GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: University of the District of Columbia, Petitioner, and University of the District of Columbia Faculty Association/nea, (On behalf of Barbara Green), Respondent.	PERB Case No. 88-A-03 Opinion No. 220

DECISION AND ORDER

On January 20, 1988, the University of the District of Columbia (UDC) filed an Arbitration Review Request seeking review of an arbitration award issued on December 30, 1987. UDC contended that the Award, which orders the reinstatement of an employee terminated under a reduction in force (RIF), is contrary to law and public policy and that the Arbitrator exceeded his authority and was without jurisdiction to "rewrite the parties' agreement." UDC also claimed that it was deprived of the Arbitrator's neutrality when the Union was permitted to submit an additional post-hearing brief and UDC was not.

The University of the District of Columbia Faculty Association (UDCFA) timely filed an Opposition to UDC's request, asserting that there was no basis for the Board to review the Award since the Arbitrator's conclusions were not contrary to the management's rights provisions of the Comprehensive Merit Personnel Act of 1978 (CMPA); that the Arbitrator was authorized by the parties' agreement to decide whether the conditions existed for the reemployment of an employee terminated by a RIF; and that an alleged lack of neutrality in the Arbitrator's allowing only the Union to submit an additional post-hearing brief is not a basis for review of an arbitration award under the CMPA.

For the reasons set forth below, we deny UDC's request for review.

The Arbitration Award resolves a grievance concerning the termination of Barbara Green (Grievant), a faculty member in the Department of Family Life Science, because of a RIF. The Arbitrator concluded that the Grievant's reemployment was required under the terms of the parties' Master Agreement that:

> [a] RIFed faculty member shall be offered reinstatement should the position within the department, discipline and specialty be reopened within three years. A reinstatement offer shall be based on the inverse order of reduction after giving consideration to program needs. (Article XIII, Section I).

The Arbitrator concluded that while management's right to hire and to determine vacancies is clear, Section I of Article XIII of the parties' Master Agreement sets forth the conditions for the reinstatement of RIFed teachers. Such a provision, the Arbitrator ruled, is a result of the "reservoir of negotiable subjects" under D.C. Code Section 1-618.8(b), which imposes an obligation to bargain those matters not reserved in Section 1-618.8(a). Thus, while the Arbitrator conceded that the decision to RIF is "wholly reserved to management by subsection (a)(5) of the Code and by the contract, its effects on the employees...are another matter." It is the "effects of a critical managerial decision" which the Arbitrator concluded were subject to mandatory collective bargaining and which resulted in the negotiation of Article XIII.

The Arbitrator then found that a combination of circumstances compelled the conclusion that a position in the Grievant's specialty and discipline had "reopened" in her former Department.

UDC objected to the Arbitrator's findings that (a) a position was reopened during the specified time period, and (b) the vacancy occurred in the Grievant's "discipline" and "specialty." These findings, UDC argues, directly interfere with its statutory rights under D.C. Code Section 1-618.8(a)(2)&(5), which reserve to management the exclusive right to hire and to determine whether a vacancy exists and whether or not to fill it. This is the crux of UDC's claim that the Award on its face is contrary to both law and public policy.

The Arbitrator's "unjustified overriding" of the management rights clause, according to UDC, raises significant public policy concerns since it is the intent of the above-cited section of the CMPA to "vest sole authority where there is sole responsibility." Thus, the Award deprives UDC of its reserved right to determine whether to reopen a position.

UDC also maintains that the Award presents another basis which falls within the statutorily defined reasons for review. The Arbitrator, by ignoring the terms "discipline and specialty," in the parties' agreement, exceeded his jurisdiction. UDC contends that the Arbitrator rewrote the parties' agreement in two respects: "First [he] declared that 'reopened' actually meant 'vacant'. Secondly, he declared that the words 'discipline' and 'specialty' had no meaning whatsoever."

D.C. Code Section 1-605.2(b) authorizes the Board to review grievance arbitration awards only if the Arbitrator was without, or exceeded his or her jurisdiction; the award was procured by fraud, collusion, or other similar and unlawful means. We cannot conclude, as UDC argues, that the Arbitrator's finding that a position had "reopened" as a result of vacancies created by the departure of faculty from the Grievant's former department is contrary to the management's rights provisions of D.C. Code Section 1-618.8(a)(2) and (5). The Arbitrator acknowledged management's rights under these provisions. The Arbitrator, however, was authorized by the parties' agreement to determine whether a position had "reopened," as stipulated by the provisions of the RIF Article. We find nothing in the Arbitrator's conclusion that indeed a position had reopened that on its face is contrary to law and public policy. While UDC may disagree with the Arbitrator's findings and conclusions on this issue, such a disagreement does not supply the statutory basis for the Board's review.

UDC has also failed to demonstrate that the Arbitrator exceeded his jurisdiction by "rewriting" the parties' agrement. As UDC conceded, the Arbitrator was required by the terms of the parties' agreement to determine whether the position which he concluded had reopened was in the Grievant's discipline and specialty. UDC's arguments again present no more than a disagreement with the Arbitrator's findings and thus provides no basis for Board review of this Award.

Moreover, as UDCFA correctly points out in its Opposition to the Request, even if the Arbitrator had misconstrued the parties' agreement, he would not thereby have exceeded his authority to interpret the contractual provision. Cf. National Railroad Passenger Corp. v. Chesapeake and Ohio Railway Co., 551 F.2d 136, 147 (7th Cir. 1977).

Finally, we address UDC's contention that the Arbitrator lacked neutrality by requesting an additional post-hearing brief from UDCFA to respond to the management's rights issue. UDC insisted that such action by the Arbitrator was unfounded. It was the Arbitrator's view, however, that UDC had not raised any legal

arguments regarding the management's rights statutory provisions until submitting its post-hearing brief.

UDC has not demonstrated how, if it all, it was prejudiced by the Arbitrator's actions. Once again, UDC's assertions only rise to a level of disagreement with the Arbitrator's conclusion that an additional brief was required. We cannot conclude on this basis that the Arbitrator lacked neutrality and as a result that his Award was obtained through other "similar and unlawful" means. Contrary to UDCFA's contentions, however, had UDC demonstrated that the Arbitrator was partial or even colluded with the Union, the Board would be authorized to review the Award and to take the appropriate remedial actions.

O R D E R

IT IS ORDERED THAT:

The Arbitration Review Request is denied.

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

April 19, 1989