

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia**

**Public Employee Relations Board**

In the Matter of: )

District of Columbia Department of Consumer )  
and Regulatory Affairs, )

Petitioner, )

v. )

American Federation of Government Employees, )  
Local 2725, )

Respondent. )

PERB Case No. 11-A-01

Opinion No. 1338

**DECISION AND ORDER**

**I. Statement of the Case**

This matter has returned to the Public Employee Relations Board (“Board” or “PERB”) following decisions in which the Board dismissed an untimely Arbitration Review Request filed by the Department of Consumer and Regulatory Affairs (“Department” or “Petitioner”)<sup>1</sup> and sustained an award of attorneys’ fees to the American Federation of Government Employees, Local 2725 (“Union” or “Respondent”).<sup>2</sup> The Department appealed the Board’s decision on attorneys’ fees, and the Superior Court of the District of Columbia affirmed. *D.C. Dep’t of Consumer & Regulatory Affairs v. D.C. Pub. Employee Relations Bd.*, No. 2009 CA 008104 B (D.C. Super. Ct. Aug. 19, 2010). After the affirmance of the Board’s decision on attorneys’ fees, the Union filed with the Arbitrator a supplemental petition for attorneys’ fees and suggested that the Arbitrator set a due date for the Department’s response. The Department informed the Arbitrator that in its view he had no further jurisdiction in the matter. The Arbitrator then issued an “Order Setting Briefing Dates” (“briefing order”) in which he directed the parties to submit briefs on or before October 15, 2010, on the following questions: “does the Arbitrator have jurisdiction to entertain and act upon the Union’s Supplemental Petition for Attorneys’ Fees, and

<sup>1</sup> *D.C. Dep’t of Consumer & Regulatory Affairs v. Am. Fed’n of Gov’t Employees, Local 2725*, Slip Op. No. 978, PERB Case No. 09-A-01 (Sept. 30, 2009).

<sup>2</sup> *D.C. Dep’t of Consumer & Regulatory Affairs v. Am. Fed’n of Gov’t Employees, Local 2725*, Slip Op. No. 992, PERB Case No. 09-A-01 (Sept. 30, 2009).

if so, do the facts, the law, and public policy support granting the Union's Supplemental Petition?"

In response, the Department filed with the Board an Arbitration Review Request ("Request") alleging procedural and substantive defects in the briefing order. The Union filed a pleading entitled "Union's Opposition to Agency's INTERLOCUTORY Arbitration Review Request." As the title indicates, the pleading noted that the Request was interlocutory and asserted that it was not properly before the Board.

## II. Discussion

The Respondent argues that PERB's Rule 554 prohibits the Board from considering an interlocutory appeal and cites decisions of the Federal Labor Relations Authority ("FLRA") dismissing interlocutory appeals.

Those authorities are not dispositive. Rule 554.1 provides, "Unless expressly authorized by the Board, interlocutory appeals to the Board of rulings by the Executive Director, Hearing Examiner or other Board agents shall not be permitted." A grievance arbitrator is not an agent of the Board. His authority comes from the collective bargaining agreement and any applicable statutes and regulations. *D.C. Metropolitan Police Dep't v. F.O.P./Metropolitan Police Dep't Labor Comm.*, Slip Op. No. 925 at p. 11, PERB Case No. 08-A-01 (July 12, 2010). Although the FLRA cases the Union cites came to the result that the Union advocates in the present case, the FLRA construes its regulations, specifically 5 C.F.R. § 2429.11,<sup>3</sup> as permitting interlocutory appeals in extraordinary circumstances. *U.S. Gen. Servs. Admin. and Nat'l Fed'n of Fed. Employees*, 62 F.L.R.A. 104, 106 (2006).

The provisions governing arbitration reviews before the Public Employee Relations Board are more restrictive in this regard than those of the FLRA. The Comprehensive Merit Personnel Act empowers this Board to "[c]onsider appeals from arbitration awards pursuant to a grievance procedure," D.C. Code § 1-605.02(6), and Board Rule 538.1 provides that a "party to a grievance arbitration proceeding who is aggrieved by the arbitration award may file a request for review with the Board. . . ." Under these provisions, the only act of an arbitrator that an aggrieved party can appeal for the Board to review is a final arbitration award. *D.C. Dep't of Consumer & Regulatory Affairs v. Am. Fed'n of Gov't Employees, Local 2725*, Slip Op. No. 1249 at pp. 3-4, PERB Case No. 10-A-06 (Mar. 27, 2012); *Univ. of D.C. and Univ. of D.C. Faculty Ass'n/NEA*, 38 D.C. Reg. 845, Slip Op. No. 260 at p. 2, PERB Case No. 90-A-05 (1991).

It is undisputed that the briefing order is not a final arbitration award. Therefore, the briefing order is not appealable. We express no opinion on the questions the arbitrator directed the parties to brief.

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<sup>3</sup> "Except as set forth in part 2423 [related to unfair labor practices], the Authority and the General Counsel ordinarily will not consider interlocutory appeals." 5 C.F.R. § 2429.11.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. Pursuant to Board Rule 538.4 the Arbitration Review Request filed by the Petitioner is rejected for lack of jurisdiction and is dismissed without prejudice to its renewal when a final arbitration award is issued.
2. 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.

October 18, 2012

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 11-A-01 is being transmitted via U.S. Mail to the following parties on this the 19th day of October, 2012.

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