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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,)	
)	
Petitioner,)	PERB Case No. 11-A-08
)	
v.)	Opinion No. 1340
)	
District of Columbia Metropolitan Police Department,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

Petitioner Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union" or "FOP") filed an Arbitration Review Request ("Request") seeking review of an arbitration award ("Award") in which Arbitrator James Conway found that Respondent Metropolitan Police Department ("MPD") did not violate the parties' collective bargaining agreement ("CBA") when it temporarily adjusted the hours of the Third District Power Shift for operational reasons. (Award at 13). In its Request, FOP alleges the Award on its face is contrary to law and public policy. (Request at 2). MPD did not file an opposition to the Request.

The Arbitrator was presented with the following issues:

- (1) Did MPD's action in unilaterally changing the tours of duty for members of the Third District Power Shift violate Articles 4¹ and/or 24² of the [CBA], Special Order 99-20, or related provisions of the D.C. Code?

¹ Article 4 ("Management Rights") of the parties' CBA states:

The Department shall retain the sole right, authority, and complete discretion to maintain the order and efficiency of the public service entrusted to it, and to operate and manage the affairs of the Metropolitan

(2) If so, what is the appropriate remedy?

(Award at 3).

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).

II. Discussion

A. The Award

The Arbitrator found the following facts:

On March 30, 2007, the Third District posted a new work schedule notifying members of the “Power Shift” shift that effective April 15, 2007, their new reporting times would be changed from 1930 to 2130 hours. On April 12, 2007, members of the shift submitted [a group grievance] alleging violation of [CBA] Articles 4 – “Management Rights” – and 24 – “Scheduling” – of the [CBA], as well as Special Order 99-20 – “Watch and Days Off Work Schedule.” Specifically, the grievance asserted that Article 4 required the MPD to act in accordance with applicable laws, rules, and regulations; that Special Order 99-20 provides that the assignment of members to watches and days off must be in accordance with the CBA; and that Article 24 provides that members will be assigned days off and tours that are either fixed or rotating on a known schedule in accordance with their preferences and seniority. By the changes announced, the grievance

Police Department in all aspects including, but not limited to, all rights and authorities held by the Department prior to the signing of this Agreement.

Such management rights shall not be subject to then negotiated grievance procedure or arbitration. The Union recognizes that the following rights, when exercised in accordance with the applicable laws, rules, and regulations, which in no way are wholly inclusive, belong to the Department:

1. To direct employees of the Department;
2. To determine the mission, budget, organization, number of employees, number, type, and grade of employees assigned, the work project, tour of duty, methods and processes by which such work is performed, technology needed, internal security practices, or relocation of facilities...

² Article 24, Section 1 (“Scheduling”) of the parties’ CBA states:

Each member of the Bargaining Unit will be assigned days off and tours of duty that are either fixed or rotated on a known regular schedule. Schedules shall be posted in a fixed and known location. Notice of any changes to their days off or tours of duty shall be made fourteen (14) days in advance. If notice is not given of changes fourteen (14) days in advance the member shall be paid, at his or her option, overtime pay or compensatory time at the rate of time and one-half, in accordance with the provision of the Fair Labor Standards Act. The notice requirement is waived for those members assigned to the Executive Protection Unit and the Office of Professional Responsibility.

maintained, [MPD] had scheduled the group for days off and tours different than those bid for and assigned in violation of those terms and regulations.

(Award at 2-3).

First, the Arbitrator found Article 4 of the CBA to be a “robust declaration of negotiated powers deemed necessary for [MPD] to discharge its obligations to the public.” (Award at 8). Article 4 gives MPD the “sole right, authority, and complete discretion’ to efficiently manage its affairs, including ‘to determine the... tour of duty... by which such work is performed.’” *Id.*

Next, the Arbitrator considered FOP’s argument that MPD violated the CBA by changing the hours the Power Shift members had bid for without notice to FOP. (Award at 8). Noting that MPD posted the new schedules in a “fixed and known location” fourteen days in advance, the Arbitrator found it clear that “no provision of Article 24 has been identified requiring advance notice of such changes to the Union.” *Id.*

Finally, the Arbitrator addressed FOP’s contention that bargaining was required because MPD’s actions were not in accordance with applicable laws, rules, and regulations – particularly Special Order 99-20³. (Award at 8-9). The Arbitrator summarized Special Order 99-20 as providing that the assignment of members to watches and days off will be (i) based on operational needs; (ii) will be done in accordance with the procedures set forth therein; and (iii) will be done in a manner consistent with the provisions of the CBA. (Award at 10). The Arbitrator found nothing in Special Order 99-20 that could be construed as limiting MPD’s authority to establish or adjust tours of duty, and found that the parties’ CBA takes precedence in any conflict between the CBA and Special Order 99-20. *Id.* The Arbitrator concluded that the new Power Shift work schedule did not violate Special Order 99-20. (Award at 12-13).

B. Analysis

The Comprehensive Merit Personnel Act (“CMPA”) authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the arbitrator was without, 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.).

³ The relevant portion of Special Order 99-20 states:

Change of watch or days off assignments will not normally be made except as deemed appropriate based upon operational needs and in accordance with the bargaining unit contract. Circumstances may include the following:

1. Officers or sergeants placed on Administrative Leave, Extended Sick Leave, Limited Duty, or Non-Contract as they deem appropriate.
2. Operational needs of the districts such as covering special events or circumstances, and only for the duration of the event and in accordance with the existing collective bargaining agreements.

The Board's scope of review, particularly concerning the public policy exception, is extremely narrow. 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." *Metro. Police Dep't and Fraternal Order of Police/Metro. Police Dep't Labor Committee*, 47 DC Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000); see also *District of Columbia Public Schools and American Fed'n of State, County and Municipal Employees, District Council 20*, 34 DC Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its judgment for the arbitrator's. *Fraternal Order of Police/Dep't of Corrections Labor Committee v. PERB*, 973 A.2d 174, 177 (D.C. 2009).

By submitting the grievance 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 on which the decision is based." *District of Columbia Metro. Police Dep't v. Fraternal Order of Police/ Metro. Police Dep't Labor Comm.*, 47 DC Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *District of Columbia Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 DC Reg. 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004). Disagreement with the arbitrator's findings is not a sufficient basis for concluding that an award is contrary to law or public policy. *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 31 DC Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A0-05 (1984).

In its Request, FOP alleges that the Award is contrary to law and public policy because MPD's actions were prohibited by the CBA, and because MPD failed to negotiate with FOP over the new Power Shift schedule. (Request at 5, 7).

Specifically, FOP contends that the Arbitrator failed to consider Article 24, Section 2 of the CBA, which states that "[t]he Chief or his/her designee may suspend Section 1 on a Department wide basis or in an operational unit for a declared emergency, for crime, or for an unanticipated event" (Request at 5). FOP alleges that MPD failed to comply with Article 24, Section 1 because it failed to notify FOP of the scheduling changes, and that MPD's failure to notify FOP was not due to a declared emergency, crime, or unanticipated event. (Request at 5-6).

To the contrary, the Arbitrator found that MPD complied with Article 24, Section 1 by posting the new schedules in a "fixed and known" location fourteen days prior to the effective date. (Award at 8). Further, Article 24, Section 1 requires notice to the employees, not FOP, though the Arbitrator "pass[ed] without comment the question of whether it may have promoted sound labor relations to provide notice to the FOP." *Id.* As MPD had not suspended Article 24, Section 1, there was no need for Article 24, Section 2's declaration of an emergency, crime, or an unanticipated event. FOP's allegation is simply a disagreement with the Arbitrator's findings,

and as such is not a sufficient basis for concluding that the Award is contrary to law or public policy. *See Metro. Police Dep't*, Slip Op. No. 85.

Additionally, FOP alleges that the Award violates law and public policy because MPD failed to negotiate the Power Shift scheduling changes. (Request at 7). FOP contends that tours of duty are a term and condition of employment, and unilateral changes in terms and conditions of employment violate D.C. Code § 1-617.04(a)(5). (Request at 9). FOP is correct that a unilateral change to the terms and conditions of employment violates law and public policy, but the Arbitrator found that Article 4 grants management the right to determine tours of duty. (Award at 8). Further, Article 4 dovetails with D.C. § 1-617.08(a)(5)(A), which grants management the "sole right" to determine "the mission of the agency, its budget, its organization, the number of employees, and to establish the tour of duty." FOP disagrees with the Arbitrator's conclusion on this issue, and the Board will not modify or set aside the Award on that basis. *See Metro. Police Dep't*, Slip Op. No. 85.

Therefore, FOP's Arbitration Review Request is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's 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.

November 9, 2012

CERTIFICATE OF SERVICE

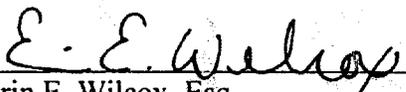
This is to certify that the attached Decision and Order in PERB Case No. 11-A-08 was transmitted via U.S. Mail and e-mail to the following parties on this the 9th day of November, 2012.

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