

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of: )

District of Columbia )  
Public Schools, )

Petitioner, )

and )

Teamsters Local Union No. 639 )  
a/w International Brotherhood of )  
Teamsters, Chauffeurs, Warehousemen )  
and Helpers of America, AFL-CIO, )

Respondent. )

PERB Case No. 90-A-11  
Opinion No. 277

DECISION AND ORDER

On July 27, 1990, the District of Columbia Public Schools (DCPS) filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitration award (Award) issued on July 5, 1990. The Arbitrator sustained a grievance filed by Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters) on behalf of the Grievant, a member of a bargaining unit consisting of bus drivers, attendants and mechanics. The grievance concerned DCPS' decision to discharge Grievant for violation of DCPS Superintendent Directives 662.13 and 205.1, when pursuant to a drug-screening procedure conducted as part of an annual physical examination, the Grievant tested positive for cocaine. The Arbitrator, in sustaining the grievance, concluded that DCPS did not provide evidence of violation of the Directives that DCPS cited as the basis for the Grievant's dismissal. (Award at 4.)

Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Sec. 1-605.2(6), 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...." DCPS contends that the Award is contrary to law and public policy in that its order that the Grievant be reinstated gave a temporary employee a greater right of continued employment than his status provides. DCPS further contends that the Award is contrary to public policy in that it (1) prevents DCPS from

disciplining employees for violations of its policies and (2) sustains the grievance notwithstanding evidence of the level of an illicit drug in the Grievant's system. Finally, DCPS contends that the Arbitrator exceeded his jurisdiction in that he subjected DCPS policy to the arbitration process in contravention of Article XXI of the parties' collective bargaining agreement. Teamsters filed an Opposition to Arbitration Review Request on August 13, 1990.

The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law and concludes that the grounds given in DCPS' request for review of the Award do not provide a statutory basis for review.

DCPS' first contention, concerning the legality of the Award's reinstatement of Grievant despite his temporary employment status, was, as DCPS acknowledges, "not before the arbitrator and rightfully he did not rule regarding the issue." (Arb. Rev. Req. at 10.) The Teamsters in its Opposition correctly notes that issues not presented to the arbitrator cannot subsequently be raised before the Board as a basis for vacating an award. Cf., Department of Public Works and American Federation of State, County and Municipal Employees Local 2091, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). See also, University of the District of Columbia and UDC Faculty Assoc., 36 DCR 2472, Slip Op. No. 216, PERB Case No. 87-A-09 (1989). Thus, we reject DCPS' attempt to use this issue to obtain the Board's review through the assertion that it is "relevant to the remedy that the arbitrator can legally award" (Arb. Rev. Req. at 10).

Moreover, as previously stated, the issue before the Arbitrator was whether the Grievant was properly terminated for violation of the cited DCPS Directives. Upon concluding that the termination was not justified, the Arbitrator had authority -- unless specifically limited by the parties' agreement, which was not the case here, -- to award reinstatement of the Grievant as part of restoring the status quo before the discharge. See, e.g., D.C. Metropolitan Police Department and Fraternal Order of Police, 36 DCR 339, Slip Op. No. 218, PERB Case No. 89-A-01 (1989). The Award does not purport to alter Grievant's status. Under these circumstances, the Board cannot find that the Award is contrary to law and public policy.

DCPS' remaining contentions rest on the assertion that the Award is contrary (or "repugnant") to public policy. However, DCPS cites to no specific public policy, much less a law -- and our statute requires both -- that has been violated. We have often cited the observation made by the U.S. Supreme Court in United Paperworkers International Union v. Misco, 484 U.S. 29, 38

(1987) (quoting W.R. Grace and Co. v. Rubber Workers, 461 U.S. 757, 766 (1983), concerning review on this basis as "limited to situations where the contract as interpreted would violate 'some explicit public policy' that is 'well defined and dominant, and is to be ascertained by reference to the laws and legal precedent and not from general considerations of supposed public interests.'" See, e.g., University of the District of Columbia and University of the District of Columbia Faculty Association, 37 DCR 5666, Slip Op. No. 248, PERB Case No. 90-A-02 (1990).

Finally, DCPS raises a rather cryptic contention that the Arbitrator exceeded his jurisdiction by rendering a decision that is contrary to the parties' agreement in that it subjects to arbitration a provision of the parties' agreement "stated to be a matter of Board of Education policy[.]" (Arb. Rev. Req. at 14.) DCPS fails to articulate what stated policy the Arbitrator has "elected to subject...to the arbitration process." Id. If, as DCPS suggests, the policy concerns "the Board's [,i.e., DCPS',] discretion to terminate employees" (Arb. Rev. Req. at 15), this raises an issue of arbitrability which the record shows was not made before the Arbitrator.<sup>1/</sup> Thus, this is not a ground that the Board may consider (see discussion of DCPS' first contention, supra, at p. 3). In any event, we find nothing in DCPS' argument or the Award itself to establish that the Arbitrator exceeded his jurisdiction by encroaching on "[DCPS'] authority to set policy...." <sup>2/</sup> (Arb. Rev. Req. at 15.)

Accordingly, DCPS has not shown a statutory basis for reviewing the Award, so that its request for Board review must be denied.

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<sup>1/</sup> DCPS in its Arbitration Review Request does not dispute the Arbitrator's authority to decide the issue before him: "The scope of this authority is to be read from the arbitration agreement. [citation omitted] The issue decided in this arbitration is quite clear: 'Did the Board of Education have just cause to discharge the grievant?'" (Arb. Rev. Req. at 11.)

<sup>2/</sup> DCPS has not stated a specific Board of Education policy the Arbitrator subjected to the arbitration process to reach his Award, which policy is a "provision of [the parties'] agreement" and "is stated to be a matter of Board of Education policy" as provided by Article XXI.

Decision and Order  
PERB Case No. 90-A-11  
Page 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 10, 1991