

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

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In The Matter Of:))
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District of Columbia))
General Hospital,))
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Petitioner,))
))
and))
))
Doctors' Council of the))
District of Columbia))
General Hospital,))
))
Respondent.))
_____))

PERB Case No. 92-A-01
Opinion No. 305

DECISION AND ORDER

On November 27, 1991, District of Columbia General Hospital (DCGH) filed an Arbitration Review Request (Request) with the Public Employee Relations Board (Board) seeking review by the Board of an arbitration award (Award) that sustains a grievance filed by the Doctors' Council of D.C. General Hospital (Council) regarding DCGH's contracting-out work performed by the bargaining unit employees. DCGH contends in its Request that the Award is contrary to law and public policy and that the Arbitrator was without authority to make the Award. The Council filed an Opposition to Arbitration Review Request on December 20, 1991. ^{1/}

Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 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 arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy... ." The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties and applicable law, and concludes for the reasons that follow that no statutory basis for our review exists, on the grounds asserted, and therefore we lack the authority to grant the Review.

^{1/} Although the Council's Opposition was received by the December 20, 1991 due date, it was submitted shortly after the close of business, i.e., 4:45 p.m. Pursuant to Board Rule 501.1, the Board grants Respondent's unopposed request for an enlargement of time to file its opposition.

The parties do not dispute that the resolution of the issue before the Arbitrator concerns the applicability of Article XX and Article III of their collective bargaining agreement, which in relevant part provides the following:

ARTICLE XX

CONTRACTING OUT

The Employer agrees that it will not contract out work currently performed by members of the bargaining unit without first attempting-- through documented recruitment efforts-- to fill the position with a person employed as a regular full time or part-time employee of DCGH.

ARTICLE III

MANAGEMENT RIGHTS

* * * *

(a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:

* * * *

6. To take whatever actions may be necessary to carry out the mission of the District Government in emergency situations. ^{2/}

The issue before the Arbitrator was whether DCGH violated Article XX when it contracted full-time physicians to meet staffing problems in its Emergency Care Center (ECC). The Arbitrator found that notwithstanding management's sole right to "take whatever action may be necessary to carry out [its] mission", DCGH's decision to contract out to meet its ECC needs did not arise from the emergency situation found by the Arbitrator. ^{3/} Consequently, while recognizing DCGH's management

^{2/} Article III is identical to the "Management rights" provision set forth in D.C. Code Sec. 1-618.8(a)(6).

^{3/} DCGH contended that its decision to contract out resulted from an emergency situation created by three problems. (Award at 22.) The Arbitrator found that DCGH's decision to contract out was not reasonably related to the only emergency

right, the Arbitrator found that under these circumstances, it was of no avail. She therefore, concluded that, given the basis that she found DCGH had decided to contract out, Article III did not relieve DCGH from complying with Article XX. ⁴/ (Award at 24.)

DCGH's argues, in support of its Request, that "the decision is contrary to law and violates public policy" because "the decision illegally requires [DCGH] to respond 'reasonabl[y]' to any 'emergency'." The Arbitrator's finding, according to DCGH, alters and thereby contravenes its rights under D.C. Code Sec. 1-618.8(a) (6) and under Article III by adding a standard, i.e., "reasonably related," that neither the statute or contract requires of "actions" that DCGH may deem "necessary" in "emergency situations." This argument, however, reflects a misreading, if not a complete disregard, of the findings and conclusions upon which the Arbitrator based her Award.

Reference is made by DCGH to the Arbitrator's observation that "[w]hile it may be true that [DCGH] has a great deal of latitude in exercising discretion to resolve an operational emergency, its choice of action must be reasonabl[y] related to the emergency circumstances to be corrected." (Award at 24.) We find no basis for reviewing the Award where the Arbitrator, who was properly authorized to interpret the contractual provisions cited supra., determined that DCGH was only relieved of its obligations under Article XX if there existed an emergency situation -- and a reasonable relationship between the emergency and the action taken by DCGH in response thereto.

DCGH also advances other equally baseless arguments in its request for the Board to review this Award. We similarly find those arguments unfounded and conclude that DCGH has failed to provide a basis for finding the Award contrary to law and public policy, or that the Arbitrator was without or exceeded the scope of the jurisdiction granted.

Therefore, we are not authorized to grant the requested review.

(Footnote 3 Cont'd)
situation that she found, i.e., the threat to terminate DCGH's medicare certification. (Award at 24.)

⁴/ The Arbitrator found DCGH's decision to contract out resulted from "the long-standing staffing problems in ECC" and therefore "c[ould] not be construed as constituting an emergency." (Award at 24.)

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ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

April 30, 1992