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

_____)	
In the Matter of:)	
)	
D.C. Office of Administrative Hearings,)	
)	PERB Case No. 24-A-07
Petitioner)	
)	Opinion No. 1883
v.)	
)	
Federation of Administrative Law Judges/D.C.)	
)	
Respondent)	
_____)	

DECISION AND ORDER

I. Statement of the Case

On March 1, 2024, the D.C. Office of Administrative Hearings (OAH) filed a grievance arbitration review request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA), seeking review of an arbitration award (Award) dated February 9, 2024. The Award found, in part, that OAH violated its Collective Bargaining Agreement (CBA) with the Federation of Administrative Law Judges/D.C. (Union) by not publicizing to bargaining unit members a limit for the number of sabbaticals which would be approved for the year in question, and at a time which would be meaningful under the terms of the CBA. OAH seeks review on the basis that the Arbitrator exceeded his jurisdiction. On March 19, 2024, the Union filed an Opposition, asking the Board to deny the Request.

Upon consideration of the Arbitrator’s conclusions, applicable law, and the record presented by the parties, the Board concludes that the Arbitrator did not exceed his jurisdiction for the reasons stated herein. Therefore, OAH’s Request is hereby denied.

II. Arbitration Award

A. Background

The Arbitrator made the following factual findings. The Grievant has served as an Administrative Law Judge (ALJ) at OAH since July 2016.¹ On February 24, 2023, the Grievant applied for a sabbatical leave through an email sent to his supervisor, the Chief Administrator Law Judge (CALJ).² The Grievant requested a sabbatical leave for a “six-month (26-week) sabbatical next year, beginning May 13, 2024, and ending November 8, 2024.”³ The Grievant had until January 2024 to file that request under the terms of the CBA, but filed it considerably earlier to provide OAH with time to plan, and to provide himself with such planning as well.⁴

In an email dated March 17, 2023, the CALJ denied the Grievant’s sabbatical request.⁵ In doing so, the CALJ stated, “[h]aving carefully considered OAH’s current and projected case load, and the negative impact the absence of an ALJ for the period of six months will cause on agency operations, [the Grievant’s] request is denied.”⁶ The CALJ relied in part upon recent OAH Annual reports, including the charts which tracked case filings and back logs, in making the decision to deny the Grievant’s sabbatical request.⁷

The Sabbatical Leave Provision in the parties’ CBA is as follows:⁸

SABBATICAL LEAVE PROVISION

ARTICLE 18

SABBATICAL/EXTENDED LEAVE

It is the policy of OAH to allow ALJs to apply for an extended time away from work (up to six months or, as appropriate, an academic year), in a non-pay status, for community service, education, travel, or other outside interests. To be eligible for a sabbatical/extended leave, an ALJ must have both: 1) been employed with OAH for seven years, and 2) received a performance evaluation of Meets Expectations, or an equivalent rating, in every category for the rating period which immediately precedes the application for sabbatical/extended leave. An ALJ who receives a Does Not Meet Expectations, or an equivalent rating in any category is ineligible. After completion of the ALJ's seventh anniversary with OAH and

¹ Award at 3.

² Award at 3.

³ Award at 3.

⁴ Award at 3-4.

⁵ Award at 4.

⁶ Award at 4.

⁷ Award at 4.

⁸ Award at 2.

each successive five years after return from a sabbatical/extended leave, the ALJ may request up to six months of leave (or, as appropriate, an academic year) as sabbatical/extended leave.

Section 1 - Process

Application for sabbatical/ extended leave should be submitted to the CALJ no later than 120 days before the proposed leave is to commence. The Chief shall review each application and approve or disapprove the request within 30 days of the submission.

Section 2 - Supervisor's Authority

Sabbaticals/ extended leave may be taken for any purpose. It is in the sole discretion of the CALJ to set limits on the number of ALJs who shall be approved for a sabbatical in any one year based on criteria listed above as well as the operational needs of OAH. If an ALJ asks for the reason for the denial, the Chief must provide a written justification for the denial.

B. Arbitrator's Findings

The Arbitrator determined that the issues for decision were:⁹

1. Whether, in exercising discretion on granting or denying sabbatical leaves, the CBA requires the CALJ to publicize the number of sabbaticals to be approved in a given year?
2. Whether the CALJ's decision to deny the Grievant's sabbatical request was arbitrary, capricious, or taken in bad faith?

The Arbitrator sustained the grievance in part, and denied it in part, for the reasons below.

1. Specific Breach of CBA

The Union argued before the Arbitrator that the CALJ violated Article 18, Section 2 of the CBA by not stating how many sabbaticals were going to be permitted in the year in question.¹⁰ The Union argued, the fact that the CALJ has discretion to set the number of sabbaticals evinces the parties' intent that some requests will be granted; and that the parties were aware that the approval of at least some requests would call for proper planning.¹¹

The Arbitrator found that the CALJ's failure to publicize to bargaining unit members the number of sabbaticals to be permitted in the year in question violated Article 18 Section 2 of the

⁹ Award at 10-11.

¹⁰ Award at 12.

¹¹ Award at 12.

parties' CBA.¹² Based upon the Arbitrator's interpretation of the contract language, the Arbitrator determined that, "where the CALJ is going to impose limits on the number of sabbaticals which will be approved in a given year, the CALJ must publicize the number to bargaining unit members."¹³ The Arbitrator noted, however, that the contract language does not inhibit the CALJ's ability to make no sabbaticals available in a given year, subject to the Union's right to challenge the exercise of that discretion.¹⁴

2. Abuse of Discretion

The Union made the following arguments before the Arbitrator: (1) the CALJ acted in bad faith by failing to interact with the Grievant to find common ground on a sabbatical option that would be acceptable to the CALJ;¹⁵ (2) the finding that the District Government's Financial Officer made that there was sufficient funding to implement the current CBA does not correlate with the CALJ's decision to deny the Grievant's sabbatical request;¹⁶ (3) the decision of the CALJ to deny the sabbatical request, which indicated a need to keep each ALJ position filled, is contradicted by the fact that, from January 2023 to October 2023, the D.C. Government imposed a hiring freeze which prevented filling a vacant ALJ position after [another ALJ] resigned;¹⁷ and (4) the CALJ's decision is not grounded in any rational basis. The reliance on case filings and back logs to deny the Grievant's sabbatical request is belied by proper assessment of the statistics. The CALJ's position in budget hearings for FY 2024 belies the CALJ's position that there was a major concern about the number of ALJs in the employee complement.¹⁸

The Arbitrator found that the CALJ's denial of the Grievant's sabbatical request was not arbitrary and capricious; and was not driven by bad faith.¹⁹ The Arbitrator found that the CALJ fulfilled her obligations under Article 18, Section 2 of the CBA by timely responding to the sabbatical request within 30 days.²⁰ The Arbitrator further noted that, in the CBA, the parties vested the CALJ with the discretion to grant or deny sabbaticals based upon operational needs and eligibility requirements.²¹ The Arbitrator found the fact that the Chief Financial Officer assessed that there was sufficient funding to implement the CBA does not remove the CALJ's discretion under Article 18.²² The Arbitrator also found that the CALJ's CBA vested discretion to grant or

¹² Award at 12. However, the Arbitrator noted that this violation does not fairly translate to a finding that the Grievant's request for a sabbatical leave must be granted on this basis alone. Award at 12.

¹³ Award at 12.

¹⁴ Award at 12.

¹⁵ Award at 12.

¹⁶ Award at 13.

¹⁷ Award at 13.

¹⁸ Award at 14.

¹⁹ Award at 20.

²⁰ Award at 12-13.

²¹ Award at 13.

²² Award at 13.

deny sabbatical requests, based upon operational needs and eligibility requirements, cannot be contradicted by a mandatory hiring freeze that all agencies must abide by.²³ Finally, the Arbitrator determined there was sufficient evidence to find that the CALJ's decision was supported by a rational basis.²⁴

III. Discussion

Section 1-605.02(6) of the D.C. Official Code permits the Board to modify, set aside, or remand a grievance arbitration award in only three narrow circumstances: (1) if an 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.²⁵ OAH seeks review on the basis that the Arbitrator exceeded his jurisdiction in deciding this matter.²⁶

OAH argues that the Arbitrator added a provision to the CBA by ruling that the CALJ has a duty to publicize the number of bargaining unit sabbaticals that would be approved for the year.²⁷ OAH argues that the CBA does not assign any duties to the CALJ regarding sabbaticals outside of the application process.²⁸

OAH's argument is not persuasive. An arbitrator does not exceed his jurisdiction if the award draws its essence from the contract and if the arbitrator is arguably construing the contract.²⁹ The relevant questions in this analysis are whether the arbitrator acted outside their authority by resolving a dispute not committed to arbitration, and whether the arbitrator was arguably construing or applying the contract in resolving legal and factual disputes.³⁰

In the instant case, the Arbitrator found that the CALJ has complete discretion over the number of sabbaticals approved in a given year, but "where the CALJ is going to impose limits on the number of sabbaticals which will be approved in a given year, the CALJ must publicize the number to bargaining unit members."³¹ In reaching this finding, the Arbitrator noted that "in negotiating the sabbatical provision, the parties did not intend that all sabbatical applications would

²³ Award at 14.

²⁴ Award at 19. The Union does not contest the Arbitrator's findings or decision.

²⁵ D.C. Official Code § 1-605.02(6).

²⁶ Request at 4. OAH's challenge is limited to the Arbitrator's finding that OAH violated the CBA by not publicizing to bargaining unit members a limit for the number of sabbaticals which would be approved for the year.

²⁷ Request at 5.

²⁸ Request at 5.

²⁹ *DOC v. FOP/DOC Labor Comm.*, 59 D.C. Reg. 12702, Slip Op. No. 1326 at 5, PERB Case No. 10-A-14 (2012).

³⁰ *DCPS v. WTU*, 67 D.C. Reg. 4654, Slip Op. No. 1740 at 7, PERB Case No. 20-A-04 (2020) (citing to *Mich. Family Resources, Inc. v. Serv. Emp' Int'l Union, Local 517M*, 475 F.3d 746, 753 (2007)).

³¹ Award at 12.

be stamped dead on arrival. The manner in which the sabbatical language is written suggests, in fact, that there will be occasions where a sabbatical will be granted.”³²

The Arbitrator’s finding was not an addition to the CBA, as OAH asserts, but instead an interpretation of the parties’ intent in negotiating the sabbatical provision. By submitting a matter to arbitration, the parties agree to be bound by the arbitrator’s decision which necessarily includes the arbitrator’s interpretation of the contract and related rules and/or regulations as well as his evidentiary findings and conclusions upon which the decision is based.³³ A party’s disagreement with an arbitrator’s interpretation of a provision in the parties’ collective bargaining agreement does not mean that the arbitrator exceeded his jurisdiction.³⁴ The Board finds that OAH has not met the standard to find that the Arbitrator exceeded his jurisdiction.

Based upon the foregoing, the Board finds no basis for turning aside the Arbitrator’s Award. Therefore, the Board denies the Request in this matter.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Review Request is denied; and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

August 20, 2024

Washington, D.C.

³² Award at 19-20.

³³ See *MPD v. FOP/DOC Labor Comm.*, 67 D.C. Reg. 9258, Slip Op. No. 1731 at 6, PERB Case No. 20-A-01 (2019); *MPD v. FOP/DOC Labor Comm.*, 60 D.C. Reg. 552, Slip Op. No. 1341 at 4, PERB Case No. 11-A-10 (2013).

³⁴ See *D.C. Dept. Pub. Works v. AFSCME Local 2091*, Slip Op. 194 at 3, PERB Case No. 87-A-08 (1988).

APPEAL RIGHTS

A final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.