

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 so 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:	)	
	)	
Washington Teachers' Union	)	
Local 6, AFT, AFL-CIO (on behalf	)	
of Adolphus Brookins),	)	PERB Case No. 98-A-02
	)	Opinion No. 543
Petitioner,	)	
	)	
and	)	
	)	
District of Columbia	)	
Public Schools,	)	
	)	
Respondent.	)	

---

DECISION AND ORDER

On December 2, 1997, the Washington Teachers' Union, Local 6, AFT, AFL-CIO (WTU) filed an Arbitration Review Request seeking review of an arbitration award (Award) resulting from a grievance filed on behalf of a bargaining unit employee, Adolphus Brookins (Grievant). The Arbitrator found that the grievance was not arbitrable. As a result, he denied the grievance. Nevertheless, he proceeded to make a substantive finding on the merits of the grievance. The grievance concerned Respondent District of Columbia Public Schools' (DCPS) alleged violation of the parties' collective bargaining agreement when it designated the transfer of the Grievant as voluntary rather than involuntary. WTU contends that "the Arbitrator was without authority or exceeded the jurisdiction granted to him" and requests that the Award be set aside.<sup>1/</sup> 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), and Board Rule 538.3, the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed

---

<sup>1/</sup> WTU also requested an opportunity to file briefs and for oral argument. The Arbitration Review Request, however, does not present any grounds for modifying or setting aside the Award. Therefore, pursuant to Board Rule 538.2, WTU's requests are denied.

**Decision and Order**  
**PERB Case No. 98-A-02**  
**Page 2**

only if the arbitrator was without, or exceeded, his or her jurisdiction; 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.

On the issue of arbitrability raised by DCPS at arbitration, the Arbitrator ruled that "[t]he issue of arbitrability was not waived by DCPS' failure to raise the issue prior to the arbitration hearing. Timeliness is an essential element of the grievance procedure." (Award at 11.) He then proceeded to rule that the grievance was initiated well past the ten (10)-day time period allowed under Article VI of the parties' collective bargaining agreement and, on that basis, found the grievance non-arbitrable. (Award at 11 and 13.) WTU contends that the Arbitrator erred in this determination by failing to give any effect to: (1) DCPS' full participation at step 2 and step 3 of the grievance procedure (notwithstanding its timeliness); (2) DCPS' failure to raise an issue of timeliness prior to the day of the arbitration hearing; and (3) Article VI.C2 of the collective bargaining agreement which allows all time limits set forth in the grievance process to be extended by mutual consent. Consequently, WTU asserts that the award is contrary to law and public policy and the Arbitrator was without authority or exceeded his jurisdiction.

It is well settled that "[b]y agreeing to submit a matter to arbitration, the parties also agree to be bound by the Arbitrator's decision, which necessarily includes the Arbitrator's interpretation of the parties' agreement...as well as his evidentiary findings and conclusions upon which his decision is based." University of the District of Columbia Faculty Association/NEA and University of the District of Columbia, 39 DCR 9628, 9629, Slip Op. No. 320 at 2, PERB Case No. 92-A-04 (1992). This jurisdictional authority applies equally to issues of arbitrability. University of the District of Columbia and American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2087, 39 DCR 3344, Slip Op. No. 219, PERB Case No. 88-A-02 (1989). "[E]ven if the Arbitrator [ ] misconstrues the parties' agreement, he would not thereby have exceeded his authority to interpret the contractual provision." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 36 DCR 3635, Slip Op. No. 220, PERB Case No. 88-A-03 (1989).

In view of the above, the Arbitrator clearly possessed the jurisdictional authority to decide the issue of timeliness; notwithstanding the fact that this issue was not raised at any time prior to the arbitration hearing. WTU cites no contractual provision that restricts the Arbitrator's authority in this regard

Decision and Order  
PERB Case No. 98-A-02  
Page 3

or any law and public policy that the Arbitrator's Award contravenes. Moreover, the Arbitrator's decision that the grievance was non-arbitrable, i.e., untimely, was based on his interpretation of certain provisions in the parties' agreement and attending findings of fact.

Therefore, WTU's disagreement with the significance the Arbitrator accorded certain factors in reaching his conclusion is merely a disagreement with the Arbitrator's interpretation of the parties' agreement and the Arbitrator's findings of fact. Such grounds do not present a statutory grounds for modifying or setting aside the Award. See, e.g., D.C. Dept of Public Works and American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2091, 39 DCR 3344, Slip Op. No. 219, PERB Case No. 88-A-02 (1989). Therefore, the decision on arbitrability neither exceeded the Arbitrator's jurisdictional authority nor rendered the award contrary to law and public policy.

Since we find no statutory grounds for review with respect to the issue of arbitrability, we have no reason to address WTU's contentions concerning the Arbitrator's substantive findings. For the reasons discussed, WTU's request that the Award be set aside is denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

March 11, 1998

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 98-A-02 was faxed and/or mailed (U.S. Mail) to the following parties on this the 11th day of March, 1998.

Jason Lederstein, Esq.  
Curtis Lewis & Associates  
1750 New York Avenue, N.W.  
Washington, D.C. 20006

FAX & U.S. MAIL

Brendolyn McCarty-Jone  
D.C. Public Schools  
415 12<sup>th</sup> Street, N.W.  
Room 602  
Washington, D.C. 20005

FAX & U.S. MAIL

Courtesy Copies

Leon B. Applewhaite  
Arbitrator  
1110 Fidler Lane  
Silver Spring, MD 20910

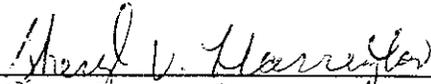
U.S. MAIL

Barbara Bullock  
President  
Washington Teachers' Union  
1717 K Street, N.W.  
Washington, D.C. 20036

U.S. MAIL

Mark Frantz  
Director of Labor Relations  
D.C. Public Schools  
Suite 1114  
415 12<sup>th</sup> Street, N.W. 20004

U.S. MAIL

  
\_\_\_\_\_  
Sheryl Harrington  
Secretary/Receptionist