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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

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In the Matter of: )

Washington Teachers' Union )  
Local 6, AFT, AFL-CIO, )

Complainant, )

v. )

District of Columbia )  
Public Schools, )

Respondent. )

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PERB Case No. 95-A-07  
Opinion No. 432

DECISION AND ORDER

On March 24, 1995, the Washington Teachers' Union, Local 6, AFT, AFL-CIO (WTU) filed an Arbitration Review Request with the Public Employees Relations Board (Board). WTU seeks review of an arbitration award (Award) that denied a grievance filed on behalf of a bargaining unit member (teacher) who had been involuntarily transferred by the District of Columbia Public Schools (DCPS) following the closing of the school where he had been assigned. WTU contends that the Arbitrator exceeded his authority and requests that the Award be vacated and set aside. DCPS filed an Opposition to Arbitration Review Request contending that WTU 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 authority or her jurisdiction... ." The Board has reviewed the Arbitrator's Award, the pleadings of the parties and applicable law, and concludes that the Request presents no statutory basis for review of the Award.<sup>1/</sup>

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<sup>1/</sup> WTU submitted the Arbitrator's Award which was issued on March 12, 1995. However, the full decision containing the Arbitrator's findings, conclusions and rationale supporting the  
(continued...)

Specifically, WTU asserts that the Arbitrator exceeded his authority by violating a provision in the parties' collective bargaining agreement concerning the sequestering of witnesses.<sup>2/</sup> The Arbitrator had denied WTU's request that DCPS' witnesses be sequestered during the arbitration proceeding pursuant to a contract provision providing that "witnesses shall be present at the hearing only at such time that personal testimony is presented." The Arbitrator interpreted this contractual provision as discretionary based on past practice. By agreeing to submit a matter to arbitration the parties also agree to be bound by the Arbitrator's interpretation of the parties' agreement and related

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<sup>1</sup>(...continued)

Award was issued on March 28, 1995. Apparently, this was done at WTU's request to accommodate the commencement of a related arbitration proceeding involving the grievant. (Dec. at 3.) DCPS provided the full decision with its Opposition to the WTU's request for review.

<sup>2/</sup> WTU also contends that by this action, the Arbitrator also violated "the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.; ... as well as various codes of arbitral and professional responsibility." In addition to the reasons discussed in the text, there is no indication in the detailed decision of the Arbitrator that WTU made any argument before the Arbitrator based upon the cited statute or arbitral or professional code. Having failed to make these arguments before the Arbitrator Petitioner cannot make them before the Board in support of its request for review. District of Columbia Public Schools and Council of School Officers, Local 4, \_\_\_ DCR \_\_\_, Slip Op. No. 416, PERB Case No. 95-A-03 (1995).

The Arbitrator does make reference to WTU's reliance upon the American Arbitration Association's (AAA) rules in support of its objection to the Arbitrator's failure to sequester DCPS' witnesses during the arbitration proceeding. (Dec. at 6.) However, the Arbitrator specifically addressed and overruled WTU's objection. Moreover, the Arbitrator ruled that WTU had waived its right to object to any failure to comply with AAA rules since WTU failed to meet AAA Rule 34 requirement that any objection be stated in writing. The Arbitrator based these rulings on his interpretation of the collective bargaining agreement provision in question and related rules. A parties' disagreement with an arbitrator's interpretation of provisions contained in the parties' collective bargaining agreement and related rules does not mean that the arbitrator has exceeded his jurisdiction. Metropolitan Police Department and Fraternal Order of Police\Department of Corrections Labor Committee, \_\_\_ DCR \_\_\_, Slip Op. No. 394, PERB Case No. 94-A-04 (1994).

rules concerning substantive as well as procedural matters.<sup>3/</sup>  
See, e.g., D.C. Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee, \_\_\_ DCR \_\_\_,  
Slip Op. No. 412, PERB Case No. 95-A-01 (1995).

Accordingly, WTU has not presented a statutory basis for its request that the Award 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.

June 14, 1995

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<sup>3/</sup> Article VI C(7), the collective bargaining provision in question, provides as follows:

Any hearing provided for in this Article shall be conducted at a time and place which will afford a fair and reasonable opportunity for all persons, including witnesses, entitled to be present to attend. No witnesses shall be admitted to such hearings unless their relevancy to the case has been previously established. Such witnesses shall be present at the hearing only at such time that personal testimony is presented. When such hearings are held during school hours, all employees who are entitled to be present at the hearing shall be excused with pay for that purpose.

Interpreting this provision as discretionary, the Arbitrator denied WTU's request based on his finding that WTU failed to argue or cite any specific prejudice by the presence of DCPS witnesses given their previous knowledge of the case and the extent of documentary evidence. (Dec. at 6). Consistent with the Arbitrator's findings, we have held that arbitrators have the authority to make evidentiary rulings upon which their decision and award are based. See, e.g., 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).