

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
Health and Hospital Public)	
Benefit Corporation,)	
)	PERB Case No. 98-A-03
Petitioner,)	Opinion No. 549
)	
and)	FOR PUBLICATION
)	
International Brotherhood of)	
Police Officers, Local 446 (on)	
behalf of Officer James Owens),)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

On February 13, 1998, the Health and Hospital Public Benefit Corporation (PBC)^{1/} filed an Arbitration Review Request seeking review of an arbitration award (Award) issued on January 20, 1998. The Award sustained a grievance filed by the International Brotherhood of Police Officers, Local 446 (IBPO) concerning the discharge of a bargaining unit employee, Officer James Owens (Grievant). The PBC asserts that the Award is contrary to law and public policy and requests that the Board "vacate the Award" and "deny the Union's grievance in its entirety". (ARR at 3.) IBPO filed an Opposition to the Arbitration Review Request, denying that a statutory basis exists for review of the Award and therefore the award should be dismissed. IBPO further states that the Arbitration Review Request is untimely.

IBPO states that the Arbitration Award was issued and served on the parties by mail on January 20, 1998, and was received by the PBC on January 22, 1998. This latter date was stamped on the

^{1/} The Petitioner inadvertently filed its Arbitration Review Request under the former name of one of its sub-components namely, the District of Columbia General Hospital (DCGH). DCGH was reorganized into the PBC pursuant to D.C. Act 11-388, "Health and Hospitals Public Benefit Corporation Emergency Act of 1996".

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first page of the PBC's copy of the Award as the date of receipt. IBPO notes that Board Rule 538.1 requires that requests for review of an arbitration award be filed "not later than twenty (20) days after service of the award." Therefore, IBPO contends, the Request is untimely because "the Agency waited until February 13, 1998, to file the Arbitration Review Request, twenty-two calendar days after receipt of the decision." (Resp. at 2.)

The PBC states that pursuant to Board Rule 501.4, five (5) days are added to the prescribed period "whenever a period of time is measured from the service of a pleading and service is by mail". Since, as IBPO acknowledges, service was by mail, its Arbitration Review Request was timely filed on February 13, 1998, within 25 days of the January 20, 1998 service date. IBPO argues that notwithstanding Board Rule 501.4, the PBC's contention contravenes the Board's holding against "interpret[ing] [Board] [R]ules in such a manner as to allow form to be elevated over the substantive objective to which the rule was intended." D.C. General Hospital v. Doctors Council of DCGH, Slip Op. No. 493 at p.3, PERB Case No. 96-A-08 (1996).

In D.C. General Hospital v. Doctors Council of DCGH, *supra*, we held 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." Slip Op. No. 493 at 3. Board 501.4 provides an unqualified uniform enlargement of time, i.e., five (5) days, to file pleadings when service is by mail, as it was here. Moreover, under Board Rule 538.1, service, not receipt, of an arbitration award triggers the commencement of the 20-day jurisdictional period within which to file an arbitration review request. IBPO's contention rests on a mistaken interpretation which equates service, under Board Rule 538.1, with receipt of the arbitration award. In view of the above, the PBC's application of Board Rules 538.1 and 501.4 does not elevate form over substance but rather is consistent with our objective of "provid[ing] notice of a uniform and consistent process".

Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-605.2(6), and Board Rule 538.3, 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 or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar means... ."

The PBC contends that the Award "is contrary to law because it is inconsistent with Article 3 of the parties' collective bargaining agreement and with Chapter 16 of the District

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No. 87-A-04 (1991).

Finally, we have held that to set aside an arbitrator's award on public policy grounds, "the petitioner must cite to applicable law (and definitive public policy) which mandates that the arbitrator arrive at a different result." AFGE, Local 631, AFL-CIO and D.C. Dept of Public Works, Slip Op. No. 365 at n. 4, PERB Case No. 93-A-03 (1993). The PBC does not present any law or definitive public policy to support its contention that the Award violates public policy. For the reasons discussed, the Request fails to present any statutory grounds for disturbing the Award.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

April 23, 1998