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

In the Matter of:)	
)	
District of Columbia Water and Sewer Authority,)	
)	
Petitioner,)	PERB Case No. 01-A-01
)	
and)	Opinion No. 642
)	
American Federation of Government Employees (AFGE), Locals 631, 872, 2553; American Federation of State, County and Municipal Employees (AFSCME), Local 2091; National Association of Government Employees (NAGE), Locals R3-05 and 06,)	
)	
Respondents.)	
)	

DECISION AND ORDER

The District of Columbia Water and Sewer Authority (WASA), filed an Arbitration Review Request and an Amended Arbitration Request (Request) on October 31, 2000 and November 24, 2000, respectively.^{1/} WASA seeks review of an arbitration award (Award) which determined that a 30-day suspension imposed on a bargaining unit employee should be measured, in calendar days rather than work days. In addition, WASA is challenging the arbitrator's ruling concerning the timeliness of the union's grievance. WASA contends that the arbitrator was without authority or exceeded his jurisdiction. (Request at p. 2.) The Respondents oppose the Request.

The issue before the Board is whether "the arbitrator was without or exceeded his jurisdiction. . . ." D.C. Code Sec. 1-605.2(6). Upon consideration of the Request, we find that

^{1/} The October 31st filing did not comply with Board Rules. However, WASA cured the filing deficiency in a timely manner.

WASA has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, WASA's request for review is denied.

WASA issued two 15 day suspensions to a bargaining unit employee for incidents which occurred on February 4, 1999 and March 9, 1999. This same individual was terminated due to a third incident which occurred on April 6, 1999. In a decision issued on August 10, 1999, the arbitrator reinstated the employee "subject to 30-day disciplinary suspension without pay." (Award at p.2). On August 27, 1999, WASA notified the employee that the "30-day suspension would be enforced as one of 30 work days, as opposed to calendar days." (Award at p. 2). The union grieved this action arguing that WASA "wrongfully enforced it as a work day suspension rather than a calendar day suspension". Also, the union argued that WASA waived its right to implement the suspension. WASA countered by arguing that: (1) the grievance was untimely; and (2) it never waived its right to implement the suspension.

In a decision issued on October 11, 2000, the arbitrator ruled that the 30-day disciplinary suspension should be measured by calendar days. In addition, he found that WASA's failure "to assert its timeliness defense at any time prior to the [arbitration] hearing" must be viewed as a waiver of that defense. Nonetheless, he concluded that WASA could implement the 30-day suspension.

WASA takes issue with the arbitrator's ruling. Specifically, WASA contends that the arbitrator exceeded his authority by finding that the suspension should be measured in calendar days, rather than work days. In addition, WASA claims that Article 52 of the collective bargaining agreement (CBA) does not require that WASA raise procedural defenses (such as timeliness) at Step 1 of the grievance process. Finally, WASA claims that the arbitrator exceeded his jurisdiction by applying language contained in Article 53 to a matter that was grieved under Article 52 of the CBA.

As a second basis for review, WASA claims that the Award is "contrary to the long-standing practice throughout the District of Columbia . . . [requiring that] suspensions for misconduct [should be] measured in work days." (Request at p. 3). However, WASA fails to cite any specific public policy that has been violated. WASA's policy argument relies solely on general consideration of supposed public policy, and not a well-defined policy or legal precedent. Thus, WASA has failed to point to any clear or legal public policy which the Award contravenes.

Before considering the merits of the union's argument, the arbitrator considered WASA's claim that the grievance was not timely. The arbitrator ruled that the union's grievance was timely because WASA failed to assert this defense prior to the arbitration hearing. WASA claims that the arbitrator exceeded his authority by finding that the agency waived its right to assert a timeliness defense. In support of its argument, WASA cites Articles 52 and 53, of the parties' CBA.

The arbitrator's conclusion that WASA waived its right to raise the timeliness issue, was based on his interpretation of Article 52 of the parties' CBA. In light of the above, WASA's contention involves only an interpretation of the parties' CBA. Thus, the essence of WASA's request for review is its disagreement with the arbitrator's interpretation of the parties' CBA. We

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have determined that such disagreement is not a sufficient basis for concluding that an award is contrary to law or public policy, or that the arbitrator exceeded his jurisdiction. See D.C. Metropolitan Police Department and Fraternal Order of Police, Metropolitan Police Department Labor Committee, 31 DCR 4159, Slip Op. No. 85, PERB Case No. 84-A-05 (1984).

In the present case, WASA merely requests that we adopt its interpretation of the parties' CBA. We have held that by agreeing to arbitration, it is the arbitrator's decision for which the parties' have bargained. D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case NO. 87-A-04 (1992). See also, University of the District of Columbia amd UDC Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).

Also, 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 and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." University of the District of Columbia and University of the District of Columba Faculty Association, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992). Furthermore, "[t]he Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator." District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union No. 246, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987).

We find that the arbitrator's conclusions are based on a thorough analysis and can not be said to be clearly erroneous or contrary to law and public policy. In the present case, WASA disagrees with the arbitrator's findings. This is not a sufficient basis for concluding that the arbitrator has exceeded his authority. For the reasons discussed, no statutory basis exists for setting aside the Award. Therefore, the Request is denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

January 9, 2001

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 01-A-01 was served, via (Fax & U.S. Mail), to the following parties on this 9th day of January, 2001.

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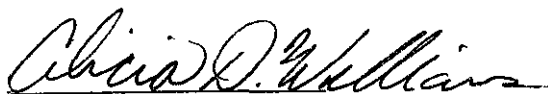
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