



## II. Discussion:

The Grievant was employed by DCPS as a Motor Vehicle Operator ("MVO") assigned to the New York Avenue Terminal ("Terminal"). (See Award at p. 5). On July 11, 2005, prior to leaving the Terminal on her route, the Grievant, in her capacity as union steward, was asked by MVO Harrison, if she could be present while Harrison discussed a work related matter with the Director of Operations, Mr. Pettigrew. Following the discussion, the Grievant asked Mr. Pettigrew if she could have time off between her morning and afternoon shifts to deliver some documents to DCPS, and for a ride to and from DCPS. Mr. Pettigrew denied the request and a disagreement and altercation ensued between Mr. Pettigrew and the Grievant. (See Award at p. 7). That same morning Mr. Pettigrew reported the incident to the Transportation Administrator, and the Administrator determined that there was just cause to terminate the Grievant based on Mr. Pettigrew's report. (See Award at p. 12). Later that day, both parties filed police reports alleging their versions of the altercation, suggesting both verbal and physical assaults from one another. (See Award at pgs. 7-11).

"On July 11, the Union submitted a grievance protesting Mr. Pettigrew's alleged physical assault of the Grievant as well as harassment and discrimination." (Award at p. 13). On July 12, 2005, the Grievant reported to work. Before commencing her route, the Grievant was informed by Terminal management that she was not supposed to be at the Terminal because she had "been recommended for termination (or that she had been terminated), although they did not have copies of the paperwork." (Award at p. 11). Initially, the Grievant refused to leave and telephoned District of Columbia police officers. As a result, the Grievant was escorted from the premises. Later that day, a written notice of termination was issued, which was effective August 2, 2005, (See Jt. Ex. 2). The termination notice charged the Grievant with assault, threatening a superior and insubordination. The notice of termination described the two incidents of July 11 and July 12, 2005. (See Award at p. 12).

Also, on July 12, 2005, the Union submitted a grievance on behalf of the Grievant protesting Management's use of improper termination procedures. (See Award at p. 13). On August 1, 2005, the Union submitted an additional grievance protesting the Grievant's unjustified termination. (See Award at p. 13). The parties were unable to resolve the grievance. Therefore the Union invoked arbitration. (See Award at p. 13).

The issue submitted to the Arbitrator was:

Did the Employer violate the Agreement when it discharged the Grievant from employment? If not, what shall be the remedy?

(Award at p. 2).

At Arbitration, DCPS argued "that it had proved just cause to terminate [the] Grievant for assault, threatening a superior and insubordination." (Award at p. 14). In addition, DCPS claimed

that "pursuant to Article XVII [of the parties' collective bargaining agreement ("CBA")], it [had] the authority to terminate an employee upon a first offense where the employee's actions 'may be detrimental to the efficiency and discipline of the school system.' It point[ed] out that the Agreement does not contain a table of penalties and maintain[ed] that the Agreement leaves to its discretion the grounds for discipline and discharge, so long as there is just cause." (Award at p. 14).<sup>1</sup> DCPS contended that it had conducted a full investigation of the incident. Furthermore, DCPS asserted that it had no duty to interview the Grievant because Article XVII, Section D, allows a grievant five days to respond to the notice of termination and the Grievant in the present matter filed no such response. (See Award at p. 15). Finally, DCPS argued that it would be contrary to law and public policy for the Arbitrator to set aside the penalty. (See Award at pgs. 15-16).

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<sup>1</sup> Article XVII (Discipline and Discharge) of the parties' CBA provides, in pertinent part, as follows:

- A. Except for Actions which may result in damage to school property, or may be detrimental to the efficiency and discipline of the school system, or may be injurious to other individuals, disciplinary measures shall be taken in the following order:

Oral reprimand  
Written reprimand  
Suspension (notice to be given in writing)  
Discharge

An employee may be suspended immediately if the employee's behavior or condition constitutes a danger to the employee, other staff, students or the operation.

- B. Any disciplinary action or measure imposed upon an employee must be received by the employee, if hand delivered or post marked (if mailed) within fifteen (15) workdays of knowledge of the matter upon which the proposed action is based.
- D. For suspension actions of five (5) workdays or more, or discharge, an employee shall be notified in writing with a copy to the Union no later than fifteen (15) workdays prior to the effective date. The notice shall include the intended action, with reasons for the action so stated. From within five (5) workdays of the receipt of the notice, the employee has the right to reply in writing, or in person, to all changes and to furnish any statements in support of his reply. The decision shall go into effect as stated unless, upon consideration by the responsible official of all relevant facts, the action is modified, at which time the employee and the Union shall be so notified, in writing, of the modification.
- E. The Board shall not discharge any employee without just cause.
- G. Any employee found to be unjustly suspended or discharged shall be reinstated with full compensation for all lost time and with full restoration of all other rights and conditions of employment.

The Union countered that Mr. Pettigrew instigated the dispute with the Grievant. In addition, the Union claimed that DCPS failed to conduct a proper investigation, and ignored credible evidence. Also, the Union contended that DCPS denied the Grievant due process, and consequently did not satisfy its burden to establish just cause. (See Award at p. 16).

In an Award issued on April 11, 2006, Arbitrator David Vaughn found that Article XVII of the 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 Mr. 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 shall be rescinded and the penalty for her misconduct reduced to a thirty-day unpaid disciplinary suspension. She shall be reinstated to service, with seniority unimpaired, and made whole for wages and benefits lost as a result of [DCPS's] action, less the period of her disciplinary suspension and less interim earnings. [The] Grievant's records shall be amended to so reflect. (Award at pgs. 25-26).

In their Request, DCPS argues 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 asserts 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 claims that "[t]he Opinion and Award is 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).

The Union counters that DCPS has not presented any statutory basis for review. (Opposition at p. 7).

When a party files an arbitration review request, the Board's scope of review is extremely narrow. Specifically, the Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in only three limited circumstances:

1. If "the arbitrator was without authority, 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."

D.C. Code § 1-605.02(6) (2001 ed.).

In the present case, DCPS asserts that the Arbitrator was without authority or exceeded his jurisdiction by finding that there was cause for discipline, but reducing the penalty from termination to suspension.<sup>2</sup> (See Request at p. 8). In support of this argument, DCPS asserts that the Arbitrator should not have substituted his judgment for that of the Transportation Administrator. In addition, DCPS claims that the Arbitrator should not have imposed the additional requirement of conducting a proper investigation.<sup>3</sup>

The Union counters that the Board has consistently held that, absent language limiting the arbitrator's equitable power, an arbitrator does not exceed his authority by reducing a penalty. (See Opposition at pgs. 4-7). In addition, the Union asserts that there is no language in the parties' CBA limiting the Arbitrator's remedial authority. (See Opposition at p. 7). Furthermore, the Union claims

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<sup>2</sup>DCPS cites *Visteon Climate Control*, 120 Lab. Arb. (BNA) 1161 (Fullmer 2004) and *Franz Food Products*, 28 Lab. Arb. (BNA) 543 (Bothwell 1957), in support of this contention.

<sup>3</sup>In support of this argument, DCPS cites *District of Columbia Water and Sewer Authority*, 49 DCR 11123, Slip Op. No. 687 at p. 6, PERB Case No 02-A-02 (2002), quoting *Cement Division, National Gypsum Co. v. United Steelworkers of America, AFL-CIO, Local 135*, which provides:

An arbitration award *fails* to derive its essence from a collective bargaining agreement when the: (1) award conflicts with the express terms of the agreement; (2) award imposes additional requirements that are not expressly provided in the agreement; (3) award is without rational support or cannot be rationally derived from the terms of the agreement, and (4) award is based on general considerations of fairness and equity, instead of the precise terms of the agreement. 793 F.2d 759, 765 (6<sup>th</sup> Cir. 1986).

that the Arbitrator was within his authority to "recognize that the concept of just cause necessarily requires an Employer to undertake a complete and [thorough] investigation of the underlying allegations against the Grievant." (Opposition at p. 7). Based on the foregoing, the Union asserts that DCPS has not presented a statutory basis for review. We agree.

This Board has held that:

[by] submitting a matter to arbitration the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based.

*District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 DCR 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *D. C. Metropolitan Police Department and Fraternal of Police/Metropolitan Police Department Labor Committee (On behalf of Angela Fisher)*, 51 DCR 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

In addition, we have found that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." *D.C. Department of Public Works and AFSCME, Local 2091*, 35 DCR 8186, Slip Op. No. 194 at p. 2, PERB Case No. 87-A-08 (1988). Moreover, we have held that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' [CBA].<sup>4</sup> See, *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). Furthermore, the Supreme Court held in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 4 L.Ed.2d 1424 (1960), that "part of what the parties bargain for when they include an arbitration provision in a labor agreement is the 'informed judgment' that the arbitrator can bring to bear on a grievance, especially as to the formulation of remedies." See also, *Metropolitan Police Department v. Public Employee Relations Board*, D.C. Sup. Ct. No. 04 MPA 0008, at p. 6 (May 13, 2005).

In the present case, DCPS does not cite any provision of the parties' CBA that limits the Arbitrator's equitable powers. Furthermore, we have held that "an arbitrator does not exceed his authority by exercising his equitable powers (unless it is expressly restricted by the parties' contract) to decide what, if any mitigating factors warrant a lesser discipline than that imposed." *Washington Teachers' Union Local 6, AFT, AFL-CIO (On behalf of James Ricks) and District of Columbia*

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<sup>4</sup>We note that if the parties' CBA limits the arbitrator's equitable power, that limitation would be enforced.

*Public Schools*, 47 DCR 764, Slip Op. No. 448 at p. 4, PERB Case No. 95-A-09 and 95-A-10 (2000). Therefore, once Arbitrator Vaughn determined: (1) that DCPS had the authority to discipline the Grievant; and (2) "that summary discharge of [the Grievant] without due process . . . [was] contrary to the CBA's 'just cause provision'," he had the authority to determine what he deemed to be the appropriate remedy. (Award at p. 20). Moreover the Arbitrator was not restricted from fashioning a remedy that reduced the penalty imposed upon the Grievant. Thus, we find that DCPS' assertion that the Arbitrator was without authority and exceeded his jurisdiction by rescinding the termination and reinstating the Grievant with a suspension involves only a disagreement with the Arbitrator's remedy. This does not present a statutory basis for review. Therefore, we cannot reverse the Award on this ground.

In addition, the Arbitrator found that under Article XVII(D), DCPS was required to consider all relevant facts. Specifically, Arbitrator Vaughn found that the language in Article XVII, "all relevant facts", requires DCPS to conduct a more thorough investigation. (See Award at pgs. 20-21). Although not stated, DCPS suggests that the Arbitrator's finding that DCPS failed to conduct an adequate investigation placed an additional requirement on DCPS that is not found in the parties' CBA. Moreover, DCPS contends that all that is required under Article XVII(D) of the CBA is that it provide the Grievant with an opportunity to respond to the notice of termination. (See Request at pp. 11-12).

We have held that by agreeing to submit the settlement of a grievance to arbitration, it is the Arbitrator's interpretation, not the Board's, that the parties have bargained for. See, *University of the District of Columbia and University of the District of Columbia Faculty Association*, 39 DCR 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992). In addition, 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 . . . as well as his evidentiary findings and conclusions . . ." *Id.* Moreover, "[this] Board will not substitute its own interpretation or that of the Agency for that of the duly designated arbitrator." *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 DCR 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987). In the present case, the parties submitted their dispute to an Arbitrator and DCPS' disagreement with the Arbitrator's interpretation of the language in Article XVII of the parties' CBA is not grounds for reversing the Arbitrator's Award. See, *Metropolitan Police Department v. Public Employee Relations Board*, D.C. Sup. Ct. No. 04 MPA 0008 (May 13, 2005) and *Metropolitan Police Department v. Public Employee Relations Board*, D.C. Sup. Ct. 01 MPA 18 (September 17, 2002).

As a third basis for review, DCPS claims that the Award is contrary to law and public policy to the extent that Arbitrator Vaughn found that DCPS failed to consider "all relevant circumstances." In support of this argument, DCPS contends that "there was no evidence to suggest that the Transportation Administrator dismissed or failed to consider any relevant circumstances in deciding to terminate [the Grievant]." (Request at p. 13). In addition, DCPS argues that there was no

testimony or evidence that the Transportation Administrator was unaware of any of the circumstances, and that the Arbitrator merely disagreed with the weight he afforded those circumstances. (See Request at p. 13).

The Union counters that DCPS' assertion that the Award is contrary to law and public policy does not present a statutory basis for review because DCPS has failed to present any specific applicable law or public policy that mandates that the Arbitrator reach a different result. (See Opposition at p. 8). We agree.

The possibility of overturning an arbitration decision on the basis of public policy is an "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's interpretation of the contract. "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of Public Policy." *American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986). We have also held that to set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the arbitrator arrive at a different result. See *AFGE, Local 631 and Dept. Of Public Works*, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1993). In addition, a petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law or legal precedent. See *United Paperworkers Int'l Union, AFL-CIO v. Misco Inc.*, 484 U.S. 29, 43 (1987); see also, *Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co.*, 442 F. 2d 1234, 1239 (D.C. Cir. 1971).<sup>5</sup> Moreover, the petitioning party has the burden to specify applicable law and definite public policy that mandates that the Arbitrator reach a different result. *MPD v. FOP/MPD Labor Committee*, 47 DCR 717, Slip Op. No. 633, PERB CASE No. 00-A-04 (2000); See also *District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20*, 34 DCR 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). Furthermore, as the D.C. Court of Appeals has stated, we must "not be led astray by our own (or anyone else's) concepts of 'public policy' no matter how tempting such a course might be in a particular factual setting." *Department of Corrections v. Local No. 246*, 554 A.2d 319, 325 (D.C. 1989).

In the present case, DCPS does not cite any specific law or public policy which mandates that the Arbitrator arrive at a different result. Instead, DCPS claims that there was no evidence that a

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<sup>5</sup> See, *Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 DCR 7217, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000) (citing *American Federation of Government Employees, Local 631 and Department of Public Works*, 45 DCR 6617, Slip Op. No. 365 at p. 4 n. 4, PERB Case No. 93-A-03 (1998); See, *District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20*, 34 DCR 3610, Slip Op. No. 156 at p.6, PERB Case No. 86-A-05 (1987).

thorough investigation was **not** conducted. Therefore, we believe that DCPS' argument merely represents a disagreement with the Arbitrator's findings of fact. This Board has held that "[i]t is well settled that disputes over the Arbitrator's evaluation of evidence does raise an issue for review." *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, 46 D.C.R. 6284, Slip Op. No. 586 at p. 2, PERB Case No. 99-A-02 (1999). Thus, the Board finds that DCPS' claim does not present a statutory basis for review. As a result, we cannot reverse the Award on this ground.

In view of the above, we find that DCPS has not met the requirements for reversing Arbitrator Vaughn's Award. In addition, we find that the Arbitrator's conclusions are supported by the record, are based on a thorough analysis and cannot be said to be clearly erroneous, contrary to law or public policy, or in excess of his authority under the parties' CBA. Therefore, no statutory basis exists for setting aside the Award.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

- (1) The District of Columbia Public Schools, Division of Transportation's Arbitration Review Request is denied.
- (2) 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.**

**September 22, 2006**

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No.06-A-14 was transmitted via Fax and U.S. Mail to the following parties on this the 22<sup>nd</sup> day of September 2006.

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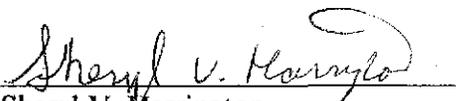
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