

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The Council of School Officers,
Local 4, American Federation of Teachers,
AFL-CIO (on behalf of Dr. Percy Ellis),

Petitioner,

and

The District of Columbia
Public Schools,

Respondent.

PERB Case No. 85-A-05
Opinion No. 136

DECISION AND ORDER

On August 12, 1985, the Council of School Officers, Local 4, AFT, AFL-CIO (CSO) filed an Arbitration Review Request with the District of Columbia Public Employee Relations Board (Board) seeking review of an Arbitration Award issued on July 19, 1985. In that Award the Arbitrator sustained, in part, a grievance filed by CSO in July 1984, on behalf of Dr. Percy Ellis, Principal of Shaw Junior High School. The basis for the Review Request is CSO's contention that the Arbitrator exceeded his authority in interpreting a District of Columbia Board of Education Administrative Rule and Superintendent's Directive. CSO also contends that the Arbitrator's interpretations are contrary to law and public policy.

On September 12, 1985, the District of Columbia Public Schools (DCPS) filed an Opposition to acceptance of the Review Request. DCPS contends that the Arbitrator's Award is consistent with the intent of the parties to the collective bargaining agreement. DCPS further contends that the Award is well within the Arbitrator's authority and jurisdiction and takes strong exception to CSO's characterization of the Award as contrary to law and public policy.

The arbitration resulted from a grievance filed by CSO on behalf of Dr. Ellis alleging that DCPS improperly suspended him for authorizing pay and duty status for an Acting Assistant Principal who was working at home while recuperating from surgery. DCPS proposed to suspend Dr. Ellis for 3 days for his alleged failure to charge the Acting Assistant Principal with sick leave and failing to report her as being on administrative

leave during her period of recuperation. The suspension was proposed approximately 16 months after the Acting Assistant Principal had returned to work. The Arbitrator reduced the 3 day suspension to a letter of reprimand for Dr. Ellis' failure to obtain clearance from his superiors to keep the Acting Assistant Principal in a pay status while she was away from her normal duty station. In issuing his Award, the Arbitrator held that (1) Dr. Ellis erred in the manner that he handled the disputed assignment but (2) the discipline imposed was overly severe under the circumstances.

In its Review Request CSO argues that Dr. Ellis had full authority to assign the Acting Assistant Principal the work she was performing at home and that nothing in DCPS's rules, regulations or directives prohibited him from keeping her on the payroll. DCPS, on the other hand, argues that Dr. Ellis did not have the authority to keep the Acting Assistant Principal in an active status when she was not at her duty post and that he should have ordered her to apply for administrative leave.

Superintendent Directive 651.3, which discusses the implementation of policies and procedures affecting administrative leave, states in relevant part:

- "1. Administrative leave may be used for official business when an employee is not at his regularly assigned post of duty but is engaged in some activity related to the D.C. Public Schools with the approval of an appropriate administrative officer."

The CSO argues that this rule is merely permissive because of the use of the term "may" in its text. Because the rule is permissive, CSO contends that it was fully within Dr. Ellis' discretion to keep the Acting Assistant Principal on the payroll.

The Arbitrator, however, found that authorization for administrative leave, under these circumstances, has always been sought and granted by an Assistant Superintendent. Dr. Ellis, himself, admitted that final approval had to come from a higher school official.

Section 502(f) of the Comprehensive Merit Personnel Act (CMPA) authorizes the Board to consider appeals from arbitration awards pursuant to a grievance procedure only if it is determined that 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."

Opinion No. 136
Case No. 85-A-05
Page Three

In reviewing the Arbitrator's Award it appears that, on its face, it is neither contrary to law and public policy nor did the Arbitrator exceed the jurisdiction granted. The evidence indicates that the Arbitrator based his interpretation on past practice. In the past, all administrative leave was reviewed and approved by an Assistant Superintendent or the equivalent. Moreover, Dr. Ellis admitted that, in the past, he had occasionally recommended administrative leave but final approval has to come from a higher school official.

CSO's disagreement with the Arbitrator's Award, alone, is not a sufficient basis for the Review of Arbitration Awards under the CMPA. By agreeing to submit the settlement of the grievance to arbitration, it was the Arbitrator's interpretation, not the Board's, that the parties bargained for. Accordingly, the Request for Review of the Arbitrator's Award is denied.

O R D E R

IT IS ORDERED THAT:

The Request for Review of the Arbitration Award is hereby denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

April 7, 1986