

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:)	
)	
Teamsters Local Union No. 639, a/w International Brotherhood of Teamsters,)	
)	
Petitioner,)	PERB Case No. 07-E-01
v.)	Opinion No. 857
)	
District of Columbia Public Schools, Division of Transportation,)	Petition for Enforcement
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

On October 27, 2006, Teamsters Local Union 639 a/w International Brotherhood of Teamsters ("Teamsters"), filed a document styled "Petition to Enforce Order Denying Arbitration Review Request" ("Petition"), regarding PERB Case No. 06-A-14 (Slip Op. No. 852). The Teamsters allege that the District of Columbia Public Schools, Division of Transportation ("DCPS") has failed to comply with Slip Opinion No. 852 which was issued on September 22, 2006. Specifically, the Teamsters claim that DCPS has failed to implement the terms of an arbitration award issued on April 11, 2006 and affirmed by the Board on September 22, 2006. (See Petition at pgs. 1 and 3). The Teamsters are asking the Board to: (1) find that DCPS has failed to comply with the Board's Order in Slip Opinion No. 852; and (2) bring an action in the Superior Court of the District of Columbia to compel DCPS to comply with the Board's Decision and Order.

DCPS' counsel was served with a copy of the Petition; however, DCPS did not file an opposition to the Petition. The Teamsters' Petition is before the Board for disposition.

II. Discussion

On May 2, 2006, DCPS filed an Arbitration Review Request (“Request”) seeking review of an April 11, 2006 arbitration award (“Award”) issued by Arbitrator David Vaughn.¹ The April 11th Award reduced the adverse action taken against bargaining unit member Karen Wise from a termination to a thirty (30) day suspension. DCPS’ request was designated as PERB Case No. 06-A-14. The Teamsters opposed DCPS’ Request.

In their Request, DCPS argued that “[t]he Arbitrator erred by substituting his own judgment for that of the Federal Court-appointed Transportation Administrator with respect to the severity of the discipline issued.” (Request at p. 8). In addition, DCPS asserted that the “Arbitrator was without authority and exceeded his jurisdiction under the controlling Agreement between [DCPS] and the Union to the extent that the Opinion and Award conflicts with the express terms of the Agreement and imposes additional obligations not expressly provided for in the Agreement.” (Request at p. 10). Lastly, DCPS claimed that “[t]he Opinion and Award [was] contrary to law and public policy to the extent that Arbitrator Vaughn found that DCPS failed to consider ‘all relevant circumstances.’” (Request at p. 13).

¹In an Award issued on April 11, 2006, Arbitrator David Vaughn found that Article XVII of the parties’ collective bargaining agreement (“CBA”) provides DCPS with the authority to terminate an employee whose actions “may be detrimental to the efficiency and discipline of the school system. However, the Arbitrator also concluded that summary discharge of an employee without due process, including the right of an employee to be heard prior to a decision being made, as well as consideration of all relevant circumstances prior to discharge, is contrary to the CBA’s ‘just cause’ provision.” (Award at p. 20)

Consequently, the Arbitrator found that DCPS failed to: (1) provide the Grievant with an opportunity to present her side of the story prior to the determination to discipline her; and (2) take into account all relevant circumstances prior to making the disciplinary determination. (See Award at p. 21). In addition, the Arbitrator determined that DCPS proved just cause to discipline the Grievant for her conduct in her confrontation with her supervisor Keith Pettigrew, however, it failed to prove that she assaulted Mr. Pettigrew. (See Award at p. 24). Also, the Arbitrator concluded that while DCPS proved the Grievant’s conduct to be insubordinate, the circumstances served to mitigate her conduct. (See Award at p. 25). The Arbitrator also took into consideration the lack of any prior discipline against the Grievant. (See Award at p. 25). In light of the above, the Arbitrator decided that the proven conduct did not support the penalty of termination. (See Award at p. 25).

As a remedy, the Arbitrator directed that the Grievant’s termination be rescinded and the penalty for her misconduct be reduced to a thirty-day unpaid disciplinary suspension.

In Slip Op. No. 852 the Board found that DCPS did not meet the requirements for reversing Arbitrator Vaughn's Award. In addition, the Board indicated that the Arbitrator's conclusions: (1) were supported by the record; (2) were based on a thorough analysis; and (3) could not be said to be clearly erroneous, contrary to law or public policy, or in excess of his authority under the parties' collective bargaining agreement. Therefore, the Board concluded that no statutory basis existed for setting aside the Award. (See Slip Op. No. 852 at p. 9). As a result, DCPS' Request was denied.

On October 27, 2006, the Teamsters filed a Petition for Enforcement with the Board. The Teamsters contend that DCPS has failed to comply with Slip Op. No. 852. Specifically, the Teamsters assert that despite the Board's denial of DCPS' Request, DCPS has not reinstated and made Ms. Wise whole as directed by Arbitrator Vaughn's Award. As a result, the Teamsters are requesting that the Board initiate an enforcement proceeding in the Superior Court of the District of Columbia in order to compel DCPS to comply with the terms of Arbitrator Vaughn's Award which was affirmed by the Board in Slip Op. No. 852.

The certificate of service which is attached to the Teamsters' Motion indicates that on October 27, 2006, DCPS' counsel was served with a copy of the Motion via first class mail, postage prepaid.² However, DCPS did not file a response to the Teamsters' Motion.

After reviewing the Teamsters' Motion, it is clear that DCPS has not complied with Arbitrator Vaughn's Award. As a result, the Board must determine if DCPS' action is reasonable.

In the present case, the Teamsters filed for arbitration on behalf of Karen Wise and on April 11, 2006, Arbitrator Vaughn issued his Award. Subsequently, on May 2, 2006, DCPS filed an Arbitration Review Request seeking that the Board reverse the award. In Slip Op. No. 852 issued on September 22, 2006, the Board denied DCPS' Request. Pursuant to D.C. Code § 1-617.13(c) "[a]ny person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain review of such order in the Superior Court of the District of Columbia by filing a request within 30 days after the final order has been issued." See also, Superior Court Civil Rules, Part XV, Agency Review, Rule 1. Slip Op. No. 852 was issued on September 22, 2006, and the Order in Slip Op. No. 852 indicates that pursuant to Board Rule 559.1 the Decision and Order is final upon issuance. Therefore, the 30-day period for filing an appeal with the Superior Court has expired. Moreover, no appeal has been filed with the Superior Court of the District of Columbia. In light of the above, DCPS has waived its right to appeal the September 22, 2006 Decision and Order.

²On November 28, 2006, the Board's Executive Director contacted both the Teamsters' counsel and DCPS' counsel and confirmed that DCPS' counsel had received a copy of the Teamsters' Motion.

As previously discussed, Arbitrator Vaughn's award was issued on April 11, 2006 and the Board's decision denying DCPS' Arbitration Review Request was issued on September 22, 2006. Thus, it has been seven months since Arbitrator Vaughn's Award was issued and two months since our Order was issued. We believe that DCPS has had more than a reasonable period of time to comply with the terms of the Arbitrator Vaughn's Award. Moreover, DCPS can no longer appeal the Board's Decision and Order in the Superior Court of the District of Columbia. In view of the above, no legitimate reason exist for DCPS' continued refusal to implement the Arbitrator Vaughn's Award.

For the reasons noted above, we find that DCPS has not complied with Slip Op. No. 852, therefore, the Teamsters' Petition for Enforcement is granted. The Board will seek judicial enforcement of our September 22, 2006 Decision and Order, as provided under D.C. Code § 1-617.13(b) (2001 ed.).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Teamsters Local Union 639 a/w International Brotherhood of Teamsters' "Petition to Enforce Order Denying Arbitration Review Request", is granted.
2. The Board shall proceed with enforcement of Slip Op. No. 852 pursuant to D.C. Code § 1-617.13 (b) (2001 ed.), if full compliance with Slip Opinion. No. 852 is not made and documented to the Board within ten (10) days of the issuance of this Decision and Order.
3. 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.**

December 1, 2006

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No.07-E-01 was transmitted via Fax and U.S. Mail to the following parties on this the 1st day of December 2006.

Mark Murphy, Esq.
Mooney, Green, Baker & Saindon, P.C.
1920 L Street, N.W.
Suite 400
Washington, D.C. 20036

FAX & U.S. MAIL

Kenneth Slaughter, Esq.
Venable, Baetjer, Howard
& Civiletti, LLP
575 7th Street, N.W.
Washington, D.C. 20004

FAX & U.S. MAIL

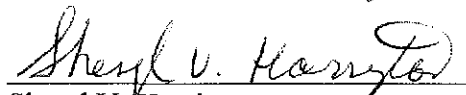
Brian Hudson, Esq.
Venable, Baetjer, Howard
& Civiletti, LLP
575 7th Street, N.W.
Washington, D.C. 20004

FAX & U.S. MAIL

Courtesy Copy:

David Vaughn, Arbitrator
13732 Lakeside, Drive
Clarksville, Md 21029

U.S. MAIL



Sheryl V. Harrington
Secretary