GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

| | |
|---|---|
| District of Columbia Public Schools,<br><br>Petitioner,<br><br>and<br><br>Teamsters Local Union No. 639, a\w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,<br><br>Respondent. | PERB Case No. 95-A-06<br>Opinion No. 423 |

DECISION AND ORDER

On March 14, 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 February 14, 1995. The Arbitrator sustained a grievance filed by the Teamsters Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (the Teamsters) on behalf of temporary indefinite (TIND) employees who, between May and June 1993, were scheduled to be released pursuant to a reduction in force (RIF).

In sustaining the grievance, the Arbitrator concluded that DCPS had violated the parties' collective bargaining agreement "when it failed to establish and follow in inverse order of seniority a Retention Register which included 'Temporary Indefinite" appointees in Group III... ."[1]/ The Arbitrator

[1]/ The collective bargaining provisions provide in pertinent part:

Article IV. ...The last employees hired shall be the

(continued...)

rejected DCPS' contention that TINDs fell under the category of "temporary limited" employees under D.C. Code § 1-625.2, who are expressly excluded from the category of employees entitled to retention rights during a RIF. Rather, the Arbitrator found that TINDs were Tenure Group III employees that were specifically accorded retention rights under District Personnel Manual (DPM) Regulation 2415 as "employee[s] serving under an indefinite appointment".

In his award, the Arbitrator directed that DCPS create retention registers that reflect the seniority standings as of June 30, 1993, for employees in Tenure Groups I, II and III. DCPS would then redetermine, based on the register, which employees in each job classification should have been released and the date each should have been recalled but for the violation. Based on this reassessment, the Teamsters and DCPS would determine which members of the grievant class are entitled to be recalled, rehired or reappointed and to back pay.

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...."[2]/

---

[1](...continued)
first employee laid off, and in rehiring, the last employee laid off shall be the first employee rehired. This shall not be interpreted or applied in any way inconsistent with federal law and/or D.C. Law.

Article XXIX

In the event of a layoff (reduction in force), employees shall be laid off in the inverse order of seniority and in accordance with the D.C. Comprehensive Merit Personnel Act of 1978, as amended. Temporary employees shall be laid off first, probationary employees shall be laid off second, and permanent employees last.

[2]/ A threshold jurisdictional issue concerning the timeliness of the Arbitration Review Request has been raised by the Respondent. The Teamsters argue that since there is no dispute that the Award was issued on February 14, 1995, pursuant to Board Rule 538.1, 501.4 and 501.5, the Request should have
(continued...)

DCPS argues that the grievants' classification of "temporary indefinite" is the functional equivalent of "temporary limited" as prescribed under D.C. Code § 1-625.2. Section 625.2(b)(4) provides that "employees serving on temporary limited appointments or having unsatisfactory performance ratings are not entitled to retention rights and other provisions of this subchapter." Therefore, DCPS contends, the Award on its face is contrary to law and public policy since it extends retention rights to grievants when such rights are not extended to this classification of employees by law.

The issue presented by DCPS' contention is whether or not the Arbitrator's interpretation of the statute and attendant regulation establishes the asserted statutory basis for review. We do not find the Arbitrator's conclusion, based on his assessment of the evidence presented, that the grievants' classification, temporary indefinite employees, did not constitute "temporary limited appointments", as provided under D.C. Code § 1-625.2, to be contrary to the plain reading of the statute. (Emphasis added.) This finding is further supported by the attendant DPM regulation, i.e., Chapter 24, Sec. 2415.7, which, provides in pertinent part:

---

[2](...continued)
been filed no later than Monday, March 13, 1995. March 13, was a city-wide furlough day for the District Government mandated by law.

Board Rule 500.8 establishes the business hours of the Board as "8:15 a.m. to 4:45 p.m., Monday through Friday, exclusive of District of Columbia holidays." With few exceptions, the District government eliminated the normal business hours for District government agencies (including the Board), that otherwise would have prevailed on that day. Since the Board did not maintain business hours on March 13, 1995, nothing could be properly filed with the Board on that date in accordance with Board Rule 501.11. In our view, a furlough day should be treated the same under our Rules as other days on which the Board is close for business, albeit less predicable. Unlike weekends and holidays, the uncertainty of furloughs in a given fiscal year has engendered the absence of this particular type of non-business day from Board Rules for purposes of computing time for filing documents. Therefore, pursuant to Board Rule 501.5, since March 13, 1995, was a legally mandated non-business day, DCPS' deadline for filing its Arbitration Review Request extended to the next business day, March 14, 1995, and the filing was timely.

2415 RETENTION STANDING: TENURE GROUPS

* * * *

2415.7 Tenure Group III shall include each employee serving under an indefinite appointment, a TAPER appointment, and a term appointment.

The Arbitrator found the grievant classification, "temporary indefinite" employees, was more indefinite than temporary in nature and therefore met the "indefinite appointment" classification entitled to retention rights under DPM 2415. Based on this conclusion, the Arbitrator found the grievant class was not subject to Chapter 8 of the DPM governing "temporary limited" and "term" employees.

We have held that even an arbitrator's "strongly questionable" interpretation of a statute, does not render the award, on its face, contrary to law and public policy. Washington Teachers' Union, Local 6, AFL-CIO and District of Columbia Public Schools, ___ DCR _____, Slip Op. No. 397, PERB Case No. 94-A-03 (1994).[3]/ Here, the Arbitrator's interpretation, in our view, appears reasonable. DCPS' grounds for review are merely arguments as to why its interpretation of statute should be accepted over that of the Arbitrator's. However, it is not a party's or the Board's interpretation for which the parties have bargained, but that of the arbitrator.[4]/ See, e.g., University of the District of Columbia and UDC Faculty Assoc., 38 DCR 5024, Slip Op. No 276, PERB Case No. 91-A-02 (1991).

---

[3]/ DCPS bases an ancillary contention, that the Arbitrator's equitable powers to fashion the instant remedy cannot stand, on the same arguments supporting its contention that the Award is contrary to law and public policy. In view of our finding that DCPS' grounds for review lacked merit, we find the Arbitrator's equitable powers to fashion the instant remedy enforcing the parties' agreement with respect to the grievant class of employees, intact.

[4]/ DCPS cited another arbitrator's award in support of its contention that its interpretation is correct. DCPS, however, cites to no law and public policy or agreement between the parties requiring the use of prior arbitration awards as controlling precedent. Absent such, as stated in the text, it is the individual arbitrator, selected in accordance with the parties' negotiated procedures, that is accorded the authority to decide a given matter.

DCPS further contends that since the parties never negotiated retention rights for these employees pursuant to D.C. Code § 1-625.2(d), DCPS was free to exercise its sole management right under D.C. Code § 1-618.8(a) to "retain" or "relieve" employees. Therefore, the Arbitrator exceeded his authority by awarding such rights to these employees and fashioning a remedy not contained in the contract.

Article IV and XXIX of the parties' collective bargaining agreement provides for retention of employees in inverse order of seniority during a reduction in force "in accordance with the D.C. Comprehensive Merit Personnel Act of 1978, as amended." The CMPA, as codified under D.C. Code § 1-625.1, provides that "[t]he Mayor and the District of Columbia Board of Education shall issue rules and regulations establishing a procedure for the orderly furloughing or termination[, e.g., RIF,] of employees .... ." As previously discussed, the Arbitrator found that DPM Chapter 24, Sec. 2415, provided retention rights to the grievant class, a finding, pursuant to the parties' collective bargaining agreement, the Arbitrator clearly had the authority to make.

Unless expressly provided to the contrary, when parties agree to submit a matter to arbitration they not only agree to be bound by the Arbitrator's interpretation of the collective bargaining agreement but also to his interpretation of related rules and/or regulations. See, e.g., UDC Faculty Assoc. and University of the District of Columbia, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992). Management rights under D.C. Code § 1-618.8 are tempered by D.C. Code § 1-625.2(d) which makes "policies and procedures" governing reductions in force that are developed under this subchapter "appropriate matters for collective bargaining". Therefore, the Arbitrator did not exceed the jurisdictional authority and contravene DCPS' management rights since his Award was drawn form the parties' collective bargaining agreement which, pursuant to D.C. Code § 1-625.2(d), superseded DCPS' authority with respect to RIF policies and procedures.

For the reasons discussed above, 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.

May 18, 1995