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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
American Federation of)	
Government Employees, Local 631,)	
Complainant,)	PERB Case No. 06-U-39
v.)	Opinion No. 1279
District of Columbia)	
Department of Public Works,)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

On June 14, 2006, Complainant American Federation of Government Employees, Local 631 ("Union" or "Complainant") filed the above-captioned Unfair Labor Practice Complaint ("Complaint"), against Respondent District of Columbia Department of Public Works ("Agency" or "Respondent") for alleged violations of sections 1-617.04(5) and 1-617.08(b) of the Comprehensive Merit Protection Act ("CMPA"). On June 30, 2006, Respondent filed a document styled Answer to Unfair Labor Practice Complaint ("Answer") in which it denies the alleged violations and raises the following affirmative defenses:

- (1) The Complaint is untimely and therefore barred by PERB Rule 520.4
- (2) Complainant seeks an illegal and arguably criminal remedy
- (3) Complainant brings this unfair labor practice in bad faith
- (4) The elements in Complainant's prayer for relief, if granted, represent a threat to the public policy and fundamental mission of the District of Columbia

(Answer at 4).

II. Discussion

A. Background

The parties agree that on January 25, 2006, the Agency and the Union met to discuss implementation of an annual employee drivers' license verification program. (Complaint at 2; Answer at 2). At the meeting, the Union requested to bargain over the review of driving records for non-CDL licensed employees. (Complaint at 2; Answer at 2). This request to bargain was followed by a written request to bargain, dated January 25, 2006. (Complaint Ex. 3). Additionally, the parties agree that the Agency sent a written memorandum to the Union postmarked February 24, 2006, in which the Agency stated the memorandum was a "follow-up to the meeting that was held on Wednesday, January 25, 2006" and denied the Union's request to bargain. (Complaint at 2; Answer at 2-3; Complaint Ex. 4). The Union alleges that it was unaware of the Agency's refusal to bargain until it received the memorandum. (Complaint at 2). The Agency contends that it "gave the Union unequivocal notice that the review program would be implemented" at the January 25, 2006, meeting and that the February 24, 2006, memorandum was a "written restatement or confirmation of what was clearly and unequivocally told to [the Union] at the January 25, 2006 meeting." (Answer at 2-3).

B. Alleged Untimeliness

The Agency raises the affirmative defense that the Complaint is untimely. (Answer at 4). As a threshold matter, the Board will consider whether the Complaint was timely filed. Board Rule 520.4 states that unfair labor practice complaints shall be filed "not later than 120 days after the date on which the alleged violations occurred." The Board does not have jurisdiction to consider unfair labor practice complaints filed outside of the 120 day window. *See, e.g., Hoggard v. Dist. of Columbia Public Employee Relations Bd.*, 655 A.2d 320, 323 (D.C. 1995) ("[T]ime limits for filing appeals with administrative adjudicative agencies...are mandatory and jurisdictional.")

The Board has held that the 120-day period for filing a complaint begins when the Complainant knew or should have known of the acts giving rise to the violation. *Pitt v. D.C. Dep't of Corrections, et al.*, ___ D.C. Reg. ___, 59 DCR 5554, Slip Op No. 998 at p. 5, PERB Case No. 09-U-06 (2009). In its Answer, the Agency states only that "William, Howland, Director of DPW, gave the Union unequivocal notice that the review program would be implemented," at the January 25, 2006, meeting. (Answer at 2). There is no evidence or allegation that the Agency informed the Union that it would not bargain over the implementation of the drivers' license review program until the memorandum sent on February 24, 2006. Therefore, the Complaint was filed within the statutory 120-day period and the untimeliness allegation is dismissed.

C. Mediation

Pursuant to Board Rule 558.4, the Board believes that the parties in this case could be best served by mandatory mediation. The parties will be contacted by PERB to schedule the mandatory mediation within seven (7) days of the issuance of this Decision and Order.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 631 and the D.C. Department of Public Works are ordered to participate in mandatory mediation of the issues underlying the instant Complaint.
2. The parties will be contacted to schedule the mandatory mediation within seven (7) days of the issuance of this Decision and Order.
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.

June 13, 2012

CERTIFICATE OF SERVICE

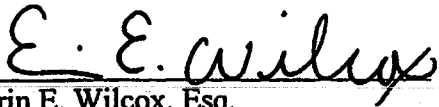
This is to certify that the attached Decision and Order in PERB Case No. 06-U-39 was transmitted via U.S. Mail and e-mail to the following parties on this the 13th day of June, 2012.

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