

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

In the Matter of:)	
)	
District of Columbia)	
Public Schools,)	
)	
Petitioner,)	
)	
and)	PERB Cases No. 92-A-10
)	Opinion No. 335
Washington Teachers' Union,)	
)	
Respondent.)	

DECISION AND ORDER

On September 4, 1992, the District of Columbia Public Schools (DCPS) filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitration award (Award) issued on August 5, 1992, that sustained a grievance filed by the Washington Teachers' Union (WTU). On September 21, 1992, WTU filed a Motion to Dismiss, contending that DCPS' Request is untimely and therefore should be dismissed. DCPS filed a Response to WTU's Motion on October 5, 1992, opposing the dismissal of its Request. For the following reasons we grant WTU's Motion.

WTU attached to its Motion a copy of a certificate of service signed by an official from the American Arbitration Association. DCPS does not dispute the validity of AAA's certificate of service confirming service of the Award to the parties by United States mail on August 7, 1992. Board Rule 538.1 requires that an arbitration review request must be filed with the Board "not later than twenty (20) days after service of the award." Since Board Rule 501.4 provides for an additional five days to a prescribed period based on mail service, we conclude that the Request was due in the Board's office not later than the close of business (4:45 p.m.) on September 1, 1992.

In a Response to the Motion to Dismiss and attached Affidavit, DCPS asserts that DCPS' counsel was away during the week the Award was rendered and, consequently, counsel for DCPS was unaware that the Award had been issued until after his return on August 18, 1992. DCPS further avers that "[u]pon returning from vacation on 8-17-92, [its counsel] did not find a copy of the subject arbitration award" among the "mail specifically addressed to [him that] was placed on [his] desk for [his]

attention when [he] returned." (Affidavit at 2.) Based on this course of events, DCPS submits that "service of the [A]ward should be established by the actual notice to the representative of the Petitioner", i.e., August 18, 1992, in which case DCPS' request would be timely. ^{1/} (Resp. at 2.)

Without addressing the veracity of DCPS' account concerning actual notice of the Award, nothing in its Response or attached Affidavit rebuts the documented evidence, i.e., AAA's certificate of service, that service of the Award was indeed made on August 7, 1992. We do not find the averments contained in DCPS' Response and attached Affidavit sufficient to overcome the objective evidence which we find to be "reliable, probative and substantial evidence" of service of the Award. District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee, 39 DCR 1931, Slip Op. No. 286 at n.4, PERB Case No. 87-A-07 (1992) quoting the D.C. Court of Appeals in Public Employee Relations Board v. D.C. Metropolitan Police Department, No. 88-868, Slip Op. at 6 (June 29, 1991). ^{2/}

In view of the foregoing, DCPS has provided no grounds why its Request should not be dismissed on the basis of timeliness.

^{1/} According to the Affidavit, August 18, 1992 was the day after DCPS' counsel returned from vacation and personally obtained a copy of the Award from AAA. Basing service of the Award on this date, DCPS' Request would have been due not later than September 7, 1992. Even accepting DCPS' account of what occurred, we note that its counsel had 14 days after he had actual notice on August 18, 1992, of the issuance of the Award, to file a timely Request by September 1, 1992.

^{2/} The Court of Appeals ruled in that case that the rules establishing time limits for initiating a proceeding before an administrative adjudicative agency are mandatory and jurisdictional. As such, the forfeiture of a party's right to initiate a proceeding is automatic and the existence of prejudice is irrelevant upon determination by the Board that the prescribed time period has not been met. Moreover, Board Rule 501.1 provides that "no extension shall be granted for the filing of initial documents." Thus DCPS' argument that "in the interest of justice" the Board should accept its Request as timely, based on its alleged date of actual notice, is to no avail. (Resp. at 2.)

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ORDER

IT IS HEREBY ORDERED THAT:

The Motion to Dismiss is granted.

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

November 17, 1992