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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
Fraternal Order of Police/Metropolitan Police)	
Department Labor Committee)	
(on behalf of Desariee Haselden),)	
)	
Petitioner,)	
)	PERB Case No. 06-A-13
and)	
)	Opinion No. 882
)	
District of Columbia Metropolitan Police)	
Department,)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

I. Statement of the Case

The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union" or "FOP") filed an Arbitration Review Request ("Request") in the above captioned matter. The Union seeks review of an Arbitration Award ("Award") that sustained the termination of Desariee Haselden ("Grievant"), a bargaining unit member.

Arbitrator Lois Hochhauser was presented with the three following issues: (1) whether the District of Columbia Metropolitan Police Department ("MPD" or "Agency") violated the Grievant's rights by (a) permitting the same person to issue both the proposed and final notices, and/or (b) permitting the Adverse Action Panel to add a charge after the hearing; (2) whether MPD improperly relied on hearsay evidence to reach its findings and conclusions; and (3) whether the penalty of removal was appropriate. (See Award at pgs. 1-2). Arbitrator Hochhauser reversed the charge

added by the Adverse Action Panel after the hearing, but found that: (1) MPD did not violate the District Personnel Manual ("DPM") or the General Orders; and (2) there was ample evidence in the record to support MPD's decision to remove the Grievant. FOP contends that the Arbitrator's Award: (1) was without authority; and (2) is contrary to law and public policy. (See Request at p. 2). MPD opposes the Request.

The issue before the Board is whether "the arbitrator was without, or exceeded his or her jurisdiction" and whether "the award on its face is contrary to law and public policy" D.C. Code § 1-605.02(6) (2001 ed.).

II. Discussion

The Grievant had been employed by MPD for approximately 18 years and was assigned to the Institute of Police Science as a Class Instructor. (See Award at p. 2). On December 29, 2004, MPD issued a Notice of Proposed Adverse Action, which was signed by Shannon P. Cockett, Assistant Chief of Police, Human Services. (See Award at p. 2). The Grievant was charged as follows:

A. Case No. 466-04

Charge No. 1: Violation of General Order Series 1202, Number , Part I-B-2¹, which provides: Drinking 'alcoholic beverage' or 'beverage' as described in Section 3, Paragraph (e), 'District of Columbia Alcohol Beverage Act,' or being under the influence of 'alcoholic beverage' or 'beverage' while on duty. This misconduct is defined as cause in Section 1603 of the D.C. Personnel Manual.

Specification No. 1: In that on December 24, 2003, while off duty, [the Grievant] became involved in a domestic incident with [her] husband, Lieutenant Timothy Haselden. By [the Grievant's] own admission, [she was] under the influence of alcoholic beverage (s).

Charge No. 2: Violation of General Orders Series 1202, Number 1, Part I-B-7, which provides: Conviction of a member of the force in any criminal court of competent jurisdiction of any criminal or quasi-criminal offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of *nolo*

¹ The Arbitrator noted that "[e]arly in the Adverse Action proceeding, MPD withdrew this charge noting the Grievant had not been on duty at the time of the incident and the charge was based on an incorrect General Order. (Tr, 32). Later in the proceeding, MPD stated it was amending the charge to refer to that portion of the G.O. referring to off duty conduct. (Tr, 41042). The Adverse Action Panel corrected citation from I-B-1 to I-B-2 and the charge remained part of the removal action." (Award at p. 2).

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contendere or is deemed to have been involved in the commission of any act which would constitute a crime whether or not a court record reflects a conviction. Members who are accused of criminal or quasi-criminal offenses shall promptly report or have reported to their commanding officers their involvement. This misconduct is defined as cause in Section 1603 of the D.C. Personnel Manual.

Specification No. 1: In that on December 24, 2003, [the Grievant was] arrested by the Prince George's County Police Department due to a domestic violence incident at [the Grievant's] home located at . . . Upper Marlboro, Maryland, with [her] husband, Lieutenant Timothy Haselden.

Charge No. 3: Violation of General Order Series 1202, Number 1, Part I-B-6, which provides: "Willfully and knowingly making an untruthful statement of any kind in a verbal or written report pertaining to his/her official duties as a Metropolitan Police Officer to, or in the presence [of] any superior officer, or making an untruthful statement before any court or hearing." This misconduct is defined as cause in Section 1603 of the D.C. Personnel Manual.

Specification No. 1: In that on August 12, 2004, during an interview with Agent Kimberly Robinson of the Internal Affairs Division, [the Grievant] admitted that [she] had reported to [her] official that while off duty at [her] home, [the Grievant] lost footing on the steps, causing [her] to fall and break [her] ankle. [The Grievant] admitted that the truth of the matter is that [her] husband, Lieutenant Timothy Haselden, pushed [her]. Therefore, [the Grievant] willfully and knowingly made an untruthful statement to [her] superior officer [. . .] in violation of General Order Series 1202, Number 1, Part I-B-6.

B. Case No. 246-04

Charge No. 1.: Violation of General Orders Series 1202, Number 1, Part I-B-12, which provides: "Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would affect adversely the employee's or the agency's ability to perform effectively, or violations of any law of the United States or any law, municipal ordinance, or regulation of the District of Columbia." This misconduct is defined as cause in Title 1, Section 2603 of the D.C. Personnel Manual.

Specification No. 1: In that on February 21, 2004, [the Grievant] became involved in a physical altercation with [her] husband, Lieutenant Timothy Haselden, over the use of his cell phone. By [the Grievant's] own admission, this incident could have been avoided had [she] not been drinking.

(Award at pgs. 2-4).

An Adverse Action Panel ("Panel") was convened on February 10, 2005. (See Award at p. 4). The Grievant was present at the Panel hearing and denied the charges. (See Award at p. 4). On or about February 14, 2005, the Panel issued its Findings and Conclusions of Law which sustained the charges in Cases Nos. 466-04 and 246-04, and recommended the Grievant's termination. (See Award at p. 4). In addition, the Panel found that the Grievant had provided false statements to an Internal Affairs investigator during an interview on May 25, 2004. As a result, in Case No. 246-04, the Panel added the following second charge and specification:

Charge No. 2: Violation of General Orders 1202, Part I-B-6, which reads:

"Willfully and knowingly making an untruthful statement of any kind in a verbal or written report pertaining to his/her official duties as a Metropolitan Police Officer to, or in the presence [of] any superior officer, or making an untruthful statement before any court or hearing." This misconduct is defined as cause in Section 1603 of the D.C. Personnel Manual.

Specification No. 1: In that on February 22, 2004, [the Grievant] reported to Officer Wofsey of the Montgomery Police Department that Lieutenant Haselden pulled [her] out of his van and threw [her] to the ground. On May 25, 2004, during an interview with Sergeant Anthony Langley of the Internal Affairs Division, [the Grievant] reported that Lieutenant Haselden pulled [her] from the van and that [she] stumbled and fell to the ground. During sworn testimony presented before an Adverse Action Panel on February 10, 2005, [the Grievant] admitted that [she] had "played with words" when [she] answered Sergeant Langley's question about this incident. [The Grievant] stated that [she] did this because [she] did not want to get Lieutenant Haselden into any trouble.

(Award at pgs. 4-5).

MPD issued, and Assistant Chief Cockett signed, a Final Notice of Adverse Action on February 23, 2005, which agreed with the Panel's conclusions and recommendations. (See Award at p. 5). The Final Notice advised the Grievant that she could appeal the decision to the Chief of Police and that the Chief's reply would constitute the final agency action. (See Award at p. 5). The Grievant appealed the decision. The Chief denied the appeal by letter dated March 17, 2005. (See Award at p. 5). The Grievant's termination became effective on April 1, 2005. (See Award at p. 5). Pursuant to the parties' collective bargaining agreement ("CBA"), the Union invoked arbitration on behalf of the Grievant.

At arbitration FOP argued that the Grievant's termination should be rescinded because MPD violated Sections 1607.3² of the DPM and General Order 1202.1 which require that the hearing officer and the deciding official must not be the same person as the proposing official in an adverse action proceeding. Specifically, FOP asserted that Assistant Chief Shannon Cockett acted as the: (1) proposing official; and (2) the deciding official. (See Award at p. 8).

MPD countered that FOP could not raise the issue of the DPM violation because Article 19, Section E. 5.2³ of "the parties' [CBA] requires that the parties cannot raise a matter in arbitration that was not previously disclosed . . . and further that a final appeal is limited to the record established at the Departmental hearing . . . and Grievant did not raise this issue earlier in this proceeding." (Award at p. 8). The Arbitrator also noted that MPD argued that "the Grievant was represented by counsel and had full opportunity to raise all of her defenses in her appeal to the Chief of Police", but failed to do so. (Award at p. 8).

In an Award issued on April 18, 2006, the Arbitrator Hochhauser rejected FOP's argument regarding the DPM violation by noting that:

the Union can point to no specific regulation or G.O. that was violated, but rather contends there is an inherent violation of due process rights if the person that issues the proposed notice also issues the final notice. 'Due process' is a legal concept contained in the U.S. Constitution that ensures that an individual is not deprived of life, liberty, property or any right without notice and an opportunity to be heard. The Union argues that Assistant Chief Cockett, by serving in more than one role, deprived Grievant of his due process rights. The Arbitrator does not agree that due process requires different individuals to make those decisions, particularly where there is a due process hearing before the final decision is issued. However, in this matter, the issue does not arise since Officer Haselden appealed Assistant Chief Cockett's decision to Chief Ramsey and Chief Ramsey

² Section 1617.3 provides that "the proposing official shall not be the deciding official, except the proposing official may be the deciding official when the proposing official is the head of an agency."

³ Article 19, Section E. 5.2 of the parties' CBA provides as follows:

The parties to the grievance or appeal shall not be permitted to assert in such arbitration proceeding any ground or to rely on any evidence not previously disclosed to the other party.

issued a decision which constituted the final decision. (Award at p. 9).

Having determined that the Union did not establish that the Grievant's due process rights were violated, the Arbitrator concluded that by failing to raise the matter in a timely fashion, the Grievant could not raise the issue at arbitration. (See Award at pgs. 9).

FOP also claimed that MPD violated the DPM by adding and sustaining an additional charge of "making a false statement" after the Panel's hearing concluded. (See Award at p. 9). FOP argued that adding the charge after the hearing concluded violated the principles of due process. (See Award at pgs. 9-10). It also maintained that the DPM and the parties' CBA require advance notice of a charge. (See Award at p. 10). The Arbitrator found that the Panel is permitted to add charges, but that it is required "to conduct a hearing consistent with the principles of fairness and due process." (Award at p. 10). The Arbitrator found that "once the Panel determined that a new charge should be brought, it was obligated to notify Grievant and allow her the opportunity to defend herself. It did not do so. Indeed, the new charge was not noted until the final decision was issued. The Arbitrator conclud[ed] that both fundamental fairness and due process require[] that this charge [of making a false statement] be reversed." (Award at pg. 10).

In addition, FOP asserted that MPD improperly relied on hearsay evidence in reaching its decision to terminate the Grievant. The Arbitrator noted that the MPD handbook states that hearsay is admissible but "advises" that it would be "arbitrarily, capriciously and in abuse of [the Panel's] discretion if the findings were based solely on hearsay evidence." (Award at p. 11). The Arbitrator found that the Panel did refer to hearsay testimony in reaching its decision; however, she noted that the Panel "did not limit itself to hearsay testimony but rather placed considerable reliance on Officer Haselden's testimony." (Award at p. 11). The Arbitrator, [indicated that in] reviewing the record, she [would rely] on the assessment of the Panel unless that assessment appear[ed] [to be] arbitrary or unsupported." (Award at p. 12). The Arbitrator concluded that the Panel did not "impermissibly rely on hearsay testimony." (Award at p. 12).

Concerning whether the penalty was appropriate, the Arbitrator stated that she carefully reviewed the record concerning the mitigating factors and aggravating factors relevant to the charges. (See Award at pgs. 12-13). In addition, the Arbitrator noted that she dismissed the charge added after the Panel had concluded the hearing. Nevertheless, the Arbitrator determined that the dismissal of that charge was insufficient to disturb the penalty of termination. (See Award at p. 14). The Arbitrator found that: (1) "the Panel considered and addressed the *Douglas*⁴ factors" before reaching its conclusion that the Grievant should be terminated; and (2) the penalty imposed was consistent with the table of penalties permitted for the misconduct. (See Award at p. 14). In view of the above,

⁴ See *Douglas v. Veterans Administration*, 5 MSRP 312 (1981).

the Arbitrator concluded that the penalty of termination was reasonable and supported by the evidence. (See Award at p. 14).

In its Request, the Union asserts that “the award is without authority and contrary to law and public policy.” (Request at p. 2). MPD opposes the Request.

When a party files an arbitration review request, the Board’s scope of review is extremely narrow. Specifically, the Comprehensive Merit Personnel Act (“CMPA”) authorizes the Board to modify or set aside an arbitration award in only three limited circumstances:

1. the arbitrator was without, or exceeded his or her jurisdiction;
2. the award on its face is contrary to law and public policy; or
3. the award was procured by fraud, collusion or other similar and unlawful means.

D.C. Code § 1-605.02(6) (2001 ed.).

FOP argues that the Arbitrator ignored guiding District of Columbia laws as well as the CBA when making her decision. Specifically, FOP asserts that “[b]y not abiding by [Article 4] of the CBA, the Arbitrator implicitly exceeded her authority and created new precedent that does not comport with the [Office of Employee Appeals (“OEA”)] decision[s].” (Request at pgs. 4-5). In support of its position, FOP argues the following:

An arbitrator is bound by the terms of the CBA. To go outside of its terms exceeds the authority granted to the arbitrator. Art. 4 of the CBA expressly incorporates all laws, rules, and regulations in the District of Columbia. . . . In her decision, the Arbitrator stated that the Grievant failed to timely raise the issue and was time barred from asserting it in arbitration. . . . The Arbitrator failed to follow Art. 4 of the CBA by not adhering to the laws of the District of Columbia. The OEA is bound by the terms of the CBA and must follow the procedures outlined therein. *District of Columbia Metropolitan Police Department v. Pinkard*, 801 A. 2d 86, 91 (D.C. 2002). Further, a CBA that “establishes guiding principles and nondiscretionary policy for a government agency . . . has the effect of a regulation, and . . . [the OEA] has jurisdiction to interpret any provision of the agreement which pertains to an issue under review.” *Rousey and Jones v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 1602-0114-90, and 1602-0115-90. . . . The OEA is the agency responsible for handling District of Columbia

government employee appeals concerning employment related matters. OEA decisions are likewise included. Arbitration is controlled by the CBA. Any action taken outside of the CBA exceeds the arbitrator's authority. (Request at p. 4).

FOP's analysis is based on its interpretation and application of D.C. Code §§ 1-606.01 and 606.03 (2001 ed.)⁵ which relate to the OEA. The OEA is a quasi-judicial body empowered to review final agency decisions affecting, *inter alia*, performance ratings which result in terminations, adverse actions for cause that result in removal, suspensions of 10 days or more, and reductions-in-force. By contrast, this Board is a quasi-judicial, independent agency entrusted, *inter alia*, with review of arbitration awards affecting employees of the District of Columbia. See, D.C. Code § 1-605.02(6). FOP conflates OEA's standard of review concerning an agency's decision to terminate an employee, with the power that this Board has to overturn an arbitration award which sustained a termination. The standard of review for the reversal of an arbitrator's decision differs significantly from OEA's review of a managerial decision. While this Board may only overturn an arbitrator's award under limited circumstances, *see* D.C. Code § 1-605.02(6), the Act that created the OEA does not define the standards by which the OEA is to review management decisions. *See Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).⁶ As a result, OEA defers to management decisions unless such decisions are not supported by substantial evidence. It is clear that OEA and this Board are two distinct independent agencies with separate and distinct jurisdiction. Also, in the present case, the Arbitrator's review of MPD's termination of Officer Haselden arises out of the parties' CBA and not D.C. Code §§ 1-606.01 and 606.03. In view of the above, FOP's claim that Arbitrator Hochhauser exceeded her authority by not relying on OEA precedent lacks merit. Therefore, FOP has failed to state a statutory basis for reversing the Award.

Concerning FOP's claim that the Arbitrator exceeded her authority by failing to follow Article 4 of the parties' CBA, we have held that "[b]y agreeing to submit the settlement of [a] grievance to arbitration, it [is] the Arbitrator's interpretation, not the Board's, that the parties have bargained for." *University of the District of Columbia and University of the District of Columbia Faculty Association*, 39 DCR 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992). In addition

⁵ Prior codification at D.C. Code §§ 1-606.1 and 1-606.3 (1981 ed.).

⁶ The District of Columbia Court of Appeals concluded, based on D.C. Code §§ 1-606.1 and 1-606.3, that:

[a]lthough the Act does not define the standards by which the OEA is to review these decisions, it is self-evident from both the statute and its legislative history that the OEA is not to substitute its judgment for that of the agency and its role . . . is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." . . . Although the OEA has a "marginally greater latitude of review" than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate. The "primary discretion" in selecting a penalty has been entrusted to agency management, not the [OEA]. (Citations omitted). *Stokes*, 1009-1010 and 1011).

we have found that by submitting a matter to arbitration, “the parties agree to be bound by the Arbitrator’s interpretation of the parties’ agreement . . . as well as [her] evidentiary findings and conclusions. . .” *Id.* Moreover, “[this] Board will not substitute its own interpretation or that of the [Union] for that of the duly designated arbitrator.” *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 DCR 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987). In the present case, the parties submitted their dispute to Arbitrator Hochhauser. Neither FOP’s disagreement with Arbitrator Hochhauser’s interpretation of Article 4 of the parties’ CBA, nor FOP’s disagreement with the Arbitrator’s findings and conclusions, are grounds for reversing the Arbitrator’s Award. See *MPD and FOP/MPD Labor Committee (on behalf of Keith Lym)*, _DCR_, Slip Op. No. 845, PERB Case No. 05-A-01 (2006).

As a second basis for review, FOP claims that the Award on its face is contrary to law and public policy. (See Request at p. 2). For the reasons discussed below, we disagree.

The possibility of overturning an arbitration decision on the basis of public policy is an “extremely narrow” exception to the rule that reviewing bodies must defer to an arbitrator’s ruling. “[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy.” *American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F. 2d 1, 8 (D.C. Cir. 1986). A petitioner must demonstrate that the arbitration award “compels” the violation of an explicit, well defined, public policy grounded in law and or legal precedent. See, *United Paperworkers Int’l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). The petitioning party has the burden to specify “applicable law and definite public policy that mandates that the Arbitrator arrive at a different result.” *MPD and FOP/MPD Labor Committee*, 47 DCR 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). Also see, *District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20*, 34 DCR 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). As the Court of Appeals has stated, we must “not be led astray by our own (or anyone else’s) concepts of ‘public policy’ no matter how tempting such a course might be in a particular factual setting.” *Department of Corrections v. Teamsters Local 246*, 554 A.2d 319, 325 (D.C. 1989).

In the present case, FOP asserts that the Award is on its face contrary to law and public policy. However, FOP does not specify any “applicable law” and “definite public policy” that mandates that the Arbitrator arrive at a different result. Instead, FOP argues that MPD violated the Grievant’s Fifth Amendment right to due process when it violated Sections 16 of the DPM and G.O. 1202.1 which require that the hearing officer and the deciding official must not be the same person as the proposing official in an adverse action proceeding.⁷ Specifically, FOP contends that MPD

⁷ In its Request, FOP also complains that “[t]he Arbitrator failed to discuss any of [FOP’s] analysis in her decision.” (Request at p. 5). An Arbitrator need not explain the reason for his or her decision. See *Lopata v. Coyne*, 735 A.2d 931, 940 (D.C. 1999). An Arbitrator’s decision is not unenforceable merely because he or she fails to explain certain bases for his or her decision. See, *Chicago Typographical Union 16 v. Chicago Sun Times*

violated the Grievant's due process rights when it allowed Assistant Chief Shannon Cockett to act as the: (1) proposing official; and (2) deciding official. (See Request at p. 5). Furthermore, FOP argues that the Grievant's due process rights cannot be waived. FOP's arguments are a repetition of the arguments considered and rejected by the Arbitrator. (See Award at p. 9). Therefore, we believe that FOP's ground for review only involves a disagreement with the arbitrator's findings and conclusions. FOP merely requests that we adopt its interpretation of the evidence presented.

We have held that a "disagreement with the Arbitrator's interpretation . . . does not make the award contrary to law and public policy." *AFGE, Local 1975 and Dept. of Public Works*, 48 DCR 10955, Slip Op. No. 413 at pgs. 2-3, PERB Case No. 95-A-02 (1995). In the present case, the parties submitted their dispute to the Arbitrator. FOP's disagreement with the Arbitrator's findings and conclusions, is not a ground for reversing the Arbitrator's Award. See, *Metropolitan Police Department v. Public Employee Relations Board*, D.C. Sup. Ct. No. 04 MPA 0008 (May 13, 2005) and *Metropolitan Police Department v. Public Employee Relations Board*, D.C. Sup. Ct. No. 01 MPA 18 (September 17, 2002). In conclusion, FOP has the burden to specify "applicable law and public policy that mandates that the Arbitrator arrive at a different result." *MPD and FOP/MPD Labor Committee*, 47 DCR 717, Slip Op No. 633 at p. 2, PERB Case No. 00-A-04 (2000). In the present case, FOP failed to do so.

In view of the above, we find that there is no merit to FOP's arguments. Moreover, we believe that the Arbitrator Hochhauser's conclusions are based on a thorough analysis of the record, and cannot be said to be clearly erroneous or contrary to law or public policy.

ORDER

IT IS HEREBY ORDERED THAT:

- (1) The Fraternal Order of Police/Metropolitan Police Department Labor Committee's Arbitration Review Request is denied.
- (2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

April 2, 2008

Inc., 935 F.2d 1501, 1506 (7th Cir. 1991). Moreover Arbitrator Hochhauser made ample factual conclusions and discussed at length FOP's arguments in supporting her decision.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 06-A-13 was transmitted via Fax and U.S. Mail to the following parties on this the 2nd day of April 2008.

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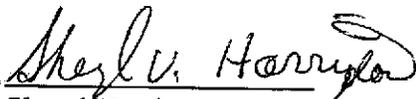
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