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Government of the District of Columbia

Public Employee Relations Board

_____)	
In the Matter of:)	
)	
District of Columbia Public Schools,)	
)	PERB Case No. 13-A-09
Petitioner,)	
)	
v.)	
)	Opinion No. 1422
Council of School Officers, Local 4, American)	
Federation of School Administrators, AFL-CIO)	
(on behalf of Deborah H. Williams),)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

This matter is before the Board upon a request of the District of Columbia Public Schools ("DCPS" or "Petitioner") to review an arbitration award ("Award") by Arbitrator Joseph M. Sharnoff ("Arbitrator") in favor of the Council of School Officers Local 4, American Federation of School Administrators, AFL-CIO ("Union" or "Respondent").

After holding hearings, the Arbitrator found the following pertinent facts: DCPS hired Deborah H. Williams ("Williams" or "Grievant") as a teacher at the Sharpe Health School for the 2005-2006 school year. DCPS appointed the Grievant principal at the Sharpe Health School at the start of the 2007-2008 school year. (Award at p. 2). She held that position in May 2010 when the chancellor of DCPS sent her a "Notice of Non-Reappointment as Principal for the 2010-2011 School Year." The notice stated, "The action is effective at the close of business on June 25, 2010." The notice advised the Grievant that DCPS would honor any rights that she might have to revert to her highest prior permanent level of employment if she provided written notification of her intent to exercise those rights by May 28, 2010. (Award at pp. 4, 14-15). The effective date of the non-reappointment did not arrive before the chancellor issued to Williams a notice of termination dated June 18, 2010. The Union filed a grievance on behalf of Williams "in protest of her termination as without just cause under the Parties' CBA." (Award at p. 16).

The Arbitrator issued the following Award:

The grievance is sustained. The District of Columbia Public Schools is directed to reinstate the Grievant, Deborah Hall Williams to her former, or fully equivalent position as a Principal in the DCPS school system and make her whole for all losses, including back pay and seniority, under the CBA, less any appropriate set offs. The Arbitrator hereby retains jurisdiction for the limited purpose of resolving any disputes concerning the remedy only.

(Award at p. 26).

DCPS filed an arbitration review request ("Request") contending that the Award should be modified or reversed pursuant to D.C. Code § 1-605.02(6) because the Award is contrary to law and public policy. In particular, DCPS contends that the Award is contrary to title 5 of the D.C. Municipal Regulations ("DCMR"). DCPS contends that under those regulations "[t]he retention and reappointment of a principal is at the sole discretion of the Chancellor of DCPS." (Request ¶7). DCPS further alleges:

8. Pursuant to this provision all principals with DCPS receive a non-reappointment or a reappointment letter at the end of their term. In accordance, Ms. Williams received a non-reappointment letter at the end of her term as principal of Sharpe Health School.

9. Ms. Williams did not grieve or challenge the issuance of her non-reappointment letter. Nor is there any evidence that the Chancellor rescinded her decision to non-reappoint Ms. Williams.

10. Therefore, the Chancellor's decision to non-reappoint Ms. Williams remains, and the Arbitrator's award ordering reinstatement of Ms. Williams to the position of Principal is contrary to law.

(Request ¶¶ 8-10).

At the parties' request the Board directed the parties to file briefs pursuant to Board Rule 538.2. The Board issued the following order:

The Board requests the parties to brief fully the issue of whether the Award's directive that the Grievant be reinstated "to her former, or fully equivalent position as a Principal in the DCPS school system" is contrary to title 5 of the DCMR and subject to being modified or set aside pursuant to section 1-605.02(6) of the D.C. Code. The findings of fact of the Arbitrator, the trier of fact, are conclusive. No recitation of the facts is needed.

D.C. Pub. Schs. v. Council of Sch. Officers, Local 4 (on behalf of Williams), 60 D.C. Reg. 12075, Slip Op. No. 1402 at p. 4, PERB Case No. 13-A-09 (2013).

The parties filed their briefs concurrently, and shortly thereafter the Petitioner moved for leave to file supplemental authority, arguing that the recently decided case of *Washington Teachers' Union Local 6 v. D.C. Public Schools*, Slip Op. No. 1414, PERB Case No. 05-U-07 (Sept. 10, 2013), was analogous. The Respondent filed an opposition to the Petitioner's motion in which it contended that the case was not analogous.

II. Discussion

Despite the Board's instruction in its order, the Respondent devotes most of its brief to a recitation of the facts. More pertinently, however, the Respondent argues:

At no point during [the] three hearing days, did DCPS argue, or provide any testimonial or documentary evidence in support of their argument that its previous non-reappointment decision somehow still stands, despite the fact that DCPS subsequently issued Ms. Williams a termination letter. Indeed, during the underlying arbitration hearing DCPS focused exclusively on the issue of Ms. Williams' termination and sought to demonstrate that just cause existed to justify its action. . . .

[B]ecause DCPS did not raise this argument through any witness or documentary evidence presented at the arbitration hearing, it failed to provide Ms. Williams an opportunity to address this argument. As a result, DCPS has waived its ability to now suggest that the non-reappointment decision can be used to avoid the Award issued by the Arbitrator in this case.

(Respondent's Brief at pp. 13-14).

The Petitioner presents the non-reappointment argument in its brief, taking the position that "[t]he Arbitrator erred by reinstating Ms. Williams to the position of principal given that she was not reappointed as a principal by the Chancellor prior to her termination from the Agency." (Petitioner's Brief at p. 1). The Petitioner did not assert in its brief that it had presented this argument to the Arbitrator. Nor did the Petitioner dispute in its supplemental filing the Respondent's contention that the Petitioner had waived the argument.

The Award makes no reference to such an argument. The Arbitrator could not be expected to have surmised that this was DCPS's position regarding his ability to reinstate Ms. Williams as a principal. The termination letter issued to Ms. Williams stated that it "serves as official notice that you will be terminated from your position as a Principal effective Monday, July 5, 2010." (Petitioner's Brief, Attachment 2). Two things in that sentence are noteworthy. First, it terminates the Grievant from her position as a *principal*, not from a position at her highest prior permanent level of employment. Thus, the Arbitrator understandably stated the

issue as follows: "Was the decision of the District of Columbia Public Schools to terminate the Grievant, Deborah H. Williams from her position of Principal at the Sharp Health School for just cause under the Party's Agreement, at Article X.A.3 and, if not, what is the appropriate remedy?" (Award at p. 2). Second, the effective date of Ms. Williams's termination as a principal is July 5, 2010. That date is after the non-reappointment was to become effective on June 25, 2010. If the non-reappointment remained effective, Ms. Williams would have had no position as principal on July 5, 2010. The Arbitrator found "that the termination letter issued to the Grievant by the DCPS was intended to, and did, have the effect of making null and void the previously issued Notice of Non-Reappointment." (Award at p. 26)

DCPS is taking a new position in contending that Ms. Williams was not re-appointed as principal and was subsequently terminated, not from that position, but from whatever position she might revert to subsequently. This was not DCPS's position at the time the termination, and it was not DCPS's position at the time of the arbitration. DCPS's argument that, in view of the non-reappointment, the DCMR precluded the Arbitrator from reinstating Ms. Williams as a principal is being raised for the first time in this arbitration review. An argument may not be raised for the first time in an arbitration review request. *AFGE Local 3721 (on behalf of Chasin) v. D.C. Fire & Emergency Med. Servs. Dep't*, 59 D.C. Reg. 7288, Slip Op. No. 1251 at p. 8, PERB Case No. 10-A-13 (2012).

Therefore, the Petitioner's arbitration review request is denied. In light of our disposition of this case, Petitioner's motion for leave to file supplemental authority is moot.

ORDER

It is hereby ordered that:

1. The Award is sustained. Therefore, the Arbitration Review Request of the D.C. Public Schools is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

September 26, 2013

CERTIFICATE OF SERVICE


This is to certify that the attached Decision and Order in PERB Case No. 13-A-09 was transmitted via File & ServeXpress to the following parties on this the 27th day of September, 2013.

Dennis J. Jackson, Esq.
D.C. Office of Labor Relations and
Collective Bargaining
441 Fourth Street, N.W. Suite 820 North
Washington, D.C. 20001

VIA FILE & SERVEXPRESS

Mark J. Murphy
Mooney, Green, Saidon, Murphy & Welch, P.C.
1920 L Street NW, suite 400
Washington, D.C. 20036

VIA FILE & SERVEXPRESS


David McFadden
Attorney-Advisor