GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: American Federation of Government Employees, Local 631, AFL-CIO, (On behalf of Marvin Henson), Petitioner, and District of Columbia, Department of Public Works, Respondent.	PERB Case No. 93-A-03 Opinion No. 365

DECISION AND ORDER

On August 5, 1993, the American Federation of Government Employees, Local 631, AFL-CIO, CLC, (AFGE) filed an Arbitration Review Request with the Public Employee Relations Board (Board). The Request seeks review of an arbitrator's award (Award) issued July 16, 1993, which denied a grievance filed on behalf of Marvin Henson (Grievant), an employee of the D.C. Department of Public Works (DPW), concerning DPW's 30-day suspension of Grievant. The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DPW, filed an Opposition to the Request on August 30, 1993, denying that a basis exists for granting Petitioner's Request.

Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-605.2(6), the Board is authorized to review grievance arbitration awards only if at least one of three statutory grounds is present. AFGE contends that review of the Arbitrator's Award is warranted on two of these grounds, i.e.,

"the [A]ward on its face is contrary to law and public policy" and "the [A]rbitrator was without, or exceeded, his or her jurisdiction[.]" For the reasons that follow, the Board concludes that the Award did not violate any of these standards.

AFGE asserts that the Arbitrator exceeded his authority by violating several provisions of Chapter 16 of the District of Columbia Personnel Manual (DPM) and thereby rendered an Award that is contrary to law and public policy. [1]/ With the exception of DPM 1609.3 and 1609.6, the DPM regulations the Petitioner now contends were violated by DPW, i.e., DPM 1604.1(b), 1609.4, 1612.3 and 1612.4, were not raised before the Arbitrator. Since AFGE never presented these alleged violations of the DPM regulations during the arbitration proceeding, the arbitrator properly did not address them. We have held that under such circumstances, the Board does not have a statutory basis for reviewing an Award. D.C. Department of Public Works and American Federation of State, County and Municipal Employees, Local 2097, 35 DCR 8186, Slip Op. No. 194 at 4, PERB Case No. 87-A-08 (1988).

DPM 1609.3 and 1609.6 prescribes certain duties and responsibilities of an agency proposing official as follows:

Section 1609.3

> The material upon which the notice [of corrective or disciplinary action] is based, and which is relied upon to support the reasons given in that notice, including statements of witnesses, documents, and reports of investigations or extracts therefrom, shall be assembled and made available to the employee for his or her review.

Section 1609.6

> Material which cannot be disclosed to the employee, or to his or her representative or designated physician, shall not be used to support the reasons given in the notice.

Petitioner contends that the Arbitrator violated these DPM regulations by allowing DPW to present, during the arbitration

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[1]/ The Board has recognized DPM regulations as having the force of law with respect to our statutory authority to review arbitration awards. See. e.g., American Federation of Government Employees , Local 1000 and D.C. Department of Employment Services, 35 DCR 8166, Slip Op. No. 177, PERB Case No. 87-A-10 (1988).

proceeding, information that was either not relied upon by DPW's proposing official or disclosed to the Grievant when providing the Grievant with notice of the proposed discipline. [2]/ The Arbitrator, however, specifically found that there was "no conclusive proof" that the information in question was or was not available for the Grievant's review. (Award at 23.) Thus, the Arbitrator's determination of whether or not DPW violated DPM 1609.3 and 1609.6 turned on his assessment of the evidence presented.

We have held that by "agreeing to submit a matter to arbitration, the parties also agree to be bound by the Arbitrator's interpretation of the parties agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." University of the District of Columbia and University of the District of Columbia Faculty Association, ____DCR____, Slip Op. No. 320 at 2, PERB Case No. 92-A-04 (1992). Therefore, no basis exists for finding the Arbitrator was without or exceeded his authority by making such an interpretation of these DPM regulations. See, e.g., D.C. Department of Corrections and International Brotherhood of Teamsters, Local Union No. 246, 34 DCR 3616, Slip Op. No. 157, PERB Case 87-A-02 (1987). [3]/ As such, there is no

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[2]/ The DPM regulations concerning procedures, duties and responsibilities and certain employee rights with respect to the imposition of corrective and adverse actions by District agencies. While these DPM provisions do not explicitly refer to the authority or jurisdiction of arbitrators to review agency corrective and disciplinary action, certain provisions e.g., concerning restrictions on materials an agency may rely upon to support their action, necessarily extends to third parties which authority to review such actions, e.g., arbitrators. If a District agency can support its action before a reviewing authority by means it cannot use in the first instance, these DPM provisions, in effect, are rendered meaningless. The question remains, however, whether or not the Arbitrator was without, or exceeded, his jurisdictional authority by his consideration of certain evidence that assertedly was in violation of the DPM regulations cited supra.

[3]/ Moreover, notwithstanding the Petitioner's contention, a review of the Award reflects that while the Arbitrator allowed this disputed information to be presented at the arbitration hearing, he did not rely upon this information in his discussion supporting his decision to sustain the disciplinary action. (Award at 22-23.) Since the Arbitrator's Award was not based on the disputed information, we find no basis on this record for the Petitioner's contention that the Arbitrator exceeded his jurisdictional

(continued...)

basis for the Petitioner's further contention that the Arbitrator's conclusions with respect to these DPM regulations produced an Award that is, on its face, contrary to law and public policy. [4]/

AFGE also contends that the Arbitrator exceeded his authority by allowing statements of witnesses to be presented that were not a part of the official case in violation of Article 38, Section 8, Section D, part 4 of the parties' collective bargaining agreement. AFGE notes that the provision states that "[n]o witness shall be heard unless the witness testimony has been establish as relevant." AFGE's contention does not present a question of arbitral jurisdiction, rather AFGE merely disagrees with the Arbitrator's decision pursuant to this contractual provision with respect to certain evidence which he apparently found to be relevant. [5]/ Under such circumstances, we will not substitute our judgment or that of the parties for that of the Arbitrator. See, e.g., Teamsters Local 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO and D.C. Department of Corrections, ____ DCR __ __,Slip Op. No. 304, PERB Case 91-A-06 (1992).

Accordingly, we conclude that AFGE has not shown a statutory basis for disturbing the Award, and therefore its Request that we "overturn" the Award and "make the grievant whole" must be

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[3](...continued)
authority in violation of DPM 1609.3 and 1609.6. Compare, D.C. Public Schools and Washington Teachers Union, Local 6, AFT, ___DCR ____, Slip Op. No. 349, PERB Case No. 93-A-01 (1993) (Arbitrator's authority to consider disputed evidence assessed under due process standards rather than DPM regulations).

[4]/ We have held under this criterion for our review of arbitration awards the petitioner must cite to applicable law (and definitive public policy) which mandates that the arbitrator arrive at a different result. See, e.g., D.C. Public Schools and American Federation of State, County and Municipal Employees, Council 20, 34 DCR 3605, Slip Op. No. 155, PERB Case No. 86-A-03 (1987) and 34 DCR 3610, Slip Op. No. 156, PERB Case No. 86-A-05 (1987).

[5]/ The Board has held with respect to an arbitrator's authority that, in the absence of clear law or contractual provision mandating otherwise, an arbitrator has jurisdiction to determine the admissibility of evidence. University of the District of Columbia and University of the District of Columbia Faculty Association, 38 DCR 1580, Slip Op. No. 262, PERB Case No. 90-A-08 (1990).

denied. Req. at p.4. [6]/

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

November 23, 1993

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[6]/ Board Rule 538.4 limits the Board's disposition of arbitration review requests to determinations "which may reject the request for lack of jurisdiction or sustain, set aside or remand the award in whole or in part."