Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 872,	
Petitioner,	PERB Case No. 04-A-07
and	
	Opinion No. 780
District of Columbia Water and Sewer Authority,	
Respondent.	

DECISION AND ORDER[1]

I. Statement of the case

On February 24, 2004, the American Federation of Government Employees, Local 872 ("AFGE, Local 872") filed an Arbitration Review Request ("Request"). AFGE, Local 872 seeks review of an arbitration award ("Award") that found the District of Columbia Water and Sewer Authority ("WASA") did not violate the parties' collective bargaining agreement when it restricted leave during peak winter months. AFGE, Local 872 contends that the Award is, on its face, contrary to law and public policy (See, Request at paragraphs 5 through 9). WASA opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy..." D.C. Code § 1-605.02(6) (2001 ed.).

[1]Board Member Walter Kamiat recused himself from this case. As a result, he did not participate when the Board considered this matter.

II. Discussion:

AFGE, Local 872, along with two other AFGE locals, a local of the American Federation of State, County and Municipal Employees, and a local of the National Association of Government Employees, are parties to a master collective bargaining agreement ("CBA") with WASA.

On July 16, 2002, WASA issued a memorandum, titled "Winter Planning and Scheduling." That memorandum required that leave requests for the peak winter months, November 2002 through February 2003, should be submitted by July 27, 2002.[2] AFGE, Local 872 argued in arbitration that these actions violated the following provisions of the parties' CBA:

-- Article 35B, which requires management to approve timely leave requests, except in case of emergency. AFGE, Local 872 argued that the CBA states that requests for leave needed to be submitted three days in advance.

-- Article 19, which prohibits various types of discrimination. AFGE, Local 872 claimed that some management officials had their leave requests approved, while those of employees it represented had not been.

-- Article 4, which requires that WASA give the president of each local union that is party to the CBA, including AFGE, Local 872, advance written notice of changes in personnel policies or working conditions affecting employees covered by the CBA and an opportunity to bargain.

In an Award issued February 1, 2004, the Arbitrator found that WASA did not violate any of the cited provisions of the CBA. He noted that Article 35 of the CBA permits an exception in cases of emergency, but does not define the term "emergency". He found that WASA's invocation of emergency circumstances to restrict leave use during winter months to be appropriate. In his award the Arbitrator noted as follows:

> Generally, the arbitral community has defined emergencies as events, activities, circumstances, conditions, or situations that are outside the control of management. Moreover, these types of situations may well be unforeseen,

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[2] There is some ambiguity in the Award concerning the date of WASA's memorandum that led to the grievance and arbitration at issue here. In some cases, the Arbitrator states that the memorandum was issued on July 16, 2002, in other cases July 16, 2001. The internal evidence suggests that the actual date was July 2002. However, this factual ambiguity has no bearing on the legal analysis in this Decision and Order.

> and they may be regarded as "acts of God." In addition, Management generally is given flexibility in such instances in order to meet legitimate operational needs. In like manner, such standards have a degree of applicability to an employee. In the instant case, Management has sought to require employees to submit annual leave requests as much as seven months in advance in order to maintain efficient business operations during the peak winter period. The issuance of [these requirements] are within Managements right to insure the efficient use of annual leave to meet documented operational needs... (Award at p. 10)

The Arbitrator rejected Local 872's contention that WASA violated the non-discrimination provisions of Article 19 of the CBA. He noted that this article, prohibits discrimination based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, disability, source of income and place of residence or business. The Arbitrator found that "[w]hile Article 19 applies to numerous aspects of discrimination, it does not specify a classification and bargaining unit of employees. [As a result he concluded that] [i]t would appear that the Union's argument is not persuasive since it is not covered under the provisions of Article 19." (Award at p. 12).

Finally, the Arbitrator found no violation of the provisions of Article 4 of the CBA. Article 4 requires that WASA provide written notification to AFGE, Local 872 of changes in working conditions. The Arbitrator concluded that "[b]ecause the emergency circumstances involved in this case, it was not possible for the Director to give the Union President advance written notice. The record shows that the Director has the authority to declare emergencies when the operational efficiency of the Agency may be seriously impaired." (Award at p. 13).

In its request, AFGE, local 872 claims that the Award is contrary to several provisions of the District of Columbia Comprehensive Merit Personnel Act. In Local 872's view, WASA's actions, although approved by the Arbitrator, violated D.C. Code § 1-617.04(a)(5), which prohibits WASA from "[r]efusing to bargain collectively in good faith with the exclusive representative," and D.C. Code § 1-617.06(a)(3), which gives employees the right "[t]o bargain collectively through representatives of their own choosing." AFGE, Local 872 concedes that D.C. Code § 1-617.08(a)(6) permits WASA to "take whatever actions may be necessary to carry out [its] mission in emergency situations," but argues that "there was plenty of time to bargain between July, 2001 and November 15, 2001. [As a result, AFGE, Local 872 claims that] the fact of the emergency claimed by the Arbitrator to negate bargaining is totally invalid" (Request at paragraph 8).

Although AFGE, Local 872 asserts as the sole basis for its Request that the Award is contrary to law and public policy, it is clear that it is the Arbitrator's interpretation of the Agreement that is actually at issue. We have held that a "disagreement with the Arbitrator's interpretation of the parties' contract does not make the Award contrary to law and public policy." AFGE, Local 1975

and Dept. of Public Works, 48 DCR 10955, Slip Op. No. 413 at p. 3, PERB Case No. 95-A-02 (1995). Moreover, this Board has held that "to set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." MPD v. Fraternal Order of Police/MPD Labor Committee, 42 DCR 7217, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). See also, AFGE, Local 631 and Dept. of Public Works, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1993), and W.R. Grace & Co. v. Rubber Workers, 461 U.S. 757 (1983).

In the present case, we find that AFGE, Local 872's disagreement with the Arbitrator is over his conclusion that the CBA provides WASA with the authority to: (1) restrict otherwise permissible leave and (2) make changes in conditions of employment without advance written notice to AFGE, Local 872 in undefined emergency circumstances. We have held that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties" agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." University of the District of Columbia and University of the District of Columbia Faculty Association, 39 DCR 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992).

AFGE, Local 872's disagreement with the Arbitrator's determination that WASA was faced with an emergency when it took the action at issue, is little more than disagreement with his interpretation of the parties' CBA. This is not a sufficient basis for concluding that the Arbitrator's interpretation is clearly erroneous nor that it is contrary to law and public policy. For these reasons, we find that no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The Arbitration Review Request is denied.

(2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

May 2, 2005

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 04-A-07 was transmitted via Fax and U.S. Mail to the following parties on this the 2nd day of May 2005.

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