GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	)	
University of the District of Columbia,	)	
Petitioner,	)	PERB Case No. 88-A-02
	)	Opinion No. 219
and	)	
American Federation of State, County and Municipal Employees, Council 20, Local 2087	)	
Respondent.	)	

DECISION AND ORDER

On November 9, 1987 the University of the District of Columbia (UDC) filed an Arbitration Review Request with the Public Employee Relations Board (Board).

UDC contended that the Board should set aside an Arbitration Award issued on October 13, 1987 because the Arbitrator exceeded his authority by finding a grievance filed by the American Federation of State, County and Municipal Employees (AFSCME), Local 2087, procedurally arbitrable. UDC also alleged that the Award is contrary to law and public policy because (1) it enforces only the provisions of the collective bargaining agreement that grants rights to the Union and does not enforce management rights and (2) it requires UDC to negotiate procedures which have already been negotiated.

The aspects of the Arbitration Award on which UDC based its procedural claims are as follows:

A. In finding AFSCME's grievance concerning a reduction in force (RIF) procedurally arbitrable, the Arbitrator concluded that although the Union initiated the grievance at the fourth step of the parties' negotiated grievance procedure, it was not improperly filed. He reasoned thus:

> It is true, as the Employer claims, that the agreement calls for a grievance to be initially discussed with an employee's immediate supervisor, and then, if not settled, the grievance should be submitted in writing to lower levels of management. However, it is also true that, on its face this particular grievance dealt with a subject which called for immediate action at the highest levels of the Employer....[T]his dispute simply does not comfortably fit within the procedural structure developed by the parties for dealing with grievances in the ordinary course...[.] (Arbitration Award p. 11)

B. The Arbitrator found that both the grievance and the Union's demand for arbitration were timely:

> Similarly, I find that, under the unique circumstances of this case, the requirement of Section 33.4A of the Agreement that a grievance be commenced within seven working days of the occurrence does not bar the grievance from being heard on the merits....[F]urther, the Employer, on a continuing basis, was declining to negotiate, an act which also goes to the heart of the grievance. I also find that the Demand for Arbitration was not untimely filed under...the Agreement. Obviously, since the grievance itself was filed on August 28, the "decision at Step 4" referred to in that Section (of the agreement) had to occur subsequent to that date, and relates to a written response by the President (of UDC) to the grievance. Nothing in the record before me reveals when, if at all, the President so responded; accordingly, it cannot be concluded that the Union did not proceed to arbitration in a timely manner. (Arbitration Award p.11-12)

The Arbitrator's finding that UDC had an obligation to bargain with AFSCME over the impact and implementation of the RIF is the basis of UDC's contention that the Award is contrary to law and public policy. UDC maintains that RIF procedures had already been negotiated with the Union and that it had no further duty to bargain this matter. The Arbitrator rejected UDC's arguments on the basis of the following reasoning:

> The Employer believes that, regarding any aspect of a RIF, its duty to bargain terminated for the duration of the Agreement when it agreed to the inclusion of Article 29 dealing with RIFs, and when it kept the Union informed of details of the RIF.... Sections 3.0 and 33.1 of the Agreement make it clear that the parties agreed to incorporate by reference certain laws and regulations. Perhaps foremost among these is the Comprehensive Merit Personnel Act, which also deals...with the bargaining relationship....[The] Act places upon Employers and Unions the continuing obligation to bargain in good faith. Here, I have concluded that the Employer did not comply with that obligation, and thereby breached the Agreement....It is no answer to say that a general RIF procedure had previously been negotiated by the parties and included in the Agreement; rather, the Employer violated both the letter and the spirit of Section 3.0. and 33.1 of the Agreement.

D.C. Code Section 1-605.2(6) authorizes the Board to consider appeals from arbitration awards issued pursuant to a grievance procedure 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. The Board finds that none of UDC's contentions meets the statutory criteria for review. As the Union correctly points out in its Opposition to the Review Request, it is well-settled that arbitrators are permitted to decide questions involving procedural arbitrability. (See, Wiley & Sons v. Livingston, 376 U.S. 543 (1964); Washington Hospital Center v. Service Employees Int'l Union, 746 F.2d. 1503

(D.C. Cir. 1984).

Although UDC may disagree with his conclusions, the Arbitrator was authorized to decide whether AFSCME's grievance and demand for arbitration were timely and whether the grievance could be initiated at the fourth step.

Turning to UDC's contentions that the rulings on procedural arbitrability are contrary to law and public policy because they unevenly enforce the provisions of the parties' agreement in favor of the Union, the Board concludes that UDC has failed to specify any law and public policy violated by these rulings. We cannot find that the Arbitrator's rulings are inconsistent with the parties' agreement. Moreover, the Supreme Court in Paper-workers v. Misco, 108 S.Ct. 364, (1987) held that more is required than a showing of "general considerations of supposed public interests" before an award will be set aside as contrary to law and public policy.

Similarly we cannot find that the Arbitrator's substantive ruling that UDC had an obligation to bargain about the impact and implementation of the RIF, is on its face contrary to law and public policy. UDC misses the point in contending that the RIF procedures had already been negotiated and were part of the parties' agreement, for the Arbitrator found that in another provision of the agreement the parties incorporated by reference the Comprehensive Merit Personnel Act of 1978 which, he found imposes a continuing duty to negotiate all matters affecting wages and terms and conditions of employment. The Arbitrator concluded that UDC's refusal to negotiate here was in direct violation of the law. In the Board's view this conclusion is entirely consistent with the CMPA. The Board has long recognized that the CMPA creates a duty to bargain over the effects or impact of implementing a RIF. (See, UDC Faculty Assoc. and UDC, 29 D.C. Reg. 2975, Slip Op. # 43, PERB Case 82-N-01 (1982).)

Accordingly, we have been shown no basis under D.C. Code Sec. 1-605.2(6) to assert jurisdiction over this matter. UDC's request that the Board review the Award must be denied.

O R D E R

IT IS ORDERED THAT:

The Arbitration Review Request is denied.

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

March 30, 1989