

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

American Federation of State,
County and Municipal Employees,
District Council 20, AFL-CIO,

Petitioner,

and

District of Columbia
General Hospital,

Respondent.

PERB Case No. 90-A-04
Opinion No. 253

DECISION AND ORDER

On February 6, 1990, American Federation of State, County and Municipal Employees, AFL-CIO, District Council 20 (AFSCME), filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitrator's award (Award) issued on January 12, 1990, which denied a grievance concerning the termination of Meauville Samuels (Grievant), an employee of the District of Columbia General Hospital (DCGH). AFSCME contends that the Award is contrary to law and public policy. On March 2, 1990, DCGH filed a response opposing the request that the Board review the Award.

Although the Arbitrator made certain findings with respect to the merits of the issue, the Award was based on a procedural determination that the grievance was untimely filed.^{1/} It is well settled that arbitrators are permitted to decide questions of procedural arbitrability. See, Wiley & Sons v. Livingston, 376 U.S. 543 (1964) and Washington Hospital Center v. Service Employees International Union, 746 F.2d 1503 (1983). In denying the grievance, the Arbitrator concluded that "the grievance [was] out of the 15 working day time limit specified in step 4 of the [parties'] grievance procedure." (Award, p.19)

As always, the issue before the Board in an Arbitration Review Request is whether or not a statutory basis for review

^{1/} In view of our decision with respect to the Arbitrator's procedural determination, the Board finds it unnecessary to consider the Union's contentions in its Arbitration Review Request concerning his findings on the merits.

exists. D.C. Code Section 1-605.2(b) authorizes the Board to consider appeals from arbitration awards pursuant to a grievance procedure if and only if one of three statutory grounds is met. Here, the Union contends that only one of these applies, namely, that the Award on its face is contrary to law and public policy. The Board concludes that AFSCME's contentions fail to demonstrate a statutory criterion for review.

The Arbitrator unequivocally concluded the following:

[I]f it is accepted that the union grievance was not filed until June 26, 1987, the grievance is out of the 15 working day time limit specified in Step 4 of the grievance procedure. Less so, but also out of time, is the grievance filed on April 21, 1987, measured either from January 29, 1987 [when the grievant testified she received notice of her discharge] or February 20, 1987 [the date postal records reflect the grievant received her discharge notice]. (Award, p. 17)

The Union first contends that the Arbitrator's finding of untimeliness is contrary to law and public policy because there was disputed testimony which, had the Arbitrator accepted it, would in the Union's view have led to an opposite conclusion. This is no more than a dispute over credibility determinations and it is well-settled that such determinations are within the authority of an arbitrator, see, e.g., D.C. Public Schools and AFSCME Council 20, 34 DCR 3605, Op. No. 155, PERB Case No. 86-A-03 (1987). Moreover, objections to the Arbitrator's evaluation of the weight of the evidence and his logical inferences therefrom do not raise the asserted statutory basis for review.

Next, the Union contends that the Award is contrary to law and public policy because "it was unreasonable and unduly harsh for [the] Arbitrator to dismiss the grievance on procedural grounds". The Union argues that "late filings should not result in dismissal of the grievance if the circumstances are such that it would be unreasonable to require strict compliance with the time limits specified by the agreement." In so arguing, the Union would have us ignore the fact that the Arbitrator found no such circumstances here and spelled out his reasons in detail, and also ignores the findings with respect to timeliness that we have quoted above and the explicit provision in the parties' collective bargaining agreement that required strict compliance

with contractual time limits.^{2/} Again, this was well within the Arbitrator's authority to evaluate the facts and interpret the agreement before him. We know of no "law and public policy" to the contrary.

No statutory basis for reviewing the Award exists where, as here, there is merely a disagreement with the Arbitrator's evaluation of the facts or interpretation of procedural provisions contained in the parties' collective bargaining agreement. The Board may not substitute its or the Union's judgement for that of the duly designated arbitrator.

ORDER

IT IS HEREBY ORDERED THAT:

The Request For Review of this Arbitration Award is denied.

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

September 5, 1990

^{2/} Article XXII, of the parties' collective bargaining agreement provides in relevant part:

Section 9 - Time Limits:

All time limits set forth in this Article may be extended by mutual consent, but if not so extended, must be strictly observed. If the matter in dispute is not resolved within the time provided for in any step, the next step may be invoked. However, if a party fails to pursue any step within the time limit then he/she have no further reason to continue the grievance.