Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Public Schools Petitioner	PERB Case No. 18-A-13
	Opinion No. 1692
v.	
Washington Teachers' Union Local 6, American Federation of Teachers, AFL-CIO Respondent	

DECISION AND ORDER

I. Introduction

On July 20, 2018, the District of Columbia Public Schools ("DCPS") filed this Arbitration Review Request ("Request") pursuant to the Comprehensive Merit Personnel Act, section 1-605.02(6) of the D.C. Official Code. DCPS seeks review of an arbitration award ("Award") issued on July 9, 2018, that sustained the grievance filed by the Washington Teachers' Union ("WTU") concerning the termination of the Grievant.

DCPS argues that the Award is contrary to law and public policy. WTU filed a timely Opposition to the Request.

Pursuant to section 1-605.02(6) of the D.C. Official Code, the Board may modify, set aside, or remand a grievance arbitration award only when (1) the arbitrator was without or exceeded his or her jurisdiction; (2) the award on its face is contrary to law and public policy; or (3) the award was procured by fraud, collusion, or other similar unlawful means. Upon consideration of the Arbitrator's conclusions, applicable law, and record presented by the parties, for the reasons stated herein, the request is denied.

II. Statement of the Case

The Grievant was a teacher at a DCPS elementary school. On June 15, 2009, the Grievant was terminated pursuant to the Professional Performance Evaluation Process (PPEP).[1] On June 22, 2009, WTU invoked Step III of the grievance procedure under the Collective Bargaining Agreement ("CBA") that required a hearing and decision by the agency.[2] DCPS received the Step III request but failed to hold a hearing and issue a decision.[3] On March 20, 2017, WTU filed a demand for arbitration challenging the termination.[4]

III. Arbitrator's Award

The parties presented three issues for arbitration: whether the grievance was procedurally arbitrable, whether DCPS discharged the Grievant without cause, and whether DCPS discharged the Grievant in retaliation for his protected speech and/or based on anti-union animus.[5]

Before the Arbitrator, DCPS argued that the delay between invoking Step III of the grievance procedure (June 20, 2009) and the request for arbitration at Step IV (March 20, 2017) was prejudicial.[6] DCPS maintained that arbitration should be barred under the doctrine of laches in the absence of a contractually imposed time limit for requesting arbitration.[7] In addition, DCPS argued that it should not be liable for damages because WTU waived its right to pursue arbitration by the extraordinary delay in requesting arbitration. Notwithstanding the delay, DCPS contended that, to the extent that any liability existed, damages should be apportioned between the parties.[8]

WTU argued that DCPS presented no evidence that the termination of the Grievant was for just cause.[9] WTU presented evidence of Grievant's employment history, union activity, and performance evaluations prior to the PPEP.[10] WTU stated that it initiated a Step III grievance in compliance with the CBA.[11] Furthermore, WTU argued that the equitable defense of laches was inapplicable because DCPS breached its obligation to hold a hearing and issue a Step III decision.[12]

The Arbitrator found that the grievance was procedurally arbitrable because WTU timely invoked Step III of the grievance procedure and DCPS "should have held a Step III hearing and

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[1] Award at 2.
[2] *Id.*
[3] Award at 13.
[4] Award at 2. WTU states that the 8-year delay in requesting arbitration was caused by a significant case backlog related to large numbers of teacher terminations.
[5] Award at 3.
[6] Award at 3-4.
[7] Laches Doctrine is a common law defense that prevents a party from waiting to pursue a remedy after a recognized injury. As recognized in *Bauman v. D.C. Board of Zoning* 894 A.2d 423, 431 (2006). Laches has two elements (1) claiming party must show prejudice caused by delay and (2) that the delay was unreasonable.
[8] Award at 6.
[9] Award at 7.
[10] Award at 8.
[11] Award at 9.
[12] Award at 7.

issued a Step III decision as a precursor to arbitration."[13] The Arbitrator held that DCPS terminated the Grievant without just cause and ordered reinstatement with backpay.[14]

IV. Discussion

DCPS requests review on the basis that the Award is contrary to law and public policy.[15] DCPS contests the holdings that (1) DCPS violated the CBA by failing to hold a hearing and issue a decision, (2) WTU made a timely request to arbitrate, and (3) DCPS is solely liable for the Grievant's damages.

The law and public policy exception is "extremely narrow".[16] The narrow scope limits potentially intrusive judicial reviews under the guise of public policy.[17] DCPS has the burden to demonstrate that the award itself violates established law or compels an explicit violation of "well defined public policy grounded in law and or legal precedent."[18] The violation must be so significant that the law and public policy mandates a different result.[19] Here, there is no such violation.

Herein, the holding that DCPS violated the CBA does not present an occasion for the Board to act under section 1-605.02(6) of the D.C. Official Code. DCPS admits that it failed to hold a Step III hearing but disputes whether its failure was a contract violation. DCPS argues that it relied, to its detriment, on WTU's apparent abandonment of the grievance.[20] WTU argues that there was no abandonment, and DCPS' position is a mere disagreement with the Arbitrator.[21]

The Arbitrator has the authority to resolve issues of fact including determinations regarding the credibility, significance, and weight of the evidence.[22] The Arbitrator found that WTU did not abandon the grievance because it timely invoked Step III of the grievance procedure. The Arbitrator held that DCPS should have conducted a grievance hearing and issued a decision, and the failure to do so was a violation of the contract. [23]

By agreeing to submit a grievance to arbitration "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the

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[13] Award at 13.
[14] Award at 14.
[15] Request at 3.
[16] *American Postal Workers Union, AFL-CIO v. United States Postal Service*,789 F.2d 1, 8 (D.C. Cir. 1986). *See MPD v. FOP/MPD Labor Comm. ex rel. Pair*, 61 D.C. Reg. 11609, Slip Op. 1487 at 8, PERB Case No. 09-A-05 (2014). *MPD v. FOP/MPD Labor Comm. ex rel. Johnson*, 59 D.C. Reg. 3959, Slip Op. 925 at 11-12, PERB Case No. 08-A-01 (2012).
[17] *Id*.
[18] *Id.*
[19] *Id*.
[20] Request at 4.
[21] Opposition to Request at 9.
[22] *DCDHCD v. AFGE Local 2725 AFL-CIO*, 45 D.C. Reg. 326, Slip Op. 527 at 2, PERB Case No. 97-A-03(1998). *AFSCME District Council 20 AFL-CIO v. D.C. General Hospital*, 37 D.C. Reg. 6172, Slip Op. 253, PERB Case No. 90-A-04 (1990).
[23] Award at 13.

evidentiary findings on which the decision is based."[24] Moreover, "[t]he Board will not substitute its own interpretation for that of the duly designated arbitrator."[25] DCPS simply disagrees with the award of the arbitrator. Disagreement with the Arbitrator is not sufficient reason to modify, set aside, or remand an Award.[26]

Likewise, the Board will decline the invitation to set aside, modify, or remand the holding that WTU's arbitration request was timely and arbitrable after an eight-year delay. DCPS raises several issues related to the procedural arbitrability of the Award and argues that the Arbitrator failed to consider the defenses of laches, abandonment, and the lack of timeliness.[27] DCPS cites to *Charles Sisson v. District of Columbia Board of Zoning Adjustment* [28] which held in zoning matters, that absent a time-limit, it is reasonable for the aggrieved party to file an appeal within two months of notice of a decision. DCPS' reliance on this zoning case is misplaced.

Issues of procedural arbitrability are for the arbitrator to decide.[29] Questions of timeliness, estoppel, laches, and other prerequisites to arbitration are exclusively for the arbitrator.[30] As discussed above, the parties agree to be bound by the arbitrator's interpretation of the contract. Here, the Arbitrator found no contractually imposed time limit for requesting arbitration.[31] The Arbitrator specifically held that the underlying grievance was arbitrable.[32] DCPS has not raised any law or public policy that would require a different result. Therefore, we defer to the Arbitrator.

Finally, the Board will decline the invitation to set aside, modify, or remand the holding that DCPS is solely liable for damages resulting from the termination of the Grievant. DCPS disagrees with the findings of the Arbitrator but does not point to a specific law and policy that would mandate a different result. To find that a decision is contrary to law and public policy DCPS must specify the applicable law and definite public policy that mandate the Arbitrator arrive at a different result. Mere disagreement with the arbitrator does not make the decision contrary to law and public policy.[33]

DCPS challenges the Award because of its potential cost and burden to taxpayers.[34] DCPS contends that the Arbitrator should have relied on the *Johnson-Whitehead* [35]arbitration decision that found issues arbitrable after an eight-year delay with the caveat that limited DCPS' liability

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[24] *FOP v. Dept. of Corrections* 59 D.C. Reg. 9798, Slip Op. 1271 at 2, PERB Case No. 10-A-20 (2012). *See MPD v. FOP/MPD Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at p. 3, PERB Case No. 00-A-04 (2000); *MPD v. FOP/MPD Labor Comm. ex rel. Fisher*, 51 D.C. Reg. 4173, Slip Op. 738, PERB Case No. 02-A-07 (2004).
[25] *FEMS v. AFGE, LOCAL 3721*, 51 D.C. Reg. 4158, Slip Op. 728, PERB Case No. 2-A-08 (2004).
[26] *AFSCME District Council 20 AFL-CIO v. D.C. General Hospital*, 37 D.C. Reg. 6172, Slip Op. 253 at 3, PERB Case No. 90-A-04 (1990).
[27] Request at 3-8.
[28] 805 A.2d 964, 969 (D.C. Ct App. 2002).
[29] *DYRS v. FOP/ DYRS Labor Comm.*, 62 D.C. Reg. 5913, Slip Op. 1513 at 4, PERB Case No. 15-A-02 (2015).
[30] *Washington Teachers Union, Local No.6, AFT v. D.C. Public Schools*, 77 A.3d 441, 446 n. 10 (2013). *See*, *MPD v. FOP/MPD Labor Comm. ex rel. Pair* 61 D.C. Reg. 11609, Slip Op. 1487 at 6, PERB Case No. 09-A-05 (2014).
[31] Award at 13.
[32] *Id.*
[33] *MPD v. FOP/MPD Labor Comm. ex rel. Pair*, Slip Op. 1487 at 7.
[34] Request at 7.
[35] *Washington Teachers Union ex rel. Johnson-Whitehead v. District of Columbia Public Schools*, AAA Case No. 01-17-0001-4339 (Rogers 2018).

to reinstatement of the employee without back pay.[36] However, there is no law, statute, rule, or public policy that requires different arbitrators to implement the same remedy. Each arbitration stands on its own and "arbitrations do not create binding precedent even when based upon the same collective bargaining agreement."[37]

An arbitrator is provided with wide latitude and flexibility in crafting remedies for CBA violations.[38] DCPS' disagreement with the Award's high estimated cost and claim of a general taxpayer burden is insufficient to cause us to remand, modify, or set aside the Award on a basis of law and public policy.

V. Conclusion

The Board rejects DCPS' arguments and finds no cause to modify, set aside, or remand the Award. Accordingly, DCPS' request is denied, and the matter is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.

2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.
December 20, 2018

[36] Request at 7.
[37] *MPD v. FOP/MPD Labor Comm.*, 59 D.C. Reg. 6881, Slip Op. 1210 at 3, PERB Case No. 10-A-11a (2012)
[38] *MPD v. FOP/MPD Labor Comm. ex rel. Gutterman*, 39 D.C. Reg. 6232, Slip Op. 282 at 3-4, PERB Case No. 87-A-04 (1991). *Univ. of D.C. v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. 1333 at 6, PERB Case No.12-A-01 (2012).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-13, Opinion No. 1692 was sent by File and ServeXpress to the following parties on this the 20th day of December 2018.

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