

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
Glendale Hoggard,)	
)	
Complainant,)	
)	
v.)	
)	
The District of Columbia)	PERB Case No. 93-U-10
Public Schools,)	Opinion No. 352
)	
and)	
)	
The American Federation of)	
State, County and Municipal)	
Employees, District Council 20,)	
Local 1959, AFL-CIO,)	
)	
Respondents.)	
)	

DECISION AND ORDER

On February 1, 1993, an Unfair Labor Practice Complaint was filed with the Public Employee Relations Board (Board) by Counsel on behalf of Complainant Glendale Hoggard (Complainant). The Complaint alleged that certain conduct by Respondents, District of Columbia Public Schools (DCPS) and American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO (AFSCME), constituted unfair labor practices, as proscribed by the Comprehensive Merit Personnel Act, at D.C. Code Sec. 1-618.4. et seq.

By letter dated April, 1993, the Executive Director dismissed the Complaint allegations with respect to DCPS as untimely filed. In pertinent, part the Executive Director's letter to Complainant stated the following:

According to Board Rule 520.4(b), an Unfair Labor Practice Complaint, when filed by an individual(s), shall be filed not later than 120 days after the date the alleged violation(s) occurred.

You have alleged in your Complaint that the basis of the violation by D.C. Public Schools consisted of a series of acts taken against Complainant starting in February 1992 and culminating with the

non-reappointment of Complainant to his position which effectively "ended" his "employment" after "September 30, 1992." (Compl. at 2.) Notwithstanding your argument that complainant did not receive formal notification of the latest of these acts, i.e., Complainant's non-reappointment, until November 3, 1992, Complainant acknowledges receipt of previous notices as early as July 13, 1992. Moreover, Complainant further acknowledges that his employment indeed ended on September 30, 1992. As measured from the latest date of the alleged violations, your Complaint, with respect to D.C. Public Schools, was due in this office not later than January 29, 1992.

If you disagree with my determination you may formally request that the Board review my determination. I note, however, Board Rule 501.1 is mandatory and provides no discretion or exception for extending the deadline for filing initial actions. Public Employee Relations Board v. D.C. Metropolitan Police Department, No. 88-868 (June 25, 1991).

On April 8, 1993, Complainant filed a document styled "Request for Review," which requested that the Board reverse the Executive Director's administrative dismissal and conduct a full hearing on the issue of timeliness and all other issues in the Complaint. No response was filed by Respondent DCPS. Complainant asserts that "[t]he issue of when Petitioner's time began to run for filing a complaint before the Board is a question of fact which should be determined by the Board after a full hearing. (Req. at 2.) We disagree.

Petitioner states in its Request that "Petitioner could not have been aware his termination occurred on September 30, 1992, since he reported for duty on October 1, 1992." Id. Accepting this as true, Petitioner fails to demonstrate how this assertion alters the latest date by which his Complaint should have been filed.^{1/} As stated in the Executive Director's letter, Petitioner acknowledged in his Complaint that his employment indeed ended on September 30, 1992. Even if Petitioner was not

^{1/} The Petitioner argues that "labor law cases ... are replete with decisions indicating [that the] time for filing an action does not begin to run until ... Petitioner is aware that the violation has occurred. To the contrary, Board rules do not permit the filing of complaints based on the discovery of alleged latent violations. Nor has the Board, to date, accepted such filings.

"aware" of his September 30, 1992 termination until he reported to work on October 1, 1992, his Complaint, nevertheless, could not be accepted for filing after January 29, 1992, as stated in the Executive Director's letter of dismissal. This 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., the termination of his employment.^{2/} This determination is not based on a disputed question of fact requiring a hearing.

In view of the foregoing, the Petitioner's Request for a reversal of the Executive Director's decision and a full hearing are denied. The Executive Director's administrative dismissal of Petitioner's Complaint as untimely, with respect to Respondent DCPS, is affirmed.

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint allegations with respect to Respondent District of Columbia Public Schools are dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

May 11, 1993

^{2/} Board Rule 501.5 provides:

In computing any period of time prescribed by these rules, the day on which the event occurs from which time begins to run shall not be included....

Thus, discounting October 1, 1992 --"the day on which [Petitioner became actually aware] of the event[, i.e., cessation of his employment,] occurred"-- Petitioner's February 1, 1993 filing of his Complaint exceeded 120 days from the date of the alleged violations with respect to DCPS.