Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
University of the District of Columbia Faculty Association,	)	PERB Case No. 17-A-05
Petitioner,	)	Opinion No. 1627
v.	)	
University of the District of Columbia,	)	
Respondent.	)	

DECISION AND ORDER

I. Introduction

On February 10, 2017, the University of the District of Columbia Faculty Association ("UDCFA") filed an Arbitration Review Request ("Request"), seeking review of an arbitration award that denied the grievances of two University of the District of Columbia ("UDC") employees who were terminated pursuant to a reduction in force ("RIF"). UDCFA asserts that the Arbitrator exceeded his authority, and bases its Request upon the Board's authority under D.C. Official Code § 1-605.02(6) to modify, set aside, or remand an award, in whole or in part, where (1) the arbitrator was without, or exceeded, his or her jurisdiction, (2) the award on its face is contrary to law and public policy, and/or (3) the award was procured by fraud, collusion, or other similar and unlawful means. The Board has reviewed the Arbitrator's conclusions, the parties' pleadings, and applicable law, and concludes that the Arbitrator did not exceed his jurisdiction. Therefore, UDCFA's Request is denied.

II. Background

On August 12, 2014, UDC notified Physics Department Professors Daryao S. Khatri and Hailemichael Seyoum (collectively,"Grievants") that they would be RIF'd effective May 15, 2015.[1] Grievants challenged the RIF, arguing that under the terms of the parties' Sixth Master

[1] *See* Request, Ex. 2 (hereinafter cited as "Award") at p. 12.

Agreement, they should have been able to exercise "bumping" rights.[2] Article XXI, § D(2) in the Sixth Master Agreement states in part that:

> A faculty member affected by a RIF may exercise seniority rights at the University by bumping the least senior faculty member occupying a position in a discipline, provided that the faculty member who seeks to bump (1) taught in the discipline within two years prior to the RIF and (2) has a qualifying degree in the discipline.[3]

Grievants offered a broad interpretation of the provision's two criteria, and argued that Professor Khatri should have been able to exercise bumping rights in the Mathematics Department, and that Professor Seyoum should have been able to exercise bumping rights in either the Mathematics or Mechanical Engineering Departments.[4] UDC interpreted the criteria more narrowly, and denied the grievances.

On February 3, 2017, the Arbitrator issued his Opinion and Award. The Arbitrator applied a narrow interpretation of the criteria and concluded that neither grievant was entitled to exercise bumping rights because: (a) Professor Khatri had not taught in the mathematics discipline within two years prior to the RIF,[5] and his three degrees in physics were not "qualifying" degrees in the discipline of mathematics for the purposes of being able to exercise bumping rights in the Mathematics Department;[6] and (b) Professor Seyoum had not taught in the mathematics or mechanical engineering disciplines within two years prior to the RIF,[7] and his undergraduate degree in mathematics and his graduate degrees in physics were not "qualifying" degrees in the disciplines of mathematics or mechanical engineering for the purposes of being able to exercise bumping rights in either the Mathematics or Engineering Departments.[8]

On February 10, 2017, UDCFA filed the instant Arbitration Review Request, contending that the Arbitrator was without, or exceeded, his jurisdiction.[9] UDCFA asserts that the parties' Fourth Master Agreement required that in order for a RIF'd employee to exercise bumping rights in another department, he/she needed to have an "advance degree" in that other discipline, and he/she needed to have taught in that discipline "at the University."[10] When the Fourth Master Agreement was still in effect, an arbitrator issued an award that applied a broad interpretation of that Agreement's bumping criteria.[11] UDCFA claims that it was that broad interpretation that led UDC to negotiate changes to the bumping provision in the Fifth Master Agreement to require

[2] Award at 13-16.
[3] Award at 67.
[4] Award at 13-16.
[5] Award at 75-78.
[6] Award at 71-72.
[7] Award at 78-79.
[8] Award at 72-75.
[9] Request at 2-6.
[10] Request at 4.
[11] Request at 3-4.

that an employee wishing to exercise bumping rights in another department must simply have taught "in [that] discipline within two years prior to the RIF" and have "a qualifying degree in the discipline."[12] UDCFA asserts that this new language was carried over when the parties adopted the instant Sixth Master Agreement.[13] UDCFA contends that even though the change in language—in UDCFA's view—made it easier for employees to bump, the Arbitrator's interpretation of the criteria in the instant Award effectively reinserted the Fourth Master Agreement's more narrow criteria that the parties had expressly negotiated to eliminate when they adopted the Fifth and Sixth Master Agreements.[14]

Specifically, UDCFA points to the Arbitrator's finding that "in general, teaching 'in the discipline' requires teaching 'in the Department' and at the University and that a 'qualifying degree' must be an 'advance degree' and in the discipline into which the faculty member wishes to bump."[15] UDCFA contends that the Arbitrator's interpretation led him to erroneously conclude that the mathematics courses Professor Khatri had taught at a private institution did not count because they had not been taught under the umbrella of the Mathematics Department "at the University," and that Professor Seyoum's undergraduate degree in mathematics did not count as a "qualifying" degree because it was not an "advance" degree in the discipline.[16]

UDCFA argues that by effectively reinserting the "intentionally deleted language" from the Fourth Master Agreement back into the Sixth Master Agreement, the Arbitrator violated Article IX § E(4) of the Agreement (which prohibits arbitrators from adding to, subtracting from, or modifying the Agreement) and thus "exceeded his jurisdiction."[17] Therefore, UDCFA asks the Board to set aside the Award and remand the matter to the Arbitrator for further consideration.[18]

III. Analysis

D.C. Official Code § 1-605.02(6) authorizes the Board to modify or set aside a grievance arbitration award in only three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[19] UDCFA seeks a review of the Award on grounds that the Arbitrator was without, or exceeded

[12] Request at 4.
[13] Request at 4.
[14] Request at 4-5.
[15] Request at 4 (quoting Award at 70).
[16] Request at 5-6.
[17] Request at 5.
[18] Request at 6. The Board notes that UDCFA also asked the Board to allow the parties to submit additional briefs for the Board to consider in this matter. However, the Board does not foresee that further extrapolation of the arguments that have already been made would lead to a different result. Therefore, in the interest of efficiency, and in accordance with the Board's discretion under PERB Rule 538.2, UDCFA's request for additional briefing is denied.
[19] *See also* PERB Rule 538.3.

his authority.

A. The Arbitrator Did Not Exceed His Authority

To determine if an arbitrator has exceeded his jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement."[20] The Board's standard for determining whether an award "draws its essence" from a collective bargaining agreement is:

> [1] Did the arbitrator act 'outside his authority' by resolving a dispute not committed to arbitration?; [2] Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?"; "[a]nd [3] [I]n resolving any legal or factual disputes in the case, was the arbitrator arguably construing or applying the contract"? So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made "serious," "improvident" or "silly" errors in resolving the merits of the dispute.[21]

Here, there is no evidence that the Arbitrator resolved any disputes other than those the parties placed before him. As the Arbitrator noted, the parties did not jointly agree on a single description of the issues to be arbitrated. However, neither party challenged the Arbitrator's synthesis of their respectively stated issues as: "Did the University violate Article XXI of the Parties' Sixth Master Agreement with respect to Grievants Khatri and/or Seyoum; and, if so, what shall be the remedy?"[22] Throughout the 80-page Award, the applicability of Article XXI, § D(2) to Grievants' cases are the only issues the Arbitrator addressed, analyzed, and resolved.

Additionally, UDCFA has not demonstrated in any way that the Arbitrator's Award was the result of fraud, that he had a conflict of interest, or that he otherwise acted dishonestly in issuing the Award.[23]

With regard to the Arbitrator's finding that "in general, teaching 'in the discipline' requires teaching 'in the Department' and at the University and that a 'qualifying degree' must

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[20] *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (*quoting D.C. Pub. Sch. v. Am. Fed'n of State, Cnty., and Mun. Emp., Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156, PERB Case No. 86-A-05 (1987)); *see also Dobbs, Inc. v. Local No. 1614, Int'l Bhd. of Teamsters*, 813 F.2d 85 (6th Cir. 1987).

[21] *Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Bishop) v. D.C. Metro. Police Dep't*, 63 D.C. Reg. 14073, Slip Op. No. 1593 at p. 12, PERB Case No. 15-A-03 (2016) (quoting *Michigan Family Res., Inc. v. Serv. Emp. Int'l Union, Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007)).

[22] Award at 3.

[23] *Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Bishop) v. D.C. Metro. Police Dep't, supra*, Slip Op. No. 1593 at p. 12-13, PERB Case No. 15-A-03 (citing *Michigan Family Res., Inc.*, 475 F.3d at 753)).

be an 'advance degree' and in the discipline into which the faculty member wishes to bump," the Board finds that the Arbitrator's analysis was, at the very least, an arguable construal and application of how Article XXI, § D(2) in the Sixth Master Agreement applies to Grievants' cases, and not a modification of any of the Agreement's particular terms.[24] Indeed, the parties presented the Arbitrator with competing interpretations and witness testimony of how they thought the criteria in Article XXI, § D(2) should be applied to Grievants' cases, and after duly acknowledging and weighing their positions and the testimony of the parties' witnesses, the Arbitrator determined that Grievants did not meet the necessary requirements to exercise bumping rights in other University departments.[25] In so doing, the Arbitrator did not claim or exercise any authority for which there was no basis in the parties' Sixth Master Agreement or in the specific issues the parties placed before the Arbitrator to resolve. Furthermore, in accordance with the Board's above-stated standard for determining whether an award "draws its essence" from a collective bargaining agreement, even if the Arbitrator's interpretation of the instant Sixth Master Agreement's bumping criteria was a "serious," "improvident" or "silly" error in light of the changes that the parties made to the provision between the Fourth and Fifth Master Agreements—and the Board is not saying that it was—his determination was still nevertheless an interpretation, and is therefore not within the Board's authority to challenge.[26] When parties submit matters to arbitration, they appoint the Arbitrator to be the reader and interpreter of their Agreement and agree to be bound by his interpretations.[27] Accordingly, since the parties specifically bargained to be bound by the Arbitrator's interpretations of their Agreement, the Board cannot substitute UDCFA's competing interpretation—or even its own interpretation—of Article XXI, § D(2) for that of the duly appointed Arbitrator.[28]

Therefore, because the Arbitrator's findings were arguably based on a construal, application, and interpretation of a specifically cited provision in the parties' Sixth Master Agreement, and because the parties expressly appointed the Arbitrator to interpret that provision when rendering the Award, the Board finds that the Arbitrator's conclusion that Grievants did not meet the criteria to exercise bumping rights in other departments drew its essence from the parties' Agreement, and was therefore not in excess of the Arbitrator's authority.[29]

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[24] *See D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Bell)*, 63 D.C. Reg. 12581, Slip Op. No. 1591 at p. 5, PERB Case No. 15-A-16 (2016) (noting that an arbitrator's interpretation or explanation of what a provision in a contract means does not necessarily constitute a modification of that provision).
[25] Award at 71-79.
[26] *Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Bishop) v. D.C. Metro. Police Dep't, supra*, Slip Op. No. 1593 at p. 13, PERB Case No. 15-A-03 (citing *Michigan Family Res., Inc.*, 475 F.3d at 753)).
[27] *Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Harris) v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 11329, Slip Op. No. 1295 at p. 5, PERB Case No. 09-A-11 (2012) (internal citations omitted).
[28] *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Robinson)*, 59 D.C. Reg. 9778, Slip Op. No. 1261 at p. 2, PERB Case No. 10-A-19 (2012) (internal citations omitted).
[29] *See Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Bishop) v. D.C. Metro. Police Dep't, supra*, Slip Op. No. 1593 at p. 12-13, PERB Case No. 15-A-03 (citing *Michigan Family Res., Inc.*, 475 F.3d at 753)).

B. Conclusion

Based on the foregoing, the Board finds that UDCFA has not shown that the Arbitrator exceeded his authority. Accordingly, UDCFA's Arbitration Review Request is denied and the matter is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. UDCFA's Request is denied and the matter is dismissed with prejudice.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Ann Hoffman and Douglas Warshof. Member Barbara Somson was not present.

May 18, 2017

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-A-05, Opinion No. 1627, was transmitted through File & ServeXpress to the following parties on this the 9th day of 2017, 2017.

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