GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
District of Columbia Department of Public Works,	
Petitioner,	
and	PERB Case No. 90-A-10 Opinion No. 280
American Federation of Government Employees, Local 872,	
Respondent.	

DECISION AND ORDER [1]/

On July 6, 1990, District of Columbia Department of Public Works (DPW) filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitration award (Award) issued on June 13, 1990. [2]/ DPW requests that the Board review the Award resulting from a grievance filed by the American Federation of Government Employees, Local 872 (AFGE or Union) that held (1) the grievance, which alleged a violation of, inter alia, the parties' collective bargaining agreement, was arbitrable and (2) that DPW had breached the provision in question. DPW contended that the Arbitrator exceeded his jurisdiction and that the Award on its face is contrary to law and public policy because it resolves an issue concerning "unit determination questions and other representation issues", matters reserved to the Board's exclusive jurisdiction under D.C. Code Sec. 1-605.2(1) of the Comprehensive Merit Personnel Act (CMPA). (Request at 3-6.)

On July 18, 1990, AFGE timely filed an Opposition to

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[1]/ Members Kohn and Danowitz did not participate in the discussion and decision of this case.

[2]/ The Award is signed and dated June 13, 1990. However, DPW attaches a copy of what is, purportedly, the envelope in which the Award was served by U.S. mail First Class to DPW's representative. The postmark indicates that the Award was mailed on June 15, 1990. In computing the timeliness of this Arbitration Review Request, the Board's Interim Rule 100.16 provides that three days are added to the prescribed period when service is by mail. Accordingly, the Request was timely filed.

Arbitration Review Request in which it asserted that the Arbitrator was within his authority and the Award was not contrary to law and public policy in that the Arbitrator did not invade the province of the Board but rather deferred to the bargaining-unit description determination previously found appropriate by the Board. (Opposition at 4-5.)

Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 1-605.2(6), the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, 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...." For the reasons addressed below, we conclude that the objections raised by DPW do not establish a statutory basis for our review of the Award and therefore deny the Request.

The case before the Arbitrator concerned a DPW decision in July, 1988, to issue and post an announcement for a Public Utility Specialist. The announcement identified the position as outside of the bargaining unit. The Union contended that the position was erroneously identified and was indeed covered by the bargaining-unit description set forth in the parties' collective bargaining agreement. A grievance was filed by AFGE which alleged, in short, that if, as the Union contended, the position was a part of the bargaining unit, DPW was in violation of certain vacancy announcement procedures as required by and set forth in the parties' collective bargaining agreement and the District Personnel Manual. [3]/ DPW's only contention is that the Arbitrator exceeded his authority and issued an award contrary to law and public policy, by improperly resolving the threshold issue in finding that the vacant position was a part of the bargaining unit.

The following unit description, as noted by the Arbitrator, is set forth in the parties' collective bargaining agreement and is not in dispute.

> "All non-professional District Service (DS) and Wage Grade (WG) employees in the District of Columbia, Department of Public Works (DPW) who were previously represented by AFGE Locals 631,

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[3]/ Article 24, Section A of the parties' agreement states that "all positions within the bargaining unit shall be filled in accordance with [DPW's] Merit Staffing Plan which is contained in DPM Chapter 8, Sec. 3.3.

> 872, 2553 and 1975 on July 23, 1984 excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than purely clerical capacities and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978."

The title of the position vacancy, i.e., Public Utility Specialist, is also undisputed. In deciding the threshold issue of whether the public utility specialist is a bargaining unit position, now the asserted basis for review, the Arbitrator observed that "[t]his matter does not concern clarification or consolidation of the existing unit. It involves a job clearly by title, series, wages and benefits already in the unit.... It is contractual in nature." (Award at 5.)

DPW fails to articulate how, by addressing this issue of arbitrability, the Arbitrator "resolve[d] unit determination questions and other representation issues" within the exclusive jurisdiction of the Board under D.C. Code Sec. 1-605.2(1). On the contrary, the Arbitrator appears to have merely affirmed that the vacancy announcement for a position, i.e., Public Utility Specialist, was encompassed by the bargaining unit description previously found appropriate by the Board and set forth in the parties' collective bargaining agreement. The Award is clearly based on the Arbitrator's accorded authority to interpret the parties' collective bargaining agreement. We have stated that "arbitrability [is] an initial question for the arbitrator to decide if Respondents challenged jurisdiction on this ground." American Federation of State, County and Municipal Employees, Council 20, AFL-CIO v. D.C. General Hospital, 36 DCR 7101, Slip Op. No. 227 at 5, PERB Case No. 88-U-29 (1989). [4]/

Accordingly, DPW has provided no basis for finding the Award

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[4]/ In the Arbitration Review Request, DPW noted the Board's power pursuant to D.C. Code Sec. 1-605.2(1) to "[r]esolve unit determination questions and other representation issues...." DPW further noted that pursuant to D.C. Code Sec. 1-605.2(11) the Board adopted Interim Rule 101 which further described the Board's authority to resolve unit determination questions as including the "clarification of an existing unit". DPW maintained that the Board's power to resolve questions of unit clarification is exclusive and thus when "the Arbitrator proceeded to make such a unit determination [he] exceed[ed] his authority and issu[ed] an Award which, on its face, is contrary to law and public policy." (Request at 5). The Arbitrator did not, however, resolve a unit determination question, as we concluded above.

on its face contrary to law and public policy nor that the Arbitrator was without, or exceeded the scope of the jurisdiction granted. Therefore, we lack the authority to disturb the Award. See, Metropolitan Police Dept. and Fraternal Order of Police, Metropolitan Police Dept. Labor Committee, 30 DCR 1658, Slip Op. No. 55, PERB Case No. 83-A-01 (1983).

ORDER

IT IS THEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

July 19, 1991