

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:)	
)	
Metropolitan Police Department)	
)	
Petitioner)	PERB Case No. 18-A-06
)	
v.)	Opinion No. 1653
)	
Fraternal Order of Police/Metropolitan Police)	
Department Labor Committee (on behalf of)	
Lawrence Bailey))	
)	
Respondent)	
)	

DECISION AND ORDER

On December 12, 2017, petitioner Metropolitan Police Department (“the Department”) filed the instant arbitration review request (“Request”). The Department appeals to the Board from two orders that an arbitrator issued after he issued his “Decision & Award.” The two orders from which the Department appeals are entitled Post-Award Order No. 02 and Post-Award Order No. 03. As we find the Request to be premature, we dismiss the Request without prejudice.

In Post-Award Order No. 02, the Arbitrator ordered the Department and respondent Fraternal Order of Police/Metropolitan Police Department Labor Committee to submit in writing their positions on the Arbitrator’s authority to impose sanctions on the Department for not reinstating the grievant in this arbitration as the Arbitrator had ordered in Post-Award Order No. 01. The Arbitrator instructed the Department to include in its submission its authority for not reinstating the grievant. After the parties submitted their positions, the Arbitrator issued Post-Award No. 03 in which he ordered the parties to make another written submission discussing the applicability to the sanctions question of a case¹ that the Arbitrator said was persuasive in nature.

The Department contends that the parties’ collective bargaining agreement “provides no authority for the Arbitrator to demand that the parties explain why they have not complied with the award, to order the parties to explain whether or not he has authority to issue sanctions, and to issue sanctions for non-compliance with the award.”²

¹ *Reliastar Life Ins. Co. v. EMC Nat’l Life Co.*, 564 F.3d 81 (2d Cir. 2009).

² Request 8.

In the orders at issue in this Request, the Arbitrator did not impose sanctions. He ordered written submissions on that subject. The Board's precedent establishes that the Department's appeal from the orders is premature. In *D.C. Department of Consumer and Regulatory Affairs v. AFGE, Local 2725*,³ the Board held that the only act of an arbitrator that an aggrieved party may appeal to the Board is a final award, and it held that a briefing order is not a final award.⁴ In that case, and in *University of the District of Columbia v. University of the District of Columbia Faculty Association/NEA*,⁵ the Board dismissed the arbitration review request "without prejudice to its renewal when a final arbitration award is issued."

In the present matter, a final arbitration award incorporating Post-Award Order No. 02 and Post-Award Order No. 03 was issued a week after the Department filed its premature Request. The Department filed a petition for review of that award on January 9, 2018. That petition has been assigned Case No. 18-A-08.

In view of the foregoing, the instant Request is dismissed without prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is dismissed without prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman, Barbara Somson, and Mary Anne Gibbons

Washington, D.C.
February 21, 2018

³ 59 D.C. Reg. 15198, Slip Op. No. 1338, PERB Case No. 11-A-01 (2012).

⁴ *Id.* at 2.

⁵ 38 D.C. Reg. 845, Slip Op. No. 260 at 2, PERB Case No. 90-A-05 (1990).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-06 is being transmitted via File & ServeXpress to the following parties on this the 22d day of February 2018.

Jhumur Razzaque
Assistant Attorney General
Personnel and Labor Relations Section
441 4th Street, N.W., Suite 1180 North Washington, D.C., 20001

Marc L. Wilhite
Pressler & Senftle P.C.
1432 K St. NW, 12th Floor
Washington, DC 20005

/s/ Sheryl V. Harrington
Administrative Assistant