

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of :)	
)	
University of the)	
District of Columbia,)	
)	PERB Case No. 87-A-09
Petitioner,)	Opinion No. 216
)	
and)	
)	
University of the)	
District of Columbia)	
Faculty Association/nea,)	
)	
Respondent.)	

DECISION AND ORDER

On July 7, 1987 the University of the District of Columbia (UDC) filed an Arbitration Review Request with the District of Columbia Public Employee Relations Board (Board) seeking review of an Arbitration Award issued on June 17, 1987. UDC contends that the Board has jurisdiction to review the Award because the Arbitrator exceeded his authority under the parties' collective bargaining agreement and the Award is contrary to law and public policy.

Specifically, UDC challenges the Arbitrator's conclusions that although UDC did not violate the parties' Master Agreement, by terminating the employment of one of its faculty members (Grievant) for falsifying his initial employment applications, it was still required to pay the Grievant a lump sum as severance pay. UDC argues that the Master Agreement, Article IX, I (6), provides that "the Arbitrator shall have no authority to add to, subtract from, or modify this agreement..." Accordingly, UDC urges that the Agreement did not grant the Arbitrator the authority to issue an award granting "severance pay" and that the Arbitrator's authority terminated upon a finding that UDC did not violate the Agreement.

The University of the District of Columbia Faculty Association (UDCFA) asserts in its response to the review request that the issue of severance pay was before the Arbitrator and that he did not, therefore, exceed his authority by reaching a decision which granted a lump sum payment to the Grievant. We agree with UDCFA that there is no basis for concluding that the Arbitrator exceeded the jurisdiction granted by the parties' Agreement.

Section 1-605.2(6) grants the Board the exclusive jurisdiction to consider appeals from grievance-arbitration awards, but limits review to cases in which the arbitrator was without or exceeded his or her jurisdiction; the award on its face is contrary to law and public policy; or the award was procured by fraud, collusion or other similar means. In concluding that the Arbitrator did not exceed the jurisdiction granted, the Board finds that one of the issues presented to the Arbitrator was whether the Grievant was entitled to severance pay as had been recommended by an ad hoc committee prior to the Grievant's termination. The ultimate decision of the Arbitrator, which considered the findings of the ad hoc committee, was within the permissible range of options presented to him by the parties. The failure of UDC to present arguments in the arbitration proceeding that the Arbitrator did not have the authority to grant the Grievant severance pay precludes it from raising this matter before the Board.

Moreover, the Board notes that it is well-settled that an arbitrator has authority to fashion an appropriate remedy. In United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 46 LRRM 2434 (1960) the Supreme Court stated the following:

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgement to bear in order to reach a fair solution of the problem. This is especially true when it comes to formulating remedies. There is a need for flexibility and meeting a wide variety of situations. (at p. 593)

The Board has also held that an arbitrator has a full range of equitable powers to fashion a remedy where the contract does not specifically limit this authority, as in the instant matter. (See, District of Columbia Metropolitan Police Department and Fraternal Order of Police, 31 DCR 4156, Opinion No. 118, PERB Case No. 84-A-04 (1984); see also, AFSCME, Council 20 and D.C. Department of Finance and Revenue, 31 DCR 4681, Opinion No. 118, PERB Case No. 85-A-03 (1985).

The Board is also not persuaded that the Award on its face is contrary to law and public policy. UDC contends that the Arbitrator's decision penalizes UDC for actions which it was required by law to take since on the basis of D.C. Code Section 1-617.1(b) UDC had to reappoint the Grievant in order to commence

adverse action proceedings.^{1/} The Arbitrator found, however, that UDC possessed the information which it needed to pursue an adverse action against the Grievant ten (10) months before doing so and yet it renewed his employment contract without first initiating adverse action proceedings. On this basis, the Arbitrator apparently concluded that some mitigation of the penalty was appropriate and thus ordered the payment of a portion of the Grievant's annual salary. As stated previously, such a result is the Arbitrator's prerogative. Moreover, UDC has made no reference to any statute, caselaw or regulation which would render the Arbitrator's Award in contravention to the law and public policy.

In conclusion, there has been no evidence presented to the Board that the Award, on its face, violated the law and public policy or that the Arbitrator exceeded his authority. Such a showing is a statutory prerequisite before the Board can consider granting a review of a grievance-arbitration award.

Based on all of the foregoing, the Arbitration Review Request is denied.

O R D E R

The Arbitration Review Request is denied.

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

March 27, 1989

^{1/} D.C. Code Section 1-617.1(b) provides that permanent non-probationary employees may only be removed for cause and in accordance with the adverse action procedures.