

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:)	
)	
Metropolitan Police Department)	
)	PERB Case No. 18-A-11
Petitioner)	
)	Opinion No. 1686
v.)	
)	
Fraternal Order of Police/)	
Metropolitan Police Department)	
Labor Committee)	
)	
Respondent)	

DECISION AND ORDER

I. Introduction

On April 17, 2018, the Metropolitan Police Department (“MPD”) filed an Arbitration Review Request (“Request”) pursuant to the Comprehensive Merit Personnel Act (“CMPA”), D.C. Official Code § 1-605.02(6). MPD seeks review of an arbitration award (“Award”) granting the grievance filed by the Fraternal Order of Police (“FOP”) on behalf of the Grievant. The Award rescinded the Grievant’s termination and ordered the payment of pre- and post-judgment interest. MPD seeks review of the Award claiming the Arbitrator exceeded his jurisdiction.

Pursuant to the CMPA, the Board is permitted to modify, set aside, or remand a grievance arbitration award only if: (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 unlawful means.¹ For the reasons stated herein, the request is denied.

¹ D.C. Official Code § 1-605.02(6).

II. Statement of the Case

The Grievant has been an employee with MPD since 2005. On December 13, 2011, the Internal Affairs Division initiated an investigation of the Grievant's alleged involvement in a domestic violence incident.² On July 26, 2012, the Grievant was served with a Notice of Proposed Adverse Action that set forth the following charges:³

Charge 1: committing an act that could constitute a crime (arrested for simple assault)

Charge 2: engaging in conduct unbecoming an officer (physical assault of his wife) and

Charge 3: failing to obey rules of police force (engaging in the assault of his wife)

On September 5, 2012, a panel of senior officers held an adverse action hearing and recommended termination. The panel exonerated the Grievant on Charge 3 and sustained Charge 1 and Charge 2. Subsequently, the Grievant was sent a Final Notice of Adverse Action. On November 15, 2012, the MPD Chief of Police denied the Grievant's appeal and FOP sought arbitration.⁴

III. Arbitrator's Award

The Arbitrator was tasked with determining two issues:

1. Whether the evidence presented by MPD was sufficient to support the charges against the Grievant and
2. Whether the termination of the Grievant was the appropriate remedy

Before the Arbitrator, FOP argued that there was not sufficient evidence to support the allegations of Charge 1 because MPD failed to provide factual support for the arrest within the specification.⁵ Moreover, FOP maintained that there was not sufficient evidence to support Charge 2.⁶ MPD argued that complete record demonstrates that there was a preponderance of evidence to support the charges.⁷

The Arbitrator found that Charge 1 was legally insufficient and that an assault did not occur, specifically stating that the Grievant was in fact trying to restrain his wife.⁸ The Arbitrator dismissed the charges in their entirety and ordered the Grievant's reinstatement with full back pay, lost benefits, and the payment of pre-judgment and post-judgment interest. He did not provide a full analysis of Charge 2 anywhere in the Award.

² Request at 3.

³ *Id.* at 4.

⁴ Award at 2-4.

⁵ Award at 13.

⁶ Award at 9-11.

⁷ Award at 3.

⁸ Award at 13.

IV. Discussion

MPD seeks the Board's review to determine if the Arbitrator exceeded his authority when he did not provide a rationale with respect to Charge 2 and whether he exceeded his jurisdiction by awarding the grievant "pre- and post-judgment interest."⁹

A. The Arbitrator did not exceed his jurisdiction when he failed to provide rationale for overturning Charge 2.

MPD relies on *Northwest Airlines, Inc. v. Air Line Pilots Association International*,¹⁰ and argues that an arbitrator cannot deviate from deciding all the issues before him.¹¹ The instant matter is distinguishable. In *Northwest Airlines*, the arbitrators refused to address the definition of "pilot seniority list" because they mistakenly believed that the issue was resolved by a stipulation and agreement between the parties.¹² The refusal to address the issue was an undisputed mistake of fact.¹³ *Northwest Airlines* is a narrow holding that stands for the proposition that an arbitration award may be unenforceable when an undisputed mistake of fact causes an arbitrable issue to be removed from the arbitration.¹⁴ Here, there is no mistake of fact and the Arbitrator addressed all issues presented.

In the present case, the Arbitrator would need to find that the Grievant physically assaulted his wife to sustain Charge 2. It is well settled that the arbitrator has the authority to resolve issues of fact including determinations regarding the credibility, significance, and weight of the evidence.¹⁵ The Arbitrator held that the Grievant did not assault his wife, and he specifically found that the Grievant was trying to restrain his wife.¹⁶ As FOP points out in its Opposition, the Arbitrator considered the evidence and determined the evidence was insufficient to confirm that an assault occurred and therefore would not support Charge 2.¹⁷ The allegations of both Charge 1 and Charge 2 are addressed within the Arbitrator's decision. The Arbitrator dismissed the charges in their entirety and determined that termination was not appropriate.

The Board has limited authority to review an arbitration award. In determining whether the arbitrator has exceeded his authority, the Board looks to whether the arbitrator complied with the essence of the collective bargaining agreement ("CBA"). The relevant questions in this examination are:

⁹ Opposition at 4.

¹⁰ 530 F.2d 1048 (D.C. Cir. 1976)

¹¹ Request at 8.

¹² *Northwest Airlines, Inc. v. Air Line Pilots Ass'n Int'l*, 530 F.2d 1048, 1049 (D.C. Cir. 1976).

¹³ *Id.*

¹⁴ *Id.* at 1050.

¹⁵ *DCDHCD v. AFGE Local 2725 AFL-CIO*, 45 D.C. Reg. 326, Slip Op. 527 at 2, PERB Case No. 97-A-03(1998).
AFSCME District Council 20 AFL-CIO v. D.C. General Hospital, 37 D.C. Reg. 6172, Slip Op. 253, PERB Case No. 90-A-04 (1990).

¹⁶ Award at 13.

¹⁷ Opposition at 5.

1. Did the arbitrator act outside his authority by resolving a dispute not committed to arbitration and
2. In resolving legal and factual disputes was the arbitrator arguably construing or applying the contract¹⁸

We have held that an arbitrator is not required to explain the reason for his decision, and that the failure to do so does not render the decision unenforceable.¹⁹ The Arbitrator's decision in this case was based on the precise issues of the sufficiency of the evidence and the appropriateness of the termination. The parties agreed and submitted their dispute to the Arbitrator. We have held that, by submitting a grievance to arbitration, parties agree to be bound by the arbitrator's interpretation of their contract, rules, and regulations; and agree to accept the arbitrator's evidentiary findings and conclusions.²⁰ No statutory basis for reviewing the Award exists where, as here, there is a mere disagreement with the Arbitrator's evaluation of the facts.²¹

B. The Arbitrator did not exceed his jurisdiction by awarding interest.

Both parties agree that the source of the arbitrator's authority is derived from Article 19, E, Section 5.4 of the CBA, which states in part:

The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision on the issue presented and shall confine his decision solely to the precise issue submitted for arbitration... The arbitrator shall render his/her decision in writing, setting forth his/her opinion and conclusions on the issues submitted, within thirty (30) days after the conclusion of the hearing.²²

We have previously held that an arbitrator's authority under the contract provides wide latitude and flexibility in crafting remedies for CBA violations, so long as the remedy is not expressly limited by the collective bargaining agreement.²³

Here, MPD argues that pre-judgment and post-judgment interest awards are outside of the arbitrator's jurisdiction. MPD does not point to any provision within the contract that would restrict the interest award of the arbitrator.

¹⁸ *Mich. Family Resources, Inc. v. Serv. Emp' Int'l Union, Local 517M*, 475 F.3d 746, 753 (2007), quoted in *F.O.P./Dep't of Corrs. Labor Comm. v. D.C. Dep't of Corrs.*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at 7, PERB Case No. 10-A-20 (2012), and *D.C. Fire & Emergency Med. Servs. v. AFGE Local 3721*, 59 D.C. Reg. 9757, Slip Op. No. 1258 at 4, PERB Case No. 10-A-09 (2012).

¹⁹ *FOP/MPD Labor Committee (on behalf Harris) v. MPD*, 59 D.C. Reg. 11329, Slip Op. 1295 at 9, PERB Case No. 9-A-11 (2012).

²⁰ *MPD v. FOP/MPD Labor Committee (on behalf of Sims)*, Slip Op. 633 at 3, PERB Case No. 00-A-04 (2000).

²¹ *AFSCME District Council 20 AFL-CIO v. D.C. General Hospital*, 37 D.C. Reg. 6172, Slip Op. 253 at 3, PERB Case No. 90-A-04 (1990).

²² Request, Ex. 6 at 27, *District of Columbia Metropolitan Police Department and the Fraternal Order of Police/MPD Labor Committee (CBA) Effective FY 2004-2008*.

²³ *MPD v. FOP/MPD Labor Committee (on behalf of Gutterman)*, 39 D.C. Reg. 6232, Slip Op. 282 at 3-4, PERB Case No. 87-A-04 (1991). *Univ. of D.C. v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. 1333 at 6, PERB Case No.12-A-01 (2012).

Moreover, the FOP cites our recent decision in *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Michael Muldrow)*.²⁴ In *Muldrow*, MPD filed an arbitration review request to challenge the award of 4% pre-judgment and 10% post-judgment interest on backpay.²⁵ MPD argued that the arbitrator did not have the authority under Article 19, E, Section 5.4 to award pre-judgment interest and that post-judgment interest was contrary to Article 46.²⁶ We held that pre-judgment and post-judgment interest awards are within the jurisdiction of the arbitrator when not restricted by the collective bargaining agreement.²⁷ We have held that the power to award pre-and post-judgment interest arises out of the broad equitable powers of the arbitrator.²⁸ Here, MPD again questions the arbitrator's jurisdiction under Article 19, E, Section 5.4. In the absence of any contractual restrictions, we find the ability to order pre-judgment and post-judgment interest is within the arbitrator's authority to determine an appropriate equitable remedy.

V. Conclusion

The Board rejects the MPD's arguments and finds no cause to set aside, modify, or remand the Arbitrator's Award. Accordingly, MPD's request is denied and the award is enforceable as written.

ORDER

IT IS HEREBY ORDERED THAT:

1. MPD's Arbitration Review Request is hereby denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

September 27, 2018

²⁴ 64 D.C. Reg. 7604, Slip Op. 1625, PERB Case No. 16-A-11 (2017).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 4.

²⁸ *Id.* at 3.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-11, Op. No. 1686 was sent by File and ServeXpress to the following parties on this the 28th day of September, 2018.

Shayn Tierney, Esq.
Pressler, Senftle & Wilhite P.C.
1432 K Street, N.W.
Twelfth Floor
Washington, DC 20005

Charles Frye
Office of the Attorney General
441 4th Street, NW
1180N
Washington, D.C. 20001

/s/ Sheryl Harrington
Public Employee Relations Board
1100 4th Street, SW
Suite E630
Washington, D.C. 20024
Telephone: (202) 727-1822