

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The American Federation of State, County
and Municipal Employees, Council 20
(on behalf of Reginald L. Bigelow),

PERB Case No. 85-A-03
Opinion No. 118

Petitioner,

and

The District of Columbia Department of
Finance and Revenue,

Respondent.

DECISION AND ORDER

On April 1, 1985, the American Federation of State, County and Municipal Employees, D.C. Council 20 (AFSCME) filed an "Arbitration Review Request" with the District of Columbia Public Employee Relations Board (Board) seeking review of an arbitration award issued on March 9, 1985. AFSCME grieved the 30 day suspension of Reginald L. Bigelow, a collective bargaining unit member, by the Department of Finance and Revenue (DFR) for inexcusable absence without leave and discourteous treatment of a supervisor. The adverse action stemmed from an incident in which the grievant was involved in a physical altercation with his supervisor during a counseling session concerning grievant's tardiness while on a restricted leave status due to a prior pattern of irregular attendance.

The Arbitrator found that DFR imposed the 30-day suspension because it believed that grievant had physically assaulted his supervisor. The Arbitrator held that while the alleged physical assault did not occur, the grievant's action was a willful disobedience of the supervisor's orders and warranted some discipline. The Arbitrator reduced the 30-day suspension to 7 days and ordered that grievant be made whole for earnings lost during the remaining 23 days.

Section 502(f) of the Comprehensive Merit Personnel Act (CMPA) (codified as District of Columbia Code Section 1-605.2(6)) authorizes the Board to consider appeals from arbitration awards pursuant to a grievance procedure only if it is determined that "the arbitrator was without, or exceeded his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion or other similar and unlawful means."

The basis for the review request is AFSCME's contention that the Arbitrator exceeded his jurisdiction and that his award, on its face, is contrary to law and public policy. AFSCME contends that the 7-day suspension for disobedience is improper because disobedience was not one of the original charges against grievant. AFSCME further contends that grievant was deprived of due process because he allegedly had no warning that the Arbitrator would base his decision on disobedience rather than the physical altercation.

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On April 17, 1985, DFR filed an "Opposition to Acceptance of Arbitration Review Request." DFR contends that the suspension of grievant is a personnel issue which is beyond the jurisdiction of the Board. DFR also contends that the award is not contrary to law and the Arbitrator did not exceed his jurisdiction because the collective bargaining agreement does not restrict the Arbitrator's exercise of equitable powers. DFR requests that the review request be denied by the Board.

In reviewing the award it does not appear that, on its face, it is either contrary to law or public policy or that the Arbitrator exceeded the jurisdiction granted. Since the collective bargaining agreement provides for arbitration of disputes involving alleged misapplication of law resulting in unfair personnel action, there appears to be no basis for AFSCME's claim that the award is contrary to law or public policy. The Arbitrator found that the grievant was partially responsible for the incident, but that the offense committed was of a lesser gravity than a physical assault of the supervisor (Opinion and Award, page 10).

With respect to AFSCME's contention that the Arbitrator exceeded his authority when he based the 7-day suspension on disobedience of the supervisor's order, it appears that the collective bargaining agreement does not restrict the Arbitrator's exercise of equitable powers. The collective bargaining agreement does not contain a table of penalties. Moreover, the award takes into consideration the context in which the incident occurred and the absence of a contractual limitation on penalties in arriving at the appropriate remedial award.

The Arbitrator's conclusions with respect to the allegations against grievant are based on the context in which the incident occurred. The Arbitrator found that the grievant was not the aggressor in the scuffle with the supervisor. Instead the physical contact between the two resulted from the fact that both tried to leave the room at the same time. However, the Arbitrator found that if grievant had obeyed the supervisor's order to remain seated until he summoned the Division Director, the physical contact would not have occurred. Reasonable persons may differ with the Arbitrator's conclusions. AFSCME's disagreement is not, however, a sufficient basis to conclude that the award is contrary to law and public policy.

The Board finds, further, that the Arbitrator's interpretation of the Agreement is based upon a thorough and detailed analysis. There is insufficient evidence to conclude that his analysis and conclusions are erroneous, contrary to law and public policy or beyond the scope of the authority granted.

O R D E R

IT IS ORDERED THAT:

The request for review of the arbitration award is hereby denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
July 22, 1985