GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

District of Columbia General Hospital,

Petitioner,

and

American Federation of Government Employees, Local 631, AFL-CIO,

Respondent.

PERB Case No. 92-A-03
Opinion No. 316

DECISION AND ORDER

On March 13, 1992, the District of Columbia General Hospital (DCGH) filed an Arbitration Review Request with the Public Employee Relations Board (Board). DCGH requested that the Board review an arbitration award (Award) that decided a grievance filed by the American Federation of Government Employees, Local 631, AFL-CIO (AFGE) on behalf of bargaining-unit employee Don Donbrosky, the Grievant. The Award sustained a grievance filed by AFGE over a decision by DCGH to terminate the Grievant. DCGH alleged in its Request that the Award is contrary to District government policy, contrary to law and exceeds the scope of the arbitrator's authority. AFGE filed an Opposition to the Arbitration Review Request on March 25, 1992, arguing that no basis exists for the Board's review. [1]/

[1]/ As a threshold matter, AFGE contends that the Request should be rejected as premature. AFGE's assertion is based on its contention that DCGH filed its Request for Review prior to the issuance of the Arbitrator's "actual decision, complete with the basis for his finding." (Opp. at 2.) However, while the Arbitrator's full opinion (issued April 1, 1992) post dates the filing of DCGH's Arbitration Review Request, his March 5, 1992 Award, which contains the basis of DCGH's request for our review, did not. According to the Arbitrator, the April, 1992 "opinion" was being issued for the expressed purpose of "explain[ing] [his] [March 5, 1992] decision in greater detail...." (March 5, 1992 Award.) It is the Arbitrator's Award which we have authority to review. D.C. Code Sec. 1-605.2 (6). AFGE has presented no reason why the March 5, 1992 arbitration Award should not be considered an award as prescribed under D.C. Code Sec. 1-605.2

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 arbitrator was without, or exceeded, his or her jurisdiction; 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 for the reasons that follow that no statutory basis for our review exists on the grounds asserted. Therefore, we lack the authority to grant the requested Review.

The undisputed issue before the Arbitrator was whether "the Grievant's rights [were] violated when he was terminated for absenteeism during incarceration." (Award at 2.) The Arbitrator ruled that in terminating the Grievant, his rights, pursuant to the Arbitrator's interpretation of District Personnel Manual (DPM), Chapter 16, Section 1614.8 and Chapter 16, Part 2, Subpart 2, Subpart 2.4(A), were violated. Specifically, the Arbitrator found that DCGH had not fully investigated the matter before terminating the Grievant and had failed to accord the Grievant due process. In finding for the Grievant, the Arbitrator awarded the reinstatement of Grievant with back pay from the date the Grievant attempted to return to work following his incarceration. The Award further provided that the Grievant's absence from work during his incarceration be charged as leave without pay (LWOP).

Under the terms of their collective bargaining agreement, the parties have agreed that disputes concerning any alleged

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(Footnote 1 Cont'd)
(6)) for purposes of DCGH's Arbitration Review Request.

Also in its Opposition, AFGE requested that the Board grant it "representational expenses incurred to the union in representing Mr. Donbrosky." (Opp. at 2.) However, the Board's statutory authority with respect to grievance arbitration matters is limited to review of only the Arbitrator's Award. AFGE's representational expenses was not an issue before the Arbitrator and therefore is not a proper matter for review. Moreover, the Board's Rules limit our disposition in Arbitration Review Request proceedings to "mak[ing] a determination which may reject a request for lack of jurisdiction or sustain, set aside or remand the award in whole or in part." Board Rule 538.4. See, International Brotherhood of Police Officers, Local 445 and District of Columbia Department of Administrative Services, ___ DCR ___, Slip Op. No. 300 at n.7, PERB Case No. 91-A-05 (1992).

violation of their agreement or misapplication or misinterpretation of personnel rules and regulations that affect the terms and conditions of bargaining unit employees is an appropriate matter for resolution through the grievance arbitration process. We have held that it is the arbitrator's (not the Board's) decision regarding contractually agreed-upon disputes for which the parties have bargained. See, University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 38 DCR 5024, Slip Op. No. 276, PERB Case No. 91-A-02 (1991) and University of the District of Columbia Faculty Association/NEA, 36 DCR 3639, Slip Op. No. 220, PERB Case No. 88-A-03 (1989).

As previously stated, the issue before the Arbitrator was whether DCGH complied with the DPM in its decision to terminate Grievant. Upon concluding that DCGH had not so complied, the Arbitrator had the authority, unless specifically mandated otherwise, to fashion an Award that included the reinstatement of the Grievant as part of restoring the status quo before the violation. See, e.g., University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 38 DCR 1580, Slip Op. No. 262, PERB Case No. 90-A-08 (1990); District of Columbia Metropolitan Police Department and Fraternal Order of Police/MPD Labor Committee, 36 DCR 3339, Slip Op. No. 218, PERB Case No. 89-A-01 (1989); District of Columbia Department of Finance and Revenue and American Federation of State, County and Municipal Employees, Council 20, Local 2776, 36 DCR 3334, Slip Op. No. 217, PERB Case No. 88-A-01 (1989); and University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 36 DCR 2472, Slip Op. No. 216, PERB Case No. 87-A-09 (1989). This is the case even if the Arbitrator misconstrues the provisions he has authority to interpret. University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 36 DCR 3639, Slip Op. No. 220, PERB Case No. 88-A-03 (1989). We do not find the "District Government Policies" or "guidelines" [2]/ cited by DCGH specifically limit the Arbitrator's authority to make the Award herein. Moreover, District government policies and guidelines that cannot be ascertained by reference to laws and legal precedents do not constitute "law and public policy" for purposes of our limited statutory authority to review on this

[2]/ In addition to the DPM regulations referenced in the text, DCGH cites DPM Chapter 16, Section 1609.9 and DPM Chapter 12, Subpart 5.

basis. [3] See, e.g., University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 37 DCR 5666, Slip Op. No. 248 at 6, PERB Case No. 90-A-02 (1990).

Accordingly, DCGH has provided no 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 9, 1992

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[3] DCGH raised related arguments challenging the Award as contrary to law, specifically, D.C. Code, Sec. 1-617.1(d)(9) and D.C. Code Sec. 1-610.6. These laws, argues DCGH, allow it to terminate Grievant for inexcusable absence and violation of the District's residency requirement, respectively. However, the Award did not decide whether DCGH possessed the authority to terminate Grievant for the infractions proscribed thereunder. Rather, as noted in the text, the Award decided whether DCGH had met certain DPM prerequisites before effecting a final decision to exercise whatever authority it had to take adverse or corrective action against the Grievant. Upon ruling that DCGH had not, the Arbitrator, for the reasons discussed in the text, possessed the authority to make the status-quo-ante Award.