Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors to that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
District of Columbia Department of Corrections, Correctional Employees, Local Union No. 1714, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (On behalf of Linton Coles), Petitioner,	PERB Case No. 94-A-01 Opinion No. 380
v.	
District of Columbia Department of Corrections, Respondent.	

DECISION AND ORDER

On October 21, 1993, the District of Columbia Department of Corrections Correctional Employees, Local Union 1714, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters) filed an Arbitration Review Request with the Public Employee Relations Board (Board). The Request seeks review of an arbitration award (Award) issued on September 28, 1993, that denied a grievance concerning the termination of the Grievant's employment by the D.C. Department of Corrections (DOC). The Teamsters contend that the Award is contrary to law, i.e., the D.C. Comprehensive Merit Personnel Act, D.C. Code Sec. 1-617.1. The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DOC, filed an Opposition to Arbitration Review Request (Response), arguing that the Award is consistent with applicable law and that there is no basis for overturning it.

Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-605.2(6), 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 jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion or other similar and unlawful means". The Teamsters' appeal is based on its contention that the second of these statutory standards for review has been met.

Generally, the issue before the Board is whether or not an arbitrator's interpretation of a statute, in deciding to deny the grievance, establishes the asserted basis for our review of the Award. Upon review of the Award, the pleadings of the parties and applicable Board law, the Board concludes that the Award, on its face, is not contrary to law and public policy.

The pertinent facts underlying the basis of the Teamsters' appeal are not in dispute. In connection with a guilty plea to a felony charge, the Grievant served a sentence which began on July 5, 1991, and continued through the date the adverse action was initiated by DOC and the date of his discharge on February 6, and April 3, 1992, respectively. DOC terminated the Grievant for cause under District Personnel Manual (DPM) regulations, which provide for the "removal" of an employee for "inexcusable absence without leave" for "ten consecutive workdays or more". DPM Reg. 1603.1 and 1618. The Teamsters contend that, given the Arbitrator's findings of fact, his conclusion that DOC's authority to terminate the Grievant was not forfeited under D.C. Code Sec 1-617.1(b-1)(1), is contrary to law.

> D.C. Code Sec. 1-617.1(b-1)(1) provides:
> Except as provided in paragraph (2) of this subsection, no corrective or adverse action shall be commenced pursuant to this section more than 45 days, not including Saturdays, Sundays, or legal holidays, after the agency knew or should have known of the acts or occurrence allegedly constituting cause, as that term is defined in subsection (d) of this section.

We found the above provision to be mandatory [1]/ in nature and effect in Metropolitan Police Department and Fraternal Order of Police, Metropolitan Police Department Labor Committee, ___

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[1]/ The D.C. Court of Appeals has held that statutes, rules and regulations setting time limits on an agency's authority to act that are mandatory in nature and effect, leave the agency without authority to act after the prescribed period. Teamsters Local Union 1714 v. PERB, 579 A.2d 706 (1990).

DCR _____, Slip Op. No. 325, PERB Cases No. 92-A-06, 92-A-07 and 92-A-09 (1993). On this basis, the Teamsters maintain that by initiating disciplinary action against the Grievant in excess of 45 days after it "knew of the act or occurrence allegedly constituting cause", i.e., the first 10 consecutive workdays of Grievant's unexcused absence while incarcerated, DOC violated Section 1-617.1(b-1)(1) and was therefore without authority to discharge the Grievant.

DOC's knowledge of the Grievant's absence without leave since July 5, 1991, is not in dispute. The Teamsters' appeal turns on its disagreement with the Arbitrator's ruling with respect to when the 45-day period commences under the statute. The Arbitrator found that the cause for the Grievant's discharge, i.e., absence without leave for ten consecutive workdays or more, was continual. As such, reasoned the Arbitrator, DOC did not violate Section 1-617.1(b-1)(1) since it initiated adverse action proceedings against the Grievant within 45 days of a "10 consecutive day period of time". (Award at 10.)

The Teamsters' contention that the 45-day period commences after the first 10 consecutive days of AWOL ignores Grievant's undisputed cause for removal, "inexcusable absence without leave" for "ten consecutive workdays or more." (emphasis added.) DPM Chapter 16, Section 1618. Under the plain meaning of this DPM regulation, ten workdays establishes only the minimum number of consecutive days that constitute cause for removal. As found by the Arbitrator, the Grievant's absence without leave continued uninterrupted through the date DOC initiated adverse action proceedings. DOC's initiation of adverse proceedings against the Grievant, as the Arbitrator found, was within 45 days of the defined cause of removal under the applicable DPM regulation.

We have held that by "agreeing to submit a matter to arbitration, the parties also agree to be bound by the Arbitrator's interpretation of the parties' agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." (emphasis added.) University of the District of Columbia and University of the District of Columbia Faculty Association, 39 DCR 9628, Slip Op. No. 320, at 2, PERB Case No. 92-A-04 (1992). Therefore, we cannot find, based on the Arbitrator's finding and his interpretation of cause under this DPM regulation, that a basis exists for the Teamsters' contention that the Award is contrary to law, i.e., D.C. Code Sec. 1-617.1(b-1)(1).

Accordingly, we conclude that the Teamsters have not shown a statutory basis for disturbing the Award. The Teamsters' request that the Award be "vacated and reversed" and that Grievant be

"made whole" is denied. [2]/

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

February 24, 1994

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[2]/ Board Rule 538.4 limits the Board's disposition of arbitration review requests to determinations "which may reject the request for lack of jurisdiction or sustain, set aside or remand the award in whole or in part."