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

In the Matter of:)
)
)

District of Columbia)
Metropolitan Police Department,)

Petitioner,)

and)

Fraternal Order of Police/Metropolitan)
Police Department Labor Committee)
(on behalf of Grievant, Angela Fisher),)

Respondent.)
_____)

PERB Case No. 02-A-07

Opinion No. 738

DECISION AND ORDER

The District of Columbia Metropolitan Police Department ("MPD" or "Agency") filed an Arbitration Review Request (Request) in the above captioned matter. MPD seeks review of an arbitration award (Award) which rescinded a termination action that had been imposed on a bargaining unit employee. MPD contends that the: (1) Arbitrator was without authority to grant the Award; and (2) Award is contrary to law and public policy. The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union") opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy" or whether "the arbitrator was without or exceeded his or her jurisdiction. . . ." D.C. Code Sec. 1-605.02(6).¹ Upon consideration of the Request, we find that MPD has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, MPD's request for review is denied.

MPD terminated the Grievant, a former Master Patrol Officer, for alleged misconduct as a result of a physical altercation that she had with her teenage niece at a Prince Georges' County, Maryland shopping mall. As a result of the incident, criminal charges were filed. However, Prince Georges' County did not pursue the matter further once the trial ended in a hung jury. Nevertheless,

¹Throughout this Opinion, all references to the D.C. Code will refer to the 2001 edition.

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MPD decided to pursue a termination action based on their view that Officer Fisher engaged in police misconduct which violated several of the Agency's rules and regulations. The Police Trial Board convened a hearing concerning the matter which lasted over 600² days. At the conclusion of the Trial Board's hearing, the Chief of Police's termination action was sustained. FOP appealed this matter at Arbitration. The Arbitrator determined that the Grievant's termination was in violation of the procedural rights guaranteed to him by the parties' collective bargaining agreement (CBA). Specifically, the Arbitrator concluded that MPD violated Article 12, Section 6 of the parties' CBA when it failed to issue a written decision within the fifty- five (55) day time limit. In addition, the Arbitrator determined that MPD violated the Grievant's procedural due process rights by failing to allow the Grievant's counsel to fully cross examine several key witnesses in the matter. As a result, the Arbitrator rescinded the termination and ordered that the Grievant be reinstated with full back pay and benefits.

MPD takes issue with the Arbitrator's Award. Specifically, MPD asserts that the: (1) Award is contrary to law and public policy and (2) Arbitrator was without authority to grant the Award. Specifically, MPD asserts that it did not violate the 55-day rule and asserts that the Arbitrator miscalculated the 55-day time limit.³ Furthermore, MPD asserts that assuming without admitting that the 55-day rule was violated, the procedural violation was harmless and the Arbitrator's decision should be reversed.⁴ In response to the arbitrator's ruling that MPD violated Officer Fisher's due

² Based on our review of the delay issue in this case, it appears that MPD and the Trial Board did not treat this matter with any urgency. In fact, five (5) of the continuances were either requested by the Employer or granted *sua sponte* by the Trial Board. The reasons given for the continuance requests vary. The reasons given involved, *inter alia*, (1) witness availability; (2) scheduling issues and (3) the need for time to secure other evidence. Based on the record, it appears that the Grievant only requested one continuance in order that Grievant's counsel could attend a funeral. The Arbitrator mentioned the Grievant's single continuance request in his Opinion and Award and concluded that it had not been shown that this delay accounted for more than a day or two, a period of little significance under these facts. Therefore, the Board finds reasonable the Arbitrator's determination that this time lapse was beyond what the parties' CBA allowed.

³MPD asserts that the counting should begin with the days between the commencement of the hearing and the 1st continuance that MPD requested. By its calculation, that time period was 29 days. Then, MPD asserts that the counting should resume after the record of the hearing closed. MPD contends that 20 days elapsed between the closing of the record and the issuance of the decision. Therefore, by MPD's calculations, it only took the Agency 49 days to issue the decision.

⁴MPD relies on a D.C. Superior Court decision involving a review of another Arbitrator's Award concerning MPD Police Officer, Anthony Brown. See, Metropolitan Police Department v. District of Columbia Public Employee Relations Board 01 MPA 19 (2002); MPD v. FOP (on behalf of Officer Anthony Brown), 48 DCR 10985, Slip Op. No. 662, PERB Case No. 01-A-05 (2001). In that case, the Superior Court reviewed a Decision of the Board concerning the effect of

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process rights by failing to allow the complete testimony of several key witnesses, MPD asserts that limiting the cross examination of those witnesses was harmless error which did not justify a reversal of the discipline. MPD also asserts that it was not allowed to brief the due process arguments raised by FOP.⁵ Therefore, MPD contends that the Arbitrator exceeded his authority by dismissing the charges against Officer Fisher.

FOP opposes MPD's Arbitration Review Request and asserts that MPD fails to state a basis for review. Specifically, FOP asserts that the Arbitrator had the authority to remedy procedural violations and provide an appropriate remedy for the due process violation because it was harmful error. As a result, FOP contends that there is no grounds for reversal of the Arbitrator's decision.⁶

In light of the above, MPD's ground for review only involves a disagreement with the Arbitrator's interpretation of Article 12, Section 6 of the parties' CBA. In addition, MPD merely

procedural time limits and reversed the Board's decision. *Id.* The Court concluded, *inter alia*, that even though the Employer had not complied with the 15-day rule, it was mere harmless error which did not deprive Officer Brown of due process or affect the decision to terminate him. See, *Id.* In addition, the Superior Court opined that the error did not warrant reversal of MPD's termination action. As a result, the Superior Court remanded the case to the Board and ordered that the Board issue an Order reversing the Arbitrator's decision and ordering MPD to reinstate the termination action. MPD v. DCPERB, 01 MPA 19 (2002).

⁵Based on information submitted to the Board by the parties, it is clear is that MPD had notice of this due process argument well before the Arbitration phase ended. In a letter sent by FOP's representative to Chief Ramsey requesting that he overturn the Trial Board's decision, FOP makes the same due process arguments concerning the failure to cross examine witnesses and the 55-day rule that it made at the arbitration stage in its brief. Therefore, we find that MPD cannot claim unfair surprise by the issue and should have known that this issue was one that it should have briefed. Therefore, we find that this argument as no merit.

⁶To refute MPD's position, FOP relies on another D.C. Superior Court case where the Court reached an opposite result. Metropolitan Police Department v. Public Employee Relations Board, 01-MPA-18 (2002). Specifically, the Superior Court upheld the Board's decision to deny MPD's Arbitration Review Request involving Officer Vernon Gudger. Metropolitan Police Department v. Public Employee Relations Board, 01-MPA-18 (2002). MPD v. FOP/MPDLC (on behalf of Vernon Gudger), 49 DCR 10989, Slip Op. No. 663, PERB Case No. 01-A-08 (2001). In this matter, the Arbitrator dismissed the disciplinary action against Officer Gudger based on a 15-day rule violation. *Id.* Without addressing the issue of whether a harmful error was committed, the Board observed that Arbitrators have broad authority to grant remedies for contract violations. *Id.* In addition, the Board relied on its holding that the parties' bargain for the Arbitrator's interpretation of their collective bargaining agreement and the Board will not substitute its interpretation for that of the duly designated Arbitrator. *Id.* Finally, the Board concluded that the Arbitrator's decision was based on a thorough analysis and could not be said to be contrary to law or public policy, nor did the Arbitrator exceed his authority. *Id.* The Superior Court affirmed the Board's decision in this matter. *Id.*

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requests that we adopt its interpretation of the above referenced CBA provision. Moreover, MPD suggests that we adopt its view that the Grievant's procedural due process rights were not violated by failing to allow her counsel to cross examine MPD's witnesses concerning their adverse testimony in this case.

Based on the above and the Board's statutory basis for reviewing arbitration awards, MPD contends that the Arbitrator exceeded her authority. We disagree.

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). Furthermore, we have determined that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement. See, D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). In the present case, MPD does not cite any provision of the CBA which limits the Arbitrator's equitable power.⁷ Therefore, the Arbitrator had the authority to rescind the discipline imposed on the Grievant due to MPD's failure to comply with procedural rights guaranteed to the Grievant by the CBA.

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). Therefore, MPD's claim that the Arbitrator was without authority to grant the Award is without merit.

MPD also claims that the Arbitrator's Award is contrary to law and public policy. We have 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, MPD's claims involve only a disagreement with the Arbitrator's interpretation of Article 12, Section 6 of the CBA and his determination that the Grievant's due process rights were violated by failing to allow her counsel to fully cross examine key witnesses in the Trial Board's case. Moreover, MPD's public policy argument does not rely on a well-defined policy or legal precedent. Thus, MPD has failed to point to any clear or legal public

⁷We note that if the parties' collective bargaining agreement limited the Arbitrator's discretion concerning penalties, that limitation would be enforced.

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policy which the Award contravenes.

Finally, we have considered arguments where MPD asserted that the Arbitrator's application of the 55-day rule and subsequent reversal of discipline imposed was contrary to law. See, District of Columbia Metropolitan Police Department v. Fraternal Order of Police, Metropolitan Police Department Labor Committee (on behalf of Grievant Charles Sims), 47 DCR 5313, Slip Op No. 625, PERB Case No. 00-A-01 (2000); See also, District of Columbia Metropolitan Police Department and The Fraternal Order of Police, Metropolitan Police Department Labor Committee (On behalf of Officer Duke Washington) ("Washington"), 31 DCR 4159, Slip Op. No. 85, PERB Case No. 84-A-05 (1984). In those cases, the Board held that a disagreement with the Arbitrator's calculation of the 55-day time limit is *not* a sufficient basis for concluding that an Award is contrary to law or public policy or that the arbitrator exceeded his jurisdiction. *Id.* As a result, we find that MPD has not articulated any reason why the present case should be decided differently than the ones noted above.

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. In the present case, MPD disagrees with the Arbitrator's conclusion. This is not a sufficient basis for concluding that the: (1) Arbitrator has exceeded his authority; or (2) Award is contrary to law or 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. The Metropolitan Police Department (MPD) is directed to reinstate Officer Angela Fisher with full back pay and benefits consistent with Arbitrator Seymour Strongin's Award, within thirty (30) days of the issuance of this Decision and Order.
3. MPD is to immediately notify the Board in writing once it has fully implemented Arbitrator Strongin's Award.
4. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

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

March 5, 2004

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 02-A-07 was served via Fax and U.S. Mail, on the following parties on this the 5th day of March, 2004.

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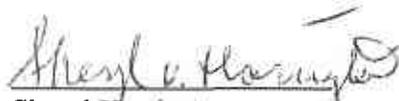
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