Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, AFL-CIO (on behalf of Tony Rich),	
Petitioner,	
and	PERB Case No. 01-A-10
	Opinion No. 995
District of Columbia Board of Education,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, AFL-CIO ("Union" or "Teamsters") filed an Arbitration Review Request ("Request"). The Union seeks review of an Arbitration Award ("Award") that denied the Union's claim for interest on the award of back pay concerning the reinstatement of Tony Rich to Thaddeus Stevens Elementary School. The Union contends the Arbitrator's Award is contrary to law and public policy. The District of Columbia Board of Education ("Respondent" or "DCBE") opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy." D.C. Code § 1-605.02(6) (2001 ed).

II. Discussion

In December of 1997, Tony Rich ("Grievant") was terminated from his position at the Thaddeus Stevens Elementary School. On January 11, 2000, Arbitrator Michael Murphy issued an Arbitration Award which reinstated the Grievant with back pay. Three supplemental Awards

were issued thereafter, and at it is Supplemental Award III that is in dispute in the Union's Request. The issue before the Arbitrator was whether interest could be applied to the Grievant's back pay.

At Arbitration, the Union argued the Board's case law[1] has interpreted D.C. Code §§ 15-108 and 109 to mandate an award of back pay also include interest. (See R&R at p. 3).

Section 15-108 states:

> In an action in the United States District Court for the District of Columbia or the Superior Court of the District of Columbia to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid.

Section 15-109 states:

> In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only. This section does not preclude the jury, or the court, if the trial be by court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest.

DCBE countered because the District of Columbia Public Schools are in a state of fiscal emergency, the Federal Back Pay Act ("FBPA"), 5 U.S.C. § 5596 et seq., prohibited an award of interest. Section 5596(b)(1)(A)(i), in pertinent part, states an employee who challenges an unwarranted personnel action and prevails is entitled to receive:

> "An amount equal to all or any part of the pay, allowance, or differentials, as applicable which the employee normally would have earned or received during the period . . . less any amounts earned by the employee through other employment during that period."

Furthermore, the amount which is payable under paragraph (1)(A)(i), is payable with interest pursuant to 5 U.S.C. § 5596(2)(A). Section 5596(2)(C) states "[i]nterest payable under

[1] See *Committee of Interns and Residents v. District of Columbia General Hospital*, 43 DCR 1490, Slip Op. No. 456 PERB Case No. 95-U-01 (1995); and *University of the District of Columbia Faculty Association and University of the District of Columbia*, 39 DCR 6238, Slip Op. No. 285, PERB Case No. 86-U-16 (1991), supplemented by 39 DCR 8594, Slip Op. No.'s 285S.

this paragraph shall be paid out of amounts available for payments under paragraph (1) of this subsection." (Emphasis added). Based on the "amounts available" language and the "fiscal emergency", DCBE claimed there were no funds to pay interest on back pay.

In an Award dated August 23, 2001, Arbitrator Murphy determined the FBPA could not be construed as to relieve DCBE's obligations to its employees. In addition, the Arbitrator found no evidence had been presented to establish funds were not available to pay interest, or the District of Columbia Public Schools were in a state of fiscal emergency. With regard to the Union's contentions, the Arbitrator found neither Section 15-108, nor 15-109 mandated an arbitrator apply interest to an award of back pay. Specifically, the Arbitrator stated Sections 15-108 and 15-109 did not provide an independent basis for allowing interest where there was no specific law or contractual provision directing interest be paid. Based on the foregoing, the Arbitrator denied the Union's claim for interest.

In their Request, the Union claims the Arbitrator's Award is contrary to law and public policy because the District of Columbia Code, as interpreted by the Board, mandates an award of interest. (See Request at p. 2). Therefore, the Union is requesting the Board reverse the Arbitrator's Award. DCBE opposes the Request.

When a party files an arbitration review request, the Board's scope of review is extremely narrow. Specifically, the Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in only three limited circumstances:

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 and unlawful means.

D.C. Code § 1-605.02 (2001 ed.).

The Union asserts the Arbitrator's Award should be set aside because it is contrary to law and public policy. In support of its argument, the Union asserts D.C. Code §§ 15-108 and 15-109 mandate interest be added to an award of back pay. The Union also points to Board decisions which have held an award of back pay constitutes a "liquidated debt" within the meaning of D.C. Code § 15-108. In addition, the Union asserts the Board "has found additional authority for its award of interest in D.C. Code § 1-615.2(3) and D.C. Code § 1-618.13, both of which grant broad authority to remedy unfair labor practices." (Request at p. 2). Lastly, the Union contends no explicit authority is required to allow the Board, or an arbitrator, to award back pay with interest and, therefore, the Arbitrator's rationale is flawed. (See Request at pgs. 3-4).

"[T]he possibility of overturning an arbitration decision on the basis of public policy is an "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's

interpretation of the contract. "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of Public Policy." *American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986). Furthermore, to set aside an award as contrary to law and public policy, the Petitioner must satisfy its burden to specify applicable law and definite public policy that mandates that the arbitrator arrive at a different result. *AFGE, Local 631 and Dept. Of Public Works*, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1993). *MPD v. FOP/MPD Labor Committee*, 47 DCR 717, Slip Op. No. 633, PERB CASE No. 00-A-04 (2000); See also *District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20*, 34 DCR 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). Also, a petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law or legal precedent. See *United Paperworkers Int'l Union, AFL-CIO v. Misco Inc.*, 484 U.S. 29, 43 (1987).

In the present case, the Union asserts the Award is on its face contrary to law and public policy. However, the Union does not specify any "applicable law" and "definite public policy" that mandates the Arbitrator arrive at a different result. Instead, the Union alleges the Arbitrator's decision was contrary to law because the cases and statutes it relies upon do not preclude the Arbitrator, or the Board, from granting an award of back pay with interest. None of the authority cited by the Union mandates interest be applied to an Award of back pay. In addition, the Union's arguments are a repetition of the arguments considered and rejected by the Arbitrator. Therefore, we believe the Union's ground for review only involves a disagreement with the Arbitrator's findings and conclusions. The Union merely requests we adopt its interpretation of the D.C. Code (specifically Sections 15-108 and 15-109). This, we will not do.

We have held a disagreement with the Arbitrator's interpretation does not render an award contrary to law. See, *DCPS and Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO*, 49 DCR 4351, Slip Op. No. 423, PERB Case No. 95-A-06 (2002). Here, the parties submitted their dispute to the Arbitrator. The Union's disagreement with the Arbitrator's findings and conclusions is not a ground for reversing the Arbitrator's Award. See *University of the District of Columbia and UDC Faculty Association*, 38 DCR 5024, Slip Op. No. 276, PERB Case No. 91-A-02 (1991). We also find the Union's disagreement with the Arbitrator's findings and evaluation of the evidence does not present a statutory basis for review. See *DCPS and Washington Teachers' Union Local 6, American Federation of Teachers*, 43 DCR 1203, Slip Op. No. 349, PERB Case No. 93-A-01 (1996). In conclusion, the Union has the burden to specify "applicable law and public policy that mandates that the Arbitrator arrive at a different result." *MPD and FOP/MPD Labor Committee*, 47 DCR 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). In the present case, the Union has failed to do so.

In view of the above, we find the Union has not met the requirements for reversing Arbitrator Murphy's Award. In addition, we find the Arbitrator's conclusions are supported by

the record, are based on a thorough analysis and cannot be said to be clearly erroneous. Therefore, no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, AFL-CIO's Arbitration Review Request is denied.

(2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

October 11, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 01-A-10 was transmitted via Fax and U.S. Mail to the following parties on this the 11th day of October 2011.

Jonathan Axelrod, Esq.
Beins, Axelrod, Kraft, Gleason
& Gibson, P.C.
1625 Massachusetts Ave., N.W.
Suite 500
Washington, D.C. 20036

FAX & U.S. MAIL

Erin Pitt, Director
Labor Management and Employee
Relations, DCPS
1200 First Street, N.E.
10th Floor
Washington, D.C. 20002

FAX & U.S. MAIL

Sheryl V. Harrington