GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: District of Columbia Department of Public Works, Petitioner, and American Federation of State, County and Municipal Employees, District Council 20, Local 2091 (On behalf of Leroy Staten), Respondent.	PERB Case No. 87-A-06 Opinion No. 178

DECISION AND ORDER

On May 26, 1987 the District of Columbia Department of Public Works (DPW) filed an Arbitration Review Request with the District of Columbia Public Employee Relations Board (Board) seeking review of an Arbitration Award served on the parties on May 4, 1987. The Arbitrator ruled the grievance sustained in part, as more fully discussed later in this Opinion. The basis for the appeal is DPW's contention that the Arbitrator was without authority and exceeded the jurisdiction granted by the parties' collective bargaining agreement in violation of Section 502(f) of the Comprehensive Merit Personnel Act of 1978 (CMPA) (Codified as District of Columbia Code Section 1-605.2(6)). 1/

On June 10, 1987, the American Federation of State, County and Municipal Employees, Local 2091 (AFSCME) filed an Opposition to the Review Request contending that it should be dismissed on the basis that the Arbitrator's decision was within the authority granted by the parties' agreement.

1/ The Executive Director dismissed the request administratively on August 19, 1987, on the basis that it was untimely. (See Board Rule 107.2) On August 31, 1987, the Office of Labor Relations and Collective Bargaining (OLRCB) on behalf of DPW, requested that the Executive Director reconsider her decision regarding the timeliness of the appeal. Upon a review of the record, the Executive Director discovered that her calculations were in error and that the appeal was timely filed. The matter was therefore presented to the Board for its consideration on January 13, 1988.

Section 1-605.2(b) grants the Board exclusive jurisdiction to consider appeals from grievance-arbitration awards, but limits review to situations in which the arbitrator was without, or exceeded his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion or other similar means.

In concluding that the grievance filed by AFSCME, Local 2091 on behalf of the Grievant, Leroy Staten, must be sustained in part and denied in part, the Arbitrator found: (1) DPW's change in its method of assigning vehicles did not violate the parties' Master Agreement (Article IV, Section 2) since there was no convincing evidence in the record that the policy was promulgated because of the Grievant's union activities; (2) Although DPW has no obligation to negotiate its actual decision to change the established practice of assigning vehicles on the basis of seniority, as the Union contends, it violated Article II, Section 20 of the contract by failing to negotiate the adverse impact of its decision; and (3) DPW is therefore ordered to negotiate this change in policy.

DPW contends that the Arbitration Award should be modified because the Arbitrator was without authority to find that while DPW's unilateral change in the method of assigning vehicles was not subject to negotiations, negotiations were nevertheless required with respect to the adverse impact of policy change. In support of its contentions, DPW argues that Article II, Section 20 neither explicitly nor implicitly imposes any duty to negotiate adverse impact. Moreover, DPW asserts that the Arbitrator's ruling requiring negotiation is incompatible with the CMPA, which requires that the negotiation of compensation and non-compensation issues take place at the same time. DPW urges that in this respect the remedy imposed by the arbitrator exceeds the scope of the agreement.

In its Opposition to the Appeal, AFSCME argues that the Award did not exceed the authority granted by the parties' agreement. The Union directs attention to the authority of the Arbitrator under Article XXII, Section 6 of the Agreement, which states that an arbitrator is required to issue a "final and binding decision not inconsistent with the [provisions] of the agreement," and directs attention to the Arbitrator's finding that the "contractual limitation placed upon the exercise of management rights was triggered,...and the duty to negotiate over impact is the result." Since the Arbitrator found a violation of Article II, Section 20, his remedy, AFSCME argues, was consistent with both his authority and the violation found.

The Board concludes that the Review Request must be denied for lack of jurisdiction under D.C. Code Section 1-604.2(b). An arbitrator derives his or her authority from the parties' agreement and applicable statutory or regulatory provisions, and an arbitration award may not be reviewed by the Board unless the arbitrator has exceeded the jurisdiction granted.

In this case, the Arbitrator's interpretation of Article II, Section 20 of the agreement, which expressly states that management rights are not subject to negotiations, but that the Union may grieve when the exercise of those rights results in an adverse impact upon employees' terms and conditions of employment, cannot be said to be inconsistent with the parties' agreement.

Therefore, the Board concludes that the Arbitrator's finding and award on this issue are consistent with the express terms of the collective bargaining agreement. The Arbitrator was within his authority and the jurisdiction granted by the agreement to require the parties to negotiate, upon request, the adverse impact of management's decision.

ORDER

IT IS ORDERED THAT:

The Arbitration Review Request is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
April 14, 1988

2/ The Board does not find merit in DPW's claim that the Award is inconsistent with CMPA provisions requiring the simultaneous negotiation of compensation and non-compensation matters. Those provisions refer to the negotiation of an initial or successor collective bargaining agreement, not the negotiation of adverse impact questions pursuant to the parties' negotiated grievance procedure.