GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of Government Employees, Local 2725, AFL-CIO,	
Complainant,	
v.	**PERB Case No. 97-U-07** **Opinion No. 509**
District of Columbia Housing Authority,	
Respondents.	

DECISION AND ORDER

On January 21, 1997, an Unfair Labor Practice Complaint was filed in the above-captioned proceeding by the American Federation of Government Employees, Local 2725 (AFGE). The Complainant alleges that Respondent District of Columbia Housing Authority (DCHA) included certain bargaining unit employees in its reduction-in-force (RIF) because they either filed a grievance, sought union representation or testified in a grievance/arbitration proceeding. In this regard, Complainant asserts that DCHA committed unfair labor practices proscribed by the Comprehensive Merit Personnel Act, as codified under D.C. Code § 1-618.4(a)(1), (3) and (4).

By letter dated January 27, 1997, the Executive Director administratively dismissed the Complaint as untimely filed. In pertinent, part the Executive Director's letter to Complainant stated the following:

> Board Rule 520.4 provides as follows:
>
> > Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred. (Emphasis added.)
>
> The Board has held that "[t]his deadline date is 120 days after the date Petitioner admits he actually became aware of the event giving rise to this complaint allegations, i.e. [notice of] termination of his employment." Hoggard v. DCPS, AFSCME Council 20, Local 1959, Slip Op. No. 352, PERB Case No. 93-U-10 (1993).

> In the instant case, you admit that the complainants became aware of the RIF on August 23, 1997. (Compl. at para.11) However, your Complaint was not filed until January 21, 1997. In light of the above-noted facts, your filing clearly exceeds the 120 days requirement in Board Rule 520.4. Therefore by this letter, I am dismissing your complaint.

On February 6, 1997, Complainant filed a document styled "Motion for Reconsideration", which requested that the Board reverse the Executive Director's administrative dismissal and process an Amended Complaint, filed with the Motion, in accordance with Board Rules.[1]/ DCHA filed a Response opposing Complainant's Motion.

AFGE states in its Request that the September 30 actual separation date, not the August 23 notice date, should be the effective date for commencing the 120 days in which to file a complaint under Board Rule 520.4. AFGE contends that "[t]o have filed a complaint ... prior to a final determination of the Agency would have been premature." (Mot. at 2.) Notices, AFGE argues, can be rescinded or employees can be rehired or reassigned in a different capacity during the period between a notice to terminate and the actual termination. AFGE asserts that it was not apparent that DCHA's inclusion of these employees in the reduction-in-force was an unfair labor practice until they were not given another option and their employment ceased.

The Complainant states that on August 23, 1996, DCHA provided the instant employees with notice of its decision to RIF them. AFGE did not allege that DCHA's decision to RIF these employees was not final when made. The retention of these employees for at lease 30 days before they were actually released merely reflect an employee entitlement under D.C. Office of Personnel Rules and Regulations and the parties' collective bargaining agreement with respect to the tenure of an employee included in a RIF.

As noted in the Executive Director's letter, our jurisdictional requirement of 120 days in which to file an unfair labor practice complaint commences from the date the violation occurred. When DCHA provided notice that it had exercised its authority to RIF these employees, any violation by DCHA that may exist with respect to this act occurs when notice or knowledge is received or reasonably ascertained. Deborrah Jackson, et al. v. the American Federation of Government Employees, Local 2741, AFL-CIO

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[1]/ The Complainant amended the September 23 release date set forth in the Complaint to September 30. The amended release date is not a factor in the basis of our decision.

(AFGE), Slip Op. 414, PERB Case No. 95-S-01 (1995). As AFGE asserts in the Complaint, the actual day these employees officially stop working did not result from action DCHA took on the last day of their employment, but rather on the day DCHA effectively exercised its authority to RIF them, i.e., August 23, 1996. If DCHA could not effectively exercise its authority to RIF until the day the employee is released, DCHA could not implement a RIF since the minimum 30-day notice requirement could never be met.

Moreover, we find no merit in Complainant's argument that an earlier filing of its Complaint would have been premature. The fact that DCHA did not reverse its decision to RIF these employees or reassign them in another capacity does not convert a RIF alleged as an unfair labor practice into one that is not. If DCHA's decision to RIF any of these employees was illegally based or motivated, it was so when made. Furthermore, this contention by AFGE appears somewhat disingenuous in view of its failure to pursue this claim for nearly 3 months after these employees ceased working. We further note that the Complainant had previously filed a timely complaint (PERB Case No. 96-U-24) alleging that DCHA committed unfair labor practices against Complainant's local president by including him in the same reduction in force that is the subject of this Complaint. That complaint was filed on September 3, 1996, prior to the scheduled September 30 release date of the local president. Under its rationale, AFGE had no basis for alleging the violation when it filed the complaint.

In view of the foregoing, the Petitioner's request that the Board reverse the Executive Director's decision to dismiss the Complaint is denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Executive Director's administrative dismissal of Petitioner's Complaint is affirmed; the Complaint is dismissed.

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

March 13, 1997

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 97-U-07 was sent via facsimile and/or mailed (U.S. Mail) to the following parties on the 13th day of March, 1997.

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