GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: University of the District of Columbia, Petitioner, and University of the District of Columbia, Faculty Association/NEA (on Behalf of Barbara Green) Respondent.	PERB Case No. 92-A-02 Opinion No. 317

DECISION AND ORDER

On March 2, 1992, the University of the District of Columbia (UDC) filed an Arbitration Review Request with the Public Employee Relations Board (Board). UDC requested that the Board review a "Second Supplemental Opinion and Award" (Award) on back-pay interest. The Award followed two earlier arbitration awards that decided a grievance filed by the University of the District of Columbia Faculty Association/NEA (UDCFA) in favor of Barbara Green, the Grievant, and ordered reinstatement and backpay. [1]/

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[1]/ The background of the instant Award is as follows: The grievance in this matter was filed on March 20, 1987, over the Grievant's release by UDC pursuant to a reduction in force. The grievance was arbitrated and an award granting reinstatement of the Grievant with backpay was issued on December 30, 1987. UDC filed for review of that award with the Board in University of the District of Columbia Faculty Association/NEA, 36 DCR 3635, Slip Op. No. 220, PERB Case No. 88-A-03 (1989). The Board denied UDC's arbitration review request, whereupon UDC petitioned the D.C. Superior Court for review of the Board's Decision and Order. The Superior Court denied UDC's petition. See, Board of Trustees of the University of the District of Columbia v. University of the District of Columbia Faculty Association/NEA on behalf of Barbara Green, Civil Action 89-3 MPA (1990). The parties subsequently returned to the Arbitrator for a supplemental award after failing to agree on the amount of backpay to which the Grievant was entitled. A supple-mental opinion and award on the amount of (Footnote 1 Cont'd)

UDC asserts in its Request that the Award is contrary to law and public policy. UDCFA filed an Opposition to Arbitration Review Request on March 9, 1992, averring that the Award is not contrary to law and public policy and that the Request should be denied.[2]/

Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 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 award on its face is contrary to law and public policy... ." The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties and applicable law, and concludes that the Award on its face is not contrary to law and public policy and therefore we lack the authority to grant the requested Review.

The Award provided that UDC pay the Grievant simple interest at a rate of 6 percent (%) per annum for the periods covering (1) the date of the grievance, i.e., March 20, 1987, to the date of the reinstatement-with-backpay award, i.e., December 30, 1987, (Pre-Award Interest) and (2) the date of the reinstatement-with-backpay award to the date UDC paid the Grievant, i.e., July 21, 1991, (Post-Award Interest). The basis of UDC's Request is two-fold. First, UDC contends that to the extent the 6% rate of interest awarded exceeds 4%, it is contrary to the statutory limit for interest awarded against the District under D.C. Code Sec. 28-3302(b). UDC further contends that pre-award interest on backpay is contrary to law and public policy.

The rate of interest in the District of Columbia is set by statute under D.C. Code Sec. 28-3302. Under Sec. 28-3302(b) of that provision, interest on "judgments or decrees against the District of Columbia or its officers or its employees..." cannot exceed 4% per annum "<u>when authorized by law</u>." (emphasis added.) In support of its contention that Sec. 28-3302(b) applies to the Arbitrator's Award of interest, UDC cites our Decision and Order in <u>American Federation of Government Employees, Local 3721 v. District of Columbia Fire Department</u> 36 DCR 7857, Slip Op. No.

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backpay was issued by the Arbitrator on January 22, 1991. The parties returned once again to the Arbitrator solely on the issue of interest on the backpay award. The instant Award, i.e., Second Supplemental Opinion and Award, was issued on February 5, 1992.

[2]/ Both UDC and UDCFA filed supplemental memoranda to their pleadings on March 20 and April 13, 1992, respectively. Since no Board rule expressly precludes such filings and there were no objections by the parties, the Board has considered these supplemental filings in its disposition of this case.

202 (Motion), PERB Case No. 88-U-25 (1989). While we held in that case that D.C. Code Sec. 28-3302(b) applies to our remedial authority to provide interest, UDC failed to distinguish between the Board's remedial powers which are "authorized by law", i.e., D.C. Code Sec. 1-618.13, and an arbitrator's remedial powers which "[are] a matter of contract," i.e., the parties' collective bargaining agreement. See, United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 580 (1960). Absent this element of Sec. 28-3302(b), we find no merit to UDC's contention that Sec. 28-3302(b) applies to an arbitrator's remedial authority to award interest. [3]/ Since UDC's assertion that the Award of interest at the rate of 6% was contrary to law turned on its contention that the Award contravened D.C Code Sec. 28-3302(b), we find no statutorily-based grounds exists for review of this aspect of the Award.

We now turn to UDC's contention that the granting of pre-award interest is contrary to law and public policy. UDC bases its second ground for our review of the Award on an early codification of D.C. Law 2-139, i.e., Sec. 3203 of the CMPA. (Supp. Mem. at 6-7.) UDC argues that pursuant to this provision, a District government employee hired prior to January 1, 1980, remains subject to the provisions of the Back Pay Act (5 U.S.C. Sec. 5596) and federal case law interpreting the meaning of the Back Pay Act "as it applied to all District employees on January 1, 1980[.]" (Supp. Mem. at 7.) [4]/ Assuming, arguendo, that an earlier codification of the CMPA carried over provisions of the federal personnel laws, e.g., Back Pay Act, for pre-January 1, 1980 District government employees, the CMPA, as was observed by the D.C. Court of Appeals, was "amended in 1981 and recodified at D.C. Code Sec. 1-633.2(a)(5)(G) to extend the supersession of the Back Pay Act to all District government employees, regardless of when they were hired." See, District of Columbia v. Hunt, 520

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[3]/ In view of this ruling, we have no occasion to address the applicability of Sec. 28-3302(b) based on the parties' arguments whether or not UDC constitutes "the District of Columbia" as prescribed under the statutory provision. We note, however, that under D.C. Code Sec. 1-602.2(4) of the CMPA, "each person employed as an educational employee of... the Board of Trustees of the University of the District of Columbia" are recognized as "[an] employee[] of the District of Columbia government ...." Also, in view of our ruling, we need not rule upon UDC's contention that the Award of interest is not subject to the provisions of D.C. Code Sec. 28-3302 since, UDC argues, arbitration awards do not constitute "judgments or decrees" as prescribed therein.

[4]/ According to UDC, Grievant was hired before January 1, 1980. (Supp. Mem. at 7.)

A.2d 300, 303 (1987). [5]

In this regard, D.C. Code Sec. 28-3302 is the prevailing law with respect to interest on backpay awards in the District of Columbia. As discussed previously, since the Arbitrator's authority to award interest is not authorized by law but rather by contract, Sec. 28-3302(b) is not applicable. Under Sec. 28-3302(a), however, "[t]he rate of interest in the District upon the loan or forbearance of money, goods, or things in action in the absence of expressed contract, is 6 percent per annum." Moreover, D.C. Code Sec. 28-3302 makes no distinction between interest provided during pre-determination or post-determination periods. Thus, in the absence of an express contractually agreed-upon rate of interest by the parties for arbitration awards, we do not find the awarding of pre-award interest on back pay at a rate of 6% to contravene applicable law and public policy.

Accordingly, UDC has provided no grounds that support a statutory basis for reviewing the Award and, therefore, its request for Board review must be denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

June 10, 1992

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[5] Compare, International Brotherhood of Police Officers, Local 445 and District of Columbia Department of Administrative Services ____DCR____, Slip Op. No. 300 at n.4, 91-A-05 (1992), where the Board acknowledged the District's recognition of provisions of the Back Pay Act as the prevailing law with respect to District government employees. However, recognition extended only to those provisions that established a system for determining aspects of backpay where there "exist[ed] no established system promulgated by the District of Columbia [,e.g., the awarding or calculation of attorney fees.]" Mayor's Memorandum Number 81-53, July 17, 1981, at 2; Memorandum of the Corporation Counsel, July 15, 1981, at 2. As discussed in the text, there exists an established system for determining interest promulgated by the District of Columbia, i.e., D.C. Code Sec. 28-3302.