Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, Local 2401 (on behalf of Albert Jones),	
Petitioner,	PERB Case No. 07-A-01
and	
	Opinion No. 856
Office of the Attorney General for the District of Columbia,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case:

On November 17, 2006, the American Federation State, County and Municipal Employees, District Council 20, Local 2401 ("AFSCME"), filed an Arbitration Review Request. AFSCME seeks review of an Arbitration Award ("Award") that sustained the termination of bargaining unit member Albert Jones ("Grievant").

Arbitrator Lawrence S. Coburn was presented with the issue of whether the Office of the Attorney General for the District of Columbia had cause to terminate the employment of Albert Jones and if not, what should be the remedy. (See Award at p. 2) The Arbitrator found that the "Grievant was terminated for cause as provided under Article 7, Section 1 of the parties' Collective Bargaining Agreement." (Award at p. 9). Therefore, the Arbitrator denied the grievance. AFSCME is seeking review of the Award on the ground that the Award on its face is contrary to law and public policy. (See Request at p. 2).

The Office of Labor Relations and Collective Bargaining ("OLRCB") on behalf of the Office of the Attorney General for the District of Columbia opposes the Arbitration Review Request ("Request"). OLRCB is requesting that the Board deny AFSCME's request for two reasons. First, OLRCB claims that AFSCME's request is untimely. (See OLRCB's Opposition at p. 2) Second, OLRCB asserts that AFSCME has failed to establish that the award is contrary to law and public policy. (See OLRCB's Opposition at p. 6).

The issues before the Board are whether AFSCME's Request is timely and whether "the award on its face is contrary to law and public policy." D.C. Code § 1-605.02 (6) (2001 ed.)

II. Discussion

The Grievant was employed by the Office of the Attorney General for the District of Columbia ("OAG") as an investigator in its Family Services Division. "In that position, [the] Grievant's principal duties included serving subpoenas and other legal documents on witnesses and parties in child abuse and neglect cases pending in Family Court. Typically, [the] Grievant was given the name and address of an individual whom he was supposed to serve, and he then proceeded to serve the individual. On the back of the document to be served, there was space for him to write the method of service. For example, if he personally handed the document to the individual in question, he would so indicate on the return of service." (Award at p. 2).

"Typically, an investigator does not have a photograph or other physical description of the individual whom he is to serve, unless the individual has a criminal record. The investigator has the option of asking an individual he is about to serve for photo identification, or of merely asking the individual if he or she is the individual he is seeking to serve. If a subpoenaed witness fails to appear in court to testify on the date specified on the subpoena, the judge has the authority to send a U.S. Marshall to bring the witness to court." (Award at p. 3)

On August 4, 2005,[1] Assistant Attorney General Denise McKoy requested that a subpoena be served on Ellen Johnson, requiring her to appear in court for a child abuse/neglect case scheduled for August 26, 2005. Ms. Johnson's address was listed on the request form, and the subpoena was assigned to the Grievant for personal service. "The Grievant, who noticed that he already had served David Suggs at the same address, complained that he was not given both subpoenas at the same time. When the Grievant was told that Ms. Johnson's testimony was necessary at the hearing, he proceeded to the address in question. Ms. McKoy later received from [the] Grievant a return of service form stating that he had personally served the subpoena on Ms. Johnson on August 9 at 11:50 a.m." (Award at p.4).

Ms. Johnson, did not appear at the August 26, 2005 court hearing. As a result, Ms. McKoy presented to the judge the Grievant's return of service, affirming that he had personally served a subpoena on Ms. Johnson on August 9th at 11:50 a.m. However, another witness at the

[1] All dates noted in this opinion refer to calendar year 2005 unless otherwise stated.

hearing, Ms. Johnson's boyfriend, (Mr. Suggs), told the judge that Ms. Johnson could not have been served the subpoena on August 9th at 11:50 a.m. because she was working at that time. The boyfriend provided Ms. McKoy with Ms. Johnson's work telephone number. Subsequently, Ms. McKoy's supervisor called Ms. Johnson and confirmed on the telephone that she had not been served with a subpoena. In addition, Ms. Johnson indicated that she had been at work on August 9th when the Grievant stated that he had served her. Ms. Johnson then went to the courthouse and testified later in the day. The Grievant was on vacation leave that day. As a result, Ms. McKoy was unable at that time to ask him about his service of the subpoena.

After the trial, Ms. McKoy contacted the Grievant's supervisor via e-mail concerning the discrepancy between the return of service and Ms. Johnson's representation that she had not been served with the subpoena. Thereafter, the Grievant went to Ms. McKoy's office and told her that he had served the subpoena on Ms. Johnson.

Marian Spears, the Grievant's supervisor, asked the Grievant about his service of the subpoena on Ms. Johnson. According to Ms. Spears, the Grievant told her that he had served the subpoena on Ms. Johnson's boyfriend, and that Ms. Johnson was behind the door when he effected service.

James K. Murphy, Chief of Investigations for the OAG, having first spoken with Ms. McKoy about the issue involving service of the subpoena on Ms. Johnson, then conducted an investigation of the matter. He first interviewed Ms. Johnson, who confirmed that the Grievant had not served the subpoena on her, and produced time records showing that she was at work at the time that the Grievant had claimed to have personally served her at home. Mr. Murphy then spoke with the Grievant, who said that he had given the subpoena to David Suggs at Ms. Johnson's apartment. According to the Grievant, there was a woman standing inside the doorway. When asked if he had spoken to the woman, the Grievant replied that he had not, but had assumed that it was Ms. Johnson. When asked to describe the woman in the doorway, the Grievant said that he could not.[2]

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[2] "The investigation also encompassed two other incidents in which [the] Grievant allegedly had failed to serve documents on individuals whom he had certified that he had served. Because the Agency did not significantly rely on the other two incidents, which were characterized by Chief Administrative Officer Michael Hailey as 'questionable,' [the Arbitrator indicated that he did] not describe[] or consider[] the facts surrounding these two incidents." (Award at p. 4, n. 2)

"Following the investigation, Mr. Murphy issued a report concluding that [the] Grievant had knowingly and intentionally provided false information on the return of service for Ms. Johnson. Further, Murphy recommended that [the] Grievant be issued an official letter of reprimand, suspended from duty without pay for ten days, and then removed from his position as an investigator. After reviewing Mr. Murphy's report, Michael Hailey, Chief Administrative Officer for the OAG, recommended to the Attorney General that [the] Grievant be immediately terminated from the OAG. The Attorney General concurred, and by letter dated October 14, [the] Grievant [was given 30 days] . . . notice proposing that he be removed as an investigator. The reasons for the termination were:

> (1) conduct unbecoming of an OAG employee; (2) an on-duty act that you knew or should reasonably have known is a violation of law; and (3) an on-duty act that interferes with the efficiency or integrity of government operations [by, among other things, deliberately providing false information on Ellen Johnson's Return of Service that was submitted to the Family Court.]" (Award at p. 5).

"In a letter dated October 18th, [the] Grievant ... denied the allegations contained in the October 14th letter. In his [October 18th] letter, [the] Grievant did not provide an explanation of the circumstances surrounding his alleged service of Ms. Johnson." (Award at p. 5).

On October 26, AFSCME filed a grievance requesting that the termination be rescinded. Subsequently, in a letter dated November 16th the OAG issued its final decision to terminate the Grievant's employment. The grievance filed by AFSCME was not resolved. As a result, AFSCME filed for arbitration on behalf of the Grievant. (See Award at p. 5).

At Arbitration the OAG argued that it had cause to discharge the Grievant because he falsified a return of service on August 9th. Specifically, the OAG claimed that the Grievant deliberately provided false information on the return of service by stating that he had personally served Ms. Johnson, when he had not. In support, of its position the OAG asserted that: (1) Ms. Johnson was at work at the time; (2) the Grievant certified that he personally served her at home; and (3) the Grievant admitted to Mr. Murphy, Chief of Investigations, that he had left the subpoena with Derek Suggs, a friend of Ms. Johnson, at Ms. Johnson's residence. "Moreover, the OAG, pointed to the Grievant's shifting story at the hearing, arguing that one cannot believe his testimony that he served the subpoena on a woman who allegedly acknowledged that she was Ms. Johnson." (Award at p. 5).

Furthermore, the OAG contended that the Grievant had no basis for assuming that Ms. Johnson was the woman who was nearby when he served the subpoena on Mr. Suggs. The OAG acknowledged that investigators are not required to have individuals produce identification documentation; however, the OAG insisted that investigators are required to ask the individuals if they are the ones whose names are on the subpoenas. Had the Grievant done so, the OAG claimed that it is highly unlikely that the woman would have confirmed that she was. Also, the OAG argued that individuals often deny their identity to avoid service, but they rarely, if ever, will lie about their identity in order to receive service.

In addition, the OAG claimed that the Grievant's credibility as an investigator had been severely compromised by his falsification of the Johnson return of service. Moreover, the OAG argued that there was no way to rehabilitate the Grievant's credibility in the eyes of the Family Court. Thus, the Grievant could no longer serve documents - an essential function of the investigator position. As a result, OAG asserted that "a lesser form of discipline would not be appropriate." (See Award at p. 6).

AFSCME countered that the parties' collective bargaining agreement ("CBA") required progressive discipline. Also, citing Article 7, Section 3 of the parties' CBA, AFSCME claimed that discipline by the OAG "shall be primarily corrective, rather than punitive in nature." (Award at p. 9) In addition, AFSCME emphasized that the OAG, contrary to its obligations under Article 10, Section 3 of the parties' CBA, had no written procedures to guide investigators on how they should serve subpoenas or complete returns of service. Also, AFSCME asserted that "the investigator witnesses, including one testifying on behalf of the [OAG], confirmed that there was no standard procedure requiring an investigator to ask individuals for identification documentation before serving subpoenas on them. [For example, AFSCME pointed out that] investigator William Dupree testified that, notwithstanding his repeated requests that the Agency define what constitutes 'personal service', no such definition was forthcoming. Instead, Mr. Dupree testified that, in his experience, the definition of personal service varies depending on which Assistant Attorney General is handling a case." (Award at p. 6).

Furthermore, AFSCME asserted that the OAG provided the Grievant with no physical description or photograph of Ms. Johnson, and that the woman served identified herself as Ellen Johnson. Under these circumstances, AFSCME argued that the Grievant's return of service, stating that he had personally served Ms. Johnson, was in good faith.

Finally, AFSCME contended that contrary to the OAG's position, there was no competent evidence to support the OAG's claim that the Grievant's credibility before the Family Court was irreparably damaged. Accordingly, any discipline of the Grievant should have been corrective. In that connection, AFSCME pointed out that the OAG provided no reason why, in the future, an Assistant Attorney General would have to advise the Court that the Grievant had erroneously completed a return of service. AFSCME also cited the fact that the OAG could promulgate written procedures for serving subpoenas, which would mitigate any credibility issues raised by retaining the Grievant as an investigator. Alternatively, AFSCME claimed that the OAG could have transferred the Grievant, a fourteen-year employee with an excellent performance record, to another position.

In an Award issued August 21, 2006 Arbitrator Lawrence Coburn found that "[i]t is undisputed that [the] Grievant did not serve a subpoena on Ellen Johnson on August 9, contrary to his certification on the return of service." (Award at p. 7) As a result, the Arbitrator indicated that the question then becomes whether the Grievant falsified the return of service or whether, having made a reasonable inquiry, he stated in good faith that he had served her.

The Arbitrator noted that the Grievant testified at the hearing that:

- when Derek Suggs came to Ms. Johnson's door, the Grievant asked for Ellen Johnson;
- Mr. Suggs then left, returning momentarily with a woman, whom the Grievant asked: "Helen Johnson?"
- When the woman replied, "Yeah," the Grievant handed her the subpoena.

The Arbitrator reasoned that "if believed, this account would exonerate [the] Grievant. It would simply be a matter of mistaken identity, after [the] Grievant had made a reasonable inquiry. However, the Arbitrator concluded that the problem with the Grievant's account at the hearing, ... is that it differed markedly from what he had told others shortly after the incident. For example, [the Arbitrator noted that] during the official investigation of the matter, [the Grievant] told Chief of Investigations Murphy that he had handed the subpoena to Mr. Suggs, not the woman. In addition, [the] Grievant earlier had told Marian Spears, his supervisor, that he had served the subpoena on Ms. Johnson's boyfriend, and that Ms. Johnson was behind the door when he effected service." (Award at p. 7).

The Arbitrator concluded that neither Mr. Murphy nor Ms. Spears had any motive to lie. Moreover, he found that each testified credibly at the hearing and noted "that [the] Grievant had told them on separate occasions that he had served the subpoena on a man, not a woman who had identified herself as Ms. Johnson." (Award at p. 7).

The Arbitrator determined that the Grievant, on the other hand, had a motive to lie at the hearing - to save his job. In addition, the Arbitrator noted that the Gievant's version of the events changed between the time he testified on direct and when he testified on cross - examination. He pointed out that "[o]n direct examination, [the] Grievant testified that when Mr. Suggs came to the door, he asked for Ms. Johnson. Mr. Suggs told [the] Grievant to wait a minute and came back with a woman. According to [the] Grievant, he 'just handed her the envelope and proceeded down the steps.' On cross examination, [the] Grievant initially confirmed his earlier testimony. When pressed, however, about whether he had asked the woman to identify herself, Grievant testified that, when Mr. Suggs brought the woman to the door, Grievant said, 'Helen [sic] Johnson?' And the woman replied, 'Yeah'." (Award at p. 7).

Furthermore, the Arbitrator indicated that the "Grievant's ever-changing story does not inspire confidence in the accuracy of his testimony at the hearing. Notably, too, when offered an opportunity before he was discharged to respond to the [OAG's] charges that he had falsified his return of service on August 9 [the] Grievant merely stated that he denied what Chief of Investigations Murphy had reported. Notably, the Grievant did not state that he had served the subpoena on a woman who had acknowledged to him that she was Ms. Johnson." (Award at pgs 7-8).

The Arbitrator concluded by stating the following:

> Under these circumstances, I conclude that the Grievant handed the subpoena to Mr. Suggs, and that the woman near the door, if she was there at all, did not state that she was Ms. Johnson.[3] Instead, I conclude that [the] Grievant handed the subpoena to Mr. Suggs when he answered the door, with or without a woman nearby. I also find it implausible that any woman would have stated that she was Ms. Johnson, because she would have had no apparent motive for doing so. As a witness stated at the hearing, individuals may lie to avoid service of a legal document, but hardly ever lie to accept service.

[3] The Arbitrator indicated that "[t]here [was] considerable doubt whether a woman, other than Mr. Suggs' fourteen-year old daughter, was at the house. When asked by Chief of Investigations Murphy to describe the woman, [the] Grievant said that he could not remember what she looked like. In addition, Ms. Johnson testified that she would not have expected any woman to be at her residence other than Mr. Suggs' daughter." (Award at p. 8, n. 3.).

> [T]he Grievant undoubtedly thought that Mr. Suggs would give the subpoena to Ms. Johnson, who lived at the same address, and that he could safely (though falsely) state that he had personally served Ms. Johnson. It is unlikely that [the] Grievant would have falsely completed the return of service with a malicious intent to undermine the Assistant Attorney General's case involving Mr. Suggs and Ms. Johnson. However, even absent a malicious intent, it is a very serious offense to falsely complete a legal document such as a return of service, particularly when the Assistant Attorney General and the Family Court Judge were likely to rely on his certification on the return of service if Ms. Johnson did not appear in court on the appointed day. By falsely stating that he had personally served Ms. Johnson, [the] Grievant committed a serious breach of trust.
>
> When an employee whose trust is essential to his job betrays that trust, absent a contractual, regulatory or statuary restriction, his employer generally has cause to remove him form his position and terminate his employment. [The] Grievant betrayed the trust placed in him by the Agency by certifying that he had served the subpoena on Ms. Johnson when he had not. His false statement caused embarrassment to the Agency, disruption to the Family Court proceeding at which Ms. Johnson was supposed to testify, and a loss of [the] Grievant's credibility in the eyes of the Agency and of the Family Court.
>
> The Union asserts that the restrictions in the Collective Bargaining Agreement require reinstatement of the Grievant. I disagree. A breach of trust such as the one in this case provides "cause," as that term generally is used, for an employer to discharge an employee. Moreover, the Union has not cited any provision of the D.C. Official Code § 1-616.51 (2001 ed.). That would limit the [OAG's] decision to remove [the] Grievant from his position under the circumstances present in this case.

> The Union also cites Article 7, Section 3 of the Collective Bargaining Agreement, which requires that discipline be appropriate to the circumstances, and "shall be primarily corrective, rather than punitive in nature." For certain serious offenses, such as a breach of trust, discharge is appropriate, without progressive discipline. To remove an employee for such an offense is not punitive, it is practical. Once an employee has seriously breached his employer's trust, the employer understandably loses confidence in the employee's capacity for honest dealing in the future. That is what happened here, and the [OAG] properly concluded that corrective action lesser than removal was inappropriate.
> (Award at pgs. 8-9)

The Arbitrator also rejected AFSCME's claim that the "[OAG's] failure to promulgate written procedures on how to serve documents left the Grievant without sufficient guidance on how personal service was to be accomplished . . . [The Arbitrator noted that] [w]ith respect to such fundamental issues, the Grievant cannot claim in good faith that he did not know what he was supposed to do." (Award at p. 9).

Likewise, the Arbitrator rejected AFSCME's argument that the OAG should have provided the Grievant with photo identification or a physical description of Ms. Johnson before he attempted to serve her. The Arbitrator indicated that this argument misses the point. Specifically, if the Grievant merely had mistakenly served a woman who had identified herself as Ms. Johnson, he would not be losing his job.

AFSCME contends that the Arbitrator's decision to uphold the Grievant's termination in light of the facts in the record, is contrary to law and public policy. (See Request at p. 2) As a result, AFSCME is requesting that the Board reverse the Arbitrator's award and reinstate the Grievant to his position as a CFSA Investigator and that the Grievant receive back pay with interest. Also, AFSCME is asking the Board to allow both parties to submit a more detailed brief fully explaining their positions in order to completely dispense of this matter.

OLRCB opposes AFSCME's Request on the grounds that: (1) AFSCME's submission is untimely and (2) AFSCME has failed to establish that the award is contrary to law and public policy.

With respect to timeliness, OLRCB asserts that AFSCME's request does not comply with the twenty (20) day requirement of Board Rule 538.1. In support of this position OLRCB states

the following:

> In the instant case, the parties agreed at the conclusion of the arbitration hearing that the arbitrator would issue his Award to the parties in Portable Data Format (pdf) via email transmission within 30 days of receipt of the post-hearing briefs, which were to be postmarked no later than August 11, 2006. . . .Consistent with this agreement, on August 21, 2006, the Arbitrator issued his Award via email to the parties, including Joseph Bradley, who represented the Union at the arbitration hearing, and the Union President Deborah Courtney. See Respondent's Exhibit 1, Arbitrator Coburn's email to parties transmitting Invoice and Award. Thus, consistent with PERB Rule 538.1 and DCGH [case]. The Union had 20 days from the transmittal and receipt of the Award on August 21, 2006, i.e. until September 11, 2006, to file its Arbitration Review Request with PERB. (OLRCB's Opposition at p. 4.).

AFSCME counters that "the parties agreed to accept 'issuance' of Arbitrator Coburn's award via email. However, the parties did not stipulate that service of the award via electronic mail would be sufficient." (Request at pgs 6-7). As a result, AFSCME claims that on October 30, 2006 it transmitted a letter (via e-mail and U.S. Mail) to the Arbitrator. The October 30th letter states in pertinent part as follows:

> As I understand the Opinion and Award ("Opinion") in this matter was issued to the parties via electronic mail upon oral consent of the parties. However, we do not have any record of the date the Opinion was served upon the parties. According to the Superior Court Rules of Civil Procedure, service via electronic mail is sufficient only when the party to be served has consented to service via electronic mail in writing. As I understand, the transcript reflects that the parties consented only to issuing the Opinion via electronic mail in a pdf format, but not to service of the Opinion via electronic Mail. Furthermore, the Public Employee Relations Board Rules do not provide for service by electronic mail. In order to preserve AFSCME's rights in appealing this matter, please accept this letter as written consent to serve the Opinion by electronic mail as of this date. Please serve the Opinion to my attention . . . and to AFSCME's Representative, Joseph Bradley. . . We will evaluate AFSCME's rights to appeal from the date of your service upon us via electronic mail. . . AFSCME's Exhibit 1. See also Request at pgs. 6-7).

Board Rules 538.1, 501.4 and 501.5 provide in relevant part as follows:

> **538.1 - Filing**
> A party to a grievance arbitration proceeding who is aggrieved by the arbitration award may file a request for review with the Board **not later than twenty (20) days after service of the award . . . .** (Emphasis added)
>
> **501.4 - Computation - Mail Service**
> Whenever a period of time is **measured from the service of a pleading and service is by mail, five (5) days shall be added to the prescribed period.** (Emphasis added)
>
> **501.5 - Computation - Weekends and Holidays**
> In computing any period of time prescribed by these rules, the day on which the event occurs from which time begins to run shall not be included. . . .**Whenever the prescribed time period is eleven (11) days or more, [Saturdays, Sundays and District of Columbia Holidays] shall be included in the computation.** (Emphasis added)

In the present case, AFSCME acknowledges and the transcript reflects that the parties agreed that the Arbitrator could issue the award via electronic mail in a pdf format. (See, Request at p. 6 and AFSCME's Exhibit 1, Tr. at p. 204 ¶11-22 and p. 205 ¶ 1-4).) As a result, Arbitrator Coburn issued his Award via e-mail on August 21, 2006. (See Award at p. 7). However, AFSCME argues that "the parties did not stipulate that service of the award via electronic mail would be sufficient." (Award at p. 7) As a result, AFSCME contends that the August 21, 2006 service date is not what triggers the twenty day requirement of Board Rule 538. Rather, AFSCME claims that the October 30, 2006 service date is what triggers the twenty day filing requirement of Board Rule 538. In support of this argument, AFSCME claims that pursuant to the Superior Court Rules of Civil Procedure, service via electronic mail is sufficient only when the party to be served has consented in writing to service via electronic and in this case AFSCME did not submit such written consent until October 30, 2006. Therefore, AFSCME asserts that the October 30, 2006 date is the operative factor that triggers the computation of the twenty day filing requirement noted in Board Rule 538.1. Also, AFSCME argues that Board Rules do not provide for service by electronic mail. In light of the above, AFSCME asserts that their November 17, 2006 filing was timely.

As noted above, AFSCME argues that pursuant to the Superior Court Rules of Civil Procedure, service via electronic mail is sufficient only when the party to be served has consented in writing to service via electronic mail. AFSCME asserts that since they did not provide their written consent until October 30, 2006, they had until November 20, 2006 to file their Request. Therefore, their November 17, 2006 filing was timely. We believe that while this argument may be of some importance to proceedings before the Superior Court, it is not controlling with respect to determining the sufficiency of service in proceedings before the Board. See District of Columbia General Hospital and Doctors' Council of the District of Columbia General Hospital, 46 DCR 8345, Slip Op. No. 493 at p. 3, n. 3, PERB Case No. 96-A-08 (1996). Therefore, we find that this argument lacks merit.

AFSCME also claims that Board Rules do not provide for electronically transmitted awards as meeting the Board's requirement for service. (See AFSCME's Exhibit 2). Board Rule 501.16 provides in pertinent part that "[s]ervice of pleadings shall be complete on personal delivery . . . depositing the document in the United States mail or by facsimile." Also, Board Rule 599 defines pleadings as "[c]omplaint(s), petitioner(s), appeal(s), request(s) for review or resolution(s), motion(s), exception(s), brief(s) and reponses to the foregoing. In light of the above, we believe that Board Rule 501.16, concerns the service of a pleading filed with the Board and not the service of an award issued by an arbitrator on parties that participated in an arbitration proceeding." Even assuming arguendo that Board Rule 501.16 is applicable in this case, we have previously found that "[t]he Board's 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." District of Columbia General Hospital and Doctors' Council of the District of Columbia General Hospital, 46 DCR 8345, Slip Op. No. 493 at p. 3, PERB Case No. 96-A-08 (1996). AFSCME's argument that although the parties agreed to accept issuance of Arbitrator Coburn's award via e-mail, the parties did not stipulate that service of the award via electronic mail would be sufficient, is such an application of our Rules. While the Award transmitted to AFSCME on August 21, 2006, was not served by one of the methods of service noted in Board Rule 501.16, we find under these facts that the impact of this requirement is one of form rather than substance when, as here, the parties agreed on the record that the Award could be issued by e-mail and AFSCME does not contend that the Award transmitted by e-mail on August 21, 2006 differs in any way from the Award transmitted by e-mail on October 30, 2006. Moreover, we find no reasonable basis for discounting AFSCME's receipt of the August 21, 2006 Award for purposes of commencing the time that AFSCME had to file its Arbitration Review Request under Board Rule 538. In light of the above, we do not find AFSCME's argument to be persuasive. Therefore, we reject AFSCME's second argument.

In view of the above, we find no merit to AFSCME's arguments. Furthermore, there is no dispute that the Award was transmitted to the parties by e-mail on August 21, 2006. Therefore, pursuant to Board Rule 538.1, AFSCME was required to file their Request within twenty days after the August 21, 2006 service date, or by September 11, 2006. However, AFSCME did not file their request until November 17, 2006. Thus, AFSCME's filing was sixty seven (67) days late. For the reasons discussed above, AFSCME's filing is not timely.

Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. See, Public Employee Public Employee Relations Board, 655 A.2d 320, 323 (DC 1995). Therefore, the Board cannot extend the time for filing an Arbitration Review Request. As a result, we dismiss AFSCME's Arbitration Review Request because it is untimely.[4]

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation State, County and Municipal Employees, District Council 20, Local 2401's Arbitration Review Request, is denied.

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.

December 21, 2006

[4]In light of this determination, it is not necessary for the Board to consider whether "the award on its face is contrary to law and public policy."

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No.07-A-01 was transmitted via Fax and U.S. Mail to the following parties on this the 21st day of December 2006.

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