

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 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 that the Award on its face is not contrary to law and public policy and therefore we lack the authority to grant the requested Review.

The stipulated issue before the Arbitrator, that is relevant to this proceeding, is the following:

"Whether the Grievant was improperly denied a career ladder promotion in violation of the Collective Bargaining Agreement and the District Personnel Manual Regulations?" (Award at 2.)

AFSCME contends that the Award "fails to address the issue of the Grievant's right to promotion at the completion of the time-in-grade requirement." (Request at 5.) AFSCME avers that at the time that the Grievant was promotion-eligible in August 1986, all four requirements of the DPM criteria had been met and therefore, the Award, by denying the grievance and thereby the Grievant's promotion, is contrary to "the express language and underlying policy" of the DPM regulations concerning career ladder promotions. The requirements in issue are set forth in the DPM, under the Merit Staffing Plan, and provide in pertinent part:

Career ladder means series of positions in the same line of work whose duties increase in difficulty from the entrance level to the level established as full performance. Employees may be promoted in it without further competition until reaching the full-performance level. Although initial competition covers the entire career ladder, such promotions are not guaranteed. The following requirements must be met each time such a promotion is made:

- a. The employee shall meet time-in-grade requirements.
- b. The employee shall meet the appropriate minimum qualification requirements, including selective factors;
- c. The employee shall have demonstrated to the satisfaction of the supervisor the ability to perform

at the next higher level; and

- d. There shall be a demonstrated need for the higher-level work to be performed.

AFSCME asserts that although "[d]uring the hearing the parties stipulated that the Grievant met all the criteria except criteria [sic] 'c'" for a career ladder promotion to the next higher level, "the unrefuted evidence indicated that by the time the one year time-in-grade requirement was met [August, 1986] the Grievant had also met criteria [sic] 'c'...." (Request at 5.) AFSCME asserts that the Arbitrator failed to address whether the Grievant had met criterion "c" by August 1986, and was therefore entitled to a promotion at that time.

Contrary to AFSCME's contentions, we find that the Award clearly reflects the Arbitrator's consideration of whether the Grievant had fulfilled the requirements of criterion "c" by the time Grievant met the time-in-grade requirement in August 1986. (Award at 10.) At page 10 of the Award, the Arbitrator summarized AFSCME's evidence and the testimony of Grievant's supervisor as follows:

The Union contended that Hubbard's performance appraisal which covered the period from January 1986 to March 1986 indicated that she was an excellent employee. This evaluation certainly appeared to reflect that Hubbard was an excellent employee, who would have no problem in getting the non-competitive promotion to the DS-9 level. The Union also introduced evidence to show that by December 1985, Hubbard was meeting the case closure requirements for a DS-9 employee.

However, Queen-Addison [Grievant's supervisor] testified that, in her judgment, Hubbard had not demonstrated in 1986 and 1987 that she was capable of performing satisfactorily at the DS-9 level. (emphasis added.)

Thus, this contention by AFSCME is directly contradicted by the record. ^{3/}

^{3/} AFSCME's arguments merely reflect disagreement with a contrary evidentiary finding by the Arbitrator that the criteria set forth therein had not been fully met by August 1986. The Arbitrator accorded "considerable weight" to the testimony of

Since the Union's assertion that the Award, on its face, is contrary to law and public policy rests on arguments disputing evidentiary findings of fact made by the Arbitrator, no statutory basis for our review exists on the grounds asserted. Accordingly, the request for review of the Arbitrator's Award is denied. ^{4/}

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

July 22, 1991

(footnote 3 Cont'd)

Grievant's two supervisors that the Grievant "was not meeting all the requirements of her position in a satisfactory manner." He concluded that "neither [supervisor] acted arbitrarily or unreasonably by not promoting Hubbard until January 1988." (Award at 11.) We are not authorized by the CMPA to review an award based on credibility determinations and the weight attributed to evidence. Department of Public Works and American Federation of Government Employees, Local 872, 37 DCR 6175, Slip Op. No. 254 at 3, PERB Case No. 90-A-06 (1990) See also, e.g., District of Columbia Public Schools and AFSCME, Council 20, 34 DCR 3605, Slip Op. No. 155, PERB Case No. 86-A-03 (1987) and University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, Slip Op. No. 248, PERB Case No. 90-A-02 (1990).

^{4/} AFSCME had further contended that DPM, Chapter 8, Section 8.3 required DCRA to either promote the Grievant, reassign her, or take appropriate adverse action. AFSCME asserted that since Grievant had met the criteria for a career ladder promotion in August 1986, the Award permits an "unauthorized and improper maintenance of the status quo" by denying the Grievant's promotion at that time, contrary to DPM regulations. (Request at 9.) Again, this contention is premised upon AFSCME's assertion that the Grievant had met the criteria for a career ladder promotion by August 1986. In view of our disposition of that contention in the text above, this argument also fails to establish a statutory basis for our review.