Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Public Schools,	
Petitioner,	PERB Case No. 15-A-08
and	Opinion No. 1576
American Federation of State, County and Municipal Employees, District Council 20, Local 2921	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On March 4, 2015, the District of Columbia Public Schools ("DCPS") filed an Arbitration Review Request ("Request"), seeking review of an arbitration award ("Award") by Arbitrator Paul Greenberg ("Arbitrator"). The Arbitrator found two grievances that challenged two different reduction-in-force ("RIF") substantively arbitrable under the parties' collective bargaining agreement ("CBA"). DCPS challenges the Award on the basis that it is contrary to law and public policy, and because the Arbitrator exceeded his jurisdiction.

III. Discussion

When a party files an arbitration review request, the Board's scope of review is extremely narrow. Specifically, the CMPA authorizes the Board to modify or set aside an arbitration award in only three limited circumstances:

1. if "the arbitrator was without, or exceeded, his or her jurisdiction";
2. if "the award on its face is contrary to law and public policy"; or

> 3. if the award "was procured by fraud, collusion, or other similar and unlawful means."[1]

The Arbitrator issued an Award, finding that reduction-in-force issues were substantively arbitrable under the parties' collective bargaining agreement. DCPS requests that the Board reverse the Award, because (1) the Award is contrary to law and public policy, and (2) the Arbitrator has exceeded his jurisdiction.[2]

DCPS argues that the Award is contrary to D.C. Official Code § 16-4406(b), because the courts are solely empowered to decide substantive arbitrability.[3] DCPS asserts that "the Court of Appeals of the District of Columbia has confirmed that questions of substantive arbitrability are for the Courts to decide."[4]

The Revised Uniform Arbitration Act ("RUAA"), at D.C. Official Code § 16-4406(b), states, "The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate."[5] However, the Board's power to consider appeals from arbitration derives from the Comprehensive Merit Personnel Act ("CMPA"), and not the RUAA.[6] The Court of Appeals has considered the intersection of these two laws in the context of labor relations arbitration. In *Washington Teachers Union, Local No. 6 v. D.C. Pub. Sch.* ("*WTU*"), the Court of Appeals considered whether the D.C. Superior Court could stay an arbitration proceeding by determining whether the subject was substantively arbitrable under the parties' collective bargaining agreement.[7] The Court of Appeals found that the Superior Court may rule on substantive arbitrability:

> [T]he question at issue in a motion to stay arbitration—whether an agreement to arbitrate exists and encompasses the dispute at hand—is a matter of contract interpretation that courts are well-equipped to handle, rather than a matter of labor relations that would benefit from the unique expertise of an arbitrator and PERB.[8]

Notwithstanding, the Court of Appeals found concurrent jurisdiction over pre-arbitration substantive arbitrability issues:

> Because the CMPA neither expresses an intent to preclude a motion to stay arbitration under D.C. Code § 16–4407 nor provides a comparable remedy, we conclude that this portion of the Arbitration Act is not

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[1] D.C. Official Code § 1-605.02(6) (2001 ed.).
[2] Request at 3.
[3] Request at 4.
[4] Request at 4 (citing *Washington Teachers Union, Local #6 v. D.C. Public Schools*, 77. A.3d 441 (D.C. 2013); and *District of Columbia v. AFSCME, District Council 20 and Local 2921*, 81 A.3d 299 (D.C. 2013)).
[5] (2014 Supp.).
[6] D.C. Official Code § 1-605.02(6).
[7] *Washington Teachers' Union, Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. D.C. Pub. Sch.*, 77 A.3d 441, 453 (D.C. 2013).
[8] *Id.*

> preempted by the CMPA and the Superior Court had jurisdiction to grant the relief sought by the District of Columbia. It bears repeating that we are only called upon to determine the default position where the parties' CBA is silent as to who should decide issues of arbitrability. Like other contracting parties, District of Columbia employees and management are free to provide that issues of arbitrability are to be decided by the arbitrator in the first instance, but they must express such intent clearly and unmistakably in their collective bargaining agreement.[9]

The Union opposes the Agency's request, because the Union asserts that the parties agreed to submit the issue to the arbitrator.[10]

Under the Board Rules, after considering an arbitration review request, the Board may reject the request for lack of jurisdiction or sustain, set aside or remand the award in whole or in part.[11]

Earlier this year, the D.C. Court of Appeals ruled that reduction-in-force cases are not arbitrable.[12] The D.C. Court of Appeals stated, in reference to the Abolishment Act that governs reduction-in-force cases, "[T]he Act unambiguously vests the OEA with the exclusive jurisdiction to determine whether the District government acted properly in conducting a RIF."[13] Even though DCPS has not asserted that the Award is contrary to law and public policy based on this holding, the court's decision may require that the Award be overturned.

III. Conclusion

Because, neither party nor the arbitrator could have considered the impact of the holding in the above case, PERB makes no determination here on whether the award in this case is contrary to law and public policy or if the arbitrator exceeded his jurisdiction. We therefore, remand this case to the arbitrator for a determination of his jurisdiction based on the case law mentioned above.

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[9] *Id.* (citations omitted).
[10] Opposition at 5-6.
[11] PERB Rule 538.4.
[12] *UDC v. AFSCME, District Council, Local 2087*, 130 A.3d 355 (D.C. 2016).
[13] *UDC* at 362.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board remands the award to the arbitrator for a determination of his jurisdiction based on *UDC v. AFSCME, District Council, Local 2087*, 130 A.3d 355 (D.C. 2016).

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, Member Barbara Somson, and Member Douglas Warshof.

Washington, D.C.

April 21, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2016, that a copy of the foregoing Decision and Order was transmitted via File and ServeXpress and first class mail, postage prepaid, to:

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