

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors to that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD**

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In the Matter of:	)	
	)	
District of Columbia	)	
Department of Housing and	)	
Community Development,	)	
	)	PERB Case No. 97-A-03
Petitioner,	)	Opinion No. 527
	)	
and	)	
	)	
American Federation of Government	)	
Employees, Local 2725, AFL-CIO,	)	
	)	
Respondent.	)	

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**DECISION AND ORDER**

On June 10, 1997, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of the District of Columbia Department of Housing and Community Development (DHCD), filed an Arbitration Review Request. OLRCB seeks review of an arbitration award (Award) that sustained a grievance filed by the American Federation of Government Employees, Local 2725, AFL-CIO (AFGE) on behalf of two bargaining unit employees who contended they had been promoted by DHCD. OLRCB contends that the Award is contrary to law and public policy. AFGE filed an Opposition to the Arbitration Review Request, contending that OLRCB has failed to establish that the Award contravenes any law or public policy.

The issue before the Board is whether or not there is a statutory basis for our review of the Award. Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 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 award on its face is contrary to law and public policy... ." Upon review of the Award, the pleadings of the parties and applicable Board law, the Board concludes that OLRCB has not established a statutory basis for our review.

OLRCB's challenge to the legal sufficiency of the Award is essentially twofold. First, OLRCB asserts that ample evidence was

presented to the Arbitrator that established that requisite forms necessary to authorize a promotion had not been executed by DHCD and therefore the promotion could not be legally effected. Based on this premise, OLRCB contends that DHCD did not violate any mandatory duty by not promoting the grievants. Consequently, any Award requiring DHCD to promote the grievants cannot stand because promotions are a discretionary act.

OLRCB's contention rests on its evidentiary-based assertion that the Director of DHCD did not execute the grievants' personnel action forms, a required act to effect the promotions. Notwithstanding OLRCB's assertions to the contrary, the Arbitrator's conclusion that the required personnel action forms were complete and properly executed was based on the testimony and documentary evidence provided by both DHCD and AFGE witnesses. Award at pp. 8-12. Based on that evidence, the Arbitrator concluded that DHCD would not have implemented the promotion and attending pay increases --prior to rescinding them-- if the forms in question had not been executed by all necessary officials, including the Director of DHCD.

It is well settled that disputes over the weight and the significance to be afforded the evidence is within the domain of the arbitrator and does not state a statutory basis for review. See, e.g., American Federation of State, County and Municipal Employees, D.C. Council 20, AFL-CIO and D.C. General Hospital, 37 DCR 6172, Slip Op. No. 253, PERB Case No. 90-A-04 (1990). The Board lacks jurisdiction to review an arbitrator's findings of fact based on credibility determinations and assessments of the probative value of record evidence. See, University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 38 DCR 1580, Slip Op. No. 262, PERB Case No. 90-A-08 (1990). Consequently, our limited statutory jurisdiction to review arbitration awards does not accord us the authority to make an independent finding of fact necessary to determine the evidentiary claims upon which this ground for review is based. Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO and D.C. Department of Corrections, 41 DCR 1510, Slip Op. No. 296 at n. 6, PERB Case No. 87-A-11 (1992). We further note that, contrary to OLRCB's requested relief, our scope of review does not accord us the authority to review and substitute our judgement on the merits of a grievance. (ARR at p. 5.)

Having found that DHCD had completed the required acts to promote the grievants, the Arbitrator could properly find that DHCD had effectively exercised its contractual and legal discretion in this regard. Given the authority and findings of the Arbitrator, OLRCB has provided no basis for finding the Award contrary to law and public policy. In view of the above, the Request presents no

Decision and Order  
PERB Case No. 97-A-03  
Page 3

statutory ground under the CMPA to modify or set aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

November 20, 1997

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 97-A-03 mailed (U.S. Mail) to the following parties on this the 20th day of November, 1997.

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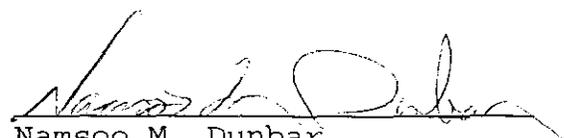
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