op. under

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

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| In the Matter of: | |
| District of Columbia Department of Corrections, Correctional Employees, Local Union No. 1714, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (On behalf of Linton Coles), | PERB Case No. 94-A-01<br>Opinion No. 389 |
| Petitioner, | (Motion and Request for Reconsideration) |
| v. | |
| District of Columbia Department of Corrections, | |
| Respondent. | |

## DECISION AND ORDER

On February 24, 1994, the Public Employee Relations Board's (Board) issued a Decision and Order, Slip Opinion No. 380, in the above-captioned matter denying the Petitioner's request to vacate and reverse an arbitration award. On March 11, 1994, the Petitioner filed a document styled "Motion to Correct the Board's Decision and Order to Accurately State the Petitioner's Position and Request for Reconsideration." The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of the District of Columbia Department of Corrections (DOC), filed an Opposition to the Motion on March 25, 1994.

In Opinion No. 380, we stated the basis of the Teamsters' contention that the Award was contrary to law as follows:

> ...the Teamsters maintain that by initiating disciplinary action against the Grievant in excess of 45 days after it "knew of the act or occurrence allegedly constituting cause", i.e., the first 10 consecutive workdays of Grievant's unexcused absence while incarcerated, DOC violated Section 1-617.1(b-1)(1) and was therefore

> without the authority to discharge the Grievant. (emphasis added) Slip Op. at 3. [1]/

The Petitioner argues in its Motion that the contention presented to the Board in its Arbitration Review Request should have been stated as follows:

> ... that [DOC] was required to act within 45 days of August 12, 1991, the date on which [DOC] had a copy of the criminal judgment and knew that the Grievant would be incarcerated and absent continuously through June 1992. (Mot. at 3.)

We agree that our framing of the Petitioner's argument does not reflect precisely its contention in the Arbitration Review Request. Nevertheless, the argument presented by the Petitioner does not alter the basis of our Decision and Order in Opinion No. 380.[2]/

The Petitioner's interpretation of the DPM regulation -- supporting this argument-- is not so compelled such that the Arbitrator's Award is on its face contrary to law and public policy. Moreover, the Petitioner's argument loses sight of the fact that the cause for the Grievant's removal, i.e., inexcusable absence without leave" for "ten consecutive days or more", never abated from the first day of the Grievant's incarceration through DOC's commencement of the removal action against the Grievant. The Grievant's continuous absenteeism, which DOC allowed before initiating adverse action proceedings, remained within the prescribed time afforded by the DPM regulation.

For the forgoing reasons, we grant the Petitioner's Motion that we more accurately state its argument in support of its

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[1]/ D.C. Code Sec. 1-617.1(b-1)(1) provides:

> Except as provided in paragraph (2) of this subsection, no corrective or adverse action shall be commenced pursuant to this section more than 45 days, not including Saturdays, Sundays, or legal holidays, after the agency knew or should have known of the acts or occurrence allegedly constituting cause, as that term is defined in subsection (d) of this section.

[2]/ While the Board is without authority to review, de novo, the findings of the arbitrator upon which an Award is based, as a matter of law, it is incumbent upon us, in our appellate role with respect to arbitration review requests, to consider the precise legal argument made by a petitioner.

Arbitration Review Request; however, we deny its Request for Reconsider of our Decision and Order in Opinion No. 380.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

The Motion requesting that we accurately state the Petitioner's argument in support of its Arbitration Review Request is granted as set forth in this Opinion; Petitioner's Request for Reconsideration of Opinion No. 380 in this proceeding is denied.

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

April 20, 1994