

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

In the Matter of:)	
)	
UNIONS IN COMPENSATION UNIT 21,)	
i.e., AFSCME, Local 2097, AFGE)	
Local 631, and IBPO, Local 446,)	PERB Case No. 02-N-02
)	
Petitioners,)	Opinion No. 699
)	
)	
)	MOTION TO STAY
)	
and)	
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF HEALTH(formerly the)	
HEALTH AND HOSPITALS PUBLIC BENEFIT)	
CORPORATION),)	
)	
Agency.)	
)	
)	

DECISION AND ORDER

This matter involves a Motion to Stay filed by the Department of Health (“DOH” or “Agency”) in the above-captioned matter. Through this Motion, DOH seeks to stay the final entry and enforcement of the Board’s Decision and Order in PERB Case No. 02-N-02¹, pending review of its appeal filed in D.C. Superior Court.²

DOH asserts that its Motion to Stay should be granted until such time as the D.C. Superior Court has issued a final decision concerning its Petition for Review. In the interim, DOH requests

¹PERB Case No. 02-N-02 involved a Negotiability Appeal filed by the Unions in Compensation Unit 21 (“Unions” or “Comp. Unit 21”). The Board’s Decision was issued on July 11, 2002 and is contained in Slip Opinion No. 674. In Slip Opinion No. 674, the Board found that the Union’s two proposals involving wages and bonuses were negotiable in the context of impact and effects bargaining over the closure of D.C. General Hospital. As a result, the Board determined that DOH has a duty to bargain with the Unions concerning these proposals.

²On August 9, 2002, DOH filed a Petition for Review of the Board’s Decision in this matter with the D.C. Superior Court.

that the Board's Decision and Order in this matter not become final or be enforced against it.

The Unions in Compensation Unit 21 ("Unions") argue that DOH's Motion to Stay Entry of Final Order and Enforcement should be denied because it was untimely. Specifically, the Unions assert that the Board's Decisions and Orders become final within 30 days unless a party files a Motion for Reconsideration within 10 days after the issuance of the Decision.³ Since no Motion for Reconsideration was filed in this matter, the Unions assert that the Decision and Order in the present case is already final. In addition, the Unions assert that DOH states no basis for staying enforcement of the Board's Decision in this matter pending appeal. Specifically, the Unions claim that under the Board's Rules⁴, only the prevailing party can seek enforcement of an order and since the Unions have not done so, DOH's motion is not timely. Furthermore, the Unions assert that the parties have been attempting to resolve the above-captioned matter; therefore, if a resolution is reached between the parties, it may be unnecessary for the Petitioner to file for enforcement of Opinion No. 674 or it may be unnecessary for Respondent to pursue an appeal of Opinion No. 674 in D.C. Superior Court. (Response at p. 3).

Pursuant to the Board's Rules, a Decision and Order is final within 30 days unless a Motion for Reconsideration is filed within 10 days of the issuance of the Decision.⁵ No such filing was made in this case. Therefore, the Board's Decision and Order became final 30 days after it was issued on July 11, 2002. As a result, the Board concludes that DOH states no basis for staying the Final Entry of the Board's Order in this case.

The Board's Rules do not contain a section which addresses the appropriate standard to be used when considering whether to grant or deny a "Motion to Stay". In addition, the Board's Rules do not provide for an automatic stay simply because a party has an appeal pending before D.C. Superior Court ("Superior Court") or any other decision making body. Furthermore, there is no Board precedent which supports automatically granting a Motion to Stay based on the fact a party has filed an appeal with a court or other decision making body. To the contrary, the Board has held that there is no Board precedent for granting a Motion to Stay simply because a Petition for Review was pending before the Superior Court. Tracy Hatton v. Fraternal Order of Police/Department of

³Board Rule 559.1 provides that the Board's Order is final 30 days after its issuance, unless stated otherwise. Pursuant to Board Rule 559.2, the Board's order will not become final if any party files a Motion for Reconsideration within 10 days of the issuance of the Decision. In the present case, neither party filed a Motion for Reconsideration.

⁴In responding to DOH's Motion, the Unions argue that "under PERB Rule 560, PERB considers taking enforcement action upon a petition of the prevailing party to enforce the order." (Response at p.2).

⁵See, Board Rules 559.1 and 559.2.

Corrections Labor Committee⁶, 43 DCR 2947, Slip Op. No. 458, PERB Case No. 95-U-02 (1996).

In considering whether granting a Motion to Stay was appropriate, the Board has considered whether the party has articulated a compelling reason to grant the Motion. In the present case, no compelling reason was offered by DOH. The only reason given by DOH is that there is an appeal pending in D.C. Superior Court. As noted earlier, the Board has held that this reason alone, is not sufficient justification for granting a stay. See, Id. The Board also notes that nothing in the Board's Decision will prevent DOH from filing a Motion to Stay in Superior Court.⁷ In view of the above, we hereby deny DOH's Motion to Stay Entry and Enforcement of the Board's Decision in PERB Case No. 02-N-02.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Health's (DOH) Motion to Stay Entry of Final Order and Enforcement of Order Pending Appeal is hereby denied.
2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

March 25, 2003

⁶ In Tracy Hatton v. Fraternal Order of Police/Department of Corrections Labor Committee, FOP filed a Motion requesting that the Board stay a portion of its Order which directed FOP to post a notice, until after the D.C. Superior Court had ruled on its Petition for Review. 43 DCR 2947, Slip Op. No. 458, PERB Case No. 95-U-02 (1996). In denying FOP's Motion to Stay, the Board stated that "there is no Board precedent, nor does FOP provide a basis for granting such relief under the circumstances of this case."

⁷Pursuant to Agency Review Rule 1(b), the Superior Court's standard for granting Motions to Stay provides that Motions to Stay may be granted "to the Extent Necessary to prevent Irreparable Injury." The Board notes that even reviewing DOH's Motion under the Superior Court's standard, no claim of irreparable harm was made before this Board. Therefore, the Board has no basis for granting the Motion to Stay.