GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
University of the District of Columbia Faculty Association/NEA, Petitioner,	PERB Case No. 92-A-04 Opinion No. 320
and	
University of the District of Columbia, Respondent.	

DECISION AND ORDER

On March 20, 1992, the University of the District of Columbia Faculty Association/NEA (UDCFA) filed an Arbitration Review Request with the Public Employee Relations Board (Board). UDCFA requested that the Board review an arbitration award (Award) that denied a grievance filed on behalf of Professor Alan J. Truelove (Grievant), concerning the termination of his employment from the University of the District of Columbia (UDC). UDCFA asserts in its Request that the Award is contrary to law and public policy and that the Arbitrator was without or exceeded his jurisdiction in making the Award. *UDC filed an Opposition to* the Arbitration Review Request on April 8, 1992, denying that a basis for review exists on the grounds asserted. [1]/

[1]/ We note that UDCFA's Request was deficient in that it failed to provide "[a] statement of the reasons for appealing the award" as required by Board Rule 538.1. The Request merely asserts, without reasons, what statutory criteria for our review of arbitration awards is allegedly met. Following the filing of the Request and Opposition, however, UDCFA filed a Memorandum of Points and Authorities on April 3, 1992, to which UDC responded by filing a Supplement to Opposition to Arbitration Review Request on May 1, 1992. UDCFA's Memorandum cured the above-noted deficiency in its Request. In view of the fact that the Board did not notify UDCFA of the deficiency and provide UDCFA with an opportunity to cure the deficiency in accordance with Board Rule 501.13, we shall accept UDCFA's Memorandum as a timely cure of its Request. We further rule that there being no objection to or Board Rule expressly prohibiting these supplemental submissions (albeit unsolicited by the Board in accordance with Board Rule 538.2), we shall also consider the parties' respective arguments made therein.

The issue before the Board is whether or not a statutory basis for our review exists in this case. Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 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 Arbitrator was without, or exceeded his or her jurisdiction; the award on its face is contrary to law and public policy...."

The Board has reviewed the Arbitration Award, the pleadings of the parties, and applicable law and concludes that the reasons presented in UDCFA's request for review of the Award do not present any statutory basis for review.

By agreeing to submit a matter to arbitration the parties also agreed to be bound by the Arbitrator's decision which necessarily includes the Arbitrator's interpretation of the parties' agreement and related rules and/or 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/NEA, 37 DCR 566, Slip Op. No. 248, PERB Case No. 90-A-02 (1990) and District of Columbia General Hospital and American Federation of Government Employees, Local 631, AFL-CIO, ____DCR____, Slip Op. No. 316, PERB Case No. 92-A-03 (1992). Furthermore, with respect to such findings and conclusions, we have stated that resolution of "disputes over credibility determinations" and "assessing what weight and significance such evidence should be afforded" is within the jurisdictional authority of the Arbitrator. See American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO and District of Columbia General Hospital, 37 DCR 6172, Slip Op. No. 253 at 2, PERB Case No. 90-A-04 (1990) and University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, supra, Slip Op. No. 248 at n.8, respectively.

UDCFA's Memorandum of Points and Authorities (see n.1 supra), contains nine points of contention which it asserts serves as grounds for our review of the Award. Point 1 makes the bare assertion that UDC never issued rules and regulations establishing corrective measures in accordance with D.C. Code Sec. 1-617.1(a). Nothing in D.C. Code Sec. 1-617.(a), however, expressly proscribes UDC from disciplining employees in the absence of such rules or regulations. (See n.4 infra.)

(Footnote 1 Cont'd)
See, University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, _____DCR_____, Slip Op. No. 320, PERB Case No. 92-A-05 (1992).

Moreover, this point completely ignores the existence of Article XI of the parties' collective bargaining agreement which established the parties' negotiated corrective, disciplinary and adverse action procedure, upon which the Award is also based.

Points 3, 4, 7 and 8 provide a series of arguments that address non-statutory grounds for review that either dispute the Arbitrator's interpretation of the parties' collective bargaining agreement or pertain to the weight or probative value attributed to the evidence by the Arbitrator in reaching his conclusions. [2]/ As we stated, such determinations are within the domain of the Arbitrator. Providing or substituting our judgment concerning the Arbitrator's interpretation of the collective bargaining agreement or the conclusions he could have drawn from the existence or absence of evidence to decide the merits of issue(s) the parties submit to arbitration exceeds our limited statutory authority to review arbitration awards. District of Columbia Metropolitan Police Department and Fraternal Order of Police Metropolitan Police Department Labor Committee, ___DCR___, Slip Op. No. 288, PERB Case No. 91-A-03 (1991) and University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, supra.

In Point 5, UDCFA argues that the Arbitrator has exceeded his jurisdiction by contravening the provisions of Article XI, Section A(5) of the parties' collective bargaining agreement which requires UDC to carry the burden of proof by clear and convincing evidence in all disciplinary proceedings. UDCFA does not contend that the Arbitrator employed a variant burden of proof, but rather that the Arbitrator took notice of a quoted passage from an Office of Employee Appeals (OEA) decision concerning the kind of relevant factors an arbitrator must assure that an agency considered before imposing discipline. We find that the referenced passage from the case neither addresses standards for burdens of proof nor contravenes Article XI. Furthermore, we find no basis for UDCFA's contentions that the Arbitrator's acknowledgement of the quoted passage in the OEA case "add[ed] to, subtract[ed] from, or modif[ied] [the parties'] Agreement." (Memo. at 8-9.) [3]/ The Arbitrator's reference to

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[2]/ Point 2 merely contains a restatement of D.C. Code Sec. 1-617.1(b) and nothing more. We find nothing inconsistent about the Award with this statutory provision.

[3]/ We note that the Award evinces the Arbitrator's employment of the "clear and convincing" standard in assigning the burden of proof when he made a finding in favor of Grievant based, in part, on UDCFA expressly meeting this standard. (Award at 12.)

the passage merely reflects his approach in assessing the probative value of the evidence in reaching his conclusion, which we noted is clearly within an arbitrator's authority to determine.

Finally, Point 6 raises the rather frivolous argument that the Award is "contrary to public policy" since D.C. Code "Sec. 1-617.1 does not require discharge." (Memo. at 9.) Not only does this contention fail to meet our statutory criteria for review that the award must be "on its face contrary to law and public policy" (emphasis added), the fact that UDC's decision to discharge the Grievant may have been discretionary clearly does not make the Arbitrator's Award allowing that decision to stand contrary to law and public policy. [4]/

Accordingly, UDCFA has not shown a statutory basis for disturbing the Award and therefore its request that the Board review the Award must be denied. [5]/

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[4]/ See, e.g., American Federation of Government Employees, Local 872 and District of Columbia Department of Public Works, _____DCR_____, Slip Op. No. 290, 91-A-01 (1992). There we ruled that an arbitrator did not exceed his jurisdiction by sustaining the penalty imposed upon the grievant unless such an act is expressly prohibited by the parties' contract. Similarly, we do not find an arbitrator's decision to let stand the penalty imposed upon the Grievant to be contrary to law and public policy unless it is expressly restricted or prohibited thereby.

[5]/ Point 9 of UDCFA's Memorandum merely reiterates a compilation of the reasons previously set forth to support its request that the Award be "overturned" and that the Board "remand" it to the Arbitrator. As discussed above, we find all of UDCFA's arguments provide no statutory basis for review of the Award. We have ruled on numerous occasions since the enactment of the CMPA that the arbitration review request based simply or for the most part on a disagreement over the merits of an arbitration award and, consequently, the arbitrator's findings and conclusions does not constitute a statutory basis for our review of arbitration awards. This arbitration review request is not alone as a prime example of a frivolous appeal. It is the CMPA and not the predilections of the parties that is the law. It is past time that both management and labor under the jurisdiction of the CMPA relinquish such arguments and recognize that no statutory basis for requesting review exists on such grounds under the CMPA.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

July 15, 1992

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order in PERB Case No. 92-A-04 was hand-delivered, sent via facsimile transmission and/or mailed (U.S. Mail) to the following parties on this 15th day of July, 1992:

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