GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

District of Columbia Fire Department Petitioner, and International Association of Fire Fighters, Local 36 Respondent.	PERB Case No. 95-A-04 Opinion No. 428

DECISION AND ORDER

On February 21, 1995, the District of Columbia Fire Department (DCFD or Department) filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitration award (Award) issued on January 25, 1995. The Award sustained a grievance filed by the International Association of Fire Fighters, Local 36 (Association) to the extent that it alleged that the Department had violated its governing Rules and Regulations by regularly operating its Rescue Squads, Fire Boat and Hazardous Materials (HAZMAT) Unit with less than the minimum staffing specified in those Rules and Regulations.

The Arbitrator found, and it is undisputed, that the operation of the DCFD is governed by the Rules and Regulations of the District of Columbia Fire and Emergency Medical Department (Rules and Regulation), which are approved by the District of Columbia City Council and can be changed only with the Council's approval. Article 3, Section 18 of the Rules and Regulations provides, in relevant part:

> Normally, company platoon units of the Department shall operate with not less than the following personnel:

(a) Rescue Squad wagon - five men
* * *
(b) Fireboat - five men....

In March 1991, then Mayor Dixon requested the Council to delete the Section 18 manning requirements in light of the District of Columbia's fiscal problems, but the Council declined to do so. A DCFD Order, dated December 23, 1993 (1993 Order), directed that thereafter rescue squads and the HAZMAT unit would be run down to 4 persons each; the fireboat unit would be run down to 6 persons, and absences were to be covered from a six person pool of Battalion Fire Chief (BFC) aides before any overtime was scheduled.

Article 9 of the collective bargaining agreement between DCFD and the Association (Agreement) defines a grievance as "a complaint by a party... that... [t]here has been violation, misapplication or misinterpretation of the Agreement, and/or... a Department rule, regulation or order which affects a term[] or condition[] of employment...," and provides procedures, including binding arbitration, for the resolution of such complaints. The Association filed a timely grievance alleging that changes in manning pursuant to the 1993 Order violated Article 3, Section 18 of the Rules and Regulations, and that the use of BFC aides in a manpower pool violated the collective bargaining agreement.[1]/

Before the Arbitrator, DCFD argued that pursuant to Section 1-618.8(a) of the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Sec. 1-618.8(a), management retains the sole right to make manning decisions; that such decisions may not be the subject of collective bargaining, and that the Arbitrator was without jurisdiction to issue an award that would infringe on DCFD's management rights.[2]/ The Arbitrator concluded that as to the challenged changes in minimum manning, the grievance did not involve rights allegedly reserved to management by the CMPA, but a dispute as to the requirements of legislatively approved Rules and Regulations, which the parties had agreed to resolve through arbitration. Accordingly, he found that Section 1-618.8(a) of

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[1]/ The Association alleged additional violations of statute and Department rules. The Arbitrator placed no reliance on those allegations, and we need not consider them here.

[2]/ Section 1-618.8(a) provides that "management[] shall retain the sole right, in accordance with applicable laws and rules and regulations.... [t]o determine.... the number of employees and the number, types and grades of employees assigned to an organizational unit, work project or tour of duty."

the CMPA is "simply inapplicable".

On the evidence presented at the hearing, the Arbitrator found: (1) that "all parties understand that the HAZMAT unit is staffed as a rescue squad wagon" under Article 3, Section 18(a) of the Rules and Regulations; that Section 18(a) specifies that rescue squads are not to operate normally with less than five persons, and that under the 1993 Order, rescue squad wagons, including HAZMAT units, normally operated with four persons, and (2) that while Article 3, Section 18(d) specifies that a fireboat normally should operate with no less than five persons, following the 1993 Order, the large fireboat normally operated with only four.[3]/ The Arbitrator found that the "[t]he Order, and its effect on normal operation places the Department in violation of Article 3, Section 18(a) and (d) of the Department's Rules and Regulations". He sustained the grievance as to those alleged violations, and directed that the violations cease.[4]/

Under Section 1-605.2(6) of the CMPA, the Board is authorized to consider appeals from arbitration awards pursuant to grievance procedures "[p]rovided, however, that such awards may be reviewed only if the arbitrator was without or exceeded, his or her jurisdiction; [or] the award on its face is contrary to law and public policy...."

DCFD contends that to the extent it sustains the grievance, the Award on its face is contrary to law and public policy because it interferes with rights reserved to management by Section 1-618.8(a) of the CMPA. We find no conflict between the Award and the statutory specification of rights that management may exercise without negotiating with the union representing its

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[3]/ Under the December 1993 Order, the fireboat unit was to consist of 6 persons. The Arbitrator noted that although Section 18(d) specifies that a fireboat normally shall not be operated with less than five persons, a smaller fireboat had been added to which two persons were assigned, with the result that the large fireboat normally was manned by four persons. In reaching his conclusion that Section 18(d) had been violated under the December 1993 Order, the Arbitrator "set aside" both the smaller boat and the personnel regularly assigned to it.

[4]/ The Arbitrator concluded that the Association's claim that the collective bargaining agreement was violated by the use of BFC aides in a manpower pool "does run into conflict with D.C. Code Sec. 1-618.8", but found no contract violation, and denied that portion of the grievance. Neither party seeks review of the denial and that question of possible conflict is not before the Board.

employees. As expressly stated in Section 1-618.8(a), the rights thus reserved to management must be exercised "in accordance with applicable laws and rules and regulations". The issue before the Arbitrator was not whether the Department's post-Order practices ran afoul of any negotiated agreement or duty to negotiate, but whether they violated the manning regulations promulgated by the Department, approved by the Council, and subject to change only with Council approval. Such regulations are binding and enforceable. Seman v. District of Columbia Rental Housing Commission, 552 A.2d 863, 866 (D.C. 1989); Dankman v. District of Columbia Board of Elections and Ethics, 442 A.2d 507, 512-13 (D.C. 1981)(en banc). While they are most often interpreted and enforced in judicial proceedings, Seman and Dankman, supra, DCFD has cited no statute and/or public policy that prohibits parties from agreeing, as the parties have done here, that such disputes may be resolved through grievance and arbitration procedures.[5]/ We are aware of no such prohibition.

DCFD makes the further claim that "the Arbitrator exceeded his jurisdiction and the Award is contrary to law and public policy to the extent ...[it] requires the Department to staff the HAZMAT Unit with five and the Fireboat with seven persons".[6]/ That portion of the Award reflects the Arbitrator's findings on the evidence presented, and his conclusion, in light of those findings, that Article 3, Section 18(a) of the Rules and Regulations require that HAZMAT equipment normally be staffed at the same level as rescue squad wagons, and that Article 3, Section 18(d) requires that the large fireboat normally have a minimum complement of five persons. In its request for review,

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[5]/ DCFD contends that this case is controlled by our decision in International Association of Firefighters, Local 36 and District of Columbia Fire Department. PERB Case No. 87-N-01, Slip Op. 167 (1987). aff'd., Local 36 v. D.C. Public Employee Relations Board. MPA No. 15-87 (D.C. Sup. Ct. 1987). Its reliance is misplaced. That case involved a union proposal to incorporate in the collective agreement the manning provisions of the Rules and Regulations as then in effect, with the intended result that the requirements could not be changed by DCFD and the Council without the Union's agreement. The holding that in light of D.C. Code Section 1-618.8(a), DCFD had no duty to bargain over that Union proposal gives no support to the claim made here, that the statute is violated by an arbitral award interpreting the Rules and Regulations, and finding that they have been violated.

[6]/ As noted above, the Arbitrator determined only that the large fireboat must be staffed with five persons, as prescribed by Section 18(d), with the result that seven persons were needed to staff both fireboats.

DCFD simply quarrels with the Arbitrator's evidentiary findings and his interpretation of the Rules and Regulations. Having agreed to arbitrate disputes as to the application or interpretation of those Rules, DCFD's dissatisfaction with the Award furnishes no ground for review by this Board. Teamsters, Local Union No. 1717 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and D.C. Department of Corrections, 41 DCR 1753, Slip Op. No. 304, PERB Case No. 91-A-06 (1994).

The Board has reviewed the Award, the parties' submissions and the applicable law and concludes that the grounds presented in DCFD's request for review do not present any statutory basis for such action. Accordingly, its request for review is denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

May 18, 1995

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order in PERB Case No. **95-A-04** was sent via facsimile transmission and/or mailed (U.S. Mail) to the following parties on this **18th** day of **May**, 1995:

Margaret P. Cox, Director — FAX & U.S. MAIL
Office of Labor Relations
and Collective Bargaining
441-4th Street, N.W.
Suite 200
Washington, D.C. 20001

Jeremiah A. Collins, Esq. — FAX & U.S. MAIL
Bredhoff & Kaiser
1000 Connecticut Ave., N.W.
Suite 1300
Washington, D.C. 20036

Patricia Polach, Esq. — FAX & U.S. MAIL
Bredhoff & Kaiser
1000 Connecticut Ave., N.W.
Suite 1300
Washington, D.C. 20036

COURTESY COPIES:

Raymond Sneed, President — U.S. MAIL
International Association
of Firefighters, Local 36
2120 Bladensburg Rd., N.E.
Washington, D.C. 20018

Otis J. Latin, Sr. — U.S. MAIL
Fire Chief
D.C. Fire Department
1923 Vermont Ave., N.W.
Suite 201
Washington, D.C. 20001

Saran A. Lashley
Labor-Management Assistant