

Decision and Order
PERB Case No. 96-A-01
Page 2

OLRCB presents evidentiary reasons as grounds for our review of the Award. OLRCB states that the Arbitrator's Award reinstating the Grievant on the basis of crediting one FOP witness over four DOC witnesses is contrary to law and public policy. (ARR at 2.) OLRCB suggests that it was incumbent upon the Arbitrator to request the appearance of a witness whose absence, according to OLRCB, served "as the basis for overturning the Department's decision to terminate the grievant." Id.

OLRCB neither cites nor are we aware of any law and public policy that places on the arbitrator a legal obligation to request evidence not offered by the parties. The arbitrator properly based his decision on the evidence before him. The Board lacks jurisdiction to review an arbitrator's findings of fact based on credibility determinations and assessments of the probative value of record evidence.^{2/} 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).

OLRCB further contends that the Award is contrary to law and public policy because it allows "an employee who clearly violated Chapter 16 of the DPM [to] be reinstated with backpay." (ARR at 2.) OLRCB's contention ignores the Arbitrator's finding based on the evidence presented that DOC "failed to maintain its burden of proving that the grievant falsified time and attendance records", the Grievant's discharge. (Award at 5-6.) Upon making this finding, the Arbitrator properly exercised his equitable authority to fashion a remedy to reinstate the Grievant with backpay. See, e.g., D.C. General Hospital and AFGE, Local 631, AFL-CIO, 41 DCR 2734, Slip Op. No. 316, PERB Case No. 92-A-03, PERB Case No. 91-A-03 (1991) (the Board declined to review an arbitrator's award that reinstated the grievant with backpay based upon the arbitrator's finding that the employer failed to comply with certain DPM

¹(...continued)
opportunity to file briefs "[i]f the Board finds that there may be grounds to modify or set aside the arbitrator's award... ." Finding no statutory basis for review, no grounds exist for setting aside or remanding the Award. Therefore, OLRCB's request is denied.

^{2/} We have held that "[b]y agreeing to submit a matter to arbitration the parties also agree 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 the evidentiary findings and conclusions upon which the decision is based." University of the District of Columbia Faculty Association/NEA and University of the District of Columbia, 39 DCR 9628, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

requirements notwithstanding the merits of the employer's justification for the grievant's discharge).^{3/}

Accordingly, OLRCB has not presented a statutory basis for its request that the Award be set aside; its request for review is therefore denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

December 20, 1995

^{3/} OLRCB raises an ancillary claim that reinstating the Grievant is contrary to law and public policy because it allows the Grievant, whose job it is to determine parole dates for inmates, an opportunity to return to work and falsify the parole dates of these inmates. This claim stems from the second issue before the Arbitrator concerning the basis of the Grievant's discharge, i.e., "Dishonesty:... using a false time and attendance form for personal gain." (Award at 1.) Once again, OLRCB cites no law and public policy restricting an arbitrator's remedial authority based upon speculation over future infractions by a grievant afforded by an award. Upon concluding that DOC had not met its burden of proof, the Arbitrator had the authority to fashion an Award that included the reinstatement of the Grievant as restoring the status quo before the alleged violation.