Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department,	
Petitioner,	PERB Case No. 00-A-04
and	Opinion No. 633
Fraternal Order of Police, Metropolitan Police Department Labor Committee (on behalf of Grievant Charles Sims)	
Respondent.	

DECISION AND ORDER

On May 30, 2000, the District of Columbia Metropolitan Police Department (MPD), filed an Arbitration Review Request (Request). MPD seeks review of an arbitration award (Award) which rescinded the termination imposed on a bargaining unit employee. MPD contends that the: (1) Award is contrary to law and public policy; and (2) Arbitrator was without authority or exceeded his authority. The Fraternal Order of Police, Metropolitan Police Department/Labor Committee (FOP) opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy" or whether "the arbitrator was without or exceeded his jurisdiction. . . ." D.C. Code Sec. 1-605.2(6). Upon consideration of the Request, we find that MPD has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, MPD's request for review is denied.

MPD terminated the Grievant, a police officer, for: (1) conduct unbecoming an officer; (2) conduct that discredits the employee or the agency; and (3) willfully and knowingly making an untruthful statement. (Request at p. 3). The Arbitrator determined that the Grievant's termination was not for cause. (Award at p. 6). Specifically, the Arbitrator concluded that MPD's decision to terminate, was predicated on the adulterous relationship between Richard Merritt (Grievant) and Ms. Roberts. (Award at pgs. 7-8) . In addition, the Arbitrator found that termination was an excessive penalty for the Grievant's "loose language" and "poor judgement in dealing with an ongoing personal relationship". (Award at p. 9) As a result, he determined that the Grievant

should be reinstated with seniority, but without back pay. Id.

In addition, the Arbitrator imposed as a condition of reinstatement, that the Grievant enroll in a recognized rehabilitation program for a period of no less than thirty (30) days. The Grievant must provide proof that he has successfully completed the program, at which point he may return to work. Also, the Arbitrator ordered that : (1) for a one year period the Grievant be subjected to *random drug and alcohol testing*; and (2) the Grievant's time off be considered a disciplinary suspension. MPD takes issue with the Arbitrator's Award. MPD contends that the:

> Arbitrator's conclusion that the Grievant's conduct as set forth in the charges was not for "cause " is contrary to law and public policy. It is contrary to the law because D.C. Code Section 617.1(d)(4), (6), (10), (11), and (16), clearly set forth the charges against [the] Grievant. The Arbitrator ignored the Agency's explicit language in its Notice of Final Adverse Action that set forth the charges as "cause" for [the] Grievant's termination. Rather, the Arbitrator unjustifiably relied upon the Agency's descriptive language of [the]Grievant's Misconduct as the Agency's rationale for terminating [the] Grievant's employment. The Arbitrator then determined that said language did not fit any of the causes set forth in the []CMPA. (Request at p. 7)

In light of the above, MPD's ground for review only involves interpretation of D.C. Code Sec. 1-617.1 (d)(4), (6), (10), (11) and (16). Moreover, MPD merely requests that we adopt its interpretation of the above referenced provisions of the Comprehensive Merit Personnel Act (CMPA).

We have held that a "disagreement with the arbitrators's interpretation ... does not make the award contrary to law and public policy." AFGE, Local 1975 and Dept of Public Works, Slip Op. No. 413, PERB Case No. 95-A-02 (1995). 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 the instant case, MPD's claim involves only a disagreement with the Arbitrator's interpretation of D.C. Code Sec. 1- 617.1(d)(4), (6), (10), (11), and (16). We have held that the "cited provisions of the CMPA, however, only set forth the grounds for the taking of an adverse action and do not themselves specify the types of discipline." District of Columbia Metropolitan Police Department and Fraternal Order of Police, Metropolitan Police /Labor Committee, Slip Op. No. 228, PERB Case No. 89-A-02 (1989). "Although Section 1-617.1 of the CMPA includes within its definition of causes (those cited in the Grievant's termination)... it neither requires removal nor mandates this particular sanction. " University of the District of Columbia and University of the District of Columbia Faculty Association, Slip Op. No. 248 at n. 7, PERB Case No. 90-A-02 (1990). In addition, we have held that by agreeing to arbitration, it is the Arbitrator's decision for which the parties' have bargained. D.C. Metropolitan Police

Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No.282, PERB Case No. 87-A-04 (1992). See also, University of the District of Columbia and UDC Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).

Also, 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 and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." 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). Moreover, "[t]he Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator." District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union No. 246, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987).

MPD also claims that the Arbitrator's Award violates public policy, in that it returns an individual whose "misconduct amounted to domestic violence", to the police department. However, MPD fails to cite any specific public policy that has been violated. Instead, MPD notes that "domestic violence by any citizen, on any level, is no longer 'winked at' by either law enforcement agencies or the courts." (Request at p. 7). MPD's public policy argument relies solely on general considerations of supposed public policy, and not a well-defined policy or legal precedent. Thus, MPD has failed to point to any clear or legal public policy which the Award contravenes.

As a second basis for review, MPD asserts that the Arbitrator exceeded his authority by reducing the Grievant's termination to a suspension. Specifically, MPD asserts that although the Arbitrator determined that there was cause for taking disciplinary action, he crafted his own mitigating circumstances and assessed his own penalty.

In support of its argument that the Arbitrator exceeded his jurisdiction, MPD cites Article 19-Section E(5) and Article 12- Section 1(b), of the parties' collective bargaining agreement(CBA). Article 19-Section E(5) provides as follow:

> The arbitrator shall not have the power to add to, subtract from or modify the provisions of this agreement in arriving at a decision of the issue presented and shall confine his decision solely to the precise issue submitted for arbitration.

Section 12-Section 1(b) provides as follows:

> Discipline may be imposed only for cause, as defined in the Comprehensive Merit Personnel Act (DCMPA), D.C. Code Section 1-617.1(d).

Based on the above contractual provisions and the Board's statutory basis for reviewing arbitration awards, MPD contends that the Arbitrator exceeded his authority by reducing the penalty. We disagree.

We have held that an arbitrator's authority is derived "from the parties' agreement and any

applicable statutory and regulatory provision." D.C. Dept. of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). Furthermore, we have determined that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement.[1]/ See, D.C. Metroploitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). In the instant case, MPD has not cited any provision of the parties' collective bargaining agreement (CBA) which limits the Arbitrator's equitable power. Therefore, the Arbitrator was not restricted by the CBA from mitigating the discipline imposed by MPD.

In addition, as previously noted, "[b]y agreeeing to submit the settlement of the grievance to arbitration, it [is] the Arbitrator's interpretation, not the Board's, that the parties have bargained for." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA,supra. The matter before the Arbitrator in this proceeding was whether the Grievant's termination "was for cause and if not, what should the penalty be/" (Award at p. 2) The Arbitrator determined that there was cause for the adverse action; however, he identified several mitigating factors which warrant reduction of the imposed penalty. As a result, he reduced the termination to a suspension and imposed certain conditions which must be satisfied prior to the Grievant's reinstatement.

MPD cites a number of decisions for the proposition that, once an arbitrator has determined that there is cause for the action taken by a government agency against the employee, "the inquiry must close and the action of the agency must be accepted." (Award at p. 8). While the cited decisions may be relevant in some respects, it should be noted that they were decided pursuant to statutes other than the CMPA. Therefore, we conclude that the cited decisions are not applicable in this case.

We find that the Arbitrator's conclusions are based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. In the instant case, MPD disagrees with the Arbitrator's conclusion. This is not a sufficient basis for concluding that the: (1) Arbitrator has exceeded his authority" or (2) Award is contrary to law or public policy. For the reasons discussed, no statutory basis exist for setting aside the Award; the Request is therefore, denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

July 17, 2000

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[1]/ We note, that if the parties' collective bargaining agreement limits the arbitrator's discretion to determine penalties, that limitation will be enforced.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 00-A-04 was served by first class mail, on the following parties on this 17th day of July, 2000.

Gail Davis, Esq.
Assistant Corporation Counsel
441 4th Street, N.W.
Suite 060N
Washington, D.C. 20001

U.S. MAIL

Leslie Deak, Esq.
1200 G Street, N.W.
Suite 800
Washington, D.C. 20005

U.S. MAIL

Courtesy Copies:

Frank McDougald, Esq.
Chief of Personnel & Labor Relations Section
Office of the Corporation Counsel
441 4th Street, N.W
Suite 1060N
Washington, D.C. 20001

U.S. MAIL

Fraternal Order of Police
MPD Labor Committee
1524 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

U.S. MAIL

Bruce Brennan, Esq.
Managing Attorney, Contracts
Personnel and Regulatory Cluster
441 4th Street, N.W
Suite 1060N
Washington, D.C. 20001

U.S. MAIL

Sheryl V. Harrington
Sheryl Harrington
Secretary