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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
DISTRICT OF COLUMBIA)	
OFFICE OF PROPERTY MANAGEMENT,)	PERB Case No. 02-A-06
)	
Petitioner,)	Opinion No. 707
)	
)	
)	
and)	
)	
AMERICAN FEDERATION OF)	
GOVERNMENT EMPLOYEES, LOCAL 631,)	
)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

On May 30, 2002, the District of Columbia Office of Property Management (“OPM”, “Petitioner” or “Agency”) filed an Arbitration Review Request (“Request”). OPM seeks review of a Supplemental Arbitration Award¹ (Award) which granted relief to a group of grievants who were displaced as a result of the Agency’s Reduction-in-Force (“RIF”). OPM contends that the: (1) Award is contrary to law; and (2) Arbitrator was without authority to grant the Supplemental Award. (Request at p. 2). The American Federation of Government Employees, Local 631 (“AFGE”) opposes the Request.²

The issue before the Board is whether “the Award on its face is contrary to law” or whether “the Arbitrator was without or exceeded his or her jurisdiction...” D.C. Code§1-605.02(6) (2001 ed.).³

¹Barbera Franklin is the Arbitrator who issued the Supplemental Award in this matter.

²The reasons for AFGE’s opposition are outlined in detail in its document entitled, “Union’s Response to Petition for Review of Arbitration Award” (“Response”).

³Throughout this Opinion, all references to the D.C. Code refer to the 2001 edition.

The underlying grievance which forms the basis of the Arbitration Review Request is a class grievance which concerned the Union's allegation that OPM breached the parties' Memorandum of Agreement ("Agreement"). The Agreement was reached during negotiations concerning the impact and effects of the Agency's RIF. Pursuant to this Agreement, the Agency was obligated to assist displaced employees in seeking comparable employment in positions for which they qualified. (Jt. Exh. 2). The Arbitrator determined that OPM breached the Agreement by failing to exercise due diligence in seeking job placement for some of the grievants in the class. (Supplemental Award at pgs 1 and 7). As a result, she ordered that the parties reach an agreement concerning the appropriate remedy, and she retained jurisdiction to resolve any issues regarding the relief (Supplemental Award at p. 1). When the parties were unable to reach an agreement concerning the appropriate relief, the Arbitrator ordered a supplementary hearing⁴, and issued a Supplemental Award.⁵ Based on the testimony at the hearing, the Arbitrator fashioned a remedy and awarded relief in the following two categories: (1) six weeks⁶ backpay awarded to those employees where it was demonstrated that the Agency did not assist them in finding jobs, under circumstances where it appeared they were actively searching; and (2) up to two years⁷ backpay awarded to those employees where it was determined that they qualified for a position that was vacant during the time period that the RIF'd employees were unemployed.

⁴ At the supplemental hearing, the Union had the burden of proving that there were appropriate vacancies during the relevant time period and that some of the 30 affected employees were minimally qualified to fill those positions. The Employer was given the opportunity to raise mitigation issues. (See, Supplemental Award).

⁵In making this Supplemental Award, the Arbitrator stated that "to deny any monetary remedy to those former employees would be to frustrate the intention of the parties' negotiated agreement" to minimize the effect of the reduction in force[.] (Supplemental Award at p. 9). Therefore, "based on the language of the MOA, I conclude that the parties intended that violation of its provisions could give rise to monetary relief." (Supplemental Award at pgs. 9 and 10). "Further, I see nothing in the parties' collective bargaining agreement that prohibits such relief for a contract violation." (Supplemental Award at p. 10). Relying on John Wiley & Sons v. Livingston, the Arbitrator noted that "it is a truism that arbitrator's have wide latitude in formulating remedies so long as they are reasonably based in the parties' collective bargaining agreement. 376 U.S. 543 (1964); (Supplemental Award at p. 10). "Moreover, 'where it is contemplated that the arbitrator will determine remedies for contract violations that he finds, courts have no authority to disagree with his honest judgement in that respect.'" United Paperworkers International Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987); (Supplemental Award at p. 10).

⁶Throughout this Opinion, this category will be referred to as a six-week award.

⁷Throughout this Opinion, this category will be referred to as a two-year award.

OPM takes issue with the Arbitrator's Award. OPM asserts the Arbitrator violated the law because the amount awarded to employees, in some cases, exceeds congressionally mandated RIF calculations for severance pay pursuant to D.C. Code §1-624.09. As a second basis for review, OPM contends that the Arbitrator exceeded her authority and went beyond the scope of the Memorandum of Agreement in two ways. Specifically, OPM contends that the Arbitrator went beyond the scope of the Memorandum of Agreement by:

- (1) awarding a supplemental award to employees who were not minimally qualified for any vacant position during the relevant time period;
- (2) awarding more than one employee the monetary equivalent of back pay for a single vacant position for which they may have been qualified.

In response to OPM's first asserted basis for review, AFGE argues that the Arbitrator violated no law by awarding either six week or two year backpay relief to the grievants. Specifically, AFGE asserts that "the Agency's contention that the backpay awarded is severance pay, in violation of D.C. Code §1-624.09, is without support in the law or the facts." (Response at p. 3). Additionally, AFGE contends that the Arbitrator's Award "is the remedy for the Agency's blatant breach of its Agreement with the Union to seek positions for employees." (Response at p. 3). Furthermore, AFGE argues that the language contained in the parties' collective bargaining agreement placed no limitations on the Arbitrator's equitable powers.⁸ In support of its position, AFGE relied on the Board's decision in District of Columbia Health and Hospitals Public Benefit Corporation and Doctors Council of D.C. General Hospital, where the Board held that an Arbitrator does not exceed his authority by exercising his equitable powers, unless it is expressly limited by the parties' collective bargaining agreement. 47 DCR 7109, Slip Op. No. 629, PERB Case No. 99-A-03 (2000).

In response to OPM's second asserted basis for review, AFGE argues that "the Agency's contention that the Award is beyond the scope of the parties' agreement is merely a disagreement with the Arbitrator's Award." (Response at p. 4) In addition, AFGE asserts that " the Agency points to no collective bargaining provision, law or regulation, which limits the arbitrator's authority

⁸Specifically, AFGE argued that the Arbitrator had no limitations on the relief that could be granted, except that the relief could not predate the event giving rise to the grievance. Arbitrator Franklin's relief became effective on June 1, 2000, the date that employees were released from their positions. D.C. Code §1-624.09 outlines the criteria for granting severance pay to RIF'd employees; however, it places *no* limitations on an Arbitrator's authority to award relief for violating a collective bargaining agreement or a Memorandum of Agreement reached as a result of impact and effects bargaining concerning a RIF.

to design a remedy for the violation.”⁹ (R & R at p.4). In support of its argument, AFGE relies on District of Columbia Water and Sewer Authority and American Federation of Government Employees, Local 872, which held that “an arbitrator is accorded the full range of equitable powers to fashion and tailor a remedy.” 46 DCR 4039, Slip Op. No. 569, PERB Case Nos. 98-A-05 and 98-A-06 (1999). Finally, AFGE asserts that since OPM set forth no contractual provisions which limited the authority of the Arbitrator, its Arbitration Review Request should be denied.

As stated earlier, OPM requests that the Board grant its Petition to reverse the Arbitrator’s award on two grounds. Namely, OPM claims that the award is contrary to law. In addition, OPM claims that the Arbitrator exceeded her jurisdiction by awarding a Supplemental Monetary Award.

The Board has stated that “to set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the Arbitrator arrive at a different result.” MPD v. FOP/MPD Labor Committee, 47 DCR 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000).

After reviewing OPM’s “contrary to law” argument, the Board finds that OPM failed to cite any applicable law that has been violated. OPM points to D.C. Code §1-624.09, entitled “Severance pay”, and contends that the Arbitrator’s Award is contrary to the severance pay allowed to workers who are displaced as a result of a RIF. However, the Board notes that the Arbitrator never characterized her award in this matter as severance pay.¹⁰ (See, Request at p. 5). Instead, she characterized this monetary award as one that was being made pursuant to the parties’ Agreement to minimize the effect of the RIF. In view of the above, the Board does not find that D.C. Code §1-624.09 is applicable to the facts that are before us.¹¹ Furthermore, because we conclude that OPM failed to cite any specific law which mandates that the Arbitrator arrive at a different result, we cannot reverse the Arbitrator’s decision on this ground.

In response to OPM’s claim that the Arbitrator exceeded her authority by awarding relief that went beyond the scope of the parties’ collective bargaining agreement, the Board finds that this claim has no merit. The Board has 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 the evidentiary findings and conclusions on which the decision is based.” MPD v.

⁹ In the present case the parties were unable to agree on an appropriate remedy, therefore, the Arbitrator retained jurisdiction over the matter and fashioned a remedy that she deemed appropriate.

¹⁰The Memorandum of Agreement itself stated that one of its purposes was “to minimize the effect of the reduction in force.” (Jt. Exh. 2).

¹¹We believe that the Arbitrator’s remedy was not an attempt to provide severance pay, rather it was a remedy for OPM’s breach of the parties’ Memorandum of Agreement.

FOP/MPD Labor Committee, 47 DCR 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000). Moreover, the Board will not substitute its own interpretation or that of the Agency for that of the duly designated Arbitrator. Id.

The Memorandum of Agreement, which forms the basis of the parties' underlying grievance, was reached in the context of the parties' impact and effects bargaining concerning OPM's RIF. In the present case, as stated earlier, the Arbitrator determined that the Agency had an obligation under the Agreement to aggressively seek employment on behalf of displaced workers. The Arbitrator then found that the Agency did not meet its obligation under the Agreement and awarded the relief that she deemed appropriate under the circumstances. Because one of the stated purposes for the Agreement was to minimize the effects of the reduction in force, the Arbitrator determined that awarding this type of relief would also minimize the effects of the reduction-in-force. The Board has held that there is no limitation on an Arbitrator's equitable authority unless the power is limited by the parties' collective bargaining agreement. District of Columbia Health and Hospitals Public Benefit Corporation and Doctors Council of D.C. General Hospital 47 DCR 7109, Slip Op. No. 629, PERB Case No. 99-A-03 (2000). We find nothing in the parties' collective bargaining agreement (CBA) or Memorandum of Agreement which places any limitations on the type of relief that the Arbitrator could award if either party breached the agreement. Neither party cites any language in the parties' CBA which limits the Arbitrator's equitable powers. Since the parties bargained for the Arbitrator's interpretation of the Agreement, the Board will not substitute its own interpretation in place of the duly designated Arbitrator. As a result, we find no support for reversing the Arbitrator's decision on these grounds.

One of the tests that the Board has used when determining whether an Arbitrator has exceeded her jurisdiction and was without authority to render an award is "whether the Award draws its essence from the collective bargaining agreement." D.C. Public Schools v. AFSCME, District Council 20, 34 DCR 3610 at p. 5, Slip Op. No. 156, PERB Case No. 86-A-05 (1987); Also see, Dobbs, Inc. v. Local No. 1614, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 813 F. 2d 85 (6th Cir. 1987). In District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee, the Board expounded on what is meant by "deriving its essence from the terms of the collective bargaining agreement." 49 DCR 810, Slip Op. No. 669, PERB Case No. 01-A-02 (2002). In that case, we adopted the standard outlined in Cement Division, National Gypsum Co. v. United Steelworkers of America. See, Id. and 793 F.2d 759, 765 (1986). Under this standard, an arbitration award *fails* to derive its essence from a collective bargaining agreement when the: (1) award conflicts with the express terms of the agreement; (2) award imposes additional requirements that are not expressly provided in the agreement; (3) award is without rational support or cannot be rationally derived from the terms of the agreement, and (4) award is based on general considerations of fairness and equity, instead of the precise terms of the agreement. Id.

Applying the Cement Division standard to the facts in the present case, the Board finds that the Supplemental Award derives its essence from the parties' collective bargaining agreement. In

view of the above, we find that the Arbitrator did not exceed her authority by granting the Supplemental Award.

Pursuant to D.C. Code §1-605.02(6), the Board finds that the Arbitrator's conclusions and the Supplemental Award are based on a thorough analysis and cannot be said to be contrary to law. In the present case, OPM disagrees with the Arbitrator's findings and the relief granted.¹² This is not a sufficient basis for concluding that the Arbitrator has exceeded her authority. For the reasons discussed above, no statutory basis exists for setting aside the Award. Therefore, OPM's Request is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Petition for Review of the Arbitration Award is hereby denied.
2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

April 25, 2003

¹² We have held that a disagreement with the arbitrator's findings is not a sufficient basis for concluding that an Award is contrary to law or public policy or that the arbitrator exceeded his jurisdiction. Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee, 31 DCR 4159, Slip Op. No. 85, PERB Case No. 84-A-05 (1984).