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

In the Matter of:)	
)	
District of Columbia Department of Recreation and Parks,)	PERB Case No. 99-A-01
)	Opinion No. 579
Petitioner,)	
)	
and)	
)	
American Federation of Government Employees, Local 2741, AFL-CIO,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On November 2, 1998, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of the District of Columbia Department of Recreation and Parks (DRP), filed an Arbitration Review Request. OLRCB seeks review of an arbitration award (Award) resulting from a grievance filed by the American Federation of Government Employees, Local 2741, AFL-CIO (AFGE) that challenged whether or not DRP's termination of a bargaining unit employee was for cause. OLRCB contends that the Award is contrary to law and public policy. AFGE filed an Opposition to the Arbitration Review Request, contending that OLRCB has failed to establish that the Award contravenes any law or public policy.

The issue before the Board is whether or not there is a statutory basis for our review of the Award. Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-605.2(6), the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed only if ... the award on its face is contrary to law and public policy..." Upon review of the Award, the pleadings of the parties and applicable Board law, the Board concludes that OLRCB has not established a statutory basis for our review.

The issue before the Arbitrator was whether DRP had demonstrated that its removal of the grievant was for the asserted causes, as prescribed under the CMPA. Specifically, DRP asserted the following causes: (1) insubordination; (2)

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discourteous treatment of the public, supervisor, or other employees; and (3) inexcusable neglect of duty. (Award at 1.) The Arbitrator found that DRP proved only one of the three causes, i.e., neglect of duty, and therefore concluded that DRP failed to establish the basis for the grievant's removal. Based on these findings, the Arbitrator reduced the grievant's removal to a reprimand and directed that the grievant be reinstated with back pay.

OLRCB asserts as grounds for review that the evidence before the Arbitrator established its charge of insubordination by the grievant. OLRCB further contends that the Arbitrator improperly excluded consideration of DRP's charge that the grievant lied. Consequently, OLRCB contends that any Award requiring DRP to reinstate the grievant would be repugnant to the purposes of the CMPA.

On the issue of the Arbitrator's failure to find insubordination, OLRCB merely disagrees with the findings of fact made by the Arbitrator. OLRCB does not contend that the Arbitrator's findings and conclusion are not based on the evidence; rather, given the evidence, OLRCB asserts what findings and conclusions it believes should be drawn.^{1/} It is well settled that disputes over the Arbitrator's evaluation of the evidence does not raise an issue for review. D.C. Public Schools and Washington Teachers Union, 43 DCR 1243, Slip Op. No. 349, PERB Case No. 93-A-01 (1996). The weight and the significance to be afforded the evidence is within the domain of the arbitrator and does not state a statutory basis for review. See, e.g., American Federation of State, County and Municipal Employees, D.C. Council 20, AFL-CIO and D.C. General Hospital, 37 DCR 6172, Slip Op. No. 253, PERB Case No. 90-A-04 (1990). Consequently, we lack the jurisdiction to review an arbitrator's findings of fact or make independent findings of fact necessary to reach the evidentiary claims upon which this ground for review is based. See, University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 38 DCR 1580, Slip Op. No. 262, PERB Case No. 90-A-08 (1990) and Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO and

^{1/} We have held that it is not a party's or the Board's interpretation of the evidence for which the parties have bargained, but that of the Arbitrator. See, e.g., University of the District of Columbia and UDC Faculty Association/NEA, 38 DCR 5024, Slip Op. No. 276, PERB Case 91-A-02 (1991). With respect to an arbitrator's remedial authority, unless expressly and specifically limited by the CBA or law an arbitrator possesses full authority to devise a remedy.

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D.C. Department of Corrections, 41 DCR 1510, Slip Op. No. 296 at n. 6, PERB Case No. 87-A-11 (1992).

With respect to the Arbitrator's decision not to consider DRP's charge of lying when determining whether the grievant was properly removed, OLRCB does not dispute the Arbitrator's finding that DRP first made this charge in its post-hearing brief to the Arbitrator. (Award at 21.) The Arbitrator concluded that DRP's failure to charge "falsification -either in the original proposal or by timely amending the charges to include a charge of falsification... clearly violated the requirement to take timely action included in the 45 day rule contained in the [parties'] Agreement and in applicable law." (Award at 22.) An arbitrator possesses the jurisdictional authority to interpret the parties' agreement to determine issues of procedural arbitrability. See, D.C. Housing Authority and AFGE, Local 2725, 45 DCR 4776, Slip Op. No. 519, PERB Case No. 97-A-02 (1998) and Teamsters Local Union No. 1714, a/w IBTCWHA and D.C. Department of Corrections, 41 DCR 1753, Slip Op. No. 304, PERB Case No. 91-A-06 (1994). Moreover, OLRCB does not challenge the Arbitrator's conclusion that the parties agreement and laws referenced therein, rendered untimely the consideration of DRP's charge of lying, i.e., falsification. Therefore, OLRCB's arguments concerning the significance of this charge as a basis for removal was foreclosed by the Arbitrator.

Given the authority and findings of the Arbitrator, OLRCB has provided no grounds for finding that the Award is contrary to law and public policy. In view of the above, the Request presents no statutory basis under the CMPA for remanding the Award to the Arbitrator or to modify or set aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

January 28, 1999

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-A-01 was served, via (U.S. Mail), on the following parties on this the 28th day of January, 1999.

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