

**Notice:** This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
American Federation of Government	)	
Employees, Local 872 (on behalf of	)	
Christopher Hawthorne),	)	
	)	PERB Case No. 03-A-05
Petitioner,	)	
	)	Opinion No. 727
and	)	
	)	
District of Columbia Water and	)	
Sewer Authority,	)	
	)	
Respondent.	)	
	)	

**DECISION AND ORDER**

On August 20, 2003, the American Federation of Government Employees, Local 872 ("AFGE"), filed an Arbitration Review Request ("Request"). AFGE seeks review of an arbitration award ("Award") which "allowed the [District of Columbia Water and Sewer Authority] to impose a 15 day suspension on the Union President, Mr. Hawthorne." (Request at p. 2). AFGE contends that the: (1) the arbitrator was without authority to grant the Award and (2) Award on its face is contrary to law and public policy. (Request at pgs. 2-3). The District of Columbia Water and Sewer Authority ("WASA") opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy" or whether "the arbitrator was without or exceeded his or her jurisdiction . . ." D.C. Code § 1-605.02(6). Upon consideration of the Request, we find that AFGE has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, AFGE's request for review is denied.

WASA imposed a thirty (30) day suspension on the Grievant (Christopher Hawthorne, President of Local 872) for insubordination. AFGE filed for arbitration on behalf of Mr. Hawthorne. In a decision issued on August 1, 2003, the Arbitrator determined that WASA had sufficient cause to take adverse action against the Grievant. However, the Arbitrator found that WASA violated Article 57, Section D of the parties' master agreement when it failed to initiate the "Notice of Proposed Disciplinary Action" within the 45-workday limit. (Award at p. 9). As a result, the Arbitrator determined that the thirty (30) day suspension was inappropriate. Therefore, the Arbitrator

reduced the suspension to fifteen (15) days. (Award at p. 9).

AFGE takes issue with the Arbitrator's Award. AFGE asserts that the Arbitrator exceeded his authority by allowing the agency to impose a fifteen (15) day suspension. Specifically, AFGE claims that the Arbitrator rendered an award that: (1) conflicts with the express terms of the parties' master agreement and (2) fails to derive its essence from the agreement.

In support of its argument, AFGE cites Article 57, Section D,<sup>1</sup> of the parties' master agreement which provides in pertinent part as follows:

**No corrective or adverse action shall be commenced more than 45 workdays (not including Saturdays, Sundays or legal holidays) after the date that the Authority knew or should have known the act or occurrence allegedly constituting cause. (Emphasis added.)**

AFGE asserts that the plain language of the above-referenced provision of the parties' master agreement, makes it clear that no disciplinary action can be commenced after 45 workdays. Also, AFGE argues that in the present case, the Arbitrator found that the "Notice of Proposed Disciplinary Action" was untimely. Nevertheless, Arbitrator Applewhite concluded that WASA had cause to take adverse action against the Grievant. As a result, the Arbitrator still allowed WASA to impose a 15 day suspension on the Union President, Mr. Hawthorne. AFGE contends that "such an award flies in the face of the collective bargaining agreement under Article 58."<sup>2</sup> (Request at p. 2). In view of the above, AFGE asserts that the Arbitrator "acted outside the scope of his power by modifying the penalties and time frame that were bargained for under the collective bargaining agreement." (Request at p. 2). In addition, AFGE claims that the award fails to derive its essence from the agreement.

In the present case, the Arbitrator reasoned that the grievance before him involved the interpretation of Article 57, Section D of the parties' master agreement. (See, Award at p. 8). As a result, we believe that one of AFGE's grounds for review only involves a disagreement with the Arbitrator's interpretation of Article 57, Section D of the parties' master agreement. Moreover, AFGE merely requests that we adopt its interpretation of the above-referenced provision of the

---

<sup>1</sup>In its Arbitration Review Request, AFGE cites Article 58 of the parties' master agreement. However, Article 58 only contains general information concerning the grievance and arbitration procedures. The language that AFGE refers to concerning the time frame for proposing disciplinary action is actually contained in Article 57, Section D of the master agreement. In view of the above, we assume that AFGE's reference to Article 58 is a typographical error and that they intended to refer to Article 57, Section D.

<sup>2</sup>See footnote 1.

master agreement.

Based on the above and the Board's statutory basis for reviewing arbitration awards, AFGE contends that the Arbitrator exceeded his authority by modifying "the time frame for meeting out discipline under the collective bargaining agreement." (Request at p. 3). We disagree.

We have held that "[b]y agreeing to submit the settlement of [a] grievance to arbitration, it [is] the Arbitrator's interpretation, not the Board's, that the parties have bargained for." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 37 DCR 5666, Slip Op. No. 248 at pgs. 3-4, PERB Case No. 90-A-02 (1990). Moreover, "[t]he Board will not substitute its own interpretation or that of the [petitioner] for that of the duly designated Arbitrator." District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union No. 246, 34 DCR 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987).

In addition, we have held that an Arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provisions." D.C. Dept. of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194 at p. 2, PERB Case No. 87-A-08 (1988). Furthermore, we have determined that an Arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement.<sup>3</sup> See, D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). In the present case, AFGE does not cite any provision of the parties' master agreement which limits the Arbitrator's equitable power. Therefore, once the Arbitrator determined that WASA had cause for taking disciplinary action against the Grievant, he also had authority to reduce the suspension due to WASA's failure to comply with procedural rights guaranteed to the Grievant by the master agreement.<sup>4</sup>

As a second basis for review, AFGE asserts that the Arbitrator's Award is contrary to law and public policy. AFGE points to D.C. Code § 1-617.04 (a)(1) (2001 ed.) and contends that the award is contrary to this code provision. Specifically, AFGE claims that "since Mr. Hawthorne was acting in his capacity as the Union steward and engaging in protected activity, he [could not] be disciplined for insubordination. [As a result, AFGE asserts that] an award that allows discipline against a Union steward for exercising his right to engage in concerted activity is contrary to law." (Request at p. 3). The Arbitrator considered AFGE's argument and noted that it is common for union grievance representatives to be given special privileges and immunities in the performance of their duties. However, he observed that this immunity is not unlimited. For example, he opined that both sides have a duty to maintain the integrity of the agreement at all times. In addition, he noted that Article 5-B of the parties' master agreement states that "all parties shall conduct such meetings with appropriate professional courtesy and decorum." In the present case, he concluded that "clearly,

---

<sup>3</sup>We note, that if the parties' collective bargaining agreement limits the arbitrator's equitable power, that limitation would be enforced.

<sup>4</sup>The Arbitrator concluded that the "Notice of Proposed Disciplinary Action" was not delivered to the Grievant until 48 days after the incident. (Award at p. 9).

things got out of hand and there is also no doubt that the Grievant knew of the consequences of his behavior." (Award at p.8). Specifically, he noted that the Grievant's prior disciplinary action for the same offense, insubordination, would indicate his familiarity with the issue. Furthermore, the Arbitrator found that, as Union President, the Grievant was all the more responsible for knowing the consequences involved and setting an example. The Arbitrator concluded that in a case where there was no immediate threat to the safety of persons or property, the rule of thumb to "obey now and grieve later" applies. (Award at p. 8). In view of the above, the Arbitrator found that WASA: (1) did not retaliate against the Grievant and (2) had cause for taking adverse action against the Grievant.

In the present case, the Arbitrator considered AFGE's argument. However, he concluded that WASA's action did not amount to retaliation. In light of the above, we believe that AFGE's second claim involves only a disagreement with the Arbitrator's findings and conclusions. We have held that a "disagreement with the Arbitrator's interpretation . . . does not render the award contrary to law and public policy." AFGE, Local 1975 and Dept. of Public Works, 48 DCR 10955, Slip Op. No 413 at p. 3, PERB Case No. 95-A-02 (2001). To set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the Arbitrator arrive at a different result. See, AFGE, Local 631 and Dept. of Public Works, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1998). Also, we have found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." University of the District of Columbia and University of the District of Columbia Faculty Association, 39 DCR 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992).

As noted above, we find that AFGE's second claim involves only a disagreement with the Arbitrator's findings and conclusions. This is not a sufficient basis for concluding that the: (1) Arbitrator has exceeded his authority or (2) Award is contrary to law or public policy.

We find that the Arbitrator's conclusion is based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. For the reasons discussed, no statutory basis exist for setting aside the Award; the Request is therefore, denied.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

- (1) The Arbitration Review Request 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.

November 18, 2003

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 03-A-05 was transmitted via Fax and U.S. Mail to the following parties on this the 18<sup>th</sup> day of November 2003.

E. Lindsey Maxwell, II, Esq.  
Beins, Axelrod, Kraft, Gleason  
& Gibson, P.C.  
1717 Massachusetts Avenue, N.W.  
Suite 704  
Washington, D.C. 20036

**FAX & U.S. MAIL**

Carol Mason-Loubon  
Labor Relations Specialist  
D.C. Water and Sewer Authority  
5000 Overlook, S.W.  
3<sup>rd</sup> Floor  
Washington, D.C. 20032

**FAX & U.S. MAIL**

**Courtesy Copy:**

Christopher Hawthorne, President  
AFGE, Local 872  
807 Tewkesbury Place, N.W.  
Washington, D.C. 20012

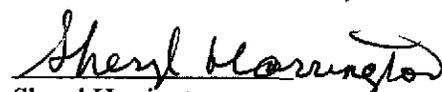
**U.S. MAIL**

Stephen Cook  
Labor Relations Manager  
D.C. Water and Sewer Authority  
5000 Overlook, S.W.  
3<sup>rd</sup> Floor  
Washington, D.C. 20032

**U.S. MAIL**

Leon B. Applewhaite  
Arbitrator  
1110 Fidler Lane  
Silver Spring, MD 20910

**U.S. MAIL**

  
Sheryl Harrington  
Secretary