GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
District of Columbia Housing Authority,	
Petitioner,	
and	**PERB Case No. 97-A-02** **Opinion No. 519**
American Federation of Government Employees, Local 2725, AFL-CIO,	
Respondent.	

DECISION AND ORDER

On April 1, 1997, the District of Columbia Housing Authority (DCHA) filed an Arbitration Review Request in the above-captioned proceeding. DCHA seeks review of an arbitration award (Award) that sustained a grievance filed by the American Federation of Government Employees, Local 2725 (AFGE). The grievance challenged the failure of the Department of Public and Assisted Housing (DPAH), DCHA's predecessor agency, to pay environmental hazard pay to affected employees in violation of the District Personnel Manual (DPM) and the parties collective bargaining agreement (CBA). DCHA contends the Award is contrary to law since it held that DCHA: (1) violated the CBA by failing to pay an environmental differential to affected employees and (2) is responsible for paying the liabilities of DPAH. Furthermore, DCHA contends that the Arbitrator exceeded his jurisdiction by directing DCHA to abate certain hazardous conditions. On this basis, DCHA requests that the Award be set aside. AFGE filed an Opposition to the Arbitration Review Request contending that DCHA presents no statutory basis for review and therefore the Request should be denied.

Under the Comprehensive Merit Personnel Act, 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 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... ." (emphasis added.) The Board has reviewed the Award, the pleadings of the parties and applicable law, and concludes that the Request

presents no statutory basis for review of the Award.[1]/

DCHA contends that "the Arbitrator misread[] the underlying court order by which DCHA was placed into Receivership and misunderst[ood] the limitation on the Receiver's authority to pay retroactive awards for the alleged misdeeds of DPAH." ARR at 8. The Order to which DCHA refers was issued by the Superior Court in Pearson, et al. v Kelly, et al., No. 92-CA-14030 (May 18, 1995). The Order, among other things, appointed a Receiver to manage the affairs of DCHA and established the authority of the Receiver.

The Board had occasion to interpret this Order with respect to the issue raised by DCHA in an unfair labor practice proceeding involving these parties. See, AFGE, Local 2725, AFL-CIO v. DPHA and DCHA, Slip Op. No. 492, PERB Case No. 95-U-11 (1996). The Arbitrator, agreeing with our interpretation, decided that DCHA's liability under the Order was not limited to prospective monetary claims but also extended to any settlement or judgement arising from claims based upon the acts of DPAH, its predecessor. We have held that grounds for review that merely argue that the petitioner's interpretation of the law in question be accepted over that of the arbitrator does not support the statutory criteria that the award is contrary to law and public policy. See, D.C. Public Schools and International Brotherhood of Teamsters, Local 639, Slip Op. No. 423, PERB Case No. 95-A-06 (1995). This is especially the case when the Arbitrator's interpretation is --as we happened to previously find-- reasonable. Id.[2]/

Next, DCHA asserts that the Arbitrator failed to apply relevant provisions of the parties' CBA and misinterpreted DPM regulation --incorporated by the CBA-- with respect to DCHA's obligation to pay environmental differential. DCHA merely prays that we adopt its interpretation of the disputed CBA provisions and related DPM regulations that was specifically considered and

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[1]/ AFGE raises a threshold jurisdictional issue of timeliness. Board Rule 538.1 requires that arbitration review request be filed "not later than twenty days (20) after service of the award." In view of the unusual circumstances determinative of this issue and our disposition of the merits, we decline to decide the timeliness of the Arbitration Review Request.

[2]/ To set aside an award as contrary to law and public policy, the petitioner must present applicable law and definitive public policy that mandates that the arbitrator arrive at a different result. See, AFGE, Local 631, AFL-CIO and Dept of Public Works, Slip Op. No. 365, PERB Case No. 93-A-03 (1993). No such result is compelled by our reading of the Order, i.e., the law in question.

rejected by the Arbitrator. We have long held that "disagreement with the arbitrator's interpretation of the contract does not make the award contrary to law or public policy." See, AFGE, Local 1975 and Dept of Public Works, Slip Op. No. 413, PERB Case No. 95-A-02 (1995). [3]/

DCHA further contends that the Arbitrator failed to make employee entitlement findings position-by-position in view of the DPM regulation authorization of environmental differentials for actual exposure to prescribed conditions. Addressing this precise issue, the Arbitrator concluded that the "unusually long period of time that ha[d] been consumed in bringing this matter to [arbitration]" made "virtually impossible" a determination of whose pay "would have been properly adjusted to include the Environmental Differential." Award at 16. An arbitrator has a full range of equitable powers to fashion or tailor an appropriate remedy unless the contract expressly and specifically limits that authority. See, Dept of Finance and Revenue and AFSCME, D.C. Council 20, Local 2776, 36 DCR 3334, Slip Op. 217, PERB Case No. 88-A-01 (1989). DCHA neither cites nor do we find any CBA or DPM provision restricting the Arbitrator from granting relief for "actual exposure" to prescribed hazardous conditions on a general, as oppose to "position-by-position", basis.[4]/

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[3]/ DCHA urges us to "hold the Arbitrator to a strict reading of the DPM" and not permit him "to reach beyond the CBA and the DPM to fashion a remedy that is beyond the scope of the grievance." (ARR at 16.) We have held that it is not a party's or the Board's interpretation for which the parties have bargained, but that of the Arbitrator. See, e.g., University of the District of Columbia and UDC Faculty Association/ NEA, 38 DCR 5024, Slip Op. No. 276, PERB Case 91-A-02 (1991). With respect to an arbitrator's remedial authority, unless expressly and specifically limited by the CBA or DPM, an arbitrator possesses full authority to devise a remedy. (See n. 4.)

[4]/ DCHA argued similarly that the Arbitrator exceeded his jurisdiction by directing DCHA in the remedy to abate the hazardous conditions that precipitated affected employees' entitlement to the environmental differential. DCHA states that AFGE did not request this relief in its grievance. As discussed in the text, unless expressly and specifically restricted by law or the CBA, the Arbitrator possesses full and equitable authority to fashion an award to redress the violation found. See, e.g., Metropolitan Police Department and Fraternal Order of Police, 36 DCR 3339, Slip Op. 218, PERB Case No. 89-A-01 (1989); Dept of Public Works and AFSCME, D.C. Council 20, Local 2091, 35 DCR 8186, Slip Op. 194, PERB Case No. 87-A-08 (1988); and University of the District of

(continued...)

In view of the above, DCHA has not presented a statutory basis for setting aside the Award. Its request for review is therefore denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

June 10, 1997

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[4](...continued)
Columbia and UDC Faculty Association, Slip Op. 368, PERB Case No. 92-A-05 (1993). Having found that employees continued to be exposed to the hazardous conditions, directing the abatement of that condition is within the Arbitrator's jurisdictional authority to provide appropriate and equitable relief, notwithstanding the fact that such relief was not specifically requested.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 97-A-02 was sent via mail (U.S. Mail) to the following parties on the 10th day of June, 1997.

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