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

In the Matter of:)	
)	
District of Columbia Water and Sewer Authority,)	
)	
Petitioner,)	PERB Case No. 01-A-03
)	
and)	Opinion No. 652
)	
American Federation of Government Employees (AFGE), Locals 631, 872, 2553; American Federation of State, County and Municipal Employees (AFSCME), Local 2091; National Association of Government Employees (NAGE), Locals R3-05 and 06,)	
)	
Respondents.)	
)	

DECISION AND ORDER

The District of Columbia Water and Sewer Authority (WASA), filed an Arbitration Review Request on November 21, 2000. WASA seeks review of an arbitration award (Award) which determined that a bargaining unit employee should be promoted from a DS-12 to a DS-13. In addition, WASA is challenging the arbitrator's ruling concerning the timeliness of the union's grievance. WASA contends that the arbitrator was without authority or exceeded his jurisdiction. (Request at p. 2.) The Respondents oppose the Request.

The issue before the Board is whether "the arbitrator was without or exceeded his jurisdiction. . . ." D.C. Code Sec. 1-605.2(6). Upon consideration of the Request, we find that WASA has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, WASA's request for review is denied.

The Grievant, Inder Pahwa, has been a District employee since 1985. In January 1995 WASA advertised two job vacancies for civil engineer positions at the DS-13 level. Subsequently, the announcement was modified. The modified announcement indicated that the vacant position would be filled as a "career ladder position" starting at the DS-12 level with promotion potential to

Decision and Order
PERB Case No. 01-A-03
Page 2

the DS-13 level. The Grievant was selected for the position. However, after serving a year at the DS-12 level, he was denied a promotion to the DS-13 level. The union grieved this action arguing that WASA improperly denied a career ladder promotion to the Grievant. WASA countered by arguing that: (1) the grievance was untimely; and (2) the Grievant was not entitled to a career ladder promotion. In a decision issued on October 30, 2000, the arbitrator denied WASA's timeliness defense. The arbitrator also ruled that the Doctrine of Laches was not applicable in this case.

In addition, the arbitrator determined that WASA improperly withheld the Grievant's promotion to the DS-13 level. (Award at p. 9). As a result, he ruled that the: (1) Grievant should be promoted to the DS-13 level; and (2) promotion should be retroactive to March 26, 1999. (Award at p. 10).

WASA takes issue with the arbitrator's ruling. Specifically, WASA contends that the arbitrator exceeded his authority by granting relief for "actions that occurred in 1996, two years prior to the effective date of the Agreement between the parties."¹ (Request at p. 2). In addition, WASA claims that the arbitrator's ruling concerning the timeliness defense, was not consistent with the clear and unambiguous language contained in Article 53/Section E of the collective bargaining agreement (CBA). Also, WASA believes that it adequately demonstrated that the Doctrine of Laches was applicable in this case. Finally, WASA claims that the arbitrator exceeded his jurisdiction by not applying language contained in Article 53 of the CBA, to the facts of this case.

Before considering the merits of the union's argument, the arbitrator considered WASA's claim that the grievance was not timely. The arbitrator ruled that the union's grievance was timely. His ruling was based on several factors. First, he gave weight to WASA's failure to assert the timeliness defense prior to the arbitration hearing. Second, he concluded that the evidence demonstrated that the Grievant made continuous efforts to have his rate of pay adjusted. Finally, he found that both parties were responsible for allowing significant time lapses to occur during the period of the dispute.

In addition, the Arbitrator ruled that based on the evidence presented, the Doctrine of Laches was not applicable in this case.

The essence of WASA's request for review is its disagreement with the arbitrator's: (1)

^{1/} Based on our discussion and ruling, it is not necessary to address this specific claim. Nonetheless, we would like to note that in Nolde Brothers, Inc. v. Local 358, Bakery & Confectionary Union, 430 U.S.243 (1977), the Supreme Court addressed a similar issue. In that case, the Court found that the parties' obligations under the arbitration clause of a collective bargaining agreement may survive the termination of the contract if: (1) the dispute is over an obligation created by the expired contract; and (2) there is nothing in the contract which expressly prohibits the parties from raising a dispute which arose under the old contract but is based on events occurring after the expiration of the contract.

Decision and Order
PERB Case No. 01-A-03
Page 3

findings and conclusions; and (2) interpretation of the parties' CBA. We have determined that such disagreement is not a sufficient basis for concluding that an award is contrary to law or public policy, or that the arbitrator exceeded his jurisdiction. See D.C. Metropolitan Police Department and Fraternal Order of Police, Metropolitan Police Department Labor Committee, 31 DCR 4159, Slip Op. No. 85, PERB Case No. 84-A-05 (1984).

In the present case, WASA merely requests that we adopt its: (1) interpretation of Article 53 of the parties' CBA; and (2) evidentiary findings and conclusions. We have held that by agreeing to arbitration, it is the arbitrator's decision for which the parties' have bargained. D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 87-A-04 (1992). See also, University of the District of Columbia and UDC Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320, 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." University of the District of Columbia and University of the District of Columbia Faculty Association, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992). Furthermore, "[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, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987).

WASA asserts a policy argument as a second basis for review. Specifically, WASA claims that "[p]ermitting the Award to stand violates the notion that state claims cannot be properly adjudicated and also permits time-barred grievances to arise when the union claims they have first become aware of the matter." (Request at p.3) 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, WASA fails to cite any specific public policy or legal precedent to support their argument. Moreover, WASA's policy argument relies solely on general consideration of supposed public policy, and not a well-defined policy or legal precedent. Thus, WASA has failed to point to any clear or legal public policy which the Award contravenes.

We find that the arbitrator's conclusions are based on a thorough analysis and can not be said to be clearly erroneous or contrary to law and public policy. In the present case, WASA disagrees with the arbitrator's findings. This is not a sufficient basis for concluding that the arbitrator has exceeded his authority. For the reasons discussed, no statutory basis exists for setting aside the Award. Therefore, the Request is denied.

Decision and Order
PERB Case No. 01-A-03
Page 4

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

May 4, 2001

CERTIFICATE OF SERVICE

This is to certify that the attached Certification in PERB Case No. 01-A-03 was transmitted via U.S. Mail to the following parties on this 4th day of May 2001.

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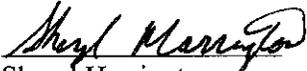
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