GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
District of Columbia Water and Sewer Authority, Petitioner, and American Federation of Government Employees, Local 872, AFL-CIO, Respondent.	PERB Case No. 98-A-05
American Federation of Government Employees, Local 872, AFL-CIO, Petitioner, and District of Columbia Water and Sewer Authority, Respondent.	PERB Case No. 98-A-06 Opinion No. 569

DECISION AND ORDER

On May 22 and 27, 1998, respectively, the District of Columbia Water and Sewer Authority (WASA) and the American Federation of Government Employees, Local 872 (AFGE) filed Arbitration Review Requests in the above-captioned proceedings. WASA and AFGE seek review of certain aspects of an arbitration award (Award) resulting

from two grievances filed by AFGE challenging WASA's authority to contract out bargaining unit work. WASA and AFGE, for different reasons, contend that parts of the Award are contrary to law and/or beyond the jurisdiction of the Arbitrator. The parties requests that aspects of the Award be reversed and/or vacated.[1]/ Oppositions were filed by both parties to the other's Arbitration Review Request, contending that the grounds for review do not meet the statutory criteria and should be denied.

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 or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means... ." (emphasis added.) The Board has reviewed the Award, the pleadings of the parties and applicable law, and concludes that the Requests presents no statutory basis for review of the Award.

WASA contends that the Arbitrator exceeded her jurisdiction by construing the legislation that created WASA, as well as subsequent WASA regulations, to decide issues concerning the viability and applicability of the parties' collective bargaining agreement as it pertains to WASA's authority to contract out the work in dispute. WASA's argument rests on the erroneous premise that arbitrators are without authority to interpret or construe laws and regulations related to the determination of the contractual issue(s) properly before them. The stipulated issue before the Arbitrator was as follows: "To what extent, if any, are the parties bound by the Collective Bargaining Agreement or the conditions of employment set forth therein?". (Award at 3.) Resolution of this issue turned on an initial determination of the disputed expiration date of the parties' collective bargaining agreement. The Board has held that the determination of such issues are properly decided by an arbitrator. American Federation of Government Employees, Local 2725 v. D.C. Housing Authority, Slip Op. No. 488, PERB Case No. 96-U-19 (1996).

---

[1]/ WASA requested that the Board permit it to present a comprehensive brief and/or oral argument in support of granting its arbitration review request. In accordance with Board Rule 538.2, the parties shall be provided an opportunity to file briefs "[i]f the Board finds that there may be grounds to modify or set aside the arbitrator's award... ." Finding no statutory grounds for setting aside or modifying the Award, pursuant to Board Rule 538.2 and 538.4, WASA's request is denied.

Moreover, the Board has held that the arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provisions." D.C. Dept of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). In reaching her conclusion, the Arbitrator interpreted the following statutory provision and WASA regulation:

> All collective bargaining agreements shall remain in effect until they expire, or until they are renegotiated by [WASA], whichever comes first, unless otherwise agreed by the parties...[D.C. Code Sec. 43-1687(d)]
>
> [WASA]... will treat all collective bargaining agreements to which the District of Columbia Water and Sewer Utility Administration ("WASUA") was a party as effective until their expiration or renegotiation with [WASA]. [Section 5201.7, 44 D.C. Register 7146 (November 21, 1997)]

Given the stipulated arbitrated issue, we cannot find the Arbitrator's interpretation of a clearly related statute and regulation was on its face, contrary to law and public policy.[2]/ See, e.g., D.C. Public Schools and Teamsters Local Union No. 639, et al., Slip Op. No. 423, PERB Case No. 95-A-06 (1995). We have so held even when we "strongly questioned" the arbitrator's interpretation of the statute. See, Washington Teachers' Union, Local 6 and D.C. Public Schools, Slip Op. No. 397 at 3, PERB Case No. 94-A-03 (1994). In view of our finding that the Arbitrator was within her jurisdictional authority to interpret the regulation and statutory provision in question, we do not reach WASA's remaining arguments that turn on its rejected contention that the Arbitrator was without such authority.

AFGE contends that another aspect of the Award is on its face, contrary to law. Specifically, AFGE contends that the Arbitrator's failure to correctly interpret the explicit terms of the collective bargaining agreement, deprived AFGE of its right under the agreement to prove that WASA's decision to contract out was unlawful and, thereby, its entitlement to a make-whole remedy. On that basis, AFGE requests that the portion of the Award denying a make-whole remedy be reversed.

AFGE merely requests that we adopt its interpretation of the

---

[2]/The Arbitrator concluded that WASA's authority to contract out bargaining unit work was subject to the parties' 1996 agreement.

disputed collective bargaining agreement provisions that was specifically considered and rejected by the Arbitrator. We have long held that "disagreement with the arbitrator's interpretation of the contract does not make the award contrary to law or public policy." See, AFGE, Local 1975 and Dept of Public Works, Slip Op. No. 413, PERB Case No. 95-A-02 (1995). To set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definitive public policy that mandates that the arbitrator arrive at a different result. See, AFGE, Local 631, AFL-CIO and Dept of Public Works, Slip Op. No. 365, PERB Case No. 93-A-03 (1993). AFGE cites no such law and public policy.[3]/ Therefore, AFGE's contentions concerning its entitlement to make-whole relief was precluded by the Arbitrator's determination that the disputed contracting out by WASA was in accordance with the parties' collective bargaining agreement.

Moreover, an Arbitrator is accorded a full range of equitable powers to fashion or tailor an appropriate remedy unless the contract expressly and specifically limits that authority. See, Dept of Finance and Revenue and AFSCME, D.C. Council 20, Local 2776, 36 DCR 3334, Slip Op. 217, PERB Case No. 88-A-01 (1989). In the absence of contractual provisions mandating otherwise, an arbitrator has the authority to fashion a remedy in the award. University of the District of Columbia and UDC Faculty Association/NEA, 38 DCR 1580, Slip op. No. 262, PERB Case No. 90-A-08 (1990).

AFGE cites no law or contractual provision compelling the Arbitrator to award a make-whole relief when, as here, no violation is found.

In view of the above, neither WASA or AFGE have presented a statutory basis for setting aside the Award. Their requests for review are therefore denied.

---

[3]/ Moreover, even if the Arbitrator had misinterpreted the parties' collective bargaining agreement, such a misreading would not render the Award contrary to law or exceed the Arbitrator's authority. University of the District of Columbia and UDC Faculty Association/NEA, 36 DCR 3635, Slip op. No. 220, PERB Case No. 88-A-03 (1989).

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Requests are denied.

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

November 9, 1998

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 98-A-05/06 was sent via facsimile and/or mailed (U.S. Mail) to the following parties on the 9th day of **November**, 1997.

Barbara Kraft, Esq — U.S. MAIL
Bein, Bodley, Axelrod & Kraft, P.C.
1717 Massachusetts Avenue, N.W.
Suite 704
Washington, D.C. 20036-2001

Alan M. Levy, Esq. — U.S. MAIL
Linder & Marsack
411 E. Wisconsin,
Suite 1000
Milwaukee, WI 53202

Namsoo M. Dunbar
Deputy Executive Director