

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 formal 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: )

University of the District of )  
Columbia, )

Petitioner, )

and )

American Federation of )  
State, County and Municipal )  
Employees, D.C. Council 20, )  
Local 2087, AFL-CIO, )

Respondent. )

PERB Case No. 97-A-01  
Opinion No. 518

DECISION AND ORDER

On March 31, 1997, the University of the District of Columbia (UDC) filed an Arbitration Review Request in the above-captioned proceeding. UDC seeks review of an arbitration award (Award) that sustained a grievance filed by the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2087 (AFSCME) on behalf of educational service bargaining unit employees who did not receive a within-grade increase for FY 1994, as provided under the parties' collective bargaining agreement (CBA). UDC contends that the Award is contrary to law and public policy and requests that the Award be set aside. AFSCME filed an Opposition to the Arbitration Review Request contending that UDC presents no statutory basis for review and therefore the Request should be dismissed.

Under the Comprehensive Merit Personnel Act, D.C. Code Sec. 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 arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy..." (emphasis added.) The Board has reviewed the Award, the pleadings of the parties and applicable law, and concludes that the Request presents no statutory basis for review of the Award.

UDC does not dispute the Arbitrator's finding that the withholding of the FY 1994 within-grade increases contravene its

obligation under the parties' CBA. Rather, UDC contends that it could not lawfully pay the within-grade increase because "[t]o do so would violate the D.C. Appropriation Act of 1994, and the public policy against the expenditure of public funds that have not been appropriated. UDC argues that the Mayor specifically disapproved appropriations to fund the FY 1994 within-grade increase in UDC's supplemental budget request.

Notwithstanding a lack of duly appropriated funds to pay for the within-grade increases, UDC's contention with respect to the lawfulness of the Award is misplaced. UDC's argument raises issues concerning its ability to pay, not the legality of its obligation to pay under the disputed provisions of the collective bargaining agreement before the Arbitrator. UDC's contention of illegality concerns its payment of the awarded within-grade increases from unappropriated funds. The Award does not identify a source of funds to satisfy the Award, an issue of compliance, but rather UDC's contractual obligation to pay and employees' entitlement to the within-grade increases. While the budgetary legislation cited by UDC affects the legality of the former, UDC cites no law or public policy that the latter contravenes.<sup>1/</sup>

Accordingly, with respect to the Award, UDC has not presented a statutory basis that it be set aside. Its request for review is therefore denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

May 16, 1997

---

<sup>1/</sup> In rendering his Award, the Arbitrator "distinguishes between merit or quality increases, on one hand, and WIGIs [(within-grade increases)] on the other hand." (Award at 13.) The Arbitrator specifically found that although DCMR regulations and the parties' collective bargaining agreement conditioned the former on the availability of funds and performance, the availability of funds was not a condition for receiving the latter. Id. The Arbitrator then proceeded to conclude the UDC could not withhold the disputed within-grade increases on this basis. Id.

Decision and Order  
PERB Case No. 97-A-01  
Page 3

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 97-A-01 was faxed and/or mailed (U.S. Mail) to the following parties on this the 16th day of May, 1997.

Joseph A. Julian, III, Esq.  
Assistant General Counsel  
University of the District of Columbia  
Building 39, Room 301  
4200 Connecticut Avenue, N.W.  
Washington, D.C. 20008

FAX & U.S. MAIL

Robert Paul, Esq.  
Zwerdling, Paul, Leibig,  
Kahn, Thompson and Wolly  
1025 Connecticut Avenue, N.W.  
Suite 712  
Washington, D.C. 20036

FAX & U.S. MAIL


Courtesy Copies

Walter Jones  
President  
AFSCME, Local 2087  
P.O. Box 4863  
Washington, D.C. 20008

U.S. MAIL

Letitia Taylor  
AFSCME, D.C. Council 20  
1108 K Street, N.W., 2nd Fl  
Washington, D.C. 20005

U.S. MAIL



Namsoo M. Dunbar  
Deputy Executive Director