

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of )  
)

District Council 20, American )  
Federation of State, County )  
and Municipal Employees, AFL-CIO )

Complainant/Petitioner )

and )

Public Schools of the District )  
of Columbia )

Respondent )

Case No. 80-U-05  
81-A-01, PERB  
Opinion No. 15

DECISION

District Council 20, American Federation of State, County and Municipal Employees (hereafter, Complainant) filed an Unfair Labor Practice Complaint against the Public Schools of the District of Columbia (hereafter, Respondent) on August 27, 1980 alleging violations by Respondent of Sections 1704(a)(1) and (5) of the District of Columbia Comprehensive Merit Personnel Act of 1978 (hereafter, CMPA), D.C. Code Section 1-347.4(a)(1) and (5). Respondent filed its Answer with the District of Columbia Public Employee Relations Board (hereafter, the Board) on September 11, 1980. In its investigation of the Complaint, the Board determined that the parties were pursuing resolution of this dispute through the grievance procedure of the negotiated agreement. In PERB Opinion No. 10, the Board determined it appropriate, under existing circumstances, to allow the parties to proceed through their voluntary dispute resolution machinery and to stay any action by the Board on the Unfair Labor Practice Complaint pending the outcome of the contractual dispute resolution proceedings. The Board specifically retained jurisdiction to review the outcome of the contractual dispute to determine whether or not it was consistent with the provisions of the CMPA and to then take appropriate action.

The Arbitrator in the contractual dispute conducted a hearing on February 11, 1981, and issued his Decision and Award on April 3, 1981. The Arbitrator denied the grievance.

On April 27, 1981 Complainant filed an Arbitration Review Request (PERB Case No. 81-A-01) with the Board pursuant to Section 502(f) of the CMPA, D.C. Code Section 1-335.2(f) seeking review by the Board of the Arbitrator's Decision and Award on grounds that the Arbitrator exceeded his jurisdiction, the Award is contrary to law, and the Arbitrator based the Award on a finding which is erroneous and not supported by the record. Respondent filed its "Opposition To Acceptance By The Board Of Request For Review Of Arbitration Award" on May 12, 1981, presenting arguments supporting its position that the Award was proper and should not be disturbed.

On May 5, 1981, Complainant filed a "Request For Reconsideration Of PERB Decision And Order And For PERB To Exercise Jurisdiction And Render A Decision On The Unfair Labor Practice Complaint" regarding PERB Opinion No. 10, Case No. 80-U-05. Complainant urges therein that the Board reconsider its Decision and Order in Opinion No. 10, because neither party had any notice that the Board might issue a ruling of "deferral", and because the "retroactive" application of a "deferral" ruling in this case is arbitrary and unfair.

Respondent filed its "Request For Dismissal Of Unfair Labor Practice Complaint Pursuant To PERB Opinion No. 10" on May 28, 1981, setting forth its position that, essentially, identical facts and issues were presented to the Arbitrator whose Decision and Award should be upheld because it is consistent with the provisions of the CMPA.

Upon completion of its review of the entire record and of the Arbitrator's Decision and Award, the Board determined that these matters were appropriate for consolidation, and considered them accordingly.

The Board first considered the question of whether or not the Arbitrator's Decision and Award was consistent with the provisions of the CMPA.

The CMPA, Section 204(b), D.C. Code Section 1-332.4, provides that:

"All provisions of existing contracts between the District government and labor organizations shall be honored until their expiration."

Section 1201(a)(2) of the CMPA, D.C. Code Section 1-342.1(2) provides that:

"The basic work week and hours of work for all employees of the Board of Education and the Board of Trustees of the University of the District of Columbia shall be established under rules and regulations issued by the respective Boards: Provided, however, that the basic work scheduling for all employees in recognized collective bargaining units shall be subject to collective bargaining, and collective bargaining agreements shall take precedence over the provisions of this title." (Emphasis Added)

These specific provisions of the CMPA require that existing agreements be honored until lawfully terminated, that basic work scheduling is subject to collective bargaining, and that collective bargaining agreements are the controlling factors.

In this case, the subject matter of the grievance is basic work scheduling, and there is a provision of the existing collective bargaining agreement that applies directly to that subject. The agreement also includes a grievance mechanism for resolving disputes arising thereunder. Under these circumstances, the Board finds that it was entirely appropriate to postpone action on the Unfair Labor Practice Complaint pending resolution by the Arbitrator of the contractual dispute based upon identical facts. It would have been inconsistent with the provisions of the CMPA to have done otherwise. Accordingly, the Board determines that there is no basis for reconsideration of its Decision and Order in PERB Opinion No. 10, and that the Arbitrator's Award is not inconsistent with the provisions of the CMPA.

With respect to Complainant/Petitioner's Arbitration Review Request, the Board has reviewed the Arbitrator's Decision and Award pursuant to Section 502(f) of the CMPA, D.C. Code Section 1-335.2(f) which provides that the Board has the power to:

"consider appeals from arbitration awards pursuant to a grievance procedure: 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; or was procured by fraud, collusion, or other similiar and unlawful means..." [Emphasis Added]

The Arbitration Review Request filed by Complainant/Petitioner charges that the "...Arbitrator exceeded his jurisdiction by determining that there are no such things as full-time employees and part-time employees... when that issue was not presented to him, and in fact, is totally erroneous." The request also charges that the "...award is contrary to law..." and cites Sections 204(b) and 1201(a)(2) of the CMPA as the basis for the allegation. Finally, the Request charges that "...the arbitrator based his award in large part on a finding which is totally erroneous and not supported by the record."

The D.C. Public Schools filed its "Opposition To Acceptance By the Board of Request For Review Of Arbitration Award". It takes the position that the Arbitrator did not exceed his authority, that the Award is not contrary to law or public policy, that the hearing was fair and impartial, and that the award is based upon the Arbitrator's determination of the facts as a result of the hearing and should not be disturbed.

In reviewing the record, the Board does not find sufficient evidence to support a conclusion that the Arbitrator was without or exceeded his jurisdiction. The Arbitrator determined that one of the two major issues before him was:

"Whether the existing Contract fixed the hours of work at eight hours per day so that the employer was not at liberty contractually to change or modify the eight hour day but rather permitted the Employer to modify the length of the work day, in accordance with the exigencies of the operation." Decision and Award, p. 12.

The question of the status of full and part-time employees cannot be said to be unrelated to this issue. Accordingly, the Board finds no basis upon which the arbitrator can be held to have been without authority or to have exceeded his jurisdiction.

Further, the Board find no basis for Complainant/Petitioner's contention that the award is contrary to law. Sections 204(b) and 1201(a) (2) of the CMPA support the position that contractual provisions shall take precedence over provisions of the CMPA with regard to basic work scheduling. This appears to be precisely what happened in this case. Consistent with statutory provisions, priority is being given to the Agreement regarding hours of work and work scheduling.

The remainder of the allegations made by the Petitioner regarding the Award, do not provide a legal basis for Board review in accordance with Section 502(f) of the CMPA.

Having fully reviewed the Arbitrator's Award in this matter, as well as the pleadings and documents submitted by the parties, the Board finds the evidence insufficient to establish a statutory basis for any additional review pursuant to Section 502(f) of the CMPA.

ORDER

It is:

ORDERED, that the Unfair Labor Practice Complaint filed herein be dismissed; and

ORDERED, that Complainant's Request for Reconsideration filed herein, be denied; and

ORDERED, that the Arbitration Review Request filed herein be denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

August 24, 1981