

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
Kenneth M. Lemmons,)	PERB Case No. 84-A-03
)	Opinion No. 83
Petitioner,)	
)	
and)	
)	
District of Columbia Department)	
of Human Services,)	
)	
Agency.)	

DECISION AND ORDER

On March 6, 1984, Kenneth M. Lemmons (Petitioner) filed an "Arbitration Review Request" with the District of Columbia Public Employee Relations Board (Board) seeking review of an arbitration award issued on February 6, 1984. In that award, the Arbitrator ruled that Petitioner's grievance contesting his discharge by the District of Columbia Department of Human Services (DHS) during his probationary period, was not arbitrable.

During the grievance procedure, including arbitration, Petitioner was represented by District Council 20, American Federation of State, County and Municipal Employees (AFSCME) which is not a party to this review request. The basis for the review request is Petitioner's contention that the arbitration award on its face, is contrary to law and public policy. Petitioner argues that employees may be discharged only "for cause" without distinction between probationary and permanent employee status. Further, Petitioner argues that the Arbitrator exceeded the jurisdiction granted in dismissing the grievance as not being arbitrable.

On March 27, 1984, DHS filed an "Opposition to Acceptance of Arbitration Review Request." DHS contends that the review request should be denied because:

- "1. Petitioner lacks the standing to appeal the award.
2. Petitioner's request was untimely.
3. The issue decided in the award is a matter not subject to [this] Board's jurisdiction; and
4. The award, on its face, is not contrary to law or public policy nor did the Arbitrator exceed his authority."

During his probationary period, Petitioner received three (3) evaluations rating his performance as marginal. After being given sixty (60) days to improve, Petitioner was discharged prior to the end of the probationary period for unsatisfactory performance. AFSCME made a demand for arbitration pursuant to the negotiated Agreement. The matter was heard by the Arbitrator on November 1, 1983, and he issued his "Award and Decision" on February 6, 1984, ruling that the grievance was not arbitrable.

Section 502(f) of the Comprehensive Merit Personnel Act (CMPA) (codified as D.C. Code Section 1-605.2(6)) authorizes the Board to consider appeals of arbitration awards only if "it is determined that the arbitrator was without, or exceeded his or her jurisdiction; the award on its face is contrary to law or public policy; or was procured by fraud, collusion or other similar and unlawful means." Board Rule 107.2 provides that any party who is aggrieved by an arbitration award may file a request for review with the Board no later than twenty (20) days after the award is served.

In examining the review request, the Board finds that the request was not filed within twenty (20) days of service of the award as required by Board Rule 107.2. No exigent circumstances have been presented to justify the delay. Accordingly, the Board finds that the request is untimely.

O R D E R

IT IS ORDERED THAT:

The Arbitration Review Request is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
July 17, 1984