GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
District of Columbia Housing Authority,	**PERB Case No. 99-A-06**
Petitioner,	**Opinion No. 598**
and	
American Federation of Government Employees, Local 2725, AFL-CIO (on behalf of Grievant Kevin Jhingory),	
Respondent.	

DECISION AND ORDER

On May 3, 1999, the District of Columbia Housing Authority (DCHA), filed an Arbitration Review Request. DCHA seeks review of an arbitration award (Award) reinstating a bargaining unit employee whose termination violated adverse action procedures and was not for cause. DCHA contends that the Arbitrator exceeded her jurisdiction and/or the Award is contrary to law and public policy. The American Federation of Government Employees, Local 2725 (AFGE) opposes the Request, arguing that DCHA identifies no statutory basis for setting aside the Award.

The issue before the Board is whether "the arbitrator was without, or exceeded, [ ] her jurisdiction" or whether "the award on its face is contrary to law and public policy... ." D.C. Code Sec. 1-605.2(6). We have reviewed the parties' pleadings and applicable law and conclude that DCHA's Request does not present a statutory basis for disturbing the Award.

Following his arrest for burglary, the grievant's termination from DCHA was proposed.[1]/ Upon review by DCHA's Department Director, the grievant's termination was revoked. The Department Director's decision was subsequently overruled by

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1/ Criminal charges were subsequently dropped. (Award at 9.)

DCHA's Receiver and the grievant's termination was reinstated. AFGE grieved the termination contending that there was not just cause to terminate the grievant and that the Receiver's termination violated procedural requirements outlined in the parties' collective bargaining agreement (CBA).

The Arbitrator concluded that the contractual provision at issue permitted review of the Department Director's action only when the Department Director concurs with the recommended removal of an employee. The Arbitrator further concluded that DCHA did not meet its burden of proof that the grievant was discharged for just cause. Having resolved the issues in the grievant's favor, the Arbitrator awarded the grievant reinstatement with back pay. This Request for Review ensued.

DCHA asserts that the Receiver's reversal of the Department Director's decision does not violate the parties' CBA. DCHA contends that the Arbitrator's conclusion that the CBA permits further review of the Department Director's decision only when the Department Director concurs with the removal of an employee is "a modification of the clear and express terms of CBA Art. 10, Section D(6)(c)." (ARR at 9.) DCHA contends that the CBA is silent with respect to removal actions that the Department Director does not sustain. Since the Receiver has been accorded the "[a]uthority to establish personnel policies [...],"[2]/ DCHA argues that the Receiver does not violate the CBA by reserving the power to review personnel actions not addressed by the CBA. DCHA also asserts that it provided sufficient evidence to establish just cause for discharging the grievant.

The Board has held that an arbitrator possesses the jurisdictional authority to determine whether or not an agency has complied with the parties' CBA. Metropolitan Police Department and FOP/MPD Labor Committee, 43 DCR 5601, Slip Op. No. 460, PERB Case No. 96-A-03 (1996). This authority includes the power to interpret the meaning of the applicable CBA provision. Section D6(c) of the parties' CBA, in pertinent part, provides: "The Department Director may concur and sustain, reduce, or dismiss, but not increase, the removal prior to its effective date. If the Department Director concurs in the proposed action to remove, the Department Director shall refer the removal to the Director of Human Resources Department (HRD) for review."

DCHA acknowledges that the Receiver is not authorized to "abrogate present collective bargaining agreements." (ARR at 9.)

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[2]/ Pearson, et al. v. Kelly, et al., CA-14030-92 (D.C. Super. Ct., J. Graae)(May 19, 1995).

The Arbitrator's conclusion that the Department Director's reduction of an employee's removal was not subject to further review by the Receiver is an interpretation drawn from this CBA provision. The Arbitrator's interpretation of the meaning of the CBA provision to reach his conclusion does not exceed his authority to determine DCHA's compliance with the CBA.

Whatever powers DCHA asserts have been accorded the Receiver, the interpretation of the parties' rights under their collective bargaining agreement are within the jurisdictional authority of the Arbitrator. DCHA's disagreement with the Arbitrator's interpretation does not render the Award contrary to law and public policy. See, e.g., Teamsters Local Union 1714 a\w IBTCWHA, AFL-CIO and Dept of Corrections, 41 DCR 1753, Slip Op. 304, PERB Case No. 95-A-02 (1994). By agreeing to arbitration, the parties agreed to be bound by the Arbitrator's interpretation of the meaning of the CBA provision which is at issue. UDCFA\NEA and University of the District of Columbia, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).

DCHA also takes issue with the Arbitrator's conclusion that DCHA's evidence was insufficient to establish just cause for terminating the grievant. Specifically, the Arbitrator found DCHA's justification of its decision to terminate the grievant turned on hearsay evidence. Since DCHA "fail[ed] to provide any direct evidence linking the Grievant to the criminal activity", the Arbitrator concluded that she could not sustain the discharge. (Award at 18.) DCHA contend that such evidentiary restrictions modify clear terms of the CBA which provide that formal rules of evidence shall not strictly apply.

Disputes over 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) and University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992). The challenged conclusion resulted from the Arbitrator's assessment of the probative value of the parties' evidence to conclude that DCHA's evidence was not sufficient to establish just cause. 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). See also, Metropolitan Police Department and FOP/MPD Labor Committee, Slip Op. No. 378, PERB Case No. 93-A-04 (1994) (The Board found that the arbitrator's use of beyond-a-reasonable-doubt standard rather than the lower preponderance-of-

the-evidence standard was within the arbitrator's domain where the agency cited no law or CBA provision mandating standard of proof for an arbitration proceeding). DCHA cites no law or CBA provision that restricts the Arbitrator's authority to make such evaluations of the evidence to reach her conclusion.

In view of the above, DCHA has provided no grounds for finding that the Arbitrator exceeded her authority or that the Award is contrary to law and public policy. Therefore, no statutory basis exists for remanding the Award to the Arbitrator or for modifying or setting 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.

August 2, 1999

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-A-06 was transmitted via Fax and/or U.S. Mail to the following parties on this the 2nd day of August, 1999.

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