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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
Matthew Schaeffer,)	
)	
Petitioner,)	
)	PERB Case No. 09-A-09
and)	
)	Opinion No. 1209
District of Columbia)	
Metropolitan Police Department,)	
)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case:

On June 17, 2009, Matthew Schaeffer (“Petitioner”) filed an Arbitration Review Request (“Request”). The Petitioner seeks review of an arbitration award (“Award”) that upheld the termination of Matthew Schaeffer, a District of Columbia Metropolitan Police Department Officer. The Arbitrator ruled that the District of Columbia Metropolitan Police Department (“MPD” or “Respondent”) had “sufficient evidence in the record to support the charges and penalty of removal.” (Award at pg. 20).

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

This case concerns the termination of MPD Officer Michael Schaeffer from his position as a patrolman in November 2006. On May 26, 2006, MPD began disciplinary action against Officer Schaeffer, serving him with a Notice of Adverse Action. The Notice was supported by two charges of “Neglect of Duty and Inefficiency” and five charges of “Failure to obey orders or directives issued by the Chief of Police.” (Award at pg. 2). On August 28, 2006, Officer

Schaeffer appeared before an Adverse Action Panel ("Panel") to challenge the Notice's charges. The Panel determined Officer Schaeffer was guilty of all charges and recommended he be terminated. See, Award at pg. 2. On October 3, 2006, Officer Schaeffer was served with a Final Notice of Adverse Action, informing him he would be terminated on November 10, 2006. The Final Notice stated that he had ten days to appeal to the Chief of Police. See, Award at pg. 2. On October 17, 2006, Officer Schaeffer filed an appeal with the Chief of Police. The Chief of Police dismissed the two "Neglect of Duty and Inefficiency" charges and one of the "Failure to obey orders or directives issued by the Chief of Police" charges. The remaining charges were upheld, and the appeal was denied. See, Award at pg. 2-3. This was the fourth disciplinary action against Officer Schaeffer within a twelve month period. See, Award at pg. 3. In accordance with the parties' collective bargaining agreement ("CBA"), Officer Schaeffer filed a grievance of the termination with an Arbitrator. See, Request at pg. 2.

In addressing the parties' positions, the Arbitrator determined the issue before him was: "Whether there was sufficient evidence in the record to support the Grievant's termination for cause." (Award at pg. 4).

The Arbitrator found there was sufficient evidence in the record to support the Grievant's termination for cause. He noted:

In the final analysis, the Arbitrator discerns no grounds on which to overturn the Panel's findings and penalty recommendation. The Panel had valid reasons to credit the testimony of Lieutenant Stroud and Officer Peyton in finding that the Grievant failed to check the schedule for his BTA hearings, failed to appear at five (5) BTA Hearings[,] and, as a result, caused several traffic violations to be dismissed. Having found a preponderance of evidence in support of the charges and specifications, the Panel, in the absence of any evidence corroborating the Grievant's various claims that he rescheduled the hearings, appeared[,] or was excused, reasonably concluded that his testimony lack[ed] credulity and was self-serving.

(Award at pg. 20).

The Petitioner filed the instant review of the Award, contending that: "[the] award is contrary to law and public policy." D.C. Code § 1-605.02(6) (2001 ed.).

When a party files an arbitration review request, the Board's scope of review is extremely narrow.¹ Specifically, the Comprehensive Merit Personnel Act ("CMPA")

¹ In addition, Board Rule 538.3- Basis for Appeal- provides:

In accordance with D.C. Code Section 1-605.2(6), the only grounds for an appeal of a grievance arbitration award to the Board are the following:

- (a) The arbitration was without authority or exceeded the jurisdiction granted;
- (b) The award on its face is contrary to law and public policy; or

authorizes the Board to modify or set aside an arbitration award in only three limited circumstances:

1. If "the arbitrator was without, or exceeded his or her jurisdiction";
2. If "the award on its face is contrary to law and public policy"; or
3. If the award "was procured by fraud, collusion or other similar and unlawful means." D.C. Code § 1-605.02(6) (2001 ed.).

Concerning the Petitioner's claim that the Award is on its face contrary to law and public policy, we disagree for the reasons discussed below.

As previously stated, the Board's scope of review, particularly concerning the public policy exception, is extremely narrow. Furthermore, the U.S. Court of Appeals, District of Columbia Circuit, observed:

[i]n *W.R. Grace*, the Supreme Court has explained that, in order to provide the basis for an exception, the public policy in question "must be well defined and dominant, and is to be ascertained 'by reference to laws and legal precedents and not from general considerations of supposed public interests.'" Obviously, the 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).²

A Petitioner must demonstrate that the arbitration award "compels" the violation of an explicit well defined public policy grounded in law and or legal precedent. See, *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). In addition, the petitioning party has the burden to specify "applicable law and definite 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 pg. 2, PERB Case No. 00-A-04 (2000). Also see, *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 pg. 6, PERB Case No. 86-A-05 (1987). As the Court of Appeals has stated, we must "not be led astray by our own (or anyone else's) concept of 'public policy' no matter how tempting such a course might be in any particular factual setting." *District of Columbia Department of Corrections v. Teamsters Union Local 246*, 54 A.2d 319, 325 (D.C. 1989).

In its Arbitration Review Request, the Petitioner challenges the Arbitrator's decision on the ground that the Award violates law and public policy, "specifically sections 1603.2, 1603.10, and 1619 of the District of Columbia Personnel Regulations, Chapter 16, Part I." (Request at pg. 1). The Petitioner divides its challenge into two arguments: 1) "[t]he disciplinary action

(c) The award was procured by fraud, collusion or other similar and unlawful means.

² See, *W.R. Grace & Co. v. Local Union 759, International Union of United Rubber Workers*, 461 U.S. 757, 103 S.Ct. 2177, 2176, 76 L. Ed. 2d 298 (1983).

lacks just cause,” and 2) “[d]ue process must be afforded and the [p]enalty must conform to the table of appropriate penalties.” (Request at pgs. 2-3). Concerning the first argument, Mr. Schaeffer contends:

The disciplinary action in this matter is based solely on an alleged violation of “Failing to Obey Orders and Directives Issued by the Chief of Police,” specifically the directive contained in Line F1-B of Section 1 of Series 701 the Metropolitan Police Department General Orders. At the time of the disciplinary action and Award this section of General Orders had been clearly and unequivocally rescinded and replaced in its entirety by Special Order 02-01, issued by the Chief of Police... There is no allegation that the Petitioner violated this current Special Order, any verbal order or instruction given by an official or any written policy, procedure, regulation or law contained in the District of Columbia Code or Municipal Regulations.

(Request at pg. 2-3).

In addition, Mr. Schaeffer also alleges that he was the subject of reprisal from an Agency head, a violation of Section 1606.1 of Chapter 16 of the District of Columbia Personnel Regulations. (Request at pg. 3). The Petitioner states:

On at least on prior occasion[,] the Petitioner had been subjected to a similar Adverse Action investigation directly related to legitimate law enforcement actions he had taken against a higher ranking member of the Agency... Around the time that the events leading to the termination matter were occurring, the Petitioner, as part of his legitimate duties, was involved [in] a law enforcement action against no less than three command staff officials who subsequently approved or authored portions of the Adverse Action.

(Request at pg. 3).

In regards to Mr. Schaeffer’s second argument that due process must be afforded, and the penalty must conform with appropriate penalties, the Petitioner alleges:

At the time of the Final Agency Decision, which was the sole basis of the Arbitration Award, the Agency had full knowledge that an underlying case on which the progressive discipline was built upon was being aggrieved as provided in the Collective Bargaining Agreement between the Agency and Union representing the Petitioner. Despite that case having been un-adjudicated at the time of the Final Agency Decision, the Agency applied the maximum penalty when computing progressive discipline and this formed the basis of the Award against the Petitioner.

(Request at pg. 3). The Petitioner then alleges that the Arbitrator in the initial case found in favor of Officer Schaeffer after the Final Agency Decision and significantly reduced the penalty

in that case. Thus, the Petitioner states: "in this matter the Award is based on that previous disciplinary action as proposed by the Agency, not the actual discipline that was instituted," and "it is not unreasonable to believe that the punishment in two disciplinary cases that were not appealed would have also been reduced based on the actual punishment in the previous case." (Request at pg. 3).

Concerning Mr. Schaeffer's first just cause argument, that the General Order Officer Schaeffer was determined to have violated had been rescinded during the relevant time period, the Board defers to the Arbitrator's findings. In the Award, the Arbitrator found that the General Order was still in effect, and Officer Schaeffer had violated it. See, Award at pgs. 14-19. The Petitioner now asks the Board to overturn the Arbitration's finding of fact. Making findings of fact is within the arbitrator's jurisdictional domain. *Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO and D.C. Department of Correction*, 41 DCR 1753, Slip Op. No. 304, PERB Case No. 91-A-06 (1992). The Board lacks authority to make findings of fact in its limited statutory jurisdiction to review [an] arbitration award. *Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO and D.C. Department of Correction*, 41 DCR 1510, Slip Op. No. 296 at n. 6, PERB Case No. 87-A-11 (1992).

In addition, the Board has held that 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 Petitioner'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 have held that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as his evidentiary findings and conclusions upon which the decision is based." *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 DCR 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *D. C. Metropolitan Police Department and Fraternal of Police, Metropolitan Police Department Labor Committee (Grievance of Angela Fisher)*, 51 DCR 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

In reviewing the Petitioner's second just cause argument, that his discipline was an act of reprisal in violation of the DCMR, the Board determines it does not have jurisdiction over the claim. The allegation of reprisal was not raised during the arbitration proceedings. Issues not presented to the arbitrator cannot subsequently be raised before the Board as a basis for vacating an award. See, *Department of Public Works and American Federation of State, County and Municipal Employees Local 2091*, 35 DCR 8186, Slip Op. No. 194, PERB Case. No. 87-A-08 (1988); see also, *District of Columbia General Hospital v. American Federation of Government Employees, Local 631, AFL-CIO*, 41 DCR 2738, Slip Op. No. 316 at pg. 2, PERB Case No. 92-A-08 (1992). Therefore, the Board denies the Petitioner's second just cause argument.

What is more, the Board rejects Mr. Schaeffer's argument that due process was not afforded and the penalty did not conform with appropriate penalties. The Petitioner argues that the punishment in the instant case should be reevaluated because it was the result of a progressive discipline and an underlying case's penalty had been reduced following the Award. Notwithstanding the Petitioner's argument concerning progressive discipline, arbitration decisions do not create binding precedent. *See, Hotel Ass'n of Washington, D.C., Inc. v. Hotel & Restaurant Employees Union, Local 25*, 963 F.2d 388, 389-291 (D.C. Cir. 1992). Thus, one arbitrator's decision is not dependent upon the decision of another arbitrator. In addition, Officer Schaeffer was found guilty of three charges of failure to obey orders. Pursuant to District of Columbia Personnel Regulations, Chapter 16, Part 1, Section 1619, the penalty for a first time offense of this charge may be removal. Thus, the Arbitrator's determination that removal was appropriate is within the boundaries of the law.

The Board finds that the Arbitrator's conclusions are based on a thorough analysis and cannot be said to contrary to law or public policy.

THEREFORE, no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

1. Matthew Schaeffer'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 29, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-A-09 was transmitted via Fax and U.S. Mail to the following parties on this the 29th day of October 2011.

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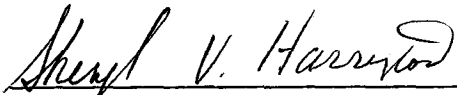
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