GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
District of Columbia Housing Authority,	**PERB Case No. 99-A-10**
Petitioner,	**Opinion No. 618**
and	
American Federation of Government Employees, Local 2725, AFL-CIO (on behalf of Grievant Anthony Patrick),	
Respondent.	

DECISION AND ORDER

On October 12, 1999, the District of Columbia Housing Authority (DCHA), filed an Arbitration Review Request (Request). DCHA seeks review of an arbitration award (Award) that reduced the disciplinary penalty imposed on a bargaining unit employee from termination to a suspension. DCHA contends that the Arbitrator exceeded his jurisdiction and/or the Award is contrary to law and public policy. The American Federation of Government Employees, Local 2725 (AFGE) opposes the Request, arguing that DCHA has failed to present statutory grounds for review.

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

DCHA terminated the Grievant, a carpenter, for (1) insubordination, (2) inexcusable neglect of duty, and (3) inexcusable absence without leave. (Award at 3.) The Arbitrator found that DCHA met its burden of proof with respect to the charge of inexcusable neglect of duty. However, the Arbitrator found the DCHA did not meet its burden with respect to the

charges of insubordination and inexcusable absence without leave. The Arbitrator ruled that DCHA had cause to discipline the grievant; however, the Arbitrator concluded that the penalty was neither progressive nor corrective, as provided under the collective bargaining agreement. (Award at 11.) Therefore, he reduced the termination to a 15-day suspension without pay and reinstated the Grievant. Id.

DCHA takes issue with the Arbitrator's findings of fact and the reduction of the penalty imposed. DCHA asserts that the Arbitrator's conclusion that it failed to meet its burden of proof with respect to the charges of insubordination and inexcusable absence without leave, was based on his determination that DCHA could not rely upon hearsay evidence in deciding to terminate an employee. DCHA asserts that the Arbitrator's evidentiary ruling modifies the clear terms of the parties' collective bargaining agreement (CBA).

DCHA states that Article 9 of the CBA governs the Arbitrator's evidentiary authority. Article 9, Sec. E(4) provides that "[t]he arbitration hearing shall be informal and the rules of evidence shall not strictly apply." (ARR at p.7.) Also, DCHA contends that the testimony of a DCHA regional manager -found to be "a credible witness"--- should not be deemed insufficient to overcome the testimony of the Grievant just because the regional manager's testimony was hearsay. Id. DCHA contends that by ruling it can not rely upon hearsay evidence to terminate an employee, the Arbitrator has modified the clear terms of the CBA and exceeded his authority.

We have held that by submitting a matter to arbitration, the parties agree to be bound, not simply by the arbitrator's decision, but by his interpretation of the agreement. Council of School Officers and D.C. Public Schools, 33 DCR 2392, Slip Op. No. 136, PERB Case No. 85-A-05 (1986). DCHA's contention here involves only an interpretation of the collective bargaining agreement and not any law or public policy. Moreover, it is well settled that disputes over the weight and significance accorded evidence is within the domain of the arbitrator and does not state a statutory basis for review. American Federation of State, County and Municipal Employees, D.C. Council 20 and D.C. General Hospital, 37 DCR 6172, Slip Op. No. 253, PERB Case No. 90-A-04 (1990). Nothing contained in the cited CBA provision restricts the Arbitrator's authority in this regard. Also, this CBA provision does not mandate what weight or significance the Arbitrator should accord different types of evidence, e.g., hearsay, with respect to its sufficiency to sustain a disciplinary action.

DCHA also asserts that the Arbitrator failed to give effect to the provision of the CBA which provides that: (1) "DCHA is not bound absolutely by the range of penalties" listed in the CBA; and (2) "the severity of the disciplinary action is assessed after reference to the nature and gravity of the infractions and their relationship to the employee's assigned duties." (ARR at 8.) DCHA contends that "[i]n considering the aggregate of these offenses, in addition to the prior verbal and written admonitions, the Receiver ... was within the range of penalties in discharging the Grievant from employment." Id.

Once again, this ground for review presents no more than an interpretation of the parties' CBA. The Arbitrator's conclusion that the Grievant's termination was not appropriate under the circumstances turned on his interpretation of a provision of the CBA which provided that disciplinary action should be "progressive" and "corrective not punitive." The Arbitrator's interpretation of the meaning of this CBA provision does not exceed his authority to determine DCHA's compliance with the CBA. By agreeing to arbitration, it is the Arbitrator's decision for which the parties' have bargained. An arbitrator need not defer to an employer's expertise or discretion under the contract concerning the appropriate discipline. D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. 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).

DCHA cites nothing in the CBA that mandates that an employee be terminated for the finding made by the Arbitrator. Upon finding a basis for imposing discipline, "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 Committee, supra. Here, the Arbitrator found that two of the three causes for terminating the grievant were not established by the evidence. Based upon his findings, the Arbitrator found the penalty imposed was neither progressive or corrective as required by the CBA.

Given the authority of the Arbitrator, DCHA's Request presents no basis for finding that the Arbitrator exceeded his authority or that the Award is, on its face, contrary to law and public policy. For the reasons discussed, no statutory basis exists for setting aside the Award; the Request is therefore, denied.

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.

January 21, 2000

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-A-10 was transmitted via Fax and/or U.S. Mail to the following parties on this the 21st day of January, 2000.

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