GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,	
Petitioner,	PERB Case No. 90-A-09 Opinion No. 279
and	
District of Columbia Public Schools,	
Respondent.	

DECISION AND ORDER

On June 20, 1990, Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters), filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitration award (Award) issued on June 4, 1990. The Arbitrator denied a grievance filed by the Teamsters on behalf of Oswald Inge (Grievant), a bus driver and employee of the District of Columbia Public Schools (DCPS). The grievance concerned DCPS' decision to discharge Grievant for allegedly violating the Superintendent's Directives 205.1 and 662.13, when pursuant to a drug-screening procedure conducted as part of an annual physical examination, the Grievant tested positive for cocaine. The Arbitrator stated the issue presented as follows: "Whether the Board of Education had 'just cause' to discharge [the grievant] solely because he tested positive for cocaine usage during an annual physical examination." (Award at 2.) After rejecting the grievant's testimony as not credible, and accepting the testimony of the toxicologist medical witness as to the circumstances and procedures of the drug test in question (id. at 5,6), the Arbitrator rejected the grievance, concluding "that the Grievant was disciplined for just and proper cause." (Id. at 9-10.)

The Teamsters contend that the Award is contrary to the public policy set forth in the CMPA, Opinions of the D.C. Court of Appeals, and the rules and regulations of agencies of the District of Columbia in "conclu[ding] that an employee can be discharged solely because he tested positive for cocaine during an annual physical examination, without any evidence of impact on

the job performance[.]" (Arb. Rev. Req. at 2.) The Teamsters further assert "that the [A]ward should be set aside because the Board of Education unilaterally imposed drug testing without negotiating on either the decision to impose testing or the impact of the testing procedures on the employees." (Arb. Rev. Req. at 2.) DCPS filed an Opposition to Arbitration Review Request on July 10, 1990.

Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 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 award on its face is contrary to law and public policy...." The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties, the applicable law and concludes for the reasons that follow that no statutory basis for review has been shown and therefore we deny the request to review the Award.

The nub of the Teamsters' first objection to the Award is that it is contrary to the governing statute and, inter alia, Board of Education Regulations and Superintendent's Directives 662.13 and 205.1 which do not prohibit discharge "solely because of a positive test for cocaine, without any evidence of impact on job performance...." (Arb. Rev. Req. at 8.) The short answer to this claim is found in Superintendent's Directive 205.1 itself. That Directive, which deals with drug testing, provides in paragraph III.N. the following:

> "N. When warranted, disciplinary action will be imposed as follows with respect to individuals already employed by D.C. Public Schools:
>
> "1. Positive test for marijuana or alcohol:
>
> * * *
>
> "2. Positive test for other drugs:
>
> "a. First occasion - immediate termination."

Thus, the very Directive that established drug-testing for, among other situations, "a particular group of employees whose work involves public safety factors or other areas recognized by legal authority as warranting such testing without individualized suspicion of drug usage or possession", goes on to authorize the discipline upheld by this Award upon the showing that the Arbitrator here found had been made (i.e. the positive drug test during an annual physical examination of which the grievant had advance notice). The Teamsters' first objection must fail.

The Teamsters' contention that the Award must be set aside because the drug-testing program was unilaterally imposed, however, gives rise to an entirely different issue. The Teamsters note that the issue of whether DCPS' alleged failure to negotiate over its decision to impose drug-testing was raised before the Arbitrator as a matter that was then pending before the Board. That matter has since been decided, see, Teamsters, Local Unions No. 639 and 730 a/w Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. District of Columbia Public Schools, 38 DCR 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1990).

We found in that proceeding that DCPS' refusal to bargain over the procedures and the effects and impact of its drug-testing program constituted an unfair labor practice and -- insofar as relevant to the case herein -- concluded that "[a]lthough discipline was imposed in the absence of the requested and required implementation and impact bargaining, it is not possible to know what impact effects bargaining might have had upon the imposed disciplinary action." Slip Op. at 10. Therefore, the Order was specifically and expressly limited to suspending "[f]urther processing of all pending drug-testing-related grievances..." (emphasis added, Slip Op. at 11,) until the conclusion of required negotiations, including any third-party proceedings. The Order did not reach those drug-testing-related grievances or arbitrations already decided as of the date of that Order, i.e., November 1, 1990. Slip Op. at n.9. As previously noted, the Arbitrator issued his Award on June 4, 1990. Thus, even had the Teamsters articulated which of the statutory criteria for the Board's review is met by this contention, it could not succeed with respect to the Arbitrator's Award in view of our opinion in PERB Case No. 89-U-17.

For the foregoing reasons, the Board concludes that there is no basis authorized by the CMPA for our review that has been demonstrated in this Request. Accordingly, the request for review of the Arbitration Award is denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is hereby denied.

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

July 10, 1991