GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: **Washington Teachers' Union Local 6, AFT, AFL-CIO (on behalf of James Ricks),** **Petitioner,** **and** **District of Columbia Public Schools,** **Respondent.**	**PERB Case No. 95-A-09 and 95-A-10** **Opinion No. 448**

DECISION AND ORDER

On July 3, 1995, James Ricks (Grievant) filed an Arbitration Review Request (PERB Case 95-A-09) with the Public Employee Relations Board (Board). The Grievant requested that the Board review an arbitration award (Award) issued on June 12, 1995.[1]/ The Award sustained in part and denied in part a grievance filed by the Washington Teachers' Union, Local 6, AFT, AFL-CIO (WTU) on behalf of the Grievant, a teacher employed by the District of Columbia Public Schools (DCPS).[2]/

By letter dated July 5, 1995, the Board's Executive Director notified the Grievant that only: (1) WTU may file for arbitration[3]/ and (2) WTU and DCPS may properly file a request to review the Arbitrator's Award. Furthermore, the Grievant was

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[1]/ The Grievant asserted in paragraph 4 of his Arbitration Review Request that he "[would] not be represented by the Washington Teachers' Union, nor the general counsel for the union."

[2]/ The Arbitrator reduced the Petitioner's termination to a suspension without pay.

[3]/ The Grievant was informed that either an employee or the union may raise a grievance under the collective bargaining agreement (CBA). However, Article VI(B)(2) of the CBA explicitly states at subsection (7), Step 4 of the grievance process,."that no individual employee himself may invoke or pursue arbitration." The Executive Director cited and attached a copy of our Decision and Order in Irene Wilkes and D.C. Public Schools, 34 DCR 3631, Slip Op. No. 161, 86-A-07 (1987).

informed that his Arbitration Review Request would be administratively dismissed unless his petition was amended to establish his right to file an appeal of the Award pursuant to Board Rule 538.1.[4]/ The amended Arbitration Review Request was due by July 12, 1995. Upon receiving no response from the Grievant, the Executive Director, by letter dated July 14, 1995, administratively dismissed the Grievant's Arbitration Review Request.

On July 12, 1995, Petitioner WTU filed an Arbitration Review Request (PERB Case No. 95-A-10) seeking review of the same Award. On July 14, 1995, the Board's Executive Director, pursuant to Board Rule 538.1, dismissed WTU's Request as untimely. (see n. 4.) On July 20, 1995, WTU filed a Motion for Reconsideration. WTU asserts that its Arbitration Review Request is actually an amendment of the Arbitration Review Request filed by the Grievant James Ricks in PERB Case No. 95-A-09. Thus, WTU contends that its Request was timely filed by the July 12, 1995 deadline provided to Mr. Ricks.

The Executive Director's July 5, 1995 letter accurately set forth the rights of the Grievant, WTU and DCPS with respect to initiating an arbitration review request before the Board pursuant to D.C. Code 1-605.2(6) and Board Rule 538.1. Moreover, the only opportunity the letter provided the Grievant was to demonstrate how he had proper standing to pursue an appeal of his grievance arbitration award before the Board. The Grievant and WTU, in its Arbitration Review Request, failed to do this.

However, with respect to pro se individuals initiating actions before the Board, we have held that we will not hold them to a strict standard of compliance with our procedural rules. Willard Taylor v. University of the District of Columbia Faculty Association, ___ DCR _____, Slip Op. No. 324, PERB Case No. 90-U-24 (1992). Under certain circumstances we will extend some latitude to pro se individuals who make an earnest or good faith attempt to comply. In this regard, it is conceivable that the Grievant could have understood the Executive Director's July 5, 1995 letter as affording him the opportunity to amend his Arbitration Review Request by substituting WTU as the proper party to this cause of action. In this limited context, we shall extend to WTU the enlargement of time the Executive Director

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[4]/ Board Rule 538.1 provides that "[a] party to a grievance arbitration proceeding who is aggrieved by the arbitration award may file a request for review with the Board not later than twenty (20) days after service of the award." (Emphasis added.) Like all Board Rules concerning the initiation of a cause of action, Board Rule 538.1 is jurisdictional and mandatory.

accorded the Grievant to amend its Arbitration Review Request. Therefore, WTU's Arbitration Review Request is timely.

In view of our disposition of WTU's Request, we find it unnecessary to provide DCPS with an opportunity to respond to the merits pursuant to Board Rule 538.2 which we shall proceed to address below.

Under the 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 authority or her jurisdiction... ." The Board has reviewed the Arbitrators's Award, WTU's pleadings and applicable law, and concludes that the Request presents no statutory basis for review of the Award.

WTU asserts that the Award "on its face is contrary to law and public policy and deprives the grievant of his procedural and substantive due process." (ARR at 3.) In support of this ground for review, WTU takes issue with the standard upon which the Arbitrator made his Award. Specifically, WTU cites the Arbitrator's conclusion that "there was cause to discipline the Grievant... but...termination was <u>not</u> just cause under Article VII (E) of the Agreement." (Award at 13.)

WTU contends that by reducing the Grievant's termination to a suspension based on "cause", a standard not provided under the contract or applicable law, "the arbitrator applied a different and lower standard for suspension... ." (ARR at 3.) WTU acknowledges that an arbitrator is given wide latitude to interpret the law; however, WTU asserts that this arbitral authority does not allow an arbitrator to amend and misconstrue the applicable statutes. WTU claims that clearly by doing this, the Arbitrator has exceeded his contractual and legal authority.

Contrary to WTU's assertions, neither D.C. Code § 1-617.1 nor any other applicable statutory provision provide "cause" as the standard for taking disciplinary action. Rather, the disciplinary standard under the CMPA, as codified under D.C. Code § 1-617.1 and the management rights provisions of D.C. Code § 1-618.8(a)(2), provide "cause" as the basis for taking adverse or disciplinary action. Therefore, for this reason and the reasons discussed below, we find no basis for WTU's contention that the Award is contrary to law and public policy.

Under the parties' collective bargaining agreement, Article VII(E) subjects disciplinary action to a standard of "just cause". However, this standard governs DCPS' authority to take disciplinary action, not the otherwise broad equitable authority

of the arbitrator to render an award. We have held that "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 Dep't and the FOP, MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 87-A-04 (1991). The Arbitrator merely modified disciplinary action already taken by DCPS based on his finding that DCPS failed to fully meet the contractual standard governing DCPS' authority to discipline. We find that neither the contractual nor the statutory provisions cited by WTU restrict the Arbitrator's authority to render such an Award.[5]/

The Board has reviewed the Arbitrator's Award, WTU's pleadings and the applicable law and concludes that the grounds presented in WTU's request for review do not present a statutory basis for disturbing the Award. Accordingly, WTU's request for review is denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Motion for Reconsideration is granted; the Arbitration Review Request is denied.

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

August 25, 1995

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[5]/ The Arbitrator's Award also turned on his conclusion that DCPS did not meet its burden of proof under Article VII (E) of the Agreement to discharge the Grievant for just cause. We have held that by "agreeing to submit a matter to arbitration, the parties also agree to be bound by ... 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 find no basis for WTU's disagreement in this regard.