

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 to 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 1975, AFL-CIO, )  
 )  
Petitioner, )  
 )  
and )  
 )  
District of Columbia )  
Department of Public Works, )  
 )  
Respondent. )  
 )  
 )  
 )

PERB Case No. 95-A-02  
Opinion No. 413

---

DECISION AND ORDER

❖ The American Federation of Government Employees, Local 1975, AFL-CIO (AFGE) seeks review of an arbitration award (Award) that sustained the discharge of the Grievant, a motor vehicle inspector employed by the D.C. Department of Public Works (DPW). AFGE contends that the Award is contrary to law and public policy. The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DPW, filed an Opposition to Arbitration Review Request contending that AFGE presents no statutory basis for review and therefore the Request should be dismissed.

The Grievant had been terminated by DPW for misuse of District Government property, i.e., an agency vehicle, and inexcusable absence without leave. A grievance ensued asserting that a provision in the parties' collective bargaining agreement required DPW to refer the employee for counseling before it can discipline the employee because the "direct cause" of the disciplinary action

was the result of the employee's drug abuse. The Arbitrator concluded that neither his interpretation of the disputed provision in the parties' collective bargaining agreement nor his findings of fact "precluded [DPW's] disciplinary action and removal" of Grievant. (Award at 12-13.)

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 award on its face is contrary to law and public policy ... ." 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.

AFGE's contention that the Award is contrary to law and public policy turns on its contention that DPW discharged the Grievant for actions caused by the Grievant's disability, drug abuse. AFGE asserts that the basis of the Grievant's discharge, substance abuse, is a listed disability under the Rehabilitation Act of 1993, § 504, as amended (Act); therefore, DPW's discharge of the Grievant on this basis violates the Act. The Arbitrator found, however, that "there was never any sign of a drug problem or that the Grievant's demeanor indicated a substance abuse situation which might have bearings upon this Grievant's actions". (Award at 13.) Based on this finding, the provisions of the Act are not implicated.

Notwithstanding this finding, AFGE makes two arguments in support of its asserted statutory basis for review. First, AFGE insists that the applicable contract provision does not permit DPW to take disciplinary action against an employee when DPW is aware that the cause for adverse action is due to the employee's drug abuse problem. Rather, DPW is obligated first to refer the employee to a rehabilitation program or counseling. The Arbitrator did not interpret the contract as restrictively as AFGE does. He concluded that the contract "reserved [management's] right to take disciplinary action against employees" and "does not specify that said referral is a mandatory alternate action under all circumstances." (Award at 12.) <sup>1/</sup> AFGE's disagreement with the

---

<sup>1/</sup> Moreover, the Arbitrator found that DPW was unaware of the Grievant's substance abuse problem until long after the adverse action had been taken. (Award at 13.) Based on this finding, the Arbitrator ruled that he could not conclude that "the circumstances of this case precluded disciplinary action and removal" of Grievant by DPW. (Award at 12.) AFGE challenged these findings of fact with disputed testimony which, had the Arbitrator accepted it, would in  
(continued...)

arbitrator's interpretation of the parties' contract does not render the Award contrary to law and public policy. Teamsters Local Union No. 1714 a/w IBTCWHA, AFL-CIO and D.C. Dep't of Corrections, 41 DCR 1753, Slip Op. 304, PERB Case No. 91-A-06 (1994). This is the case "even if the arbitrator misconstrued the contract, for it is the arbitrator's interpretation for which the parties bargained." Id.

Secondly, AFGE repeats the argument made to the Arbitrator that the disputed contractual provision should be interpreted in light of the Rehabilitation Act. AFGE contends that so interpreted, the contract does not permit the Grievant's discharge for conduct resulting from his substance abuse, a listed disability under the Act, since the Grievant was drug free at the time of his discharge. By discharging the Grievant based on conduct AFGE alleges was caused by his abuse, AFGE suggests that DPW violated the Act. Despite AFGE's urging, the Arbitrator declined to equate the disputed contractual provision with that of the Act. Whatever rights the grievant might have under the Act, his rights under the contract are subject to the interpretation of the Arbitrator under the contractual grievance-arbitration procedure. See, International Brotherhood of Police Officers, Local 446, AFL-CIO/CLC v. D.C. General Hospital, 39 DCR 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992) and American Federation of Government Employees, Local Union No. 3721 v. D.C. Fire Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1992).<sup>2/</sup>

Accordingly, AFGE has not demonstrated that a statutory basis

---

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

AFGE's view have led to a contrary conclusion. It is well settled that disputes over the arbitrator's evaluation of the weight of the evidence and credibility determinations do not raise the asserted statutory basis for review. See, e.g., American Federation of State, County and Municipal Employees, D.C. Council 20, AFL-CIO and D.C. General Hospital, 37 DCR 6172, Slip Op. No. 253, PERB Case No. 90-A-04 (1990).

<sup>2/</sup> AFGE cites Teahan v. Metro-North Commuter R. Co., 951 F.2d 511 (2nd Cir. 1991) in support of this argument but never clearly articulates how that case supports the claim that the Award is contrary to law and public policy. In Teahan, contrary to AFGE's assertions, the Second Circuit did not find a violation of the Rehabilitation Act. Rather, the Court held that a genuine issue of fact existed with respect to the elements of a violation and therefore the employer's motion for summary judgment against the employee could not stand based on the record before the trial court. The Court remanded the case for further proceedings to determine the existence of a violation.

Decision and Order  
PERB Case No. 95-A-02  
Page 4

exists for its request that the Award be reversed; 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.  
February 22, 1995