GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of Government Employees. Local 2725, AFL-CIO,	
Complainant,	**PERB Case Nos. 99-U-40 and 99-U-41**
v.	**Opinion No. 609**
District of Columbia Housing Authority,	
Respondent,	

DECISION AND ORDER

On March 27, 1999, and April 7, 1999, arbitration awards were issued sustaining grievances filed by the American Federation of Government Employees, Local 2725 (AFGE) challenging the District of Columbia Housing Authority's (DCHA's) termination of bargaining unit employees. The awards set aside the terminations and provided for the grievants' reinstatement.[1]/ AFGE made written requests that DCHA immediately implement these awards. DCHA did not respond to either request.

On April 26, 1999, and May 3, 1999, DCHA filed Arbitration Review Requests (ARR) with respect to these two awards, i.e., PERB Case Nos. 99-A-05 and 99-A-06. On August 2, 1999, we denied both of these Requests.[2]/ To date, DCHA has not sought judicial review of our Decisions. DCHA can no longer file timely

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1/ The April 27th award also awarded back pay; the March 27th award did not.

2/ In both ARR, the Board found that DCHA did not present a statutory basis for disturbing the awards. In addition, the Board determined that the ARR in PERB Case No. 99-A-05 was untimely.

petitions for judicial review.[3]/

On August 26, 1999, AFGE filed two Unfair Labor Practice Complaints, i.e., PERB Case Nos. 99-U-40 and 99-U-41, 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 arbitration awards. AFGE seeks DCHA's full compliance with the awards, attorney fees, costs, and a Notice posting.

On September 10, 1999, DCHA filed Answers to the Complaints denying that it has committed the alleged unfair labor practices. On October 5, 1999, DCHA filed a Motion to Dismiss the Complaint in PERB Case No. 99-U-41. AFGE filed an Opposition to the Motion to Dismiss and a Motion for Summary Judgement to which DCHA responded.

The allegations of the Complaints are supported by documentary evidence. DCHA acknowledges the existence of the arbitration awards and AFGE's written requests that DCHA implement the awards. DCHA has further acknowledges that the terms of the both award have not been implemented. In both cases, DCHA does not present a basis for any genuine issue of dispute concerning the terms of the awards.

In PERB Case No. 99-U-41, DCHA's grounds for dismissal stem from its contention that the failure to implement an arbitration award does not constitute an unfair labor practice under the CMPA. In PERB Case No. 99-U-40, DCHA asserts that the Board lacks jurisdiction over AFGE's Complaint. Specifically, DCHA asserts that AFGE's request is a "petition for enforcement" of the arbitration award. Furthermore, DCHA contends that "said request is not properly an Unfair Labor Practice Complaint and should be filed in the appropriate forum." (Ans. at 4.) The parties' contention in these cases present only a question of law appropriately decided on the pleadings pursuant to Board Rule 520.10.

These are the latest Complaints filed by AFGE against DCHA

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[3]/ The Board Decisions in PERB Case Nos. 99-A-05 and 99-A-06 were served by first class mail. Pursuant to Board Rules 559.1, 501.4 and 501.5, our Decisions became "final" on September 7, 1999. A party aggrieved by a final order of the Board has thirty (30) days to file for review with the D.C. Superior Court. D.C. Code § 1-618.13(c). Therefore, in order to be timely, an appeal of those Decision pursuant to D.C. Code § 1-618.13(c) had to be filed no later than October 7, 1999.

alleging unfair labor practice violations. AFGE's allegations are based on DCHA's refusal to implement a final and binding grievance arbitration award, whose terms are not in dispute. We recently decided five cases involving these same parties and the same legal issues. American Federation of Government Employees, Local 2725, v. D.C. Housing Authority, Slip Op. Nos. 585 and 595, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999); American Federation of Government Employees, Local 2725, v. D.C. Housing Authority, Slip Op. No. 597, PERB Case No. 99-U-23 (1999) and American Federation of Government Employees, Local 2725, v. D.C. Housing Authority, Slip Op. No. 603, PERB Case No. 99-U-18 (1999) (attached).[4]/ We have reviewed DCHA's argument and we see no basis for treating these cases differently from the five we have previously decided. We address below only those arguments not previously raised by DCHA.

DCHA asserts that the Board lacks the statutory authority, expressed or implied, to seek compliance with grievance arbitration awards. (Mot. at 3.) DCHA contends that "[n]either the CMPA nor its provisions for enforcement of arbitration awards define an unfair labor practice claim as the failure or refusal to implement an arbitration award." Id. DCHA asserts that the Board should "defer to... the CMPA for its definition of an unfair labor practice claim." Id. In support of this contention, DCHA cites our decision in Fraternal Order of Police/MPD Labor Committee v. D.C. Metropolitan Police Department, 39 DCR 9617, Slip Op. 295, PERB Case No. 91-U-18 (1992). There, we observed that "[a]lthough the Board possesses the authority to seek compliance with its decisions and orders, there is no explicit statutory authority to seek compliance with decisions and or awards rendered by third-parties, e.g., arbitrators." Id. at p 3. Based on our observation, DCHA argues that no provision under the CMPA or Board Rules makes the failure or refusal to implement a grievance arbitration award an unfair labor practice.

However, our observation in Metropolitan Police Department concerned our authority in an unfair labor practice proceeding with respect to an alleged refusal to implement an arbitration award whose terms are genuinely in dispute. The CMPA does not delineate a list of acts and conduct that constitutes a failure to bargain in good faith. The Board has interpreted and defined through case law the type of acts and conduct constituting a

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[4]/ DCHA has appealed Slip Op. Nos. 585 and 595 in the D.C. Superior Court. The Board has filed an Answer to DCHA's Petition for Review. In addition, the Board has filed a Petition for Enforcement of Slip Op. Nos. 585, 595 and 603.

failure to bargain in good faith and thereby an unfair labor practice under Section 1-618.4(a)(5). In the subsequently decided case, American Federation of Government Employees, Local 872, v. D.C. Water and Sewer Authority, 45 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1999), we 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." Slip Op. No. 497 at p. 3.[5]/

DCHA attempts to distinguish the facts in American Federation of Government Employees, Local 872, v. D.C. Water and Sewer Authority, Slip Op. No. 497, PERB Case No. 96-U-23, from those in the instant cases. Specifically, DCHA argues that "[u]nlike the case herein, in Water and Sewer, the alleged unfair labor practice was a failure to implement the terms of a negotiated settlement agreement resulting from the arbitration process."(Mot/Dism at p. 5.) However, our holding in Water and Sewer expressly extended the duty to bargain in good faith to "an award or negotiated agreement where no dispute exists over its terms." (Emphasis added.) Slip Op. No. 497 at p 2.

For the reasons discussed, these arguments lack merit. In view of the above, we find no basis for DCHA's Motion to Dismiss the Complaint in PERB Case No. 99-U-41. Therefore, the Motion is denied. Based on the above, we find that DCHA has violated D.C. Code § 1-618.4(a) (1) and (5) by refusing to implement the arbitration awards in PERB Case Nos. 99-U-40 and 99-U-41.

We further conclude that DCHA continues to engage in a pattern and practice of refusing to implement arbitration awards. Therefore, we conclude that it would be in the interest-of-justice to accord AFGE its requested costs in these proceedings for prosecuting DCHA's latest violations of this same nature.

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[5]/ DCHA made the related argument in PERB Case No. 99-U-40, that the Board's remedial authority with respect to an arbitration award is limited by D.C. Code § 1-605.2(6) to setting aside, vacating or remanding the award. However, the instant causes of action are unfair labor practice complaints filed pursuant to the Board's authority under D.C. Code § 1-605.2(3). Under Section 1-605.2(3), the Board has the authority, upon finding an unfair labor practice, to "issue an appropriate remedial order[.]" Pursuant to that authority, the Board has decided that directing the implementation of an undisputed arbitration award is "an appropriate remedial order" to redress the unfair labor practice established by the facts of these cases.

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. The 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 which are rendered pursuant to the negotiated provisions of the parties' collective bargaining agreement and over which no genuine dispute exists.

2. DCHA, 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.

3. DCHA shall, in accordance with the terms of the awards, fully implement, forthwith, the arbitration awards.

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 these Complaints. 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 and 7 of this Order.

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.

December 7, 1999

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order on in PERB Case Nos. 99-U-40 and 99-U-41 was transmitted via Fax and/or U.S. Mail to the following parties on the 7th day of December, 1999.

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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. 609, PERB CASE NOS. 99-U-40 and 99-U-41 (DECEMBER 7, 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. 20005. Phone: (202) 727-1822.

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

December 27, 1999