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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

_____		)
In the Matter of:		)
		)
Washington Teachers' Union		)
Local 6, AFL-CIO (On behalf of		)
Loretta Smith),		)
		)
	Petitioner,	)
		)
		)
v.		)
		)
		)
District of Columbia		)
Public Schools,		)
		)
	Respondent.	)
_____		)

PERB Case No. 94-A-03  
Opinion No. 397

DECISION AND ORDER

On April 18, 1994, the Washington Teachers' Union, Local 6, AFL-CIO (WTU) filed an Arbitration Review Request with the Public Employee Relations Board (Board). WTU seeks review of an arbitration award (Award) issued on March 24, 1994, that upheld the termination of Loretta Smith (Grievant) from employment by the District of Columbia Public Schools (DCPS). WTU contends that the Award is contrary to law and public policy, specifically, the D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-617.1. DCPS filed a Motion to Dismiss the Arbitration Review Request as untimely filed. DCPS further argues that the Award represents an interpretation of the parties' collective bargaining agreement and, therefore, does not warrant review.

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 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". WTU's appeal is based on its contention that the second of these statutory standards for review has been met.

We address first the issue of timeliness. DCPS' assertion of untimeliness is based on its erroneous assumption that the Board's April 21, 1994 letter advising WTU's representative to correct noted filing deficiencies in the Request, reflected the filing date

of WTU's Request. WTU's Request, however, was timely filed in accordance with Board Rules on April 18, 1994.<sup>1/</sup>

Turning to WTU's basis for appeal of the Award, the issue before the Board is whether or not the Arbitrator's interpretation of a statute, in deciding to deny the grievance, establishes the asserted statutory criteria for our review of the Award. Upon our review of the Award, the pleadings of the parties and applicable Board law, the Board concludes that the Award, on its face, is not contrary to law and public policy.

WTU contends that the Award is contrary to law because it violates "procedural and substantive due process principles as provided under the Fifth Amendment to the United States Constitution." (Req. at 9.) In support of this ground for review, however, WTU presents no law and specifically defined public policy that has been contravened. Rather, WTU merely disagrees with and disputes the Arbitrator's assessment of the evidence supporting his findings and conclusions that cause for the Grievant's termination, as provided under the CMPA, D.C. Code Sec. 1-617.1(d)(22), was established. Cause under Section 1-617.1(d)(22) provides in pertinent part:

(22) Convictions of a misdemeanor, when the conviction is based on conduct that would affect adversely the employees' or the agency's ability to perform effectively.

WTU contends that undisputed evidence presented during the arbitration hearing confirms that DCPS never knew the nature of the conduct for which the Grievant was convicted. Therefore, DCPS cannot be found to have met its burden of proof for establishing cause under this provision. The Arbitrator concluded the following regarding the establishment of cause: "The grievant's misconduct occurred while she was off duty and, despite some adverse publicity, did not truly impair her ability to perform effectively as a teacher until it became clear that she was to be sentenced to prison for her misconduct." (Award at 11.)

Although the Arbitrator found that the Grievant's conduct of violating a stay-away order, which undisputedly was the basis of

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<sup>1/</sup> Board Rule 538.1 requires that a request for review of an arbitration award be filed "not later than twenty (20) days after service of the award." Whenever a period is measured from the service of a document and service is by mail, as was the case here, Board Rule 501.4 provides that 5 days be added to the prescribed period. The instant Arbitration Review Request was filed with the Board on the 25th day after its service by mail on WTU.

her conviction, did not adversely affect her ability to perform effectively, he did find that the Grievant's imprisonment resulting from her conviction met the statutory requisite of affecting her ability to perform her job duties. While we strongly question the Arbitrator's reading of the statute, we do not find this interpretation of the above-cited statutory provision to be, on its face, contrary to law and public policy.<sup>2/</sup>

Accordingly, we conclude that WTU has not established a statutory basis for its request that the Award be set aside.

ORDER

**IT IS HEREBY ORDERED THAT:**

The Arbitration Review Request is denied. DCPS' Motion to Dismiss, for the reasons stated in this Opinion, is granted.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Washington, D.C.  
July 18, 1994

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<sup>2/</sup> WTU also contends that DCPS' authority to take adverse action against the Grievant was time-barred under a provision of the parties' collective bargaining agreement requiring the "initiation of the disciplinary action...no later than thirty (30) school days after the supervisor's knowledge of the alleged infraction." WTU asserts that disciplinary action against the Grievant should have commenced within 30 days of her August 18, 1992 conviction. DCPS discharged the Grievant on November 12, 1992 --within 30 days of her October 16, 1992 sentencing date. The Arbitrator found the Grievant's conduct, insofar as it resulted in a sentence of imprisonment, established the declared cause for disciplinary action. As discussed in the text, such interpretations and findings by the Arbitrator do not support a statutory basis for review.

Moreover, we have held that by "agreeing to submit a matter to arbitration, the parties also 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." (emphasis added.) University of the District of Columbia and University of the District of Columbia Faculty Association, \_\_\_ DCR \_\_\_, Slip Op. No. 320, at 2, PERB Case No. 92-A-04 (1992). Therefore, we cannot find, based on the Arbitrator's finding and his interpretation of the parties' agreement, that WTU has presented grounds supporting our statutory criteria for review of the Award.