

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The District of Columbia  
Department of Corrections,

Petitioner,

and

The International Brotherhood of  
Teamsters, Local Union No. 246,  
on behalf of Mary E. Edwards,

Respondent.

PERB Case No. 87-A-02  
Opinion No. 157

DECISION AND ORDER

On October 10, 1986 the District of Columbia Department of Corrections (DOC) filed an "Arbitration Review Request" with the Public Employee Relations Board (Board), arguing inter alia that (1) reinstatement of the grievant would be contrary to law and public policy; (2) adherence to the award would "not only jeopardize safety of other employees, but also severely diminish public confidence in the Agency's ability to control the inmate population;" and (3) "courts and arbitrators have upheld discharges in similar situations."

The issue before the Board is whether or not a statutory basis for review exists in this case.

The September 1986 Award that the Agency petitions the Board to review ruled:

"The grievance is sustained to the extent that it protests the agency's decision to discharge the grievant. The discharge is to be rescinded and reduced to a 30-day suspension, and the grievant otherwise is to be made whole for all losses of earnings and other benefits."

The Award stems from a grievance, dated September 12, 1984, filed by the International Brotherhood of Teamsters, Local Union No. 246 (IBT) on behalf of Mary E. Edwards, a correctional officer in the District of Columbia Department of Corrections' D.C. Correctional Institution (DOC), in protest of her discharge by the DOC, effective September 7, 1984.

The grievant was employed by DOC from April 1979 and prior to the discharge proceedings had not received any warnings, reprimands or suspensions despite being arrested in February 1982, while off-duty, for reckless driving and driving while intoxicated. The grievant pleaded guilty to the reckless driving charge and the charge of driving under the influence was dismissed. On February 21, 1984, the grievant was arrested in Washington, D.C. and charged with driving under the influence. On June 7, 1984, the grievant pleaded guilty to violation of D.C. Code Section 40-716(b) (1), driving while intoxicated. The grievant was sentenced to a term of imprisonment for 14 days in her own place of employment, the D.C. Correctional Institution. The grievant used accumulated leave during her period of incarceration and returned to work upon the completion of her sentence. The grievant continued to work, without incident, until she received a Notice of Decision, dated August 22, 1984, which stated as the ground for discharge:

"Other failure of good behavior which is of such a nature that it causes discredit to your agency and your employment."

The August 22, 1984 memorandum, in relevant part, stated further that: "The reasons, specifically and in detail were set forth in the letter of July 31, 1984." Thereafter, the grievant was discharged effective September 7, 1984. The July 31, 1984 memorandum, which adds no further substance to the August 22, 1984 discharge letter, was an admonishment of the grievant for being incarcerated and for her alleged lack of cooperation during her arrest.

The agency's October 10, 1986 Arbitration Review Request with a supportive memorandum is devoid of any cognizance of the Board's statutory basis for review of arbitration awards.

D.C. Code §1-605.2(6) authorizes the Board to consider appeals from arbitration awards pursuant to a grievance procedure provided 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; or was procured by fraud, collusion, or other similar and unlawful means. This is the exclusive method for reviewing the decision of an arbitrator concerning a matter properly subject to the jurisdiction of the Board, notwithstanding any provisions of the District of Columbia Uniform Arbitration Act (D.C. Code §§16-4301 to 16-4319).

The Agency "Memorandum in Support of Arbitration Review Request" does not persuade the Board that a statutory basis for review exists in this case. The agency memorandum does not challenge the arbitrator's authority or jurisdiction nor does it contain any allegation of fraud, collusion or similar unlawful conduct. With respect to the agency argument that the grievant's reinstatement would be contrary to law and public policy it presents no law or public policy for Board evaluation. While the agency cites D.C. Personnel Regulations, Chapter 16, at Section 1604.5 and Section 1608.3 as considerations it took into account when determining the appropriate adverse action to be taken against the grievant, neither section requires termination of employment. Indeed,

the agency argument concerning these regulations is fatal to its Arbitration Review Request, for it contends:

"The Department believes that the Arbitrator's reading of these sections was too narrow. The Department's interpretation of the above-cited sections in conjunction with its right to impose discipline, is that it may impose adverse action, including discharge, for off-duty misconduct that clearly impinges on the Department's ability to meet its responsibilities."

The Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator. Further, a review of the agency memorandum in support of its Arbitration Review Request establishes that no evidence is offered to prove that the grievant's reinstatement would: (1) injuriously affect the Department; (2) adversely affect its employees; and (3) adversely affect the Agency's ability to perform effectively.

In the instant case the arbitrator concluded that because the respondent's misconduct took place off-duty, the Agency lacked proper cause, under Statute or Regulation, to subject the respondent to an adverse action, i.e., to a suspension of 30 days or more or to a discharge.

Although the arbitrator was persuaded that the Agency had properly established that the grievant's off-duty misconduct was of a serious nature and did have sufficient relationship to her employment as a correctional officer to justify appropriate action, discharge was not provided for in this instance under the District of Columbia Comprehensive Merit Personnel Act (CMPA).

CMPA Section 1-617.1(b), provides in relevant part:

"A permanent employee ... may be suspended for more than 30 days, reduced in rank or pay, or removed from the service only for cause and only in accordance with the provisions of this subchapter and subchapter VI of this chapter." (Emphasis supplied)

Further, Section 1-617.1(d), states: "For the purpose of this Section, cause shall be defined as follows" (Emphasis supplied); there follows in this provision the 21 types of misconduct which constitute "cause" for removal. The D.C. Office of Personnel's Regulations, at Section 1604.3, provides these same 21 causes for removal ... 'an adverse action must be based on one or more of these 21 causes. Other causes, unless they can be found to be included or subsumed under the 21, will not legally support an adverse action.'"

The Arbitrator noted that:

"The Agency's failure to identify one or more of the enumerated causes for discharge perhaps might not be fatal if it could be demonstrated that the particular facts involved directly and unambiguously constituted one or more of the enumerated causes for discharge. This has not been demonstrated herein."

Apparently, the Arbitrator was sufficiently disturbed by the respondent's off-duty misconduct in citing Section 1604.5 of the regulations which authorized the Agency with "corrective action" for off-duty misconduct. Citing Section 1604.5 of the regulations, the Arbitrator applied "the most appropriate penalty" provided in the Table of Penalties Guide, a 30 day suspension, rescinding MPD's unauthorized discharge.

The Arbitrator noted, that the Agency failed to cite any particular cause for discharge, and referred only to: "Other failure of good behavior which is of such a nature that it causes discredit to your agency and your employment." This statement tracks the terms of Regulations, at Section 1604.3(p), with two significant exceptions, i.e., the phrase "during duty hours" is deleted as is the statement which makes this provision applicable to off-duty misconduct by uniformed members of the MPD. Section 1604.3(p), therefore, is not applicable directly to the respondent's off-duty misconduct.

Further, a review of the 21 causes listed in the CMPA for discharge reveals none are applicable to the facts involved herein, either because the facts alleged do not constitute the type of misconduct which is defined as one of the causes for discharge and/or because the penalty of discharge for such off-duty misconduct is applicable only to uniformed members of the MPD.

For the foregoing reasons the Board finds that there is no basis upon which to conclude that the award contrary to law and public policy.

O R D E R

IT IS ORDERED THAT:

The Request for Review of the Arbitration Award is hereby denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
April 22, 1987