GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
District of Columbia Housing Authority,	
Petitioner,	**PERB Case No. 99-A-08**
	Opinion No. 600
and	
Bessie Newell,	
Respondent.	

DECISION AND ORDER

On June 7, 1999, the District of Columbia Housing Authority (DCHA or Petitioner) filed an Arbitration Review Request. DCHA seeks review of an arbitration award (Award) reinstating a bargaining unit employee (Grievant or Respondent)[1]/ who had been terminated for cause. DCHA asserts that grounds exist for finding that the Arbitrator exceeded her jurisdiction and/or the Award is contrary to law and public policy. The Respondent filed an Opposition to the Arbitration Review Request, denying that DCHA has presented any statutory grounds for review.

The issue before the Board is whether "the arbitrator was without, or exceeded, [ ] her jurisdiction" or whether "the award on its face is contrary to law and public policy... ." D.C. Code Sec. 1-605.2(6). The Board concludes that DCHA has not established a statutory basis for our review.

DCHA terminated the Grievant, a contract compliance

1/ The grievance was filed by the American Federation of Government Employees, Local 2725 (AFGE), on behalf of the Grievant. Under the collective bargaining agreement between DCHA and AFGE, bargaining unit employees are entitled to have private counsel, in lieu of union representation, represent them in grievance/arbitration proceedings. In the instant matter, the Grievant elected to have private counsel. Hence, she is the named Respondent in this Arbitration Review Request.

specialist, for (1) incompetency and (2) inefficiency. The Arbitrator found that the record established both causes for disciplinary action; however, the Arbitrator concluded that the penalty was neither progressive nor corrective, as provided under the collective bargaining agreement (CBA). Therefore, she reduced the termination to a four-month suspension without pay and reinstated the grievant.

DCHA asserts that the parties' collective bargaining agreement (CBA) permits DCHA to: (1) terminate the grievant for the infractions; and (2) determine "the severity of the disciplinary action" based upon "the nature and gravity of the infractions and their relations to the employee's assigned duties." (ARR at 6.) The Arbitrator, found that DCHA had sustained its burden of proof with respect to the causes for discipline. However, she reduced the penalty from termination to a four-month suspension. Therefore, DCHA contends that the Arbitrator exceeded her jurisdiction and the Award is contrary to law and public policy.

Notwithstanding an arbitrator's finding of employee misconduct, we have held that "an arbitrator does not exceed his authority by exercising his equitable powers (unless it is expressly restricted by the parties' contract) to decide what, if any, mitigating factors warrant a lesser discipline than that imposed." D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 97-A-04 (1992). Here, the Arbitrator determined that discharge was a permissible penalty under the table of appropriate penalties for a first offense. However, the Arbitrator concluded that there were mitigating factors that warranted lessening the penalty. (Award at 20.) However, we find.nothing in the CBA restricts the Arbitrator's authority to determine the appropriate penalty.

The Board has held that an arbitrator possesses the jurisdictional authority to interpret the CBA to determine whether or not an agency has complied with it. Metropolitan Police Department and FOP/MPD Labor Committee, 43 DCR 5601, Slip Op. No. 460, PERB Case No. 96-A-03 (1996). This authority includes the power to interpret the meaning of applicable contractual provisions contained in the CBA. Article 10, Section C, (2) and (3) provide that disciplinary action should be: (1) "corrective and not punitive" and (2) "progressive in severity". (Award at 3.) The Arbitrator's decision to reduce the termination to a four-month suspension turned on her interpretation of these CBA provisions. The Arbitrator concluded that terminating the Grievant under the circumstances did not comply with these contractual provisions. (Award at 20-21.)

Finally, DCHA asserts that the Receiver has been accorded the "[a]uthority to establish personnel policies [...]."[2]/ DCHA argues that the Receiver, in accordance with the powers granted him, determined that the grievant's performance infractions seriously jeopardized and impaired DCHA's mission. Therefore, DCHA asserts, it was exercising its personnel authority by determining that based on the infractions found, the Grievant should be terminated.

DCHA acknowledges that the Receiver is not authorized to "abrogate present collective bargaining agreements." (ARR at 7.) As discussed previously, the Arbitrator's conclusion that the Grievant's termination was not appropriate under the circumstances turned on her interpretation of a provision of the CBA which provided that disciplinary action should be "progressive" and "corrective and not punitive." The Arbitrator's interpretation of the meaning of this CBA provision does not exceed her authority to determine DCHA's compliance with the CBA.

Whatever powers the Receiver may have, the interpretation of the parties' rights under the CBA are within the jurisdictional authority of the Arbitrator. DCHA's disagreement with the Arbitrator's interpretation does not render the Award contrary to law and public policy. See, e.g., Teamsters Local Union 1714 a\w IBTCWHA, AFL-CIO and Dept of Corrections, 41 DCR 1753, Slip Op. 304, PERB Case No. 95-A-02 (1994). By agreeing to arbitrate their dispute, DCHA and the Respondent/Grievant agreed to be bound by the Arbitrator's interpretation of the meaning of the CBA provisions at issue. University of the District of Columbia Faculty Association\NEA and University of the District of Columbia, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).

Given the authority of the Arbitrator, DCHA's Request presents no basis for finding that the Arbitrator exceeded her authority or that the Award is, on its face, contrary to law and public policy. For the reasons discussed, no statutory basis exists for setting aside the Award; the Request is therefore denied.

---

[2]/ Pearson, et al. v. Kelly, et al., CA-14030-92 (D.C. Super. Ct., J. Graae)(May 19, 1995).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Review Request is denied.

2. Pursuant to Board Rule 559.1, this Order is final upon issuance.

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

September 30, 1999

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-A-08 was transmitted via Fax and/or U.S. Mail to the following parties on this the 30th day of September, 1999.

Jesse James, Jr., Esq. — U.S. MAIL
P.O. Box 10459
Burke, VA 22009

Ralph C. Conte, Esq. — U.S. MAIL
Assistant General Counsel
D.C. Housing Authority
1133 North Capitol Street, N.W.
Washington, D.C., 20002

Courtesy Copies

Bessie Newell — U.S. MAIL
3410 South Dakota Ave., N.W.
Washington, D.C. 20018

Eric Bunn — U.S. MAIL
President
American Federation of
Government Employees, Local 2725
P.O. Box 1740
Washington, D.C. 20013

Sheryl Johnson, Esq. — U.S. MAIL
General Counsel
D.C. Housing Authority
1133 North Capitol Street, N.W.
Washington, D.C., 20002

David Gilmore — U.S. MAIL
Receiver
D.C. Housing Authority
1133 North Capitol Street, N.E.
Washington, D.C. 20002

Margery Gootnick — U.S. MAIL
Arbitrator
46 Knollwood Drive
Rochester, NY 14618

Sheryl Harrington
Secretary/Receptionist