

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)
)

Teamsters Local Union No. 639)
a/w International Brotherhood)
of Teamsters, Chauffeurs,)
Warehousemen and Helpers)
of America, AFL-CIO,)

Petitioner,)

v.)

District of Columbia)
Public Schools,)

Respondent.)

PERB Case Nos. 90-N-02,
90-N-03 and 90-N-04

Opinion No. 274

(Motion for Reconsideration)

DECISION AND ORDER

On January 22, 1991, Teamsters Local Union 639 filed a Motion for Reconsideration in the above-captioned matter seeking reversal by the Public Employee Relations Board (Board) of its rulings on two of several items submitted for a negotiability determination. The Board had issued a Decision and Order on December 24, 1990, Slip Opinion No. 263 finding nonnegotiable the two Teamsters' proposals that are the subject of this Motion. ^{1/}

For the following reasons we deny the Teamsters' Motion for Reconsideration. With respect to Proposal No. 22 -"Drug Testing"- the Teamsters argue that the Board should reverse its conclusion that the standard for the imposition of drug testing is nonnegotiable. The Teamsters contend that since "a significant factor" in the Board's decision in Teamsters Local Unions No. 639 and 730 v. D.C. Public Schools, 38 DCR 96, Slip Op. 249, PERB Case No. 89-U-17 (1990), finding negotiable certain impact and procedural issues related to drug-testing, was the testimony of the then Director of the Office of Labor Relations and Collective Bargaining, this testimony should also lead to the Board's reversal of its position regarding the standards for testing. This contention ignores the reason we noted that testimony in a footnote. The issue under discussion in our Opinion at that point was whether "procedural matters concerning the levels of discipline" (Slip Op. 249 at 8) were within Respondent DCPS' duty to bargain over the impact and effects, including procedures for implementing the decision to

^{1/} Teamsters Local 639 and D.C. Public Schools, 36 DCR 1586, Slip Op. No. 263, PERB Case Nos. 90-N-02, 03 and 04 (1990).

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adopt drug-testing. Based on the facts of that case, we had just held that the decision to adopt drug testing was management's right. In coming to the conclusion that DCPS had a duty to bargain over impact and effects, we referred to the significance -- real but not controlling -- of the fact that the parties before us "ha[d] a history of including the procedural aspects of disciplinary matters in their collective bargaining agreement" (*id.* at 6). We then, in a footnote, set out a portion of the testimony that the Teamsters would now rely on, noting it for the facts recited therein, which showed the frequency with which other District of Columbia Government agencies had bargained concerning drug-testing procedures including disciplinary actions. In short, it was for what has been the bargaining practice in this limited area that we cited the testimony. Nothing in that PERB footnote in a case that did not present a question about the standards for testing -- the question whose answer in Opinion No. 263 we are here asked to reconsider -- provides any reason for reexamining our decision on this question, much less coming to a different answer.

Similarly unconvincing is the Teamsters' argument for reversal of our decision concerning Proposal No. 13, "Work Year/Hours of Work." The Union's contention that its proposal's introductory paragraph "does not attempt to regulate the school year" seems to us contradicted by the language of that paragraph. As to Section "A" of this proposal we did find that it dealt with scheduling as Teamsters assumes. (See our Op. 263 at 15)

The Teamsters assert at page 5 of the Motion that "PERB...erroneously held that the scheduling of hours of work for the Attendance Counselors was nonnegotiable." On the contrary, in Opinion No. 263 at page 15, we concluded "that scheduling, a bargainable subject, is distinguishable from the establishment of the 'basic work week' and 'hours of work' - matters reserved to management." Thus, there is no occasion for us to revisit our Opinion regarding this issue.

ORDER

IT IS HEREBY ORDERED THAT:

For the foregoing reasons, the Motion for Reconsideration is denied.

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

April 22, 1991