

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

American Federation of)
State, County and Municipal)
Employees, AFL-CIO)
District Council 20, Local 2776,)

Petitioner,)

and)

District of Columbia)
Department of Finance)
and Revenue,)

Respondent.)

PERB Case No. 87-A-03
Opinion No. 165

DECISION AND ORDER

On March 9, 1987, Local 2776, District Council 20, American Federation of State, County and Municipal Employees, AFL-CIO, (AFSCME) filed an Arbitration Review Request with the Public Employee Relations Board (Board) alleging that a February 17, 1987, Arbitration Award sustaining a charge against its local union president, Joyce Gore, of one (1) hour absence without leave (AWOL) should be reversed because, on its face, the Award is contrary to law and public policy.

On April 7, 1987, the D.C. Department of Finance and Revenue (DFR) filed its Opposition to the Arbitration Review Request contending that AFSCME failed to define the public policy with which the Award allegedly conflicted and that AFSCME's argument failed to address both "law and public policy, as required, in order to invoke the Board's review."

The Arbitrator found that a one (1) hour charge of absence without leave (AWOL) against the grievant, Ms. Gore, was justified under the provisions of the parties' contract, when the grievant had failed to return to work during the approved time period granted by her supervisor to conduct a grievance investigation.

Article 6, Section 2 of the parties' Collective Bargaining Agreement states:

Stewards shall obtain permission from their immediate supervisor prior to leaving their work assignments to properly and expeditiously carry out their duties during a reasonable amount of official time to be estimated in advance wherever possible...

A steward thus engaged will report back to his/her supervisor on completion of such duties and return to their job. The employer agrees that there will be no restraint, interference, coercion or discrimination against a steward in the performance of such duties.

The Arbitrator found the contractual language "clear and unequivocal on its face" and "sufficiently certain to entitle the Employer to enough information of the probable duration of an absence to permit an intelligent choice for granting or denying it." (Award at p. 11). The Arbitrator held "the Employer has no obligation to pay official time that is not in conformity with Article 6 Section 2 of the labor agreement." Ibid. Accordingly, the Arbitrator ruled that "the absence without leave (AWOL) charged to the Grievant for her absence from her work area for one (1) hour on April 22, 1986, was not only justified but squarely within the employer's prerogative." Ibid.

Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 1-605.2(6), the Board is empowered to consider appeals from grievance-arbitration awards provided, inter alia, the award on its face is contrary to law and public policy.

AFSCME rests its argument for appeal solely on its contention that the Award is contrary to public policy as expressed by D.C. Code Section 1-618.1(b), which provides that each employee of the District Government has the right, freely and without fear of penalty or reprisal:

- (1) To form, join and assist a labor organization or to refrain from this activity;
- (2) To engage in collective bargaining concerning terms-and-conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative; and
- (3) To be protected in the exercise of these rights.

AFSCME asserts this section expresses the public policy of the District of Columbia to protect employees against reprisal for having provided assistance to labor organizations. AFSCME argues that the Award is directly contrary to Section 1-618.1(b) because (1) Ms. Gore complied with the notice requirements of the Collective Bargaining Agreement and (2) in good faith offered management a telephone number where she could be reached. AFSCME contends that the Award sustains a penalty against Ms. Gore for engaging in activities on behalf of the Union.

DFR, in opposing review of the arbitration award, avers that D.C. Code Section 1-605.2(6) requires a showing of a violation both of law and public policy before a review of an Award may be granted, but inasmuch as AFSCME's argument addresses only the public policy issues, it fails to meet this criterion. Additionally, DFR contends, AFSCME has not presented evidence that the employer has engaged in any restraint, interference or coercion of Union representatives and that without such evidence an argument that DFR engaged in the restraint of union activities cannot be sustained.

The issue before the Board is whether an arbitration award which interprets a contract as sustaining the denial of official time to an employee engaged in union business on the employer's time is on its face contrary to law and public policy. 1/

We conclude that the award on its face is not contrary to law and public policy and therefore deny the request for review.

The Arbitrator's finding that there was no evidence that DFR engaged in conduct which discouraged union activities was based upon his interpretation of the relevant provisions of the parties' collective bargaining agreement. In construing the contract provisions to allow the employer to require advance permission for a specified time in which to conduct union business, the Arbitrator was acting within the options available to him. The Board's agreement or disagreement with the Arbitrator's interpretation of the contract provisions is of no consequence, as we are not authorized to review an Arbitration Award

1/ At the outset, the Board rejects the Employer's argument that the Union has not alleged that the Award is violative of the law, in addition to public policy. The Union expressly grounds its Arbitration Review Request on "law and public policy." (Arbitration Review Request, Paragraph D). The Union's public policy argument is derived from D.C. Code Section 1-618.1(b). Thus, the Union's claim is that the Award is contrary to this public policy and to the statute in which it is embodied.

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which is not on its face contrary to law and public policy. The fact that the Union disagrees with the Arbitrator's interpretation of the provisions in Article 6, Section 2 of the agreement does not bring this matter within the Board's jurisdiction to grant a review of the award.

Accordingly, we find no basis upon which to grant the request for review of the arbitration award in this proceeding.

ORDER

IT IS ORDERED THAT:

The Arbitration Review Request is hereby denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD.
Washington, D.C.
September 2, 1988