GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

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| **In the Matter of:** | |
| **American Federation of Government Employees, Local 2725, AFL-CIO,** | |
| **Complainant,** | **PERB Case No. 97-U-07**<br>**Opinion No. 513** |
| **v.** | |
| | **MOTION FOR RECONSIDERATION** |
| **District of Columbia Housing Authority,** | |
| **Respondent.** | |

## DECISION AND ORDER

On March 13, 1997, the Board issued a Decision and Order (Slip Opinion No. 509) in the above-captioned case denying Complainant's appeal of the Executive Director's administrative dismissal of the Unfair Labor Practice Complaint as untimely. We concluded that the 120-day requirement in which to file an unfair labor practice complaint under Board Rule 520.4, commenced when the D.C. Housing Authority (DCHA) provided employees with official notice of its decision to terminate their employment pursuant to a reduction-in-force (RIF). Slip Op. at 3. We, therefore, affirmed the Executive Director's determination that the Complainant's January 21, 1997 Complaint, alleging a violation of the CMPA that stemmed from a RIF initiated by notice on August 23, 1996, was untimely.

On March 24, 1997, the Complainant, in accordance with Board Rule 559.2, filed a Motion for Reconsideration of Opinion No. 509. An Opposition to the Motion was filed by DCHA. We have reviewed the grounds for reconsideration and we find nothing contained in the Motion that was not previously presented or considered in reaching our Decision in Opinion No. 509 with respect to the timeliness of the asserted violation by Respondent's inclusion of the employees in question in the RIF.[1/]

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[1/] In dismissing the Complaint, the Executive Director cited our Decision and Order in Glendale Hoggard v. D.C. Public Schools, 43 DCR 1297, Slip Op. 352, PERB Case No. 93-U-10 (1993). There, we (continued...)

The Complainant, however, asserts a violation ancillary to the RIF not heretofore articulated or made clear in the Complaint. Specifically, the Complainant asserts that the Respondent committed unfair labor practices by retaining all but the 13 employees in question that were included in the RIF. With respect to this asserted violation, we find the Complaint timely filed. Contrary to the alleged violative inclusion of these employees in the RIF, Complainant could not become aware of an alleged violative non-selection of these employees for retention until it became apparent that they would be the only ones not retained, i.e., on the day they were actually released, i.e., September 30, 1996.

In view of the above, we shall reinstate the Complaint with respect to the alleged violation by Respondents alleged discriminatory non-selection of the employees in question for retention and refer it for hearing.[2]/

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[1](...continued)
reiterated that PERB Rules establishing the length of time in which to initiate a cause of action are jurisdictional and mandatory. See also, Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (1991). As such, these Rules afford no discretion to enlarge established time periods, including the 120-day requirement for initiating an unfair labor practice complaint under Board Rule 520.4. In Hoggard, we specifically held that the time period for filing an unfair labor practice complaint with respect to an alleged violative termination ran from the time the employee is informed or receives notice of his termination.

In affirming our Decision, the D.C. Court of Appeals reasoned that the actual release of the employee "merely confirms the action that had long since been communicated to him." Hoggard v. PERB, 655 A.2d 360, Slip Op. at 6 (1995). Moreover, the Court observed that the the disposition of analogous situations arising under the National Labor Relations Act support our Decision. Id, Slip Op. at 5. We find no basis for distinguishing under these facts between an alleged violative reduction-in-force and a termination with respect to our conclusion that the violation occurs when notice is given.

[2]/ In view of our reinstatement of the Complaint in PERB Case 96-U-24, involving these same parties and underlying facts, we shall consolidate these cases for hearing and disposition.

ORDER

**IT IS HEREBY ORDERED THAT:**

The Motion for Reconsideration of the Board's Decision and Order in Opinion 509 is granted, in part, in accordance with this Opinion.

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

April 10, 1997

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order on Motion for Reconsideration in PERB Case No. 97-U-07 was sent via facsimile and/or mailed (U.S. Mail) to the following parties on the 10th day of April, 1997.

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