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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
District of Columbia Metropolitan)	
Police Department,)	
)	
Petitioner,)	
)	
v.)	PERB Case Nos. 98-A-04
)	Opinion No. 593
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Antonial Atkins),)	
)	
Respondent.)	
)	
)	
)	

DECISION AND ORDER ON REMAND

In Slip Op. No. 548, we dismissed as untimely an Arbitration Review Request filed by the D.C. Metropolitan Police Department (MPD) in the above-captioned case. Upon petition for review, the D.C. Superior Court reversed our decision. D.C. Metropolitan Police Department v. D.C. Public Employee Relations Board, C.A. No. 98-MPA-16 (Order issued April 13, 1999).^{1/} The case is now

^{1/} MPD had filed an Arbitration Review Request on the last day that it could be timely considered under Board Rule 538.1. However, MPD had failed to attach a copy of the arbitration award to its Request, as required by Board Rule 538.1(e). MPD subsequently cured this deficiency by filing a copy of the award, however, MPD's action occurred after the mandatory time for filing the Request. Consequently, the Board found that MPD's Request was not "officially filed" until after the time provided under Board Rule 538.1. Slip Op. No. 548 at 4. In affirming the Executive Director's dismissal of the Request as untimely, the Board held that "the opportunity the Board provides parties under Board Rule 501.13 to cure a deficient pleading when initiating a cause of action, cannot act to extend the mandatory and jurisdictional time period allowed to initiate a cause of action." Id. Judge Dixon of the D.C. Superior Court

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before us on remand for a decision on the merits.

The issue before the Board is whether "the award on its face is contrary to law and public policy... ." D.C. Code Sec. 1-605.2(6). The Board, having considered MPD's grounds for review, as well as relevant law, has determined for the reasons set forth below that MPD has not provided a statutory basis under the Comprehensive Merit Personnel Act (CMPA) for remanding the Award to the Arbitrator or to modify or set aside the Award.

MPD terminated Officer Antonial Atkins (grievant) for several alleged causes including insubordination. The issue before the Arbitrator was the reasonableness of the penalty, i.e., termination, imposed by MPD. (Award at 2.) The Arbitrator found Atkins insubordinate; however, he found the penalty of termination unsupported. The Arbitrator concluded that the grievant's termination under the sustainable charges was not warranted. Based on his findings and conclusions, the Arbitrator determined that MPD's termination of the grievant was punitive and contrary to the parties' collective bargaining agreement. As a result, the Arbitrator reduced the termination to a 30-day suspension without pay. (Award at 9.)

MPD contests the reduction of the penalty imposed. MPD contends that the Arbitrator's reduction of the termination to a suspension is contrary to law because the District Personnel Manual (DPM), 37 DPM 8297, provides for the penalty of removal for a first offense of insubordination. (ARR at 2.) Respondent Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) argues that MPD's contention states no statutory basis for disturbing the Award.

When an arbitrator finds employee misconduct, the arbitrator has discretion to lessen the discipline imposed. American Federation of Government Employees, Local 872 and D.C. Dept of Public Works, 39 DCR 5989, Slip Op. No. 290, PERB Case No. 91-A-01 (1992). 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." D.C. Metropolitan Police Department and FOP/MPD Labor

¹(...continued)

found that the Board's interpretation would eliminate for the benefit of the 10-day period provided under Board Rule 501.13 for curing filing deficiencies. Judge Dixon found that our Decision would render Board Rule 501.13 "virtually meaningless" and reversed it. Superior Court Order at 4.

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Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 97-A-04 (1992). Although permissible, nothing in the DPM regulation cited by MPD mandates termination for a first offense under this regulation. Therefore, the Award, reducing the penalty imposed by MPD, was within the Arbitrators's authority. Consequently, we do not find it to be contrary to law. In view of the above, the Request presents no statutory basis under the CMPA for remanding the Award to the Arbitrator or for modifying or setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Order is final upon issuance.

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

July 30, 1999

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order on Remand in PERB Cases No. 98-A-04 was mailed (U.S. Mail) to the following parties on this the 30th day of July, 1999.

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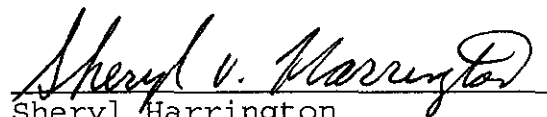
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