GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: The University of the District of Columbia, Petitioner, and The University of the District of Columbia Faculty Association/ National Education Association, Respondent.	PERB Case No. 82-A-02 Opinion No. 45

DECISION AND ORDER

BACKGROUND

On March 1, 1982, the University of the District of Columbia (the University) filed an Arbitration Review Request with the Distict of Columbia Public Employee Relations Board (the Board) seeking review of an arbitration award issued on February 2, 1982. In that award, the arbitrator sustained the grievance of the University of the District of Columbia Faculty Association (the Association).

The basis for the appeal is the alleged inconsistency of the arbitrator's award with law and public policy of the District of Columbia, specifically, Section 502(f) of the District of Columbia Comprehensive Merit Personnel

Act of 1978 (CMPA) (codified as D.C. Code Section 1-605.2 (6))[1]. The University contends that the arbitrator's award on its face is contrary to law and public policy because the arbitrator, in interpreting the negotiated agreement between these parties, allegedly failed to interpret the agreement in view of the "Management Rights" clause of the CMPA. The University contends further that the arbitrator wrongfully based the award solely upon an interpretation of Article XIII A.(b) of the negotiated agreement which specifically defined a reduction in force (RIF) of faculty as the result of "a discontinuance or curtailment of department(s), program(s), or function(s) of the University".

Finally, the University requested that "...the implementation of the Arbitration Award...be stayed pending resolution of this appeal" by the Board.

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[1] Section 502(f) of the CMPA (D.C. Code Section 1-605.2(6)) provides that the Board shall have the power to:

> "(f) consider appeals from arbitration awards pursuant to a grievance procedure: Provided, however, That such awards may be reviewed only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means: Provided, further, That the provisions of this subsection shall be the exclusive method for reviewing the decision of an arbitrator concerning a matter properly subject to the jurisdiction of the Board, notwithstanding any provisions of the District of Columbia Uniform Arbitration Act."

[2] Sections 1708(a)(3) and (5) entitled "Management Rights; Matters Subject To Collective Bargaining", (codified as D.C. Code Section 1-618.8(3) and (5) provide that:

> "The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:..."
> "(3) to relieve employees of duties because of lack of work or other legitimate reasons;..."
> "(5) to determine the mission of the agency, its budget, its organization, the number of employees and the number, types and grades of positions of employees assigned to an organizational unit, work project or tour of duty, and the technology of performing its work; or its internal security practices..."

The Association filed its Opposition to the Arbitration Review Request on March 10, 1982 contending essentially that:

1. "The University merely is attempting to obtain a de novo review of its contractual claim, and this is contrary to both the letter and spirit of the PERB Rules."

2. "[A]n arbitration award is presumed to be valid" and should be upheld so long as it "'draws its essence from the collective bargaining agreement'".

3. "[N]either PERB's enabling legislation nor the agency's interim rules confer the authority to order a stay. Moreover, even if PERB had such authority, the University has not even alleged that it will suffer irreparable harm unless a stay is granted,... much less demonstrated that this is the case."

The Board's Executive Director, in order to comply with the provisions of Board Rule 107.6, wrote to the parties on April 19, 1982 requesting additional information through written memoranda. The University filed a response on May 11, 1982 and the Association filed responses on May 10 and May 21, 1982.

Jurisdiction of the Board

The University asserts CMPA Sections 502(f) and 1708 (codified as D.C. Code Sections 1-605.2(6) and 1-618.8) as the authority for the Board to exercise jurisdiction over this matter. The Board finds that this arbitration award involves labor-management relations issues within its jurisdiction pursuant to the sections of the CMPA asserted by the University.

Consistency of the Award with Law and Public Policy

The Board's review of the Arbitrator's award is limited, in this matter, to the singular question of whether or not the award on its face is contrary to law and public policy.

The issue presented to the arbitrator was:

> "Did the University violate Article XIII Section A.(b) of the collective bargaining agreement when it implemented a reduction in force on August 8, 1981?"

Article XIII, Sections A and B provide that:

> "A. A reduction in force shall be defined as a decrease in the number of faculty as a result of:
>
> a) A bona fide financial exigency or
>
> b) A discontinuance or curtailment of department(s), program(s), or function(s) of the University..
>
> The Board of Trustees shall determine when a RIF must be undertaken.
>
> B. The parties agree that RIF is a last resort action. Prior to affecting a RIF, alternatives will be sought such as normal attrition, retirement (both mandatory and early), and resignations."

The Arbitrator ruled, in pertinent part, that:

> "...the matter that has been resolved here is that the University violated Article XIII, Section A.(b) of the collective bargaining agreement when it implemented a RIF in 1981. As shown by the evidence of record, the University had unilaterally decided that a RIF was necessary in the fall of 1980 and the Board of Trustees' Resolutions to implement a RIF were based upon the need to have a 15 to 1 student/faculty ratio and not on the need to discontinue or curtail department(s), program(s), or function(s) of the University regardless of what the resulting student/faculty ratio might be. This conclusion should not be misconstrued to mean that the Board of Trustees should not have the responsibility to run a RIF. To the contrary, the ruling reached here is simply that the Board of Trustees and the University must act in compliance with Article XIII, Section A. when deciding that a RIF must be undertaken." [Emphasis Added]

The Arbitrator was clearly aware of the University's statutory claims, but concluded that the statutory right to conduct a RIF was limited here by the terms of the negotiated agreement. The Arbitrator's conclusion is supported by the sequence of events. The parties voluntarily entered into the negotiated agreement in October 1980, some ten (10) months after the CMPA became operative. Clearly, the University knew, or should have known, of its statutory management rights at the time. Yet, it voluntarily negotiated and agreed to contractual provisions which modified its statutory rights regarding RIF's.

The Arbitrator interpreted the contract as was her mandate and that interpretation is well within the scope of authority granted. There is insufficient evidence for the Board to conclude that the award is contrary to law or public policy since it is what the parties bargained for, that is, an interpretation of a disputed contractual provision voluntarily negotiated and agreed upon. The Board concludes, as did the Arbitrator, that the University must abide by the terms of the agreements it negotiates, even when the terms of those agreements modify its statutory right to RIF employees.

Request for Stay Pending Resolution of the Appeal

The University cited no specific statutory authority for either its request or the Board's authority to grant a stay. The Association correctly points out that the University has made no allegation or submitted any evidence that any irreparable harm will result absent issuance of a stay by the Board. Based upon the Board's determinations as stated above, no action is required or taken on the University's request for a stay.

ORDER

IT IS ORDERED THAT:

The Arbritation Review Request filed herein is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

July 22, 1982