

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The District of Columbia Department
of Corrections,

Petitioner,

and

The American Federation of Government
Employees, Local 1550,

Respondent.

PERB Case No. 85-A-06
Opinion No. 131

DECISION AND ORDER

On August 23, 1985, the District of Columbia Department of Corrections (DOC), filed an "Arbitration Review Request" with the Board seeking review of an arbitration award issued on August 1, 1985. In that Award, the Arbitrator reinstated and converted to a 30-day suspension, the discharge of Woodie C. Head, Jr., a Corrections Officer employed by DOC. The basis for the review request is DOC's contention that the Arbitrator's reinstatement of Mr. Head violates public policy and should be overturned.

On September 12, 1985, the American Federation of Government Employees, Local 1550 (AFGE) filed a response opposing the Board's acceptance of the Arbitration Review Request. AFGE asserts that the Award does not violate public policy nor is it contrary to law. AFGE further contends that DOC merely disagrees with the Arbitrator's interpretation of the Comprehensive Merit Personnel Act (CMPA) when the Arbitrator decided that the facts which formed the basis of DOC's proposed termination of Mr. Head did not constitute "just cause" as defined by the statute.

Arbitration followed DOC's proposed notice of termination of Mr. Head on March 9, 1984. Mr. Head was involved in an off-duty altercation with a former inmate in which there were allegations that money changed hands for the purpose of purchasing heroin.

A fight between Mr. Head and this former inmate resulted in Mr. Head being indicted for a felony of assault with a deadly weapon and convicted of a misdemeanor for simple assault pursuant to a plea-bargain. Mr. Head was given a suspended sentence of one year and placed on unsupervised probation for three years. DOC's termination letter stated, in part, "...your conviction of a felony as having been reduced to simple assault, I have concluded that the offense is sustained and warrants removal." Under the CMPA, conviction of a felony is "just cause" for an adverse action, while conviction of a misdemeanor is not.

Both parties agreed that the issue to be resolved by the Arbitrator was the question of whether Mr. Head was terminated for just cause. After carefully reviewing the evidence, the Arbitrator concluded that Mr. Head had not been convicted of a felony. At the same time, the Arbitrator determined that, although the termination letter was inartfully drafted, DOC was aware that Mr. Head's conviction was a misdemeanor. The Arbitrator held that because Mr. Head had not been convicted of a felony, DOC could not legally discharge him. However, he also found that the conviction for a misdemeanor does give DOC the right to impose some discipline short of termination. Accordingly, the Arbitrator disallowed the discharge and converted it to a 30-day suspension, which was the maximum allowable under the CMPA in recognition of the seriousness of Mr. Head's conduct.

DOC contends that the Arbitrator's Award violates public policy but fails to cite any specific policy that has been violated. Instead DOC's primary argument appears to be that the Arbitrator's interpretation of what constitutes "just cause" for termination under the CMPA is too narrow.

Section 502(f) of the CMPA authorizes the Board to consider appeals from arbitration awards pursuant to a grievance procedure only if it is determined that "the arbitrator was without, or exceeded his or her jurisdiction; the award, on its face, is contrary to law and public policy; or was procured by fraud, collusion or other similar and unlawful means."

In reviewing the Arbitrator's Award it appears that, on its face, it is neither contrary to law and public policy nor does it appear that the Arbitrator exceeded the jurisdiction granted. As the issue was submitted to the Arbitrator, he was required to interpret the CMPA. The fact that DOC disagrees with the Arbitrator's interpretation, standing alone, is insufficient grounds to disturb the Award, even where the objections are cloaked in the vague garb of unidentified public policy. In its Review Request, DOC asserts its belief that the intent of the

Decision and Order
Case No. 85-A-06
Opinion No. 131
Page 3

drafters of the CMPA was that the definition of "just cause" not be interpreted narrowly. However, a plain reading of the CMPA supports the Arbitrator's interpretation. Even if the Arbitrator had chosen to speculate on the intent of the drafters of the CMPA, it is his interpretation that the parties bargained for and not this Board's. It is not the function of the Board to substitute its judgment for the Arbitrator, but only to examine his Award for its adherence to the three statutory review standards.

The Board is not unmindful of the emotional and controversial nature of this case and in no way sanctions the conduct of Mr. Head. The plain language of the CMPA does not include conviction of a misdemeanor as "just cause" for an adverse action. It is clear that Mr. Head was convicted of a misdemeanor even though he was indicted for a felony. Plea-bargaining is a well established part of the criminal justice system and cannot be ignored or discounted as a mere technicality by either DOC, the Arbitrator or the Board. It is noted that conviction of a misdemeanor is a corrective action under the CMPA subject to a maximum 30-day suspension which was properly made a part of the Arbitrator's Award.

O R D E R

IT IS ORDERED THAT:

The Request for Review of the Arbitration Award is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
February 27, 1986.