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

In the Matter of:)	
)	
District of Columbia Fire and Emergency Medical Services,)	
)	
Petitioner,)	
)	PERB Case No. 05-A-06
and)	
)	Opinion No. 896
)	
International Association of Firefighters, Local 36,)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

I. Statement of the Case:

The District of Columbia Fire and Emergency Medical Services (“FEMS”) filed an Arbitration Review Request (“Request”) seeking review of an Arbitration Award (“Award”) that sustained the grievance filed by the International Association of Firefighters, Local 36 (“Union”). The Union opposes the Request.

The issue before the Board is whether: (1) “the arbitrator was without authority or exceeded his or her jurisdiction”; or (2) “the award on its face is contrary to law and public policy”. D.C. Code § 1-605.02(6) (2001 ed.).

II. Discussion:

On June 8, 2004, then Mayor Anthony A. Williams, issued an announcement in the District Personnel Manual ("DPM"), Bulletin 12-201, which provided in part that:

Due to the passing of Ronald W. Reagan, fortieth President of the United States, and in respect to him, all District government agencies and departments under the authority of the Mayor will be closed on Friday June 11, 2004. However, essential public services will continue to be provided.

Section 3 of the Bulletin provided, in part, that:

A workday on which District Government offices are closed is a non-workday for non-emergency employees for pay and leave purposes.

. . .

Employees designated as "emergency employees" will be required to report to their duty station on time as scheduled.

As a result of their designation as emergency employees, firefighters were required to report to duty as scheduled on June 11, 2004. On June 24, 2004, the Union filed a grievance pursuant to Article 9, Section B(3) of the parties' collective bargaining agreement ("CBA"). The grievance alleged the denial of holiday pay, and the opportunity for holiday pay, and sought compensation in the form of holiday pay for all eligible full duty members employed and available to work on June 11, 2004. (See Award at pgs. 3-4). FEMS denied the grievance and the Union invoked arbitration.

At arbitration, the Union argued that "D.C. Code § 1-612.02(b) provides that for purposes of pay and leave, 'legal public holidays' shall include ten (10) specified holidays 'and any other day designated to be a legal holiday by the Mayor.'" (Award at p. 6). The Union contended that the Mayor choosing to designate June 11, 2004, as an administrative closing is not dispositive where the circumstances show that it was in fact a holiday. (See Award at p. 6). In support of this contention, the Union argued that the administrative closings provisions of DPM Chapter 12, Subpart 10, authorize the Mayor to order such closings in emergency situations and not to honor the memory of a president. (See Award at p. 6). As such, the Union claimed that the closing was a holiday and that Article IX, Section 5 of the FEMS Order Book and the DPM require additional pay when a firefighter works on a holiday. Consequently, the Union argued that FEMS violated the applicable rules, regulations and orders when it denied the firefighters holiday pay for June 11, 2004.

FEMS countered that holiday pay was not available for the June 11, 2004 closing because June 11th was not one of the holidays enumerated in the D.C Code or declared by

the Mayor. (See Award at p. 7). In addition, FEMS stated that the CBA contained no provisions concerning holidays and that the DPM is controlling on this issue. The DPM Bulletin designated June 11th as an administrative closing/non-workday, and not a holiday. FEMS also argued that the Union could have bargained over the issue of holiday pay during the collective bargaining process.

The Arbitrator found that despite the fact that the CBA did not address holiday pay, there had been a past practice of providing holiday pay on a day of mourning for President Nixon in 1994. Thus, the Arbitrator determined that June 11th was in effect a holiday, even though it not been labeled as such. (See award at p. 9). Consequently, the Arbitrator sustained the grievance and ordered compensation in the form of holiday pay for all eligible full duty members of the bargaining unit who were employed and available for work on June 11, 2004.

FEMS takes issue with the Award. Specifically, FEMS claims that the Arbitrator exceeded his authority by granting holiday pay for June 11, 2004. In addition, FEMS contends that the Arbitrator's conclusions contravene the DPM and the District of Columbia Code. (See Request at p. 11). FEMS also asserts that the Award is contrary to law and public policy. (See Request at pgs. 6, 11 and 12). The Union opposes the Request claiming that FEMS has failed to assert a statutory basis for review.

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

D.C. Code § 1-605.02(6) (2001 ed.).

In the present case, FEMS claims that the Arbitrator was without authority to grant holiday pay for June 11, 2004. In support of this contention, FEMS cites Chapter 12, Subparts 3 and 10 of the DPM which relate to the designation of holidays and non-workdays and asserts that the CBA does not contain any provisions regarding holiday pay. In addition, FEMS contends that the Arbitrator's evidentiary findings do not support the granting of holiday pay and that the Arbitrator has modified the agreement in doing so.¹

¹ Relying on *Dobbs, Inc. v. Local 614, International Brotherhood of Teamsters*, 813 F. 2d 85 (6th Cir. 1987), the Board has held that an arbitrator exceeds his authority if he adds to, subtracts from, or modifies the provisions of a collective bargaining agreement in arriving at a decision. In *Dobbs* the Court concluded that the Arbitrator created his own contract rather than apply the contract that was agreed upon by the

We have held and the District of Columbia Superior Court has affirmed that, “[i]t is not for [this Board] or a reviewing court . . . to substitute their view for the proper interpretation of the terms used in the [CBA].” *District of Columbia General Hospital v. Public Employee Relations Board*, No. 9-92 (D.C. Super Ct. May 24, 1993). See also, *United Paperworkers Int’l Union AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). Furthermore, an arbitrator’s decision must be affirmed by a reviewing body “as long as the arbitrator is even arguably construing or applying the contract.” *Misco, Inc.*, 484 U.S. at 38. We have explained that:

[by] submitting a matter to arbitration “the parties agree to be bound by the Arbitrator’s interpretation of the parties’ agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based.”

District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, 47 DCR 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *D. C. Metropolitan Police Department and Fraternal of Police, Metropolitan Police Department Labor Committee (Grievance of Angela Fisher)*, 51 DCR 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

FEMS’ arguments are a repetition of the positions it presented to the Arbitrator and its ground for review only involves a disagreement with the Arbitrator’s interpretation of Chapter 12, Subparts 3 and 10 of the DPM and the parties’ CBA. FEMS merely requests that we adopt its interpretation of the above referenced provisions of the DPM and the parties’ CBA. “[T]his Board will not substitute its own interpretation or that of the Agency 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). In the present case, the parties submitted their dispute to Arbitrator Truesdale. Neither FEMS’ disagreement with the Arbitrator’s interpretation of Chapter 12, Subparts 3 and 10 of the DPM and the parties’ CBA, nor FEMS’ disagreement with the Arbitrator’s findings and conclusions, are grounds for reversing the Arbitrator’s Award. See *MPD and FOP/MPD labor Committee (on behalf of Keith Lynn)*, Slip Op. No. 845, PERB Case No. 05-A-01 (2006).

As a second basis for review FEMS contends that the Award is contrary to law and public policy. In support of this argument FEMS asserts that the DPM and D.C. Code do not give FEMS authority to grant holiday pay.

parties. Specifically, the Arbitrator’s award contradicted a table of penalties which was agreed upon by the parties and contained in the collective bargaining agreement. *Id.* In the present case, the Award does not contradict an express provision of the parties’ CBA. Instead, the present case involves a disagreement with the Arbitrator’s interpretation of the parties’ CBA and the DPM. Therefore, *Dobbs* is not applicable and we reject FEMS’ argument that the Arbitrator has modified the parties’ CBA.

The 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). Also see, *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).

We find that FEMS has not cited any specific law or public policy that was violated by the Arbitrator's Award. We decline FEMS' Request that we substitute the Board's judgment for the Arbitrator's decision for which the parties bargained. FEMS had 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, FEMS failed to do so.

In view of the above, we find no merit to FEMS' arguments. We find that the Arbitrator's conclusions are based on a thorough analysis and cannot be said to be clearly erroneous, contrary to law or public policy, or in excess of his authority under the parties' CBA. Therefore, no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

- (1) The District of Columbia Fire and Emergency Medical Services' Arbitration 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.**

June 1, 2007

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 05-A-06 was transmitted via Fax and U.S. Mail to the following parties on this the 1st day of June 2007.

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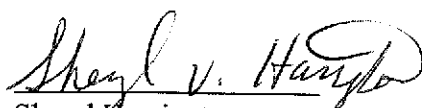
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