GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

Council of School Officers, Local 4, Petitioner, and District of Columbia Public Schools, Respondent.	PERB Case No. 95-A-03 Opinion No. 416

DECISION AND ORDER

On January 19, 1995, the District of Columbia Public Schools (DCPS) filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitration award (Award) issued on December 26, 1994 by Arbitrator M. David Vaughn. [1]/ The Arbitrator sustained a grievance filed by the Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO (the Union) on behalf of Messrs. Alexander Brown and Edmund Millard and Dr. Rosa Hillary (the grievants), who, in July 1993, were involuntarily transferred from positions as school Principals to positions as Community Coordinators. In sustaining the grievance, the Arbitrator concluded that the parties' collective bargaining agreement permitted involuntary transfers of covered employees only in specified circumstances, and by its terms overrode the employer's broad authority under DCPS regulations to make transfers "for the good of the system."[2]/ The Arbitrator found, on the evidence

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[1]/ On January 20, 1995, DCPS filed a timely addendum to its request for review.

[2]/ The regulation provides: that "[t]he Superintendent shall have the authority to effect the reassignment of any school (continued...)

presented, that none of the transfers satisfied the contractual criteria, and that while the grievants had experienced no reduction in grade or pay, the transfers had adverse consequences for each of them and "clearly changed their conditions of employment."[3]/ As a remedy, the Arbitrator directed that grievants be restored to the positions from which they had been transferred, or at their option, to equivalent positions; that their records be modified to reflect the Award, and that they be made whole for any losses of wages or benefits suffered.[4]/

Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Sec. 1-605.2(6), the Board is authorized to consider appeals from arbitration awards pursuant to grievance procedures "[p]rovided, however, that such awards may be reviewed only if the arbitrator was without or exceeded, his or her jurisdiction; [or] the award on its face is contrary to law and public policy...."

DCPS contends that the Award on its face is contrary to law and public policy because the "practical effect" of the conclusion that the employer may make involuntary transfers only in the circumstances specified in the collective bargaining agreement is to "void management's unilateral right to transfer pursuant to D.C. Code Section 1-618.8 Management rights: matters subject to collective bargaining.... [and] negate[] management's right [under the DCPS regulations] to determine what actions constitute the 'best interest of the school system.'"

There is no indication in the Arbitrator's careful statement of the parties' position in the arbitration, that DCPS made any argument based on D.C. Code Section 1-618.8. Having failed to

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[2](...continued)
officer when the Superintendent deems it to be in the best interest of the school system." Title 5, Section 516.2, District of Columbia Regulations.

[3]/ The Arbitrator found that grievants were "removed from important, visible, professionally-significant positions on the basis of complaints and criticisms to which they had no official opportunity to respond and no way to obtain vindication and [were] placed in a position with less visibility, vastly lower budget, different location and generally less desirable hours. The changes clearly changed their conditions of employment."

[4]/ The Arbitrator observed that where a position had been abolished prior to the transfer, the contractual restrictions would not apply. He found, however, that each of the grievants had been transferred from an existing position.

make the argument to the Arbitrator, it cannot now make it in support of its request for review. See District of Columbia Public Schools and Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, 38 DCR 5035, Slip Op. No. 277, PERB Case No. 90-A-11. In any event, neither the D.C. Code nor the DCPS regulation supports the contention that the Award on its face is contrary to law and public policy.

Section 1-618.8 provides in relevant part, that "management[] shall retain the sole right in accordance with applicable laws and rules and regulations....[t]o hire, promote, transfer, assign and retain employees in positions within the agency...."

DCPS makes no claim that law and public policy is offended by bargaining over such management rights, and concedes that it did so in this case. Nor does it argue that it could not lawfully and consistent with public policy have entered into the agreement as found by the Arbitrator. It argues only that the Arbitrator applied the wrong standard in interpreting language claimed to limit its rights under the statute and regulations - that he should have required a "clear and unmistakable" contract waiver instead of interpreting the agreement using standard canons of construction. This then, is simply another request for review by a party dissatisfied with an arbitrator's interpretation of the agreement. We have repeatedly said, and repeat here, that such dissatisfaction furnishes no basis for review by this Board, even if the arbitrator has misconstrued the agreement, "for it is the arbitrator's interpretation for which the parties bargained." Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and D.C. Dept. of Corrections, 41 DCR 1753, Slip Op. No. 304, PERB Case No. 91-A-06 (1994).

DCPS makes the further claim that the Arbitrator exceeded his jurisdiction by requiring the reinstatement of Dr. Henry to a Principal position. DCPS argues that Dr. Henry's appointment was for a three year term as an ET-06 Principal, commencing November 1, 1991 and ending October 31, 1994; that she served the entire period with no reduction in pay, and that the effect of the Award would be to require the agency to pay her at the ET-06 rate for a duration longer than her appointment.

Having found a violation of the agreement, an arbitrator has broad authority to fashion a remedy that will restore the pre-violation status quo. See e.g., D.C. Metropolitan Police Department and Fraternal Order of Police, 36 DCR 339, Slip Op. No. 218, PERB Case No. 89-A-01 (1989). Dr. Henry was transferred effective July 1993, some fifteen months before her appointment

expired. The Arbitrator found that she had been transferred in violation of the agreement, and that although she suffered no reduction in pay, there were "clearly consequences adverse to" her, see supra, note 3. We find no basis for the contention that the Arbitrator exceeded his authority by directing Dr. Henry's reinstatement to the position of Principal for the term of her appointment remaining.

DCPS has not shown a statutory basis for review of the Award, and accordingly, its request for review 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 8, 1995