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**Government of the District of Columbia  
Public Employee Relations Board**

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In the Matter of: )  
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The American Federation of Government )  
Employees, Local 872, )  
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)  
  ) Petitioner, )  
)  
  ) and )  
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)  
District of Columbia, )  
Water and Sewer Authority )  
(on behalf of Christopher Hawthorne), )  
)  
  ) Respondent. )  
)  
)  

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PERB Case No. 04-A-12  
Opinion No. 828

**DECISION AND ORDER**

**I. Statement of the Case**

The American Federation of Government Employees, Local 872 ("Union") filed an Arbitration Review Request ("Request"). The Union seeks review of an Arbitration Award ("Award") that sustained the grievance filed by the Union on behalf of Christopher Hawthorne ("Grievant"), but denied the Union's request for attorneys' fees and arbitration costs. The District of Columbia Water and Sewer Authority ("WASA") opposes the Request. WASA is requesting that the Board deny the Union's Request for two reasons. First, WASA claims that the Request is untimely. Second, WASA asserts that the Union has not established that the Award is contrary to law and public policy.

The issues before the Board are whether the 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

On March 21, 2003 an altercation occurred between the Grievant and the Director of Customer Service. (See Award at p. 4). On June 20, 2003, WASA issued a determination discharging the Grievant for insubordination. (See Award at p. 12). The Union grieved the matter, asserting that the discharge proposal was untimely. (See Award at p. 12). The Union invoked arbitration on July 22, 2003. (See Award at p. 12).

The issue before the Arbitrator was: "whether or not [WASA] had just cause to propose the discharge of Grievant Christopher Hawthorne. If not, what shall the remedy be?" (Award at p. 1).

At arbitration, WASA argued that the disciplinary proposal had been issued in a timely manner. (See Award at p. 12). The Union countered that the discharge proposal was untimely. (See Award at p. 16). In addition, the Union asked that it be awarded arbitration costs and attorney's fees. (See Award at p. 20).

In an Award dated April 30, 2004, Arbitrator Spilker concluded that WASA had failed to comply with the parties' collective bargaining agreement ("CBA") by failing to conduct an investigation into the matter and imposing discipline in a timely manner. (See Award at p. 24). As a result, the Arbitrator directed that the disciplinary action be rescinded. (See Award at p. 24). However, the Arbitrator denied the Union's request for costs and attorney's fees. (See Award at p. 24).

In their Request, the Union claims that the Arbitrator should have awarded attorney's fees in the "interest of justice". The Union asserts that the Award is contrary to law and public policy because it violates D.C. Code § 1-606.08. (Request at pgs. 4-6). In its Opposition, WASA counters that the Request is untimely and the Award is not contrary to law and public policy. (Opposition at p. 3).<sup>1</sup>

With respect to timeliness, WASA asserts that "the award issued by Arbitrator Spilker was served via facsimile on the parties on April 30, 2004. As such, Board Rule 501.4 is not applicable and the twenty-day limitations period for seeking review commenced on April 30, 2004. Furthermore, the Union did not file its [Request] until May 24, 2004." (Respondent's Opposition at p. 3).

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<sup>1</sup>The Board notes that the following three additional pleadings were filed: (a) the Union filed a Reply to Respondent's Opposition to Petitioner's Arbitration Review Request; (b) Respondent filed a Motion to Strike Petitioner's Reply, or in the Alternative Motion to file a Surreply; and (c) Respondent's Surreply.

Board Rules 538.1, 501.16, 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.

501.16 - Methods of Service

Service of pleadings shall be complete on personal delivery during business hours; depositing of the message with a telegraph company, charges prepaid; depositing the document in the United States mail, properly addressed, first class postage prepaid; or by facsimile transmission.

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.

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 the 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.

In the present case, Arbitrator Spilker issued her Award on April 30, 2004. (See Award at p. 27). There is no dispute that the Award was served on the parties by facsimile. As a result, WASA argues that: (1) the Award was sent via facsimile on April 30, 2004; and (2) pursuant to 501.16, service was complete on that day. (See Opposition at p. 3). In addition, WASA asserts that pursuant to Rule 538.1, the Union was required to file their Request within twenty days after the service date, or by May 20, 2004. (See Opposition at p. 3). Furthermore, WASA contends that the Union did not file their Request until May 24, 2004. (See Opposition at p. 3). Thus, WASA claims that the Union's May 24, 2004 filing was four (4) days late.

In their Request, the Union acknowledges that the Award was issued on April 30, 2004.<sup>2</sup> (See Union's Brief at p. 1). In addition, the Union, in its Reply to the Respondent's Opposition, indicates that the Award was sent via facsimile on April 30, 2004 at 10:48 p.m. (See Reply at p. 1).<sup>3</sup> However, the Union contends that it did not receive the Award until May 3, 2004. (See Reply at p. 2). Citing Board Rule 538.1, the Union argues that since the Award was not received until May 3, 2004, the Union was required to file their Request within twenty days after the May 3, 2004, receipt date, or by May 24, 2004. (See Reply at p. 3). Thus, the Union claims that May 24, 2004 was the last day to file its Request. (See Reply at p. 3). For the reasons discussed below, we disagree.

"[The Union's] timeliness argument is based on their belief that the receipt date is the operative factor which triggers the computation of the twenty-day filing requirement noted in Board Rule 538.1. However, Board Rule 538.1 states that an arbitration review request must be filed by 'no later than twenty (20) days after service of the award.' (Emphasis added). The twenty day limitations period for review of an award commences after service of the award, not when it is received by the party." *District of Columbia, Water and Sewer Authority and AFGE Local 872, \_DCR\_, Slip Op. No. 843 at p. 5, PERB Case No. 05-A-10 (2006)*; See also *Health and Hosp. Public Benefit Corp. And IBPO, Local 446, 49 DCR 4954, Slip Op. No. 549, PERB Case No. 98-A-03 (1998)*. Five days may be added pursuant to 501.4, if service is by mail. However, in the present case service was by facsimile; therefore Board Rule 501.4 is not applicable. See *D.C. Gen. Hosp. and Doctor's Council of the D.C. Gen. Hosp.*, Slip Op. No. 493, PERB Case No. 96-A-08 (1996). Since it is undisputed that the Award was sent by facsimile on April 30, 2004, the Union was required to submit their pleading no later than May 20, 2004. 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 Relations Board v. D.C. Metropolitan Police Department*, 593 A. 2d 641 (D.C. 1991). Therefore, the Board finds the Union's May 24, 2004, filing was untimely. Thus, the Union's Request is denied.

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<sup>2</sup>The Arbitrator's Award, at page 27, indicates a date of August 30, 2004. However, the Union acknowledges in its Request that the Award was issued on *April 30, 2004*. (See Brief at p. 1). Moreover, neither party has challenged the April 30, 2004, date. In addition, the Board notes that the date actually indicated by the time-and-date stamp of the facsimile was April 30, 2004.

<sup>3</sup>Board Rule 538 does not prohibit the Board from taking into consideration supplemental pleadings. Therefore, the Board acknowledges receipt of the Union's Reply. In addition, WASA's Motion to Strike is denied.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

- (1) The American Federation of Government Employees, Local 872'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.**

**September 29, 2006**

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No.04-A-12 was transmitted via Fax and U.S. Mail to the following parties on this the 29<sup>th</sup> day of September 2006.

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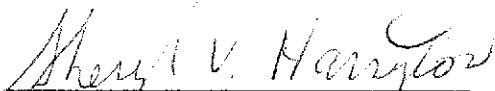
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