

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:)	
)	
District of Columbia Health and Hospitals)	
Public Benefit Corporation/D.C. General)	
Hospital)	
)	PERB Case No. 00-A-03
Petitioner,)	
)	Opinion No. 629
and)	
)	
Doctors Council of D.C. General Hospital)	
)	
)	
Respondent.)	
)	

DECISION AND ORDER

On January 18, 2000, the District of Columbia Health and Hospitals Public Benefit Corporation (PBC) filed an Arbitration Review Request (Request), followed by an Addendum to the Arbitration Review Request (Addendum) filed on January 27, 2000. ^{1/} The PBC seeks review of an arbitration award which granted a monetary award to the Doctors Council of D.C. General Hospital (Doctors Council). The PBC contends that the Arbitrator exceeded his authority. (Request at par.2) The Doctors Council opposes the Request, arguing that the: (1) January 27th Addendum is untimely; and (2) PBC has failed to present statutory grounds for review.

The issue before the Board is whether “the arbitrator was without or exceeded, his jurisdiction. . . .” D.C. Code Sec. 1-605.2(6). Upon consideration of the Request, we find that the PBC has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, the PBC’s request for review is denied.

On March 31, 1997, Arbitrator Herbert Fishgold issued an Arbitration Award (Award) in a

^{1/} The January 18th filing did not comply with Board Rules 501.10 and 538.1. Specifically, the PBC’s submission was not accompanied by a copy of the Award and proof of the date of service of the Award. In addition, the PBC failed to submit the required number of copies. Pursuant to Board Rule 501.13, the PBC was informed that these filing deficiencies had to be cured by February 7, 2000.

Decision and Order
PERB Case No. 00-A-03
Page 2

grievance filed by the Doctors Council. It was alleged in the grievance that D.C. General Hospital (DCGH) violated the collective bargaining agreement (CBA) by "contracting out [] physician radiology services to a group of radiologists who had been employed by DCGH up until the effective date of the contract." (Oppo. at p. 2) The March 1997 Award ordered DCGH to take immediate steps to comply with the CBA. These steps included making good faith attempts to fill the radiology positions with qualified DCGH employees prior to contracting out the work. (Request at p.1) In addition, DCGH was ordered to: (1) immediately terminate the radiology services contract; and (2) "cease and desist from violating Article XX of the CBA, as well as PERB Case No. 92-U-17 (Slip Opinion No. 475), in the future." Id.

The parties were unable to agree on the remedy. As a result, the question concerning the proper remedy was referred to Arbitrator Fishgold. The "sole issue pending before the Arbitrator was the Doctors Council request for an award of money for the period April 1, 1999, forward." (Supp. Award at p. 4) On December 21, 1999, Arbitrator Fishgold issued a "Supplemental Award: On Remedy". In his Supplemental Award the Arbitrator noted that DCGH had not complied with the March 1997 Award. Therefore, the Arbitrator granted prospective monetary relief, on a weekly basis. This monetary relief was consistent with the calculations proposed by the Union. The monetary relief would run from "December 16, 1999 forward, until such time as the Hospital is in full compliance." (Request at p. 2)

The PBC takes issue with the Arbitrator's Award. In the January 18, 2000 filing, the PBC contends that the Arbitrator exceeded his authority by ordering weekly payments to the union, to commence on December 16, 1999. ^{2/} (Request at par.2) Also, the PBC claims that the Arbitrator: (1) was not clear in explaining certain dates in the Award; and (2) did not have authority to grant the Union prospective weekly payments and interest payments. (Request at p.3)

As noted in footnote 1, the January 18th filing was deficient. However, pursuant to Board Rule 501.13, the PBC was allowed to cure the filing deficiencies. As a result, on January 27, 2000, the PBC filed an Addendum. In its Addendum, the PBC again asserts that the Arbitrator exceeded his authority by ordering weekly penalties until DCGH complies with paragraphs 2 and 3 of the March 31, 1997 Award. In addition, the PBC contends for the first time, that the Arbitrator exceeded his authority by failing to recognize the: (1) PBC's recruitment efforts; and (2) fact that the recruitment efforts have not yielded sufficient qualified applicants to meet the hospital's radiologist needs. Also, the PBC claims that it is impossible to comply with those provisions of the March 1997 Award which relate to termination of the radiology contract.

The Doctors Council raises a threshold issue concerning the timeliness of the January 27th Addendum. Board Rule 538.1 provides that an aggrieved party "may file a request for review with the Board not later than twenty (20) days after service of the award." In the instant case, the Doctors Council argues that the Arbitrator's Supplemental Award was mailed on December 21, 1999.

^{2/} The PBC points out that December 16th is a date prior to the Award being issued.

Decision and Order
PERB Case No. 00-A-03
Page 3

Therefore, the PBC's Request had to be filed by January 18, 2000.^{3/} (Opp. at p. 11-12).

Furthermore, the Doctors Council claims that in the January 27th Addendum, the PBC asserts new grounds for objecting to the "Supplemental Award on Remedy". (Opp. at p. 10) In light of the above, the Doctors Council contends that any new claims raised by the PBC in the January 27th Addendum, are not timely.

The PBC contends that the Award which it received on December 23, 1999, was an "unsigned draft". In addition, the PBC argues that "it was apparent that several mistakes were made in the calculations and the proposed payment commencement dates". (Request at par. 1) The PBC notes that once these mistakes were discovered, the parties discussed these errors with the Arbitrator. As a result of the discussions, a corrected version of the Award was issued. However, the corrected version was not received by the PBC until January 7, 2000. (Request at par. 1) In view of the above, the PBC asserts that service occurred on January 7, 2000. Therefore, the PBC claims that it had until February 1, 2000, to file its Request.

Board Rule 538.1 is mandatory and jurisdictional. As a mandatory and jurisdictional provision of our rules, it does not provide the Board with any discretion for extending the prescribed time for initiating an action. See, Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A. 2d 641 (1991). Therefore, the first issue to be determined by the Board is whether the new grounds asserted in the January 27th Addendum, are timely.

A review of the parties' submissions, reveals that the December 21st Award was not signed. In addition, the Award contained several errors which were subsequently corrected. As a result of the above, the question presented is whether the errors and the missing signature make the December 21st Award invalid.

We have held that "[our] Rules exist to establish and provide notice of a uniform and consistent process for proceeding in matters properly within our jurisdiction. In this regard, we do not interpret our rules in such a manner as to allow form to be elevated over the substantive objective for which the rule was intended." D.C. General Hospital and Doctors Council of the District of Columbia General Hospital, 46 DCR 8345, Slip Op. No. 493, PERB Case No. 96-A-08 (1996). In the instant case, the PBC's argument amounts to such an application of our Rules. Specifically, the unsigned Award received by the PBC on December 23, 1999, did not differ significantly from the signed copy received on January 7, 2000. Therefore, the errors appear to be typographical and not substantive. In addition, the Arbitrator's reason for granting relief, was DCGH's failure to comply with the March 1997 Award. We find that none of the identified typographical errors affect this finding. Moreover, the PBC is really challenging the Arbitrator's authority to grant the monetary relief, rather than the amount of this relief. We find under these facts, that the impact of requiring

^{3/} The Doctors Council notes that pursuant to Board Rules 538.1 and 501.4, the PBC had twenty five days within which to file its Request. They note that the twenty fifth day was Sunday, January 16, 2000. However, the first business day was January 18, 2000. Therefore, they concluded that the PBC's Request had to be filed by January 18th.

Decision and Order
PERB Case No. 00-A-03
Page 4

a signed award, without typographical errors, is one of form rather than substance. In view of the foregoing, we conclude that the December 21, 1999, Supplemental Award was valid. As a result, all of the claims asserted by the PBC, should have been contained in their January 18th filing. Therefore, the new claims asserted by the PBC in the January 27th Addendum, are dismissed as untimely.

Notwithstanding the untimeliness of the new grounds asserted in the January 27th Addendum, both the PBC's original Request and the Addendum do not present a statutory basis for disturbing the Award. Under D.C. Code § 1-605.2 (6), the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed only if the arbitrator was without, or exceeded, his [] jurisdiction"

In the instant case, the Arbitrator found that the PBC had not complied with paragraphs 2 and 3 of the March 31, 1997 Award. He determined that in order to insure proper and timely compliance with paragraphs 2 and 3 of the Award, the Hospital would be ordered to pay "for each week of non-compliance beginning with December 16, 1999 forward." (Supp. Award at p. 5).

We have held that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." D.C. Dept of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). Furthermore, we have determined that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement. See, D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 97-A-04 (1992). In the instant case, the PBC has not cited any provision of the parties' collective bargaining agreement which limits the Arbitrator's power.

In addition, we have held that by agreeing to arbitration, it is the Arbitrator's decision for which the parties' have bargained. D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 87-A-04 (1992). See, also University of the District of Columbia and UDC Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992). Also, we have determined that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." University of the District of Columbia and University of the District of Columbia Faculty Association, 39 DCR 9628, Slip Op. No. 320 at p.2, PERB Case No. 92-A-04 (1992). The essence of the PBC's request for review is its disagreement with the Arbitrator's decision to grant the union's request for a monetary award.

Given the authority of the Arbitrator, the PBC's Request presents no basis for finding that the Arbitrator exceeded his authority. For the reasons discussed, no statutory basis exist for setting aside the Award; the Request is therefore, denied.

Decision and Order
PERB Case No. 00-A-03
Page 5

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

July 14, 2000

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 00-A-03 was served by first class mail, on the following parties on this 14th day of July, 2000.

Wendy Kahn, Esq.
Zwerdling, Paul, Leibig, Kahn
Thompson & Wolly, P.C.
1025 Connecticut Avenue, N.W.
Suite 712
Washington, D.C. 20036

U.S. MAIL

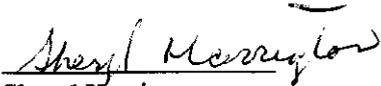
Roscoe Ridley, Director
Labor Relations
D.C. Health & Hospitals
Public Benefit Corporation
1900 Massachusetts Ave., S.E.
Suite 1505
Washington, D.C. 20005

U.S. MAIL

Courtesy Copies:

Donald H. Marshal, M.D.
Doctors Council of D.C. General Hospital
1900 Massachusetts Ave., S.E.
Suite 264
Washington, D.C. 20003

U.S. MAIL


Sheryl Harrington
Secretary