

On September 15, 1987, MPD filed a document styled "Motions For Reconsideration and for Retroactive Extension of Time for filing Arbitration Review Request" in which it argued that (1) the Board cannot delegate to its Executive Director the authority to decide matters on which the Board has the final say and (2) pursuant to Board Interim Rule 100.13 (now Board Rule 501.1), this is an appropriate case for the Board to exercise its discretion to extend the time for filing an Arbitration Review Request. (Motion at 6 and 9.) The FOP timely filed a response to the Motions opposing any reconsideration by the Board of the Executive Director's dismissal of MPD's Request. For the following reasons we deny MPD's Motion.

MPD correctly notes in its first argument that at the time its Motions were filed an identical issue involving the same parties, and concerning the timeliness arguments MPD now raises, was pending before the Superior Court of the District of Columbia in District of Columbia Metropolitan Police Department and the Fraternal Order of Police/MPD Labor Committee (On Behalf of Officer Clark M. Gutterman, MPA 10-87 (1990)). (Motion at n. 1.)^{3/} The issue before the Superior Court was whether or not it was error for the Board, vis-a-vis the Executive Director, to dismiss as untimely an Arbitration Review Request filed by the MPD absent a showing of prejudice. The Superior Court has since decided this issue in the affirmative whereupon, it was appealed to the D.C. Court of Appeals in Public Employee Relations Board v. D.C. Metropolitan Police Department, No. 88-868 (June 25, 1991).

The Court of Appeals affirmed the Superior Court's Order reversing the Board's dismissal of that Arbitration Review Request; however, it did so on different grounds,^{4/} finding the rationale underlying the Superior Court's decision erroneous. Id., Slip Op. at 2. In affirming the Superior Court's Order, the

^{3/} The pendency of this matter was precisely the reason that the Board's consideration of MPD's Motions in the instant proceeding was held in abeyance.

^{4/} The Court of Appeals based its ruling on the fact that the Executive Director's dismissal of MPD's Review Request lacked "reliable, probative and substantive evidence" to support it. PERB v. MPD, supra, Slip Op. at 6. Here, there is no dispute by MPD that it knew its Arbitration Review Request was due no later than June 8, 1987 and that it was not received at the office of the Executive Director until June 9, 1987. (Motion at 3.) Interim Board Rule 100.26 (now Board Rule 501.11) provides that "[f]iling with the Board shall not be complete until the document is received in the office of the Executive Director."

Court of Appeals ruled that "the time limits for filing appeals with the administrative adjudicative agencies are mandatory and jurisdictional, thus obviating any need for a showing of prejudice...." *Id.*, Slip Op. at 2 and 6. As a mandatory and jurisdictional provision of our rules, MPD's right to request review of the Arbitration Award was automatically forfeited when it failed to do so within the prescribed time limit.^{5/} Thus, contrary to MPD's contentions, the Executive Director's action in dismissing its Request was not a "discretionary quasi-judicial act" requiring review by the Board. Moreover, pursuant to D.C. Code Sec. 1-605.1(k) of the Comprehensive Merit Personnel Act (CMPA), the Board may appoint such persons as it deems necessary to carry out its business.^{6/}

MPD's second argument in its Motion, relying upon Interim Rule 100.13, is of no avail. Interim Board Rule 100.13 provides:

"When an act is required or allowed to be done at or within a specified time, the Board, the Chairperson or the Executive Director shall have discretion to order the period extended or reduced when it may be

^{5/} A statutory provision which specifies a certain period of time within which an act is to be done that is construed as "directory" leaves intact the authority to act beyond the specified time period unless actual prejudice is established. See Black's Law Dictionary 547 (4th ed. rev. 1976). If the time period is construed as a forfeiture of the authority to act beyond the specified time period, it is deemed "mandatory". *Id.* Cf., Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO and D.C. Department of Corrections, 38 DCR 5080, Slip Op. No. 284, PERB Case No. 87-A-11 (1991); Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment, 490 A.2d 628, 635 (1985) and Thomas v. District of Columbia Department of Employment Services, 490 A.2d 1162, 1164 (1985).

^{6/} Notwithstanding MPD's contention that the CMPA did not contain any provisions authorizing the Board to delegate such "discretionary" acts and final decisions to the Executive Director, MPD acknowledged in its Motion that it was informed by the Executive Director in a letter dated August 5, 1987, during the processing of PERB Case Nos. 86-A-06 and 87-A-04, that the Board had "decided at the outset of [its June 14, 1987] meeting...to defer to [the Executive Director's] discretion in making determinations on issues of timeliness." (Motion at 6-7.) As noted by FOP, Interim Rule 109.1 (now Board Rule 500.3) provides "[t]he Executive Director is the principal administrative officer of the Board and performs such duties as assigned by the Board"

manifested in a particular case that strict adherence will work surprise or injustice or obstruct the proper effectuation of D.C. Law 2-139."

MPD contends "that 'strict adherence' to the rule will work [a] 'surprise'." However, Interim Rule 100.13 has no application to Interim Rule 107.2, a jurisdictional prerequisite. Jurisdictional requirements are controlling over what and when certain actions and proceedings can be initiated with the Board. With respect to Arbitration Review Requests, to properly invoke the Board's jurisdiction, a required element of the Request is that it be filed within 20 days after service of the arbitration award. As discussed above, MPD failed to meet this jurisdictional requirement. See n.2, *supra*. Moreover, as noted by the Court of Appeals, Interim Rule 107.2 is not only jurisdictional but also mandatory. Therefore, "[t]he issue of prejudice, [or as MPD asserts, surprise,] is irrelevant." PERB v. D.C. Metropolitan Police Dept., *supra*, Slip Op. at 5.

In view of the foregoing, MPD provides no basis for the Board to review the decision of the Executive Director.

ORDER

IT IS HEREBY ORDERED THAT:

The Motions for Reconsideration and for Retroactive Extension of Time for filing Arbitration Review Request are denied.

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

February 5, 1992