GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
District Council 20, Local 709 American Federation of State, County and Municipal Employees, AFL-CIO,	
Petitioner,	PERB Case No. 90-A-03 Opinion No. 225
and	
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

On December 11, 1989, the American Federation of State, County and Municipal Employees, Local 709 (AFSCME) filed an Arbitration Review Request with the D.C. Public Employee Relations Board (Board). AFSCME seeks the Board's review of an Arbitration Award rendered as a result of an impasse proceeding in the negotiation of a collective bargaining agreement covering non-compensation items.

AFSCME contends that Board Rule 107.1(a) and (b) apply in this situation and that under these rules review should be granted because the award is contrary to law and public policy and the Arbitrator was without authority and exceeded the jurisdiction granted.

The Metropolitan Police Department (MPD) opposes the review request on the grounds that (1) the Board lacks jurisdiction to review the award; (2) AFSCME's request was not timely filed; and (3) the request does not otherwise establish a basis for the Board's review.

We deny AFSCME's request for review of the arbitration award for the reason that we have no jurisdiction to consider it.

The dispositive question here is whether the CMPA gives the Board authority to review impasse arbitration awards concerning non-compensation matters. If the answer to that question is negative, it is immaterial whether any provision of the Board's rules could be parsed so as to apply in this situation, since no Board rule could create jurisdiction not provided by our governing statute. Accordingly, we turn to the CMPA.

There is no express provision of the CMPA authorizing Board review of impasse arbitration awards of the kind at issue here. The only provision of the CMPA that addresses Board review of arbitration awards is D.C. Code Section 1-605.2(6), set forth in the margin. [1]/ The Board has previously examined the significance of this statutory state of affairs for a closely related question, namely, whether the Board has authority to review impasse arbitration awards concerning compensation. In Council of School Officers and D.C. Public Schools, 33 DCR 2922, Slip Op. No. 138 (1986), answering that question in the negative, we stated the following:

> The Code expressly provides for the review of grievance arbitration awards pursuant to contractual grievance procedures in D.C. Code Section 1-605.2(6). There is no such provision for review of interest arbitration awards. This difference in statutory treatment reflects the wholly different nature of two proceedings: grievance arbitration involves the interpretation and application of an existing contract; interest arbitration, in contrast, is the establishment of a contract for parties who have failed to do so for themselves. Interest arbitration is thus more akin to a legislative than a judicial determination (Slip Op. at 2).

There are, of course, differences between the CMPA treatment of compensation bargaining impasses and those in non-compensation bargaining. With respect to the former, the statute contains specific and detailed procedures that ultimately lead to binding arbitration based on the last best offers of the parties. Non-compensation impasses are statutorily treated more summarily, with substantial discretion given to the Board in the choice of impasse resolution techniques. [2]/ We do not believe that this difference requires or permits a result different from that

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[1]/ D.C. Code Section 1-605.2(6) provides in relevant part that the "Board shall have the power to consider appeals from arbitration awards pursuant to a grievance procedure...."

[2]/ D.C. Code Section 1-605.2(4) empowers the Board to "[r]esolve bargaining impasses through fact-finding, final and binding arbitration or other methods agreed upon by the parties as approved by the Board and to remand disputes if it believes further negotiations are desirable. Arbitration shall not be conducted by the Board itself but the Board shall provide arbitrators selected at random from a panel or list of arbitrators maintained by the Board and consisting of persons agreed upon by labor and management."

reached in the Council of School Officers case cited supra.

It is as true here as it was in Council of School Officers that grievance arbitration and interest arbitration are of a "wholly different nature." And the final fact-finding report issued by the arbitrator here is -- like the award at issue in that case -- more akin to legislative than to a judicial determination." [3]/

And of course, the Board had no decisional role in the fact-finding proceeding here which was, per the parties' ground rules, the functional equivalent of the binding arbitration there. In both cases, the arbitration process substantively is independent of the Board. We conclude that the independence is total in that we have no power to review the process' substantive result. Cf. Council of School Officers, Local 4 v. M. David Vaughn and William R. Rumsey, 553 A.2d. 1222 (1989); see also Caso v. Coffey, 41 N.Y. 2d 153, 359 N.E. 2d 683, (C.A. N.Y.) (1976).

Accordingly, we conclude that we lack jurisdiction to review interest arbitration awards concerning non-compensation issues, and therefore deny AFSCME's request for review.

ORDER

IT IS HEREBY ORDERED THAT:

The Review Request is denied.

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

May 16, 1990

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[3]/ Cf. D.C. Code Section 1-618.17(j) providing for review by the City Council of a settlement agreement reached during compensation negotiations or an arbitration award issued by a board of arbitration.