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 formal 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: University of the District of Columbia, Petitioner, and American Federation of State, County and Municipal Employees, Local 2087, Respondent.	PERB Case No. 96-A-06 Opinion No. 481 (Motion for Reconsideration)

DECISION AND ORDER

On June 26, 1996, we issued a Decision and Order, Slip Opinion No. 473, in the above-captioned matter dismissing the Petitioner's Arbitration Review Request (Request) appealing two Awards resulting from a bifurcated arbitration proceeding. We dismissed the Request based on timeliness, insofar as it appealed issues decided in the First Award, and for failure to present any statutory grounds for review with respect to the second Award. On July 10, 1996, the Petitioner University of the District of Columbia (UDC), filed a document styled "Motion for Reconsideration." The Respondent, the American Federation of State, County and Municipal Employees, Local 2087 (AFSCME), filed an Opposition to the Motion on July 22, 1996.

In Opinion No. 473 we found that the grounds of Petitioner's Request, filed on April 9, 1996, were limited to issues decided in the first Award issued on July 17, 1995. As such, the Petitioner's Request was dismissed because it exceeded the Board's jurisdictional time limit, i.e., 20 days after service of the award, for filing an arbitration review request. The Petitioner (1) disagrees with our determination that its Arbitration Review Request is untimely with respect to the first Award and (2) asserts that its Request contained grounds that timely appealed issues decided in the second Award.

In Opinion No. 473, we held that "[w]hile UDC's Request meets the time period required under Board Rule 538.1 for a review of the March 13 remedial Award, UDC does not appeal the limited issues determined in that Award." Slip Op. at 2. We therfore concluded that UDC's request for review of matters determined in the first

Award was untimely. Our ruling turned on our holding in University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 38 DCR 845, Slip Op. 260, PERB Case No. 90-A-05 (1991). UDC contends that in that case the Board declined jurisdiction because the arbitrator's award was not final when the arbitrator "reopened the proceeding before him in order to consider an award of interest." (Mot at 4.) UDC contends that the same situation is presented by the instant Awards when the Arbitrator reasserted jurisdiction to issue a remedial Award following his Award on the merits. Notwithstanding UDC's assertions to the contrary, our decision not to review the award in PERB Case 90-A-05 at that time was predicated upon the premise that the arbitrator in that case had reasserted jurisdiction based on "the Union's request for clarification with respect to an award of interest"... ." Slip Op. No. 260 at 1. We understood that by clarification, the arbitrator intended to reopen the arbitration to revisit issues already addressed. The fact that this turned out not to be the case is of no consequence with respect to the basis of our holding. This uncertainty, i.e., whether the second award would be indeed a reopening of the first award, is precisely why we dismissed that arbitration review request "without prejuduce to its renewal when a final arbitration award is issued". Slip Op. at 2 (emphasis added).

When the petitioner renewed its appeal of the initial award in PERB Case 90-A-05 along with its appeal of the second award in PERB Case No. 91-A-02, we found that the second award was not a "clarification" of the first award but rather a separate award addressing an issue not decided in the first award. We did not dismiss as untimely the petitioner's appeal of the first award, however, because the premise upon which our initial dismissal rested in PERB Case 90-A-05, i.e., that the initial award was not final, was not realized. In this regard, the petitioner's renewed appeal of the first award was timely preserved by our Order dismissing without prejudice petitioner's arbitration review request first filed in PERB Case 90-A-05.[1/]

[1/] The Board has held that a refiled cause of action dismissed initially without prejudice will not be deemed a new matter with respect to its timeliness if based upon the discovery of facts or other evidence that did not exist at the time the action was first filed. Council of School Officers, Local 4 v. D.C. Public Schools, 30 DCR 4966, Slip Op. No. 65, PERB Case No. 83-U-08 (1983). PERB Case No. 91-A-02 was a refiling of the petitioner's request for review of the subject award in PERB Case No. 90-A-05 based upon facts that did not exist at the time the request was initially filed, in addition to a request for review of a second subsequent award.

In the instant case, the parties do not dispute that the Arbitrator's authority with respect to the second Award was limited to a matter not addressed in the first Award. Unlike the arbitrator's action in PERB Case 90-A-05, there was no basis for viewing the instant first Award as reopened, i.e., not final, when issued with respect to the issues addressed therein.[2]/ Therefore, for the reasons set forth in Opinion No. 473, we affirm our ruling that Petitioner's appeal of issues decided in the first Award is untimely.

With respect to the second Award, while the Petitioner correctly notes that its Request contains grounds that timely appeals issues decided in the second Award, for reasons addressed in the margin below, the ground for review raised by the Petitioner does not provide a statutory basis for remanding, modifying or setting aside the second Award.[3]/ Therefore, our holding that the

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[2]/ In view of our discussion above and contrary to further argument by the Petitioner, our citation to District of Columbia Public Schools and American Federation of State County and Municipal Employees, D.C. Council 20, Local 1959, Slip Op. No. 381 at n. 4, PERB Case No. 94-A-02 (1994) does not overrule our holdings in PERB Cases Nos. 90-A-05 and 91-A-02 but, rather, is consistent with it.

[3]/ The Petitioner asserts that by providing retroactive reinstatement of these employees, the second Award violates (1) public policy under the Comprehensive Merit Personnel Act (CMPA) as codified at D.C. Code § 1-601.2(4), to "[e]nsure the efficient administration of this personnel system" and (2) the requirement under the Anti-deficiency Act (31 U.S.C. §665) to keep expenditures within funds that are appropriate. The Petitioner contends that the Award effectively nullifies the reduction in force (RIF) implemented by UDC to achieve these objectives.

The Arbitrator's Award is based on his authority to interpret the parties' contract and render a decision on whether its terms have been violated. We have held that "[t]o the extent that the parties have negotiated and reduced statutory rights [and obligations] to contractual provisions, those rights [and obligations] are controlled by the contractual provisions when relief for breach of those provisions is sought through the contractual grievance-arbitration procedure." American Federation of Government Employees, Local 1875, AFL-CIO and the D.C. Department of Public Works, Slip Op. No 413, at 3, PERB Case No. 95-A-02 (1995). See, also, International Brotherhood of Police Officers, Local 446, AFL-CIO\CLC v. D.C. General Hospital, 39 DCR

(continued...)

Petitioner failed to provide a statutory basis for disturbing the second Award is also affirmed.

ORDER

IT IS HEREBY ORDERED THAT:

In view of the foregoing, the Motion for Reconsideration is denied.

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

August 16, 1996

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[3](...continued)
9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992) and American Federation of Government Employees, Local Union No. 3721 v. D.C. Fire Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1992). Moreover, Petitioner cites nothing in these statutes that expressly or specifically makes an award of retroactive reinstatement of RIFed bargaining unit employees on its face contrary to law and public policy. We have held that the mere assertion that an arbitration award contravenes some broad public policy does not meet our statutory criteria for review that an award is, on its face, contrary to both law and public policy. Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee, 41 DCR 6092, Slip Op. No. 325, PERB Cases Nos. 96-A-06, 07 and 09 (1992). Accordingly, UDC has not established this statutory criteria.