

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

In the Matter of:	)	
	)	
Harold Fisher, Jr., et al.	)	
	)	
Petitioners,	)	PERB Case No. 92-U-01
	)	and 92-U-02
v.	)	Opinion No. 347
	)	
District of Columbia	)	
Public Schools,	)	
	)	
Respondent.	)	

DECISION AND ORDER<sup>1/</sup>

On October 23, 1991, Harold Fisher, Jr. on behalf of himself and other named employees, (Petitioners), submitted for filing a document alleging certain violative conduct by the Respondent District of Columbia Public Schools (DCPS). (This filing was docketed as PERB Case No. 92-U-01.) In accordance with Board Rule 501.13, the Board's Executive Director provided Petitioners' representative, Harold Fisher, notice of and an opportunity to cure filing deficiencies, as well as a copy of the Board Rules. Specifically, the Petitioners were advised that their filing failed to conform with Board Rules 501.6 and 520.3(d) requiring pleadings to provide the names, addresses and telephone numbers of all parties and a clear and complete statement of the allegations including dates, times and places. On November 12, 1991, the Petitioners' documents in PERB Case No. 92-U-01 were returned for failure to properly file and meet the minimum requirements for pleadings in support of an Unfair Labor Practice Complaint, as prescribed under Board Rules 501.8, 501.12, 520.3 and 520.4(b).<sup>2/</sup>

On November 15, 1991, Harold Fisher, on behalf of Petitioners, submitted for filing an Unfair Labor Practice Complaint, that was docketed as PERB Case No. 92-U-02, asserting

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<sup>1/</sup> Chairperson Squire did not participate in either the discussion or decision of this case.

<sup>2/</sup> In both the October 25th and November 12th letters, the Executive Director emphasized the importance of the Petitioners supplying explicit information regarding the timing of the alleged conduct and directed Petitioners representative's attention, specifically, to the rules regarding timely complaints.

Decision and Order

PERB Cases No. 92-U-01 and 92-U-02

Page 2

the same allegations that Petitioners alleged in PERB Case No. 92-U-01. By letter dated November 20, 1991, the Executive Director dismissed the Complaint in PERB Case No. 92-U-02 as untimely filed.<sup>3/</sup> In letters dated December 27, 1991 and February 6, 1992, the Executive Director reaffirmed her dismissal of Petitioners' Complaint in response to two requests by Petitioner Fisher that the Executive Director reconsider her determination. Petitioners were further advised that they were "free to submit additional information addressing the issue of timeliness" or could "formally request that the Board review [the Executive Director's] determination".

There was no further communication from the Petitioners regarding this matter until March 5, 1993, when the Petitioners filed a request that the Board reconsider the decision of the Executive Director and "accept the complaint as submitted on October 23, 1991 and amended after that, as timely." (Req. at 2.)<sup>4/</sup>

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<sup>3/</sup> The letter provided in pertinent part:

After having reviewed your submission and its attachments, I have concluded that the Complaint is untimely and I am therefore dismissing it administratively.

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 was an August 21, 1990 Memorandum that was implemented as late as July 16, 1991. Even if measured from the latest date of an alleged violation, your Complaint was due in this office not later than November 13, 1991.

<sup>4/</sup> Although Petitioner Fisher refers to subsequent filings to his October 23, 1991 purported Complaint as amendments, we note that Petitioner was specifically advised by letter dated November 12, 1991, that filings subsequent to his failed attempt to properly file and cure his October 23, 1991 filing would be considered as a new Complaint. Thus, his November 15, 1991 filing was docketed as a new Complaint and not an amendment to his October 23, 1991

(continued...)

Pursuant to Board Rule 500.3 "[t]he Executive Director [is] the principal administrative officer of the Board and performs such duties as designated by the CMPA [,i.e., the Comprehensive Merit Personnel Act,] or as assigned by the Board, including the investigation of all petitions, requests, complaints and other matters referred or submitted to the Board." This delegation of authority derives from the CMPA, D.C. Code Sec. 1-605.1(k), which authorizes the Board to "appoint such employees as may be required to conduct its business." The Board has delegated the administrative dismissal of untimely actions to its Executive Director as a proper exercise of its authority. See e.g., District of Columbia Public Schools and Washington Teachers Union, \_\_\_ DCR\_\_\_, Slip Op. No. 335, PERB Case No. 92-A-10 (1992) and District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee, 39 DCR 1931, Slip Op. No. 286, PERB Case No. 87-A-07 (1992).

We, however, consider the exercise of such authority by the Executive Director on matters "referred or submitted to the Board", to be an action of and decision by less than the full Board. In this regard, we consider Petitioners' request as an appeal to the full Board for reconsideration of its decision dismissing the Complaint. Accordingly, Petitioners' request is in effect subject to the provisions of D.C. Code Sec. 1-605.2 (12), governing appeals, by an adversely affected party, of Board decisions rendered by less than the full Board.

In the interest of balancing both the opportunity for an affected party to appeal an adverse decision with providing certainty to Board actions, D.C. Code Sec. 1-605.2 (12) makes "final" decisions by the Board that are not appealed to either the full Board or the D.C. Superior Court (in decisions originally rendered by the full Board) if such appeal is "not taken within 120 days of the decision." Petitioners' appeal to the Board of its decision, vis-a-vis, the Executive Director, to (1) reject for filing the Petitioner's October 23, 1991 Complaint in PERB Case No. 92-U-01 and (2) dismiss as untimely the Petitioners' November 15, 1991 Complaint in PERB Case No. 92-U-02, is well beyond the prescribed 120 days from the date of those

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<sup>4</sup>(...continued)

Complaint. Consequently, the only Complaint accepted for filing was Petitioners' November 15, 1991 Complaint, i.e., PERB Case No. 92-U-02, which was determined to be untimely. See n.1, supra. See also, American Federation of Government Employees, Local 3721 v. The District of Columbia Fire Department, 29 DCR 4373, Slip Op. No. 46, PERB Case No. 82-U-01 (1982).

Decision and Order  
PERB Cases No. 92-U-01 and 92-U-02  
Page 4

decisions, i.e., November 12 and 20, 1991, respectively.<sup>5/</sup>  
Thus, as prescribed by D.C. Code Sec. 1-605.2 (12), those  
decisions of the Board are final.<sup>6/</sup>

In view of the foregoing, the Petitioners' request for  
reconsideration by the Board of the Executive Director's  
decisions in PERB Cases Nos. 92-U-01 and 92-U-02 is out of time  
and therefore must be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

The Request for Reconsideration is dismissed.

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

April 26, 1993

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<sup>5/</sup> As discussed in the text, Petitioner did not seek such  
review until well over 14 months after being so advised. Moreover,  
Petitioners have provided no additional information not previously  
considered. Finally, as the Executive Director noted in affirming  
to Petitioners her determination of untimeliness, Board Rule 501.1  
is mandatory and provides no discretion or exception for extending  
the deadline for filing initial actions. See, Public Employee  
Relations Board v. D.C. Metropolitan Police Department, No. 88-868  
(June 25, 1991). Therefore, notwithstanding the staleness of  
Petitioners' appeal to the Board, Petitioners provide no basis for  
disturbing the Executive Director's determination.

<sup>6/</sup> We note that although the Board has entertained motions  
and petitions for reconsideration of its Decisions and Orders, no  
such reconsideration of the merits of a Board Decision and Order  
has been accepted by the Board by a party filing more than 120 days  
after the issuance of the initial Decision and Order. With respect  
to Board decisions rendered without prejudice, the Board has  
established a standard for reconsidering the allegations of a  
dismissed Complaint "when newly discovered facts or evidence exists  
which did not exist at the time the matter was originally  
considered by the Board." Council of School Officers, Local 4 v.  
District of Columbia Public Schools, 30 DCR 4966, Slip Op. No. 83-  
U- 08 (1983). The instant appeal is of a Board decision to dismiss  
with prejudice, i.e., timeliness.