GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
District of Columbia Department of Public Works,	
Petitioner,	PERB Case No. 90-A-06 Opinion No. 254
and	
American Federation of Government Employees, Local 872,	
Respondent.	

DECISION AND ORDER

On April 16, 1990, District of Columbia Department of Public Works (DPW) filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitration award (Award) issued on March 22, 1990. DPW requests that the Board review the Award resulting from two grievances filed by the American Federation of Government Employees, Local 872 (AFGE or Union) and consolidated before the Arbitrator for resolution. The grievances concerned DPW's decision to contract out certain work necessary for the subsequent installation of water meters by DPW personnel. The Arbitrator sustained the grievance charge that DPW had violated its obligations under the parties' collective bargaining agreement by failing to notify the Union and consult with it regarding adverse impact before implementing its decision.

DPW contends that the Award is contrary to law and public policy and should therefore be set aside. [1]/

The case before the Arbitrator concerned a DPW decision to contract out certain work required by its endeavor to resolve widespread problems resulting from the location of water meters.

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[1]/ DPW also requests, should the Board not grant its request to set aside the Award, that it be granted a hearing in the matter. Our Rules concerning arbitration appeals do not provide for hearings by the Board.

An invitation to bid was issued, an award made, and work began in September 1989 (Award, p. 4 - 5). The Arbitrator found that the "total cost" prerequisite for contracting out did not exist. [2]/ The Arbitrator further found that DPW had not met its obligation under its collective bargaining agreement with the Union to provide the Union with notice of its proposed contracting out and to consult with the Union regarding any adverse impact that contracting out might have on bargaining unit employees (Award p. 9 - 10). The Arbitrator therefore concluded that DPW had implemented the decision to contract out certain work without fulfilling its collective bargaining agreement obligations, and so upheld the grievance.

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[2]/ The relevant provisions of the collective bargaining agreement provide as follows:

ARTICLE 4

Relationship of This Agreement to Department Policies and Practices

Section A

In exercising authority to establish regulations relating to Department policies in matters affecting working conditions of employees covered by this Agreement, the Employer shall have due regard for the obligations set forth in this Agreement.

ARTICLE 30

Contracting Out

Section A

During the term of this Agreement the Employer shall not contract out work performed by employees covered by this Agreement except where the Director determines that manpower or equipment is not available to perform such work on a regular or overtime basis; provided the total cost of management's performance will not be more than the cost of contracting out or when it is determined by the Director that emergency conditions exist and such contracting out is necessary. In those rare circumstances where contracting out is deemed necessary, and emergency conditions do not exist, the Department agrees to inform the Union of its proposed contracting out and consult with the Union regarding any adverse impact of such contracting out on employees covered by this Agreement at least twenty (20) working days prior to contracting out.

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... ." DPW contends that the Award is contrary to law and public policy in that (1) the Arbitrator discounted the testimony of one of its witnesses, (2) the Award requires DPW to provide the Union with a second notice of its decision to contract out, (3) it requires that all action be held in abeyance until consultation with the Union has occurred, (4) it requires termination of the contracting-out agreement, (5) "[t]he Union never established any harm to bargaining-unit [employees]", and (6) the Award violates DPW's right under the collective bargaining agreement to contract out such work upon notification to the Union.

The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law and concludes that the Award on its face is not contrary to law and public policy and therefore we lack the authority to set it aside.

We begin with DPW's contentions listed as items 1, 2, and 6 above. All of these contentions rest on the assertion that the Arbitrator acted contrary to law and public policy by concluding the Union did not receive proper notice as provided under Article 30 of the contract before DPW's decision to contract out was executed. This conclusion by the Arbitrator is based on his determination to credit "[t]wo Union witnesses [who] testified that several inquiries about prospective contracting out were answered by denials" over one DPW witness who had testified that he overheard the Union being given notice. We are not authorized by the CMPA to review an award based on credibility determinations and the weight attributed to evidence. See, e.g. District of Columbia Public Schools and AFSCME, Council 20, 34 DCR 3605, Slip Op. No. 155, PERB Case No. 86-A-03 (1987) and University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, Slip Op. No. 248, PERB Case No. 90-A-02 (1990). The Arbitrator's conclusion that the Union was never provided any notice of the decision to contract out precludes any basis for DPW's contention that the Award requires that the Union be provided with a "second notice" prior to contracting out. Thus, contrary to DPW's assertion, its right to contract out upon meeting this requirement is unabridged by the Award.

DPW's third and fourth grounds essentially contend that the Award is contrary to law and public policy by the remedy it imposes. The remedy merely provides for conformance with the parties' collective bargaining agreement. As noted earlier, the

terms which set the conditions under which DPW may contract out and, when met, require that DPW provide prior notice to and consultation with the Union are agreed-upon provisions of the parties' collective bargaining agreement. [3]/ The Arbitrator's Award simply holds DPW to contractual obligations it had assumed. DPW has not argued nor do we find that the parties' collective bargaining agreement restricts the Arbitrator's authority to make such an Award.

Finally, DPW contends that the Union never established and therefore, the Arbitrator was unable to consider whether there was any harm to bargaining unit employees as a result of the contracting out. Any such evidence was precluded by the agency's failure to inform and consult with the Union. Moreover, DPW has not cited nor are we aware of any law and public policy that evidence of this nature must be established in an arbitration proceeding.

Accordingly, DPW has not shown a statutory basis for disturbing the Award and its request that the Board review the Award must therefore be denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

September 5, 1990

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[3]/ DPW argues that prior consultation with the Union would place all action in abeyance and "provide the Union with an effective veto over any management contracting-out decision." But the parties' collective bargaining agreement specifically provides for prior consultation with the Union, not approval by the Union when, as here, emergency conditions for contracting out do not exist.