

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

|                                   |   |                         |
|-----------------------------------|---|-------------------------|
| _____                             | ) |                         |
| In the Matter of:                 | ) |                         |
|                                   | ) |                         |
| The District of Columbia Public   | ) |                         |
| Schools,                          | ) | PERB Case No. 84-A-02   |
|                                   | ) | Opinion No. 79          |
| Petitioner,                       | ) | As amended May 23, 1984 |
|                                   | ) |                         |
| and                               | ) |                         |
|                                   | ) |                         |
| The American Federation of State, | ) |                         |
| County and Municipal Employees,   | ) |                         |
| District Council 20, Local 2093   | ) |                         |
| (On behalf of Robert O. Hemsley)  | ) |                         |
|                                   | ) |                         |
| Respondent.                       | ) |                         |
| _____                             | ) |                         |

DECISION AND ORDER

On January 20, 1984, the District of Columbia Public Schools (DCPS) filed an Arbitration Review Request with the District of Columbia Public Employee Relations Board (Board) seeking review of an Arbitration Award issued on December 27, 1983. The Arbitrator ruled that a grievance remains arbitrable when the American Federation of State, County and Municipal Employees (AFSCME) permits substitution of independent legal counsel by the Grievant in lieu of union representation.

The basis for the Request for Review of the Arbitration Award is Petitioner's contention that the Arbitrator "was without authority and exceeds the jurisdiction granted." In addition, DCPS contends that the award, on its face, is contrary to law and public policy since arbitration is a private, contractual agreement between a labor organization and management which an individual employee cannot pursue without union representation.

On February 7, 1984, AFSCME, through Grievant's counsel, filed an "Opposition and Response to Agency's Arbitration Review Request" with the Board. AFSCME contends that it invoked arbitration and remains a party to the arbitration even though it granted permission to the Grievant to retain independent legal counsel at his own expense. Moreover, AFSCME contends that the negotiated Agreement between the parties does not prohibit an employee from seeking private legal assistance during arbitration. Finally, AFSCME contends that the only issue before the Arbitrator was the arbitrability of the grievance and that, since both parties agreed to submit this issue to the Arbitrator, Petitioner cannot justly claim that the Arbitrator exceeded his authority in deciding it.

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Section 502(f) of the Comprehensive Merit Personnel Act of 1978 (D.C. Code Section 1-605.2(6)) grants the Board the exclusive power to "consider appeals from arbitration awards pursuant to a grievance procedure." However, "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; or was procured by fraud, collusion or other similar and unlawful means."

In reviewing the Request, the Board finds no basis for concluding that the Award is contrary to law or public policy; that the Arbitrator exceeded the jurisdiction granted; or that the Award was procured by fraud, collusion or other similar and unlawful means. The parties voluntarily agreed to submit the limited issue of the arbitrability of the grievance to arbitration, and the Arbitrator's decision appears to be based on a plain reading of the negotiated Agreement. The Arbitrator was authorized by the parties, pursuant to the negotiated Agreement, to interpret its provisions. There is insufficient evidence to conclude that the Arbitrator's analysis and conclusions were contrary to law and public policy or beyond the scope of the authority granted.

ORDER

IT IS ORDERED THAT:

The Arbitration Review Request is hereby dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
May 23, 1984