

the Arbitrator acted within his jurisdiction and that the Request should be denied. ^{2/}

The issue before the Board is whether or not there is a statutory basis for our review of the Award. Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 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 or her jurisdiction; the award on its face is contrary to law and public policy...." Upon review of the Arbitration Award, the pleadings of the parties and applicable law, the Board, for the reasons that follow, denies in part and grants in part UDC's Arbitration Review Request.

The Award provided that UDC pay the Grievant interest at a rate determined by the "formula for establishing the method and rates...used [by the National Labor Relations Board] in the calculation of interest in backpay awards." (Award at 3.) The Award provided interest on backpay commencing from the date the grievance was filed, i.e., March 7, 1984, to the date of actual payment of the backpay. Interest was also awarded on that portion of the Grievant's backpay payable to his retirement account (including UDC's contribution) at the rate of return that

^{2/} We note that although UDC's Request specified the statutory criteria ("grounds") for our review, it failed to provide "[a] statement of the reasons for appealing the award" as required by Board Rule 538.1. In this respect the Request was deficient. On May 1, 1992, however, UDC filed an unsolicited document entitled "Supplemental Statement of Reasons for the Appeal." UDCFA responded by filing a "Supplemental Brief in Opposition to Arbitration Review Request" on June 15, 1992, following its request to do so having been granted by the Board's Executive Director. UDC cured the above-noted deficiency in its supplemental pleading. In view of the fact that the Board did not notify Petitioner of the deficiency in its initial filing in accordance with Board Rule 501.15, the Board accepts UDC's supplemental filing, pursuant to Board Rule 501.1, as a timely cure of its deficient March 26, 1992 Request. Moreover, we shall also accept the parties' supplemental submissions as fulfilling the requirements of Board Rule 538.2, which provides the parties an opportunity to file briefs when grounds may exist for granting review. See, University of the District of Columbia Faculty Association and University of the District of Columbia, DCR _____, Slip Op. No. 320, PERB Case No. 92-A-04 (1992) and International Brotherhood of Police Officers, Local 445 and District of Columbia Department of Administrative Services, DCR _____, Slip Op. No. 300 at n.3, PERB Case No. 91-A-05 (1992).

was actually realized on the investment made by the retirement plan. Finally, pursuant to a finding made in the Award that the Grievant was also wrongfully denied sabbatical leave, the Arbitrator "directed [UDC] to pay grievant an amount equal to what he would have been paid had he taken a sabbatical leave during the academic year 1984-1985, with interest, calculated as above, from the date the grievance giving rise to the sabbatical issue was filed." (Award at 5.)

UDC contends that to the extent the Award provides for (1) "pre-award interest" on backpay, i.e., prior to the May 1, 1991 award on the merits (see n.1 supra) and (2) rates of interest that exceed 4 percent (%) per annum, it contravenes D.C. Code Sec. 28-3302." The contentions and supporting arguments raised by UDC in this Request for Review do not differ significantly from those made in the Arbitration Review Request it filed in University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, DCR, Slip Op. No. 317, PERB Case No. 92-A-02 (1992). There we stated that "D.C. Code Sec. 28-3302 is the prevailing law with respect to interest on backpay awards in the District of Columbia." *Id.*, Slip Op. at 4. In rejecting UDC's arguments in support of identical contentions concerning the award in that case, we concluded that an arbitrator's authority to award interest is authorized by contract, not law, and as such is not subject to the 4% per annum interest rate limitation prescribed under D.C. Code Sec. 28-3302(b). We further concluded that "D.C. Code Sec. 28-3302 makes no distinction between interest provided during pre-determination or post-determination periods." We find no basis for distinguishing those provisions of the Award and the arguments for review from those presented to us in PERB Case No. 92-A-02. Once again, we conclude for the reasons stated in PERB Case No. 92-A-02 that these same contentions do not present a statutory basis for our review. ^{3/}

^{3/} UDC raises these same objections, and supporting arguments with respect to the Arbitrator's Award of interest on the Grievant's retirement contribution. For the reasons we articulated in UDC and UDCFA/NEA, supra, we find UDC's contentions are without merit with respect to any award of interest resulting from the parties' negotiated grievance arbitration proceeding.

Moreover, we note that D.C. Code Sec. 28-3302(a) provides that "[t]he rate of interest in the District upon the loan or forbearance of money, goods, or things in action in the absence of expressed contract, is 6 percent per annum." (Emphasis added.) The Arbitrator merely awarded the rate of interest to which the Grievant would have been contractually entitled as a

UDC's final contention is that by providing the Grievant backpay for sabbatical leave --leave which the Arbitrator determined was wrongfully denied--, the Arbitrator exceeded his jurisdiction and the Award is contrary to law and public policy. As a threshold matter, UDC asserts that by compensating the Grievant for the denied sabbatical leave, based on a finding that the Arbitrator was without jurisdiction to make, in a supplemental arbitration proceeding that was limited to the question of remedy. Thus, UDC contends, the Arbitrator was without or exceeded his jurisdiction by rendering an Award with respect to sabbatical leave. We agree.

In his Award, the Arbitrator expressly sets forth those issues on which he made findings in his May 1, 1991 decision. (See n.1 supra.) Furthermore, the Arbitrator acknowledged that with respect to those issues he "retained jurisdiction over the question of remedy until that question was finally resolved" in his Supplemental Award. (Award at 1.) The Arbitrator concedes that none of the issues decided in the May 1, 1991 decision on the merits included a finding as to whether the Grievant was wrongfully denied sabbatical leave. (Award at 4.) Notwithstanding the limited purpose for which the Arbitrator stated that he retained jurisdiction, he proceeded to make initial findings and conclusions in the Award with respect to the issue of whether or not sabbatical leave was wrongfully denied. This determination in turn served as the basis for the Arbitrator's award of sabbatical leave pay in the supplemental proceeding. (Award at 4-5.)

The only reason noted by the Arbitrator for exceeding the scope of his expressly limited jurisdiction was that there was "considerable testimony" from the hearing that resulted in the May 1, 1991 decision, which enabled him to make a finding as to whether the Grievant was wrongfully denied sabbatical leave. (Award at 4.) UDC does not contend, however, that the Arbitrator lacked sufficient evidence upon which to make a finding on the merits concerning the issue of sabbatical leave. Moreover, neither the Arbitrator nor UDCFA in its Opposition provided any authority for the proposition that mere arbitral economies may serve as a basis for expanding an arbitrator's jurisdictional

(Footnote 3 Cont'd)
participant in the retirement plan.

authority beyond that expressly conferred by the parties. ^{4/}

UDCFA argues that the denial of sabbatical leave was not grieved "as a separate independent breach of contract" but rather "as a result of the impermissible suspension" addressed by the Arbitrator. Thus, UDCFA concludes, "[t]he [A]rbitrator's [A]ward of sabbatical pay was ... merely an example of traditional consequential damages awarded to compensate for a contractual breach" resulting from the Arbitrator's earlier determination. This argument, however, misses the point.

Notwithstanding an arbitrator's broad remedial powers to fashion an appropriate remedy, the Award of sabbatical leave pay cannot stand without a properly authorized determination on the issue which the Arbitrator neither decided in his May 1, 1991 award nor retained jurisdiction to determine in the instant Award. The Arbitrator exceeded his retained jurisdictional authority by making this determination in an arbitration proceeding specifically and expressly limited to remedial determinations. We have ruled that an arbitrator cannot retain jurisdiction on his own motion to rule upon a matter because he "failed to complete the arbitration by ruling on all issues submitted in the original submission [to arbitration]." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, DCR, Slip Op. No. 276 at 8, PERB Case No. 91-A-02 (1991). ^{5/} We

^{4/} The Arbitrator also observed, in deciding to include a remedy on sabbatical leave in his Award, that the issue "ha[d] been fully briefed by the parties for purposes of this proceeding." (Award at 4.) However, the predicate for this reasoning rests on the legitimacy of the Arbitrator's jurisdictional authority to make the necessary finding in this Award, i.e., whether or not the Grievant was wrongfully denied sabbatical leave, upon which any remedy would be based.

^{5/} With respect to our ruling in that case, the Board made an observation which we believe is worth reiterating here:

"That the result leaves one party with the legitimate complaint that an issue put to the Arbitrator has not been explicitly resolved by him is unfortunate, but it is not different in nature from the dissatisfaction of a party when an arbitrator gives a "wrong" reading of a contract provision. The possibility of arbitral error is within the outcomes that the parties accept when they agree that otherwise unresolved grievances under their collective bargaining contract shall

therefore conclude that the Arbitrator exceeded his jurisdiction by awarding the Grievant sabbatical leave pay based on a determination the Arbitrator was without jurisdiction to make.

ORDER

IT IS HEREBY ORDERED THAT:

Insofar as the Arbitration Award provides for sabbatical leave pay, the Arbitration Review Request is granted and the Award is set aside. In all other respects, the Arbitration Review Request is denied.

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

July 16, 1992

(Footnote 5 Cont'd)

be determined by arbitration." Id.

In view of our decision to grant review of the Award of sabbatical leave pay for the reasons discussed above, we have no occasion to reach the remaining arguments advanced by UDC in support of review of this aspect of the Award.

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order in PERB Case No. 92-A-05 was hand-delivered, sent via facsimile transmission and/or mailed (U.S. Mail) to the following parties on this 16th day of July, 1992:

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