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. 98-U-20, 99-U-05 and 99-U-12**
Complainant,	**Opinion No. 595**
v.	**MOTION FOR RECONSIDERATION**
District of Columbia Housing Authority,	
Respondent,	

DECISION AND ORDER

On May 3, 1999, the District of Columbia Housing Authority filed a Motion for Reconsideration in the above-referenced matter. The issues presented by this case are set forth in the Board's Decision and Order, Slip Op. No. 585. In all three Complaints, the Complainant American Federation of Government Employees, Local 2725 (AFGE) asserted that Respondent District of Columbia Housing Authority's (DCHA) violated the CMPA, as codified under D.C. Code § 1-618.4(a)(1) and (5), by failing to implement three different arbitration awards. DCHA contended that its asserted rights to appeal the awards relieved it of any obligation to implement the terms of each award.

In Slip Op. No. 585, we held that DCHA had waived its right to appeal the awards by failing to file either a timely arbitration review request with the Board or a petition for review with the D.C. Superior Court. Slip Op. at 3-4. Therefore, we held that DCHA had no "legitimate reason" for its on-going refusal to implement the awards and found DCHA's refusal to do so an unfair labor practices.

Pursuant to Board Rule 559.2, DCHA filed a "Motion for Reconsideration and Stay of Order of Cease and Desist" (Motion). AFGE filed an Opposition to the Motion. For the reasons discussed below, we deny DCHA's Motion.

DCHA asserts that it had "diligently" and timely pursued appeals of the awards in PERB Case Nos. 99-U-05 and 99-U-12, in the D.C. Superior Court pursuant to the party's collective bargaining agreement and the Uniform Arbitration Act. DCHA argues -in view of the Superior Court's ruling affirming the Board's exclusive jurisdiction over appeals of grievance arbitration awards- that the Board's time period for pursuing appeals of arbitration awards should be equitably tolled to enable DCHA an opportunity to file appeals of the awards with the Board.[1]/ DCHA further asserts that the Board should stay its cease and desist order pending such appeals.

Board Rule 538.1 provides that appeals of a grievance arbitration award must be filed with the Board "not later than twenty (20) days after service of the award." Board Rules 501.1 and 501.3 provide that no extension of the time for filing initial pleadings shall be granted. The D.C. Court of Appeals has held that this and other Board rules that establish time period limits for initiating a cause of action before the PERB are mandatory and jurisdictional. Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (1991). As such, the PERB lacks discretion to extend or reduce these time limits notwithstanding an absence of prejudice. Id.

Under analogous circumstances we have held that a complainant union member's initial resort to the internal dispute resolution process provided under the union's by-laws did not toll the time period for filing a timely standards of conduct complaint with the Board. See, Deborrah Jackson, et al. v. American Federation of Government Employees, Slip Op. No. 414,

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[1]/ While these three Complainants were pending disposition before the Board, the D.C. Superior Court issued an Order dismissing DCHA's petition to vacate the arbitration award referenced in PERB Case No. 99-U-05. The Court held that "it lacks jurisdiction over this matter since this appeal can only be brought before the PERB pursuant to D.C. Code § 1-605.2(6), and there is no legal or statutory basis for plaintiff's argument that DCHA's status as an instrumentality of the District of Columbia government somehow vests this Court with jurisdiction under the Uniform Arbitration Act in contravention of D.C. Code § 1-605.2(6)." District of Columbia Housing Authority v. Marty McMillan and American Federation of Government Employees, Local 2725, C.A. No. 98-9888 (Civil Div., February 3, 1999.)

PERB Case No. 95-S-01 (1995).[2]/ We view this precedent as barring DCHA's request for tolling.

Moreover, the D.C. Superior Court order affirming the Board's exclusive jurisdiction over appeals of grievance arbitration awards was issued on February 3, 1999. Even if the period of time the matter remained pending before the D.C. Superior Court is tolled, the time between the D.C. Superior Court's February 3, 1999 Order and DCHA's May 3, 1999 Motion for Reconsideration far exceeds the 20-day period accorded under Board Rule 538.1 for appealing an arbitration award. Tolling the filing date for the time DCHA's suit was pending in the D.C. Superior Court would have no effect, since any filing with the Board now would be untimely. To date, no appeal of the awards in PERB Case Nos. 99-U-05 and 99-U-12 have been filed.

With respect to PERB Case No. 98-U-20, DCHA raises no new arguments that we did not previously considered and reject.[3]/ Therefore, based on the discussion, the Motion for Reconsideration and Stay of the Board's Order are denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is denied.

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[2]/ Moreover, we find DCHA's asserted belief that its right of appeal of arbitration awards lied in the Superior Court rather than within the Board's jurisdiction is somewhat disingenuous in view of its initial appeal to the PERB of the arbitration award in PERB Case No. 98-U-20. See, District of Columbia Housing Authority and American Federation of Government Employees, Local 2725, 45 DCR 4776, Slip Op. No. 519, PERB Case No. 97-A-02 (1998).

[3]/ DCHA reasserts previous arguments. DCHA asserts that there can be no violation base on its failure to implement the award in this case because it has implemented all aspects of that award for which it is legally obligated. In Slip Op. No. 585, we observed that DCHA "ha[d] previously appealed the award referenced in PERB Case No. 98-U-20 on this ground in an arbitration review request filed with the Board in PERB Case No. 97-A-02." Slip Op. at 3-4. DCHA's arbitration review request and its motion for reconsideration in PERB Case No. 97-A-02 were denied. We found DCHA insistence on maintaining this argument presented no legitimate basis for failing to meet its obligations under the CMPA.

2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

June 17, 1999

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order on in PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 was transmitted via Fax and/or U.S. Mail to the following parties on the 17th day of June, 1999.

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