

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 so 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:)	
)	
D.C. Metropolitan Police)	
Department,)	
)	
Petitioner,)	PERB Case No. 99-A-09
)	Opinion No. 602
and)	
)	
Fraternal Order of)	
Police/Metropolitan Police)	
Department Labor Committee (on)	
behalf of Officer Beverly Short),)	
)	
Respondent.)	
)	

DECISION AND ORDER

On July 30, 1999, the District of Columbia Metropolitan Police Department (MPD or Petitioner) filed an Arbitration Review Request seeking review of an arbitration award (Award) reinstating a bargaining unit employee who had been terminated for cause. The Award was the result of a grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) on behalf of the bargaining unit employee (Grievant). MPD contends that "the arbitrator improperly ruled, contrary to the Table of Penalties and made up her own version of what the penalty should be." (ARR at 4.) FOP filed an Opposition to the Request, arguing no statutory basis exists for disturbing the Award.

The issue before the Board is whether "the arbitrator was without, or exceeded, [] her jurisdiction... ." D.C. Code Sec. 1-605.2(6). The Board concludes that MPD does not present grounds that establish a statutory basis for our review.

The parties have agreed to resolve disputes concerning the application or interpretation of personnel rules and regulations through the contractual grievance arbitration process. The Board has held that by agreeing to arbitrate such matters, it is "the arbitrator's decision regarding contractually agreed-upon disputes for which the parties' have bargained." D.C. General

Decision and Order
PERB Case No. 99-A-09
Page 2

Hospital and AFGE, Local 631, 41 DCR 2734, Slip Op. No. 316, PERB Case No. 92-A-03 (1994). Here, MPD terminated the Grievant for (1) Absence Without Leave (AWOL) and (2) failure to obey orders pursuant to certain provisions and guidelines under MPD General Orders and District Personnel Manual (DPM). The Arbitrator found that the record established grounds supporting both causes for disciplinary action.

However, she found that several factors mitigated against a penalty of termination. She further found that MPD violated its General Order -incorporated in the parties' collective bargaining agreement (CBA)- prohibiting the consideration of "corrective action beyond a three-year duration in making a determination of punishment." (Award at 11.) She set aside the termination and conditionally reinstated the Grievant pursuant to a "Last Chance Agreement for a three-year duration with full seniority and benefits." (Award at 10.)^{1/}

MPD notes that the cause for the Grievant's disciplinary action was supported by the record and found by the Arbitrator. MPD contends that "[u]nder such circumstances, a penalty chosen by the department, which was within the Table of Penalties guides of both the Police's Department's General Orders and the District of Columbia Personnel Manual, should have been left undisturbed as within the agency's discretion." (ARR at 2.) Therefore, MPD asserts, that by reducing the termination, the Arbitrator "improperly, ruled contrary to the Table-of-Penalties and made up her own version of what the penalty should be." (ARR at 4.)

Although not expressly stated, MPD's assertions suggest that these grounds constitute a statutory basis for finding that the Arbitrator was without or exceeded her jurisdiction. Notwithstanding an arbitrator's finding of cause, "an arbitrator does not exceed his authority by exercising his equitable powers (unless it is expressly restricted by the parties' contract) to decide what, if any, mitigating factors warrant a lesser discipline than that imposed." D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 97-A-04 (1992). See also, D.C. Housing Authority and American Federation of Government Employees, Local 2725, 45 DCR 4776, Slip Op. No. 519, PERB Case No. 97-A-02 (1998) (arbitral authority subject to restrictions provided by DPM regulations as well). Such authority includes the power to "fashion or tailor an appropriate remedy" unless expressly and specifically limited. Dept of Finance and Revenue and AFSCME,

^{1/} Under the "Last Chance Agreement", any subsequent adverse action during this three-year period would be grounds for removal. (Award at 10.)

Decision and Order
PERB Case No. 99-A-09
Page 3

D.C. Council 20, Local 2776, 36 DCR 3334, Slip Op. No. 217, PERB Case 88-A-01 (1989).

The Award reflects that the Arbitrator's decision to lessen the imposed penalty turned on several mitigating factors. In so doing, the Arbitrator concluded that these mitigating factors warranted lessening the penalty. (Award at 14.) Notwithstanding any discretion accorded MPD to terminate the Grievant for cause, MPD cites no provision in its General Orders, DPM or the parties' CBA that mandates termination or otherwise restrict the Arbitrator's equitable authority.

Given the authority of the Arbitrator, MPD's Request presents no basis for finding that the Arbitrator exceeded her authority or that the Award is, on its face, contrary to law and public policy. Therefore, the Request is denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

September 30, 1999

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Cases No. 99-A-09 was mailed (U.S. Mail) to the following parties on this the 30th day of September, 1999.

Urenthea McQuinn, Esq. U.S. MAIL
Assistant Corporate Counsel
441 4th Street, N.W.
Washington, D.C. 20001

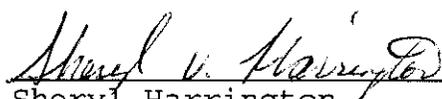
Turna Lewis, Esq. U.S. MAIL
1200 G Street, N.W.
Suite 800
Washington, D.C. 20005

Courtesy Copies:

Brenda Wilmore, Esq. U.S. MAIL
Director/Labor Relations
Metropolitan Police Department
300 Indiana Avenue, N.W.
Room 5004
Washington, D.C. 20001

Beverly Short U.S. MAIL
400 5th Street, N.W.
Washington, D.C. 20001

Dr. Andree Y. McKissick U.S. MAIL
Arbitrator
2808 Navare Drive
Chevy Chase, MD 20815-3802



Sheryl Harrington
Secretary/Receptionist