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**Government of the District of Columbia
Public Employee Relations Board**

_____)	
In the Matter of:)	
)	
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee)	
(on behalf of Grievant, David Blue, et. al-)	
Spring Valley Detail))	PERB Case No. 03-A-03
)	
Petitioner,)	
)	Opinion No. 726
and)	
)	
District of Columbia)	
Metropolitan Police Department,)	
)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

The Fraternal Order of Police /Metropolitan Police Department Labor Committee ("FOP" or "Union") filed an Arbitration Review Request ("Request") in the above captioned matter. FOP seeks review of an Arbitration Award which dismissed a grievance because the Arbitrator determined that it was not arbitrable.¹ Specifically, FOP claims that the Arbitration Award is contrary to law and public policy pursuant to D.C. Code §1-605.2(6) (2001 ed.)². The Metropolitan Police Department ("MPD" or "Agency") opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy" pursuant to D.C. Code Sec. 1-605.2(6)(b). Upon consideration of the Request, we find that

¹The Arbitrator reached this conclusion after reviewing the collective bargaining agreement (CBA) and determining that the section of the CBA cited by FOP, which concerned overtime under the Fair Labor Standards Act, was inoperative during the relevant time period.

²Throughout this Opinion, all references to the D.C. Code refer to the 2001 edition.

FOP has *not* established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, FOP's request for review is denied.

A number of police officers represented by FOP volunteered and were assigned to work a detail which involved overtime, hereinafter referred to as the Spring Valley Detail. The officers assigned to the overtime detail provided security and escort services to assist in the clean-up and detoxification of a World War II-era hazardous waste site. This detail was operated 24-hours a day, 7 days a week and required continuous police oversight. MPD solicited volunteers for the detail with the understanding that overtime would be paid for all qualifying hours of duty performed. From March 24, 2002 until May 14, 2002, MPD paid no overtime to union members working the Spring Valley Detail. Consequently, FOP filed a grievance on May 14, 2002 based on MPD's failure to make timely payments for overtime labor performed by David Blue and similarly situated police officers.³ In its grievance, the Union contended that this was a violation of the parties' CBA and the Fair Labor Standards Act (FLSA). The Arbitrator⁴ found that the grievance was *not* arbitrable because Article 30, §2⁵, the section of the collective bargaining agreement (CBA) cited by FOP in its grievance, was inoperative⁶. Therefore, FOP's grievance was denied.

FOP now seeks review of the Arbitrator's decision to dismiss its grievance on the basis that it is contrary to law and public policy. Specifically, the Union claims that its failure to cite the correct and operative section of the CBA was a mere technicality and that public policy favors arbitration where parties have previously agreed to arbitrate matters.⁷ In addition, FOP contends

³The record reflects and it is not disputed that the officers did receive their overtime payments; however the payments were delayed. As a result, the Union contends that the untimeliness of the overtime payment is a violation of the CBA and the Fair Labor Standards Act (FLSA). Therefore, FOP requested liquidated damages as a remedy for the delay in payment pursuant to the applicable section of the FLSA.

⁴Arbitrator Donald H. Doherty issued this decision.

⁵Article 30, §2, as cited in FOP's grievance, provides as follows:

To the extent that the Employer's present policies, "procedures and practices equal or exceed the requirements of the Fair Labor Standards Act, those policies, procedures, and practices shall remain in effect, except as otherwise provided herein.

⁶In its brief to the arbitrator, FOP admitted that the section of the CBA which it cited was inoperative.

⁷FOP relies on Gateway Coal Co. v United Mine Workers of America, 414 U.S. 368, 377-78 (1974) as authority for its positions. Specifically, it asserts that "[A]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.

that the officers who prepare the grievances are not lawyers, and should not be held to the higher standard of interpreting the contract in order to cite the correct section. FOP also asserts that MPD had an obligation to notify it of the error and provide an opportunity to resubmit the grievance in its corrected form⁸. Finally, FOP argues that MPD should be required to pay the liquidated damages because it acknowledged responsibility for its duty to pay the overtime in its initial response to the Union's request for overtime.

MPD asserts that the Chief of Police made the Union aware that the grievance cited an inoperative provision in his first response to the grievance/arbitration demand.⁹ In addition, MPD asserts that if the Arbitrator had allowed review of a grievance that was based on an inoperative section of the parties' CBA, he would have been impermissibly adding to the CBA in violation of Article 19E, §5, Part 4 of the parties' CBA.¹⁰ Finally, MPD contends that the Union has not cited any language which supports its premise that the denial of a grievance because it is based on inoperative language is against law and public policy. Therefore, MPD has not stated any statutory basis for reversing the arbitrator's decision.

Notwithstanding the authority cited above, we believe that FOP's asserted grounds for review only involve a disagreement with the Arbitrator's interpretation of the parties' CBA and his determination that the grievance was not arbitrable. Moreover, FOP merely requests that we adopt its view that the grievance was arbitrable.

Doubts should be resolved in favor of coverage." See also, Gateway Coal Co. v United Mine Workers of America, 414 U.S. 368, 377-78 (1974) and United Steelworkers of America v Warrior & Gulf Navigation Co., 363 U.S. 574, 582-583 (1960). "The public policy favoring arbitration is grounded in the understanding that labor arbitration is 'the substitute for industrial strife.'" Id.

⁸In response to this claim, the Board notes that in correspondence to the Union, MPD informs FOP, on at least two occasions, of its belief that the section of the CBA which FOP cited in its grievance was inoperative and that the grievance had no basis. In addition, the record contains a response from FOP which indicates its willingness to allow the Arbitrator to determine whether: (1) the cited section of the CBA was operative and (2) the grievance was arbitrable.

⁹ In addition, the Chief of Police noted that he believed that the grievance was initially filed at the wrong level of authority and should have been filed at a lower level before it reached him.

¹⁰MPD also argued that based on Article 19E, §5, Part 2 of the parties' CBA, FOP should not be permitted to assert any ground or rely on any evidence at arbitration that was not previously disclosed to the other party. Specifically, MPD refers to FOP's argument that its members who file grievances are not lawyers and should not be held to that higher standard when filing grievances. MPD asserts that this argument should not be entertained because it was not presented to the Arbitrator. MPD also contends that FOP's argument on this issue should be rejected because the police officers who file grievances were released by MPD to attend training on the topic of preparing grievances.

We have held that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." D.C. Dept. of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). In addition, we have held that "[b]y agreeing to submit the settlement of [a] grievance to arbitration, it [is] the Arbitrator's interpretation, not the Board's, that the parties have bargained for." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320 at p.2, PERB Case No 92-A-04 (1992). Also, we have found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." Id. Moreover, "[t]he Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator." District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union No. 246, 34 DCR 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987).

We have also held that a "disagreement with the arbitrator's interpretation. . . does not make the award contrary to law and public policy." AFGE, Local 1975 and Dept. of Public Works, Slip Op. No 413, PERB Case No. 95-A-02 (1995). To set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the arbitrator arrive at a different result. See, AFGE, Local 631 and Dept. of Public Works, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1993). In the present case, FOP's claim involves only a disagreement with the Arbitrator's interpretation of the parties' CBA and his decision on arbitrability. Moreover, FOP does not cite any applicable legal precedent or any public policy which supports its position. Thus, FOP has failed to point to any clear or legal public policy which the Award contravenes.

We find that the Arbitrator's conclusion is based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. Rather, FOP merely disagrees with the Arbitrator's conclusion of non-arbitrability. This is *not* a sufficient basis for concluding that the Arbitrator's Award is contrary to law and public policy. For the reasons discussed, no statutory basis exist for setting aside the Award; the Request is therefore, denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

March 5, 2004