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

In the Matter of:)	
)	
Fraternal Order of Police/ Department of Corrections Labor Committee,)	
)	
Petitioner,)	PERB Case No. 96-A-04
and)	Opinion No. 471
)	
District of Columbia)	
Department of Corrections,)	
)	
Respondent.)	
)	

DECISION AND ORDER

The Fraternal Order of Police/Department of Corrections Labor Committee (FOP) seeks review of an arbitration award (Award) that sustained the suspension of Corporal Catherine Norton (Grievant), a correctional officer employed by the D.C. Department of Corrections (DOC). FOP contends that the Award is contrary to law and public policy. The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DOC, filed an Opposition to Arbitration Review Request contending that FOP presents no statutory basis for review and therefore the Request should be dismissed.

The Grievant had been suspended by DOC for inexcusable neglect of duty. ^{1/} A grievance ensued asserting that the penalty levied against the Grievant was unreasonable in view of mitigating factors and that the denial of union representation during the investigative/ disciplinary interview of the Grievant violated a provision in the parties' collective bargaining agreement. The Arbitrator found that the Grievant never made a request for union representation during her disciplinary interview, and accordingly

^{1/} The charges included failing to follow written and verbal instructions and leaving an assigned prisoner alone on several occasions, resulting in the escape of the prisoner. (Award at 4.)

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concluded that there was no denial of contractually required union representation. (Award at 6.) The Arbitrator further concluded that the Grievant had failed in the performance of a "core function" of correctional officers, i.e., the custody and control of prisoners, and found no basis for mitigating the penalty imposed by DOC. (Award at 7.)

Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-605.2(6), the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed only if 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 unlawful means" The Board has reviewed the Arbitrator's Award, the pleadings of the parties and applicable law, and concludes that the Request presents no statutory basis for review of the Award.

FOP's first ground for review --that the "[A]rbitrator failed to consider all the facts and circumstances of the case" in deciding not to mitigate the Grievant's 30-day suspension-- fails to meet any of our statutory criteria noted above. (ARR at 2.) It is well settled that disputes over the weight and the significance to be afforded the evidence is within the domain of the arbitrator and does not state a statutory basis for review. See, e.g., American Federation of State, County and Municipal Employees, D.C. Council 20, AFL-CIO and D.C. General Hospital, 37 DCR 6172, Slip Op. No. 253, PERB Case No. 90-A-04 (1990). ^{2/}

In its second ground for review, FOP contends that the Arbitrator "misinterpreted the letter and spirit of the Collective Bargaining Agreement between the Petitioner and the Respondent when he found that the Grievant's right to Union representation was not violated." (ARR at 2.) On numerous occasions we have made clear the fundamental doctrine that an arbitrator possesses the authority to determine whether a party to a collective bargaining agreement has complied with the agreement, which necessarily includes his

^{2/} Contrary to FOP's assertion, the Arbitrator stated that in finding no grounds for mitigating the penalty, he was "mindful of the Grievant's long standing and good service with the Employer". (Award at 7.) Our limited statutory jurisdiction to review arbitration awards does not accord us the authority to make an independent finding of fact necessary to determine the merits of this asserted ground for review. Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO and D.C. Department of Corrections, 41 DCR 1510, Slip Op. No. 296 at n. 6, PERB Case No. 87-A-11 (1992).

interpretation of the meaning of the applicable provision(s). See, e.g., D.C. Metropolitan Police Department and Fraternal Order of Police, MPD Labor Committee, ___ DCR _____, Slip Op. No. 394 at n. 2, PERB Case No. 94-A-04 (1991). FOP's disagreement with the Arbitrator's interpretation does not render the Award contrary to law and public policy. Teamsters, Local Union No. 1714 a/w IBTCWHA, AFL-CIO and D.C. Dep't of Corrections, 41 DCR 1753, Slip Op. 304, PERB Case No. 91-A-06 (1994). ^{3/}

While we recognize that the right to union representation is also statutory, we have held that "to the extent that the parties have negotiated and reduced statutory rights to contractual provisions, those rights are controlled by the contractual provisions when relief for breach of those provisions is sought through the contractual grievance-arbitration procedure." American Federation of Government Employees, Local 383, AFL-CIO and Dep't of Public Works, ___ DCR _____, Slip Op. No. 413, PERB Case 95-A-02 (1995). See, also, International Brotherhood of Police Officers, Local 446, AFL-CIO/CLC v. D.C. General Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992) and American Federation of Government Employees, Local Union No. 3721 v. D.C. Fire Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1992). ^{4/} ,

In view of the above, we can find no basis for FOP's contention that the Award is contrary to law and public policy, or that the Request otherwise presents a statutory ground under the

^{3/} This is the case "even if the arbitrator misconstrued the contract, for it is the arbitrator's interpretation for which the parties bargained." Teamsters Local Union No. 1714 a/w IBTCWHA, AFL-CIO and D.C. Dep't of Corrections, 41 DCR 1753, Slip Op. 304, PERB Case No. 91-A-06 (1994).

^{4/} Whatever statutory rights accorded bargaining unit employees under the CMPA, the interpretation of similar or parallel rights provided under their collective bargaining agreement are within the jurisdiction of the arbitrator. See, American Federation of Government Employees, Local 1975, AFL-CIO and D.C. Department of Public Works, Slip Op. No. 413, PERB Case No. 95-A-02 (1995). We have held that parties to a collective bargaining agreement may properly include in their negotiated agreement provisions which modify procedures or rights that may prevail under statute absent an agreement on the matter. See, D.C. Public Schools and Council of School Officers, Local 4, Slip Op. No. 416, PERB Case No. 95-A-03 (1995).

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CMPA to modify or set aside the Award. ^{5/}

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.
April 17, 1996

^{5/} FOP requested, pursuant to Board Rule 538.2, that the Board permit it to present a comprehensive brief in support of its arbitration review request. In accordance with Board Rule 538.2, the parties shall be provided an opportunity to file briefs "[i]f the Board finds that there may be grounds to modify or set aside the arbitrator's award... ." Finding no statutory grounds for setting aside or modifying the Award, FOP's request is denied.