

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 so 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

---

In the Matter of:	)	
	)	
American Federation of Government	)	
Employees, Local 383, AFL-CIO,	)	
	)	
Petitioner,	)	
	)	
and	)	PERB Case No. 95-A-05
	)	Opinion No. 422
	)	
District of Columbia	)	
Department of Human Services,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

---

DECISION AND ORDER

On March 1, 1995, the American Federation of Government Employees, Local 383, AFL-CIO (AFGE) filed an Arbitration Review Request with the Public Employees Relations Board (Board). AFGE seeks review of an arbitration award (Award) that denied a grievance filed on behalf of employees who were terminated pursuant to a reduction in force (RIF) by the District of Columbia Department of Human Services (DHS). AFGE contends that the Award is contrary to law and public policy. The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DHS, filed an Opposition to Arbitration Review Request contending that AFGE presents no statutory basis for review and therefore the Request should be dismissed.

On December 3, 1993, DHS implemented a reduction in force of its youth correctional officers (YCOs). DHS subsequently recalled 39 of these employees. AFGE claims that the RIF was not properly implemented and therefore the 39 employees that DHS claimed were

"rehired" were actually "retained" by DHS. As such, AFGE contends that DHS failed to comply with applicable RIF procedures governing priority for retention.

A grievance ensued concerning DHS's alleged failure to adhere to certain District Personnel Manual (DPM) regulations governing RIF procedures. The Arbitrator concluded, pursuant to his interpretation of management's rights under the parties' collective bargaining agreement and the applicable DPM regulations, that the employees were separated from their employment by the RIF. Consequently, he found "the RIF and rehire two distinct actions" and therefore the RIFed employees were not retained by DHS but rather subsequently reemployed. (Award at 5.) Based on these findings, the Arbitrator concluded that DHS' action was not subject to DPM regulations governing the retention of employees in a planned RIF.

Under the Comprehensive Merit Personnel Act, 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 ... ." The Board has reviewed the Arbitrator's Award, the pleadings of the parties and applicable law, and concludes that the Request presents no statutory basis for review of the Award.

AFGE's contention that the Award is contrary to law and public policy turns on its dispute over the Arbitrator's finding that the RIF and subsequent rehire of 39 employees were distinct acts by DHS. AFGE states that DPM regulations require agencies to account for staffing needs prior to, not after, conducting a RIF. Given this requirement, AFGE argues that DHS' actions cannot be deemed to be the rehiring of former employees but rather DHS' rescission of the RIF notice for certain employees to meet its staffing needs. Therefore, AFGE argues, DHS was required to comply with DPM procedures for determining which employees included in a RIF to retain.

AFGE's argument that DHS actually retained these employees without regard to DPM requirements, rests on its conclusion that DHS knew or should have known prior to the RIF that it could not meet its required staffing level needs after the RIF of all scheduled employees. The Board lacks the authority to make findings of fact in its limited statutory jurisdiction to review arbitration award. Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO and D.C. Department of Correction, 41 DCR 1510, Slip Op. No. 296 at n. 6, PERB Case No. 87-A-11 (1992). Making findings of fact is within the arbitrator's jurisdictional domain. Teamsters Local Union No. 1714 a/w International Brotherhood of

Decision and Order  
PERB Case No. 95-A-05  
Page 3

Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO and D.C. Department of Correction, 41 DCR 1753, Slip Op. No. 304, PERB Case No. 91-A-06 (1992) While the Arbitrator's findings of fact in his Award are rather scanty, the Arbitrator made no finding supporting the basis of AFGE's argument.<sup>1/</sup> It is well settled that disputes over the arbitrator's evaluation of the weight of the evidence and credibility determinations do not raise the asserted 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).

Accordingly, AFGE has not demonstrated that a statutory basis exists for its request that the Award be reversed; its request for review is therefore 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 17, 1995

---

<sup>1/</sup> On the contrary, the Arbitrator found that "it is unrealistic to expect the Agency to be able to 'plan' with any degree of certainty for the increased YCO absenteeism which followed the RIF notice and which the Union candidly admits exacerbated staffing levels." (Award at 4.)