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 Pablo Figueroa),	
Petitioner,	
and	PERB Case No. 04-A-21
	Opinion No. 827
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union") filed an Arbitration Review Request ("Request"). FOP seeks review of an Arbitration Award ("Award") that denied a grievance filed on behalf of Sergeant Pablo Figueroa ("Grievant"), involving his suspension from duty. FOP claims the Award is contrary to law and public policy. The Metropolitan Police Department ("MPD" or "Respondent") opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy". D.C. Code § 1-605.02(6) (2001 ed.).

II. Discussion

On March 10, 2001, the Grievant ordered a female police officer to conduct a search of a woman he suspected of acting as a drug "mule" for her male partner. (See Award at p. 3). The Grievant did not explicitly order a strip or "squat" search, but his statements did direct a thorough search, including the woman's undergarments. (See Award at p. 3). No drugs were found during the search, and the Grievant apologized to the female citizen. (See Award at p. 3). On March 29, 2001, the female's male partner sent a letter to the Office of Citizen Complaint and Review ("OCCR"), indicating the female in question would be filing a complaint concerning the March 10, 2001, incident. (See Opposition at p. 2). A complaint was eventually filed on May 29, 2001, with OCCR. (See Award at p. 3).

OCCR conducted an investigation of the incident and concluded the Grievant had violated General Order 502.1, regarding strip or squat searches, by having the search conducted without the prior authorization of the Assistant District Commander. (See Award at p. 3). Based on OCCR's report, the Department imposed a 10-day suspension. (See Award at p. 4). The Grievant appealed the suspension, and the Chief of Police modified the suspension to 5 days held in abeyance. (See Award at p. 4). Pursuant to the parties' collective bargaining agreement ("CBA"), FOP invoked arbitration.

The issue before the Arbitrator was:

> Did Sergeant Pablo Figueroa violate G.O. 304.1 and G.O. 502.1 by directing a female police officer to conduct a strip search of a female suspect on March 10, 2001, while he was supervising a follow-up on a tip that the female was "muling drugs"?

(See Award at p. 4).

At arbitration, FOP argued the citizen's complaint was not filed in a timely manner and should have been dismissed by OCCR. (See Award at p. 4). D.C. Code § 5-1107(d) requires a citizen complaint be filed within 45 days of the date of the incident. FOP asserted that the incident in question took place on March 10, 2001, but the complaint was not filed until May 29, 2001, 80 days after the search. Because the Complaint was not filed within 45 days, FOP contends it was untimely. FOP also claimed the Grievant did not order a strip search but a "thorough" search of the citizen. (See Award at p. 5). Lastly, FOP averred the penalty was excessive and MPD failed to utilize progressive discipline. (See Award at p. 5).

MPD countered OCCR had sufficient notice a complaint would be filed because of the letter from the citizen's male partner, dated March 29, 2001. (See Award at p. 6). In addition, MPD argued although the Grievant did not explicitly order a strip search, a strip search was implied. (See Award at p. 6). Lastly, MPD asserted the penalty imposed on the Grievant was within the appropriate range of penalties. (See Award at p. 6).

The Arbitrator found the 45-day time period could be waived by OCCR for good cause. (See Award at p. 5). The Arbitrator concluded OCCR was on notice on March 29, 2001, that a complaint would be filed, and OCCR had good cause to waive the 45-day requirement due to the newness of its operations. (See Award at p. 5). In addition, the Arbitrator observed that OCCR had been in operation for only three months and its operation procedures were not widely known. (See Award at 5). The Arbitrator also determined the evidence supported OCCR's finding the Grievant either ordered, or was responsible for, the strip search of the female citizen. (See Award at p. 5). In conclusion, the Arbitrator found nothing to question the reasonableness of the penalty imposed on the Grievant. (See Award at pgs. 6-7). As a result, the Arbitrator denied the grievance.

In their Request, FOP claims the Arbitrator's Award is contrary to law and public policy because the Arbitrator "disagreed with its position that the [OCCR] complaint was untimely filed." (Request at p. 1).

When a party files an arbitration review request, the Board's scope of review is extremely narrow. Specifically, the Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in only three limited circumstances:

1. the arbitrator was without, or exceeded his or her jurisdiction;
2. the award on its face is contrary to law and public policy; or
3. the award was procured by fraud, collusion or other similar and unlawful means.

D.C. Code § 1-605.02 (2001 ed.).

FOP argues D.C. Code § 5-1107(d) requires a citizen complaint be filed within 45-days of the event giving rise to the complaint, absent a showing of good cause. (See Request at p. 5). FOP contends "the record clearly fails to reflect any finding of good cause for the untimely filing of the complaint." (Request at p. 5). FOP asserts because the record lacks any evidence of good cause, the Arbitrator's Award violated the 45-day statutory requirement. (See Request at p. 6).

"[T]he possibility of overturning an arbitration decision on the basis of public policy is an 'extremely narrow' exception to the rule that reviewing bodies must defer to an arbitrator's ruling. [T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy." *American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F. 2d 1, 8 (D.C. Cir. 1986). A petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law and or legal precedent. See *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). Furthermore, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *MPD and FOP/MPD Labor Committee*, 47 DCR 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). See also *District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20*, 34 DCR 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). As the Court of Appeals has stated, we

must "not be led astray by our own (or anyone else's) concept of 'public policy' no matter how tempting such a course might be in any particular factual setting." *District of Columbia Department of Corrections v. Teamsters Union Local 246*, 54 A2d 319, 325 (D.C. 1989).

In the present case, FOP asserts the Award is on its face contrary to law and public policy. However, FOP does not specify any "applicable law" and "definite public policy" that mandates that the Arbitrator arrive at a different result. Instead, the FOP alleges the Arbitrator's decision was contrary to law because the FOP believes good cause did not exist for OCCR to waive the 45-day requirement. FOP's arguments are a repetition of the arguments considered and rejected by the Arbitrator. Therefore, we believe FOP's ground for review only involves a disagreement with the Arbitrator's findings and conclusions. FOP merely requests we adopt its interpretation of the evidence presented.

This Board has held a disagreement with an arbitrator's findings of fact does not render an award contrary to law and public policy. *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, 46 DCR 6284, Slip Op. No. 586, PERB Case No. 99-A-02 (1999). We have also held that a disagreement with the Arbitrator's interpretation does not render an award contrary to law. See *DCPS and Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO*, 49 DCR 4351, Slip Op. No. 423, PERB Case No. 95-A-06 (2002). Here, the parties submitted their dispute to the Arbitrator. FOP's disagreement with the Arbitrator's findings and conclusions is not a ground for reversing the Arbitrator's Award. See *University of the District of Columbia and UDC Faculty Association*, 38 DCR 5024, Slip Op. No. 276, PERB Case No. 91-A-02 (1991). We also find FOP's disagreement with the Arbitrator's findings and evaluation of the evidence does not present a statutory basis for review. See *DCPS and Washington Teachers' Union Local 6, American Federation of Teachers*, 43 DCR 1203, Slip Op. No. 349, PERB Case No. 93-A-01 (1996). In conclusion, FOP has the burden to specify "applicable law and public policy that mandates that the Arbitrator arrive at a different result." *MPD and FOP/MPD Labor Committee*, 47 DCR 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). In the present case, FOP has failed to do so.

In view of the above, we find FOP's arguments have no merit. We find the Arbitrator's conclusions are based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law or public policy. Therefore, no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The Fraternal Order of Police/Metropolitan Police Department Labor Committee's Review Request is denied.

(2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

October 11, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 04-A-21 was transmitted via Fax and U.S. Mail to the following parties on this the 11th day of October 2011.

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