GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: District of Columbia Nurses' Association, Petitioner, v. District of Columbia General Hospital, Respondent.	PERB Case No. 93-A-02 Opinion No. 361

DECISION AND ORDER

On May 20, 1993, the District of Columbia Nurses' Association (DCNA) filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitration award (Award) issued on March 5, 1993. The Award denied a grievance filed by DCNA on behalf of two employees of the District of Columbia General Hospital (DCGH). On June 14, 1993, DCGH filed a Consent Motion requesting an enlargement of time to file an Opposition to the Request. The unopposed Motion was granted and DCGH's Opposition was received for filing on June 16, 1993. DCGH contended in its Opposition that DCNA's Request was untimely and should be dismissed. By letter dated July 19, 1993, the Board's Executive Director dismissed DCNA's Arbitration Review Request on the basis of timeliness.

On August 17, 1993, DCNA filed a document styled "Request For Board Reconsideration Of Administrative Dismissal Of Arbitration Review Request". For the following reasons we deny DCNA's request that we "revoke" the Executive Director's administrative dismissal of its Arbitration Review Request. (Reconsid. at 4.)

In dismissing DCNA's Arbitration Review Request, the Executive Director's letter stated, in pertinent part, the following:

> According to Board Rule 538.1, "[a] party to a grievance arbitration proceeding who is aggrieved by a grievance award may file a Request for review with the Board not later than twenty (20) days after service of the Award." (Emphasis added) You have indicated in your request that D.C. Nurses' Association, i.e., the "party" in interest, received service of the Award sometime between the issuance of the Award, i.e., March 5, 1993, and April 30, 1993. Accordingly, your Review Request was due in this office prior to May 20, 1993.[1]/

DCNA's contention and arguments in support of its request for reconsideration is predicated upon the Arbitrator's "admitted" error that he improperly bypassed Petitioner's counsel, and mailed a copy of his decision, i.e., Award, only to the offices of Petitioner, i.e., DCNA. (Reconsid. at 2.) DCNA's counsel states that he had "constructive knowledge" of this error on April 30, 1993, and received service of the Award on May 11, 1993. Therefore, counsel contends, the May 20, 1993 filing of the Arbitration Review Request should be considered within the 20 days after service of the Award as required by Board Rules. [2]/ In short, Counsel for DCNA argues that since DCNA was represented by a duly-designated attorney before the arbitrator, a determination of timeliness under the Board's Rules should be based upon service of the Award on that attorney, and not upon service on the represented "party". [3]/

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[1]/ We note that Counsel for DCNA states that the Award was issued on March 5, 1993. Since Counsel for DCNA raises no issue as to when DCNA actually received the Award, we presume DCNA received the Award in due course but in any event sometime prior to April 30, 1993, the date counsel states he first learned of the Award's existence.

[2]/ Counsel for DCNA cited to Interim Board Rules 100.15 and 100.16, which are now Final Board Rules 501.4, 501.5 and 501.6 and which establish the bases for computing the time for submitting a document to the Board.

[3]/ Counsel for DCNA contends that Interim Board Rule 100.23 incorporates the principle that "proper service of any legal document, subsequent to an initial complaint, must go to the counsel of record whenever a party is so represented." (Reconsid.

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If, indeed, Board Rules establishing time limits for filing an Arbitration Review Request require that the event from which time is measured, i.e., service of the award upon the "party", to be service of the award on a party's representative, DCNA's Request would be timely. We find, however, that the Board's Rules establishing the time periods for initiating an action, i.e., Arbitration Review Request, before the Board makes no requirement on how the triggering event, i.e., service upon the party, is achieved in other proceedings. See Board Rule 538.1. [4]/

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[3](...continued)
at 3.) We have ruled, as a procedural requirement, that in proceedings before the Board, Board Rule 501.12 (which superseded Interim Board Rule 100.23 and was in effect at all times material herein) requires parties to serve the representatives of all other parties who have made their representation known. American Federation of Government Employees, Local 872 v. D.C. Department of Public Works, 38 DCR 6693, Slip Op. No. 266 at n. 1, PERB Case No. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). The "faulty" service of the Arbitration Award occurred within the context of an arbitration proceeding prior to Counsel's attempt to initiate proceedings before the Board. Board Rule 501.12 is a procedural requirement in order to accept for filing documents in proceedings that have been initiated before the Board.

Board Rule 538.1 is jurisdictional. As a rule of jurisdiction, in computing any period of time for initiating actions before the Board, the actual party's (and not any representative the party may maintain) relationship to the triggering event is determinative of when the time period begins to run. See, e.g., Glendale Hoggard v. District of Columbia Public Schools, et al., ____ DCR _____, Slip Op. No. 357, PERB Case No. 93-U-10 (1993). In this case, the event is the admitted service of the Award upon the actual party, DCNA. The D.C. Court of Appeals has affirmed the Board's interpretation of its rules establishing time limits for initiating a proceeding before this agency as mandatory and jurisdictional. Public Employee Relations Board v. D.C. Metropolitan Police Department, No. 88-868, Slip Op. at 6 (June 29, 1991). "T[]he forfeiture of a party's right to initiate a proceeding is automatic and the existence of prejudice is irrelevant upon determination by the Board that the prescribed time period has not been met." District of Columbia Public Schools and Washington Teachers' Union, ____ DCR _____, Slip Op.No. 335 at n.2, PERB Case No. 92-A-10 (1992).

[4]/ We further note that the Board's definition of a "party" is given in the context of proceedings only under the authority of
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Board Rule 538.1 provides, in relevant part, the following:

> **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.**

Board Rule 538.1 provides no other requirement to trigger the 20-day time period to initiate an action before the Board than "service of the award" on the "party ... who is aggrieved". [5]/ DCNA, the aggrieved party, was admittedly served with the Award.

Requiring service on or actual knowledge by the representative or party's attorney to trigger the 20-day time period is neither expressed nor implied in Board Rule 538.1. Such an interpretation of Board Rule 538.1 could open its application to abuse. Moreover, in non-Board proceedings, what constitutes sufficient service, is not a matter within the auspices of the Board. [6]/ The procedural rules for arbitration,

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[4](...continued)
the Board. Board Rule 599.1 Definitions defines "Party" as "[a]ny person, employee, group of employees, organization, agency, or agency subdivision initiating such a proceeding as authorized by these rules or named as a participant in such a proceeding or whose intervention in a proceeding has been granted or directed under the authority of the Board."

[5]/ The admittedly short time period for initiating an Arbitration Review Request before the Board was established in the interest of the parties. By the time most disputes become grievances and are processed through the parties' grievance-arbitration procedures, a significant period of time has transpired since the event adversely affecting the aggrieved party. The Board's intent in establishing a short time period is to minimize the period a party is aggrieved before final review. DCNA or interested members of the labor-management community are always welcome, in accordance with Board rule 567.2, to offer proposed amendments to Board Rule 538.1 with respect to the established time period.

[6]/ Counsel for DCNA cites in support of this contention our Decision and Order in District of Columbia Public Schools and Washington Teachers' Union, ____ DCR _____, Slip Op.No. 335 at n.2, PERB Case No. 92-A-10 (1992). Reliance upon our ruling in that case, however, is misplaced. There was no issue concerning whether or not service of an arbitration award was properly made upon the District of Columbia Public School's representative. The issue
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including the manner of service, is something for the parties themselves to decide.

In view of the foregoing, DCNA has provided no grounds why its Request should not be dismissed on the basis of timeliness. The Executive Director's dismissal is therefore affirmed.

ORDER

IT IS HEREBY ORDERED THAT:

The District of Columbia Nurses' Association's request that we reverse the Executive Director's administrative dismissal of its Arbitration Review Request, based on timeliness, is denied.

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

September 22, 1993

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[6](...continued)
concerned when, after service has been made, does the time period commence that is allowed for filing an arbitration review request. We rejected DCPS' argument that the time period begins from the time its representative had actual knowledge of the award.