPS' Response to Petition for Enforcement at p. 1). Furthermore, DCPS indicated that the payroll run for the next pay period would give a more accurate reflection; however, this information would not be available until the week of September 26, 2005. As a result, DCPS stated that it would provide an updated list by September 30, 2005. Subsequently, on September 30th DCPS filed a document styled "Respondent's Supplemental Answer to Petition for Enforcement of PERB Order". (DCPS' Supplemental Answer). Attached to the

September 30th submission was an "updated list of AFSCME, Locals 1959 and 2921, membership as of September 30, 2005." (DCPS' Supplemental Answer at p. 1). Despite providing this list, DCPS acknowledged that the retroactive fees had still not been paid. Specifically, DCPS noted that although a programmer in the Office of Information Technology ("OIT") was working with personnel in Human Resources to prepare the underlying data, it became apparent that this in-house programmer could not provide the needed data. As a result, DCPS claimed that they approached a data base expert who had been working with the CAPPS system and that this data base expert determined another method which should provide the information. In light of the above, DCPS requested that the Board deny AFSCME's Petition.

After reviewing the parties' pleadings, on February 15, 2006, we issued Slip Op. No. 815. In that decision we found that DCPS had not paid the retroactive service fees to AFSCME. As a result, we determined that DCPS had failed to comply with our Order in Slip Op. No. 796; therefore, we granted AFSCME's Petition for Enforcement. However, we indicated that before seeking judicial enforcement of our July 25, 2005 Decision and Order (Slip Op. No. 796), as provided under D.C. Code § 1-617.13(b) (2001 ed.), we would grant DCPS twenty-one (21) days from the issuance of Slip Op. No. 815 to finally and fully comply with our Decision and Order in Slip Op. No. 796. In granting DCPS twenty-one (21) days within which to fully comply, we emphasized that continued disregard of the Board's Decision and Order, would be met with prompt action for enforcement.

Pursuant to paragraph three of our February 15, 2006 Order, DCPS was ordered to fully comply with Slip Op. No. 796 no later than March 8, 2006. However, DCPS did not comply by March 8th as required. Instead, on March 15, 2006, DCPS filed their motion for enlargement of time within which to comply with both Slip Op. Nos. 796 and 815. In their motion, DCPS is requesting an additional twenty-one (21) days within which to comply. In support of its request, DCPS argues that: (1) the staff member (Ms. Eileen McGlore Clements) responsible for ensuring compliance with the terms of Slip Op. Nos. 796 and 815 left DCPS in November 2005; (2) the Board did not provide a copy of Slip Op. No. 815 to the attorney who is now responsible for ensuring compliance with the terms of Slip Op. Nos. 796 and 815, until March 7, 2006; (3) the new attorney assigned to this case has met with several senior officials at DCPS in order to ensure compliance with the Board's two Orders; and (4) if the motion is granted, DCPS believes that it could fully comply with the Board's order without the need for further enforcement. In addition, on March 21, 2006, DCPS submitted a letter and a list containing the names of members of Locals 1959 and 2921. In their letter, DCPS indicated the amount of retroactive fees that is due to AFSCME. Thus, DCPS asserts that they are moving closer to compliance with the Board's two Orders. For the above-noted reasons, DCPS is requesting that the Board grant their motion.

As noted above, the parties executed a settlement agreement on March 12, 2004 and the Board's initial order directing that DCPS comply with the parties' settlement agreement was issued on July 25, 2005. (See Slip Op. No. 796). Subsequently, on February 15, 2006 the Board granted AFSCME's Petition for Enforcement and ordered that DCPS fully comply with the terms of the

parties' settlement agreement and Slip Op. No. 796. In granting AFSCME's Petition, the Board ordered that DCPS fully comply with the parties' settlement agreement and Slip Op. No. 796, no later than March 8, 2006. (See Slip Op. No. 815). Also, the Board indicated that if DCPS failed to fully comply with the terms of the parties' settlement agreement by March 8th, then the Board would seek judicial enforcement in the Superior Court of the District of Columbia. DCPS did not comply by March 8th. Instead, seven days after they were required to comply, DCPS filed their motion for an enlargement of time within which to fully comply. For the reasons discussed below, we deny DCPS' motion.

In their motion DCPS argues, among other things, that Slip Op. No. 815 was sent by the Board to the attention of Eileen McGlore Clements. However DCPS claims that Ms. Clements left DCPS in November 2005. As a result, DCPS asserts that the new attorney who is responsible for ensuring compliance with Slip Op. No. 815 did not receive a copy of Slip Op. No. 815 until March 7th. Thus, DCPS suggests that it has not complied with the terms of Slip Op. No. 815 due to the fact that this decision was received only one day prior to the March 8th deadline date. (See Motion at pgs. 1-2) However, a review of the case file reveals that Slip Op. No. 815 was transmitted by the Board via U.S. Mail on February 15, 2006 to both Ms. McGlore Clements and her supervisor Ms. Loretta Blackwell. In light of the above, DCPS' argument lacks merit.

Also, after reviewing DCPS' motion, we believe that DCPS' reasons for seeking an enlargement of time within which to comply, are similar to some of the arguments it raised in both its answer to the unfair labor practice complaint and in its opposition to the petition for enforcement. For example, DCPS asserts in the present motion that several senior officials at DCPS have met in order to develop "a plan to quickly identify the individuals in . . . Locals 1959 and 2921 on whose behalf DCPS was responsible for paying service fees." (Motion at p. 2) In addition, DCPS claims that the attorney assigned to this case met with an "official in the Office of Information and Technology . . . who was assigned. . . to [p]ull the list of relevant employees to identify the service fee employees and the amount due in the way of service fees from DCPS CAPPs accounting system." (Motion at p. 2) In light of the above, DCPS argues that "it is anticipated that, [if]the present Motion [is] granted, the [Board's] Orders could be effectively and fully complied with without the need for further enforcement action by the [Board]." (Motion at p. 2)

Similarly, in their opposition to AFSCME's "Petition for Enforcement", DCPS asserted that the District of Columbia Government controls DCPS' finances and before service fees may be deducted, the District of Columbia Government requires that DCPS code individuals appropriately in the CAPPs system. As a result, DCPS claimed that it had been working on developing the base information needed to analyze the service fees for AFSCME, Locals 1959 and 2921. Specifically, DCPS argued that they had a programmer in the Office of Information Technology (OIT) working with personnel in Human Resources to prepare the underlying data. (See DCPS' Supplemental Answer to the Petition for Enforcement at pgs. 1-2). Furthermore, DCPS argued that it ". . . prepared lists of active employees that the school system ha[d] coded for AFSCME, Locals 1959 and 2921 . . . [Also, DCPS claimed that] once employees [are]. . . coded, the D.C. Government Office

of Pay [and Retirement will deduct] the service fees.” (DCPS’ Response to Petition for Enforcement at p.1.) In view of the above, DCPS requested that the Board deny AFSCME’s “Petition for Enforcement.” In Slip Op. No. 815 we rejected DCPS’ argument concerning AFSCME’s Petition for Enforcement and concluded that DCPS had no legitimate reason for its on-going refusal to comply with the terms of the settlement agreement. As a result, we granted AFSCME’s “Petition for Enforcement” and directed that DCPS comply with the terms of the parties’ settlement agreement no later than March 8, 2006. Now, seven days after they have failed to comply with the March 8th deadline imposed by the Board, DCPS is requesting an additional twenty-one days within which to comply with the parties’ settlement agreement and Slip Op. Nos 796 and 815. However, DCPS has not presented a compelling reason as to why they still haven’t complied. Instead, DCPS again points out the steps that it claims have been taken, in order to ensure compliance. Despite the steps taken by DCPS, it is clear that DCPS has still not complied with the terms of the parties’ settlement agreement. Moreover, it has been two years since the parties entered into the settlement agreement and eight months since our July 25th Order was issued. Thus, we believe that DCPS has had more than a reasonable period of time to comply with the terms of the parties’ settlement agreement and we are not convinced that giving DCPS an additional twenty-one days will result in full compliance with the terms of the parties’ settlement agreement. Therefore, we deny DCPS’ motion.

For the reasons noted above, we find that DCPS has not complied with our Order in Slip Op. Nos. 796 and 815; therefore, we will direct our attorney to seek judicial enforcement of Slip Op. Nos. 796 and 815, as provided under D.C. Code § 1-617.13(b) (2001 ed.).

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Public Schools’ “Motion for an Enlargement of Time,” is denied.
2. Pursuant to D.C. Code § 1-617.13 (b) (2001 ed.), the Board’s attorney shall proceed with enforcement of Slip Op. Nos. 796 and 815.
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.**

April 25, 2006

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 05-U-06 was transmitted via U.S. Mail to the following parties on this the 25th day of April 2006.

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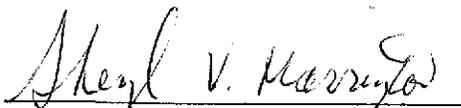
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