

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors to that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

---

In the Matter of:	)	
	)	
District of Columbia	)	
Department of Corrections,	)	
	)	
Petitioner,	)	
	)	
and	)	PERB Case No. 95-A-01
	)	Opinion No. 412
	)	
Fraternal Order of Police,	)	
Department of Corrections,	)	
Labor Committee (on behalf of	)	
Veronica Williams),	)	
	)	
Respondent.	)	

---

DECISION AND ORDER

❖ On December 12, 1994, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of the District of Columbia Department of Corrections (DOC), filed an Arbitration Review Request with the Public Employee Relations Board (Board). DOC seeks review of an arbitration award (Award) issued on November 26, 1994, granting the Fraternal Order of Police\Department of Corrections Labor Committee's (FOP) motion to dismiss the arbitration. OLRCB contends that "the arbitrator exceeded his authority, and the limited jurisdiction granted him, by basing his award on an issue that was not submitted for arbitration by the parties." (Req. at 2.) FOP filed an Opposition to Arbitration Review Request arguing that the Request does not present a statutory basis for the Board's review and that the Award granting FOP's motion to dismiss is within the Arbitrator's jurisdictional

authority. We agree. <sup>1/</sup>

Under the Comprehensive Merit Personnel Act, 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 Arbitrator was without, or exceeded his 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". OLRCB invokes the first of these statutory standards as the basis for our review.

The Arbitrator described the issues presented in the arbitration proceeding as follows:

Did the Agency-Employer violate mandatory statutory and regulatory due process procedures by failing to comply with D.C. Code § 1-617.3(a)(1)(A), (B), (C), and (D), and DPM Chapter 16, Section 1609.1, Section 1612.1, Section 1613.1, Section 1613.3, and Section 1614.1?

Whether the Agency-Employer had just cause to discharge the Grievant, in accordance with D.C. Code § 1-617 et seq.?

Whether the Grievant was afforded Union representation pursuant to Article 10, Section 5 of the Collective Bargaining Agreement?

At the conclusion of DOC's case in chief, FOP moved to dismiss the grievance based on DOC's failure to prove that it had complied with statutory and regulatory procedures necessary to effectuate a lawful discharge. (Award at 2.) The Arbitrator initially reserved decision on the motion; however, the FOP insisted that a ruling was necessary at that point in the proceeding because the presentation of its case in chief "might have the effect of correcting some of the defects in the Employer's case presentation caused by the Agency's failure to properly present evidence prior to (sic) conclusion of the case-in-chief." (Award at 3.) The Arbitrator then agreed to conclude the arbitration proceedings until the evidence could be reviewed and a ruling made on FOP's motion.

---

<sup>1/</sup> OLRCB requested that the Board permit it to submit a brief setting forth with particularity the arguments in support of its arbitration review request. In accordance with Board Rule 538.2, the parties shall be provided an opportunity to file briefs "[i]f the Board finds that there may be grounds to modify or set aside the arbitrator's award... ." In view of our disposition, this request is denied.

The Arbitrator granted FOP's motion to dismiss the arbitration based on his conclusion that DOC had failed to meet its burden of proof. The Arbitrator ruled that DOC did not establish necessary prerequisites for the Grievant's discharge by failing to enter into the record evidence of compliance with certain statutory and regulatory procedures. OLRCB asserts, however, that only the second and third issues cited above were presented by the parties for arbitration, and that by deciding the case based on the first "phantom" issue, the Arbitrator exceeded his jurisdictional authority.

The above-cited statutory and regulatory provisions sets forth employee rights and procedural requirements governing the implementation of adverse action by a District agency. The Arbitrator concluded that proof of DOC's adherence to these requirements was essential to establishing a prima facie case that there was just cause to discharge the Grievant. Because DOC failed to provide a proper foundation for documents that might have provided such proof, the Arbitrator excluded the documents from evidence. This ruling by the Arbitrator served as the basis for granting FOP's motion to dismiss.<sup>2/</sup>

We have held that by "agreeing to submit a matter to arbitration, the parties also agree to be bound by the Arbitrator's interpretation of the parties' agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." (emphasis added.) University of the District of Columbia and University of the District of Columbia Faculty Association\NEA, \_\_\_\_\_ DCR \_\_\_\_\_, Slip Op. No. 320 at 2, PERB Case No. 92-A-04 (1992). The Arbitrator's consideration of these statutory and DPM requirements as a threshold issue rather than as a part of the merits is within his authority to make evidentiary rulings and to interpret "related rules and regulations".<sup>3/</sup> Thus, the Arbitrator did not exceed his

---

<sup>2/</sup> The Arbitrator's ruling was a rather unusual way to sustain a grievance. However, having ruled that DOC failed to sustain its initial burden of proof with respect to its adverse action, the Arbitrator has the remedial authority to fashion an award restoring the grievant to the status quo prior to his discharge.

<sup>3/</sup> OLRCB raises an ancillary argument that the Arbitrator "excluded the proffered documents which would have satisfied the procedural requirements" under the D.C. Code and DPM. (Req. at 3.) A review of the Award, however, reveals that DOC proffered this evidence after it had rested its case and FOP moved to dismiss based, in part, on DOC's failure to present these documents to  
(continued...)

jurisdictional authority.

Accordingly, we conclude that the request for review does not present a statutory basis for Board review.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

The Arbitration Review Request is denied.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Washington, D.C.  
February 22, 1995

---

<sup>3</sup>(...continued)

prove its case. As discussed above, it is within an arbitrator's domain to make evidentiary rulings and conclusions on related statutory and regulatory provisions. OLRCEB does not contend that it was deprived of an opportunity to present its case prior to FOP's motion to dismiss. Nor does OLRCEB assert that the statutory and regulatory provisions are unrelated to the issues it concedes were before the Arbitrator.

Finally, we find OLRCEB's reliance on our decision in American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2776, AFL-CIO and D.C. Dep't. of Finance and Revenue, 37 DCR 4143, Slip Op. No. 246, PERB Case No. 90-A-01 (1990) is misplaced. In that case, we held that an arbitrator's interpretation of certain DPM regulations did not render the award contrary to law and public policy. Here we are confronted with an arbitrator's jurisdictional authority to make evidentiary rulings and conclusions concerning compliance with certain DPM regulatory requirements.