

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:

University of the,
District of Columbia

Petitioner,

v.

University of the
District of Columbia
Faculty Association,

Respondent.

PERB Case No. 92-A-05
Opinion No. 368

DECISION AND ORDER ON REMAND

This case is before the Public Employee Relations Board (Board) on remand from the D.C. Superior Court pursuant to its Opinion and Order granting, in part, the University of the District of Columbia Faculty Association/NEA's (UDCFA) Petition for Review of our Decision and Order in Opinion No. 321 in the above-captioned case. The Superior Court reversed the "PERB's Decision and Order affirming the arbitrator's decision to award pre-award interest at methods used by [the] N[ational] L[abor] R[elations] B[oard]".

In Opinion No. 321, UDC asserted, as a basis for our review, that the Award contravened D.C. Code Sec. 28-3302(b) to the extent that it awarded interest that exceeded 4 percent (%) per annum for pre-award back pay. (Arb. Rev. Req. at 4. We rejected UDC's contention that Section 28-3302(b) applied to arbitration awards of interest since an arbitrator's power to render awards is authorized by contract, i.e., the parties' collective bargaining agreement,

and not by law, as prescribed by Section 28-3302(b). We further noted that "any award of interest resulting from the parties' negotiated grievance arbitration proceeding" was subject to D.C. Code Sec. 28-3302(a), providing that the rate of interest, "in the absence of prescribed contract, is 6 percent per annum." *Id.*, Slip Op. at n. 3. ^{1/}

The Superior Court concluded that "PERB correctly applied D.C. Code Section 28-3302(a) in upholding the arbitrator's award". Board of Trustees of the University of the District of Columbia v. Public Employee Relations Board, et. al., Slip Op. at 14. Our Decision and Order in Opinion No. 321, however, did not expressly and specifically rule that the Arbitrator's Award of interest on back pay "at methods and rates used by the NLRB in calculating interest on back pay awards" was contrary to law and public policy, i.e., D.C. Code Sec. 28-3302(a). We now correct that inadvertent oversight. Thus, while the Arbitrator's Award of pre-award interest on back pay is not subject to D.C. Code Sec. 28-3302(b), contrary to UDC's contention, that portion of the Award setting the rate for pre-award interest in accordance with NLRB methods violates D.C. Code Sec. 28-3302(a) and, therefore, is on its face contrary to law and public policy.

ORDER

IT IS HEREBY ORDERED THAT:

The Decision and Order in Opinion No. 321 is amended to reflect our conclusion that the Arbitrator's Award of pre-award interest on back pay in accordance with methods and rates used by the National Labor Relations Board is contrary to law and public policy. That portion of the Arbitration Award is set aside, and this matter is remanded to the Arbitrator for further proceedings, in accordance with the Opinion and Order of the Superior Court in Civil Action Nos. 92-MPA-22 and 92-MPA-24, consistent with D.C. Code Sec. 28-3302.

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

October 15, 1993

^{1/} The parties do not contend, nor does the record reflect, that a contractually agreed-upon rate of interest exists for an arbitrator's award of interest on back pay.