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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 (on behalf of Grievant Gregory Powell),)	PERB Case No. 03-A-01
)	
)	
Petitioner,)	
)	Opinion No. 720
)	
and)	
)	
)	
DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On October 15, 2002, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union") filed an Arbitration Review Request on behalf of Sergeant Gregory Powell.¹ FOP seeks review of an Arbitration Award (Award)² which affirmed the termination of Gregory Powell. FOP contends that the: (1) Arbitrator was without authority to grant the Award;

¹Sergeant Gregory Powell's rank was reduced as a result of this disciplinary action. He may be referred to as either "Sergeant" or "Officer", throughout this decision. He is also referred to as "Powell", his surname.

²Arbitrator Lois Hochhauser issued the Opinion and Award in this matter.

and (2) Award is contrary to law. The Metropolitan Police Department (MPD) opposes the Request.

The issue before the Board is whether “the award on its face is contrary to law and public policy” or whether “the arbitrator was without or exceeded his or her jurisdiction...” D.C. Code § 1-605.02(6). Upon consideration of the Request, we find that FOP has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, FOP’s request for review is denied.

MPD terminated the Grievant, a Sergeant, for: (1) conduct unbecoming of a police officer by, *inter alia*, fighting with another police officer and (2) willfully and knowingly making an untruthful statement in the context of MPD’s investigation of the incident.³ The Arbitrator found that the charges against Officer Powell were supported by the evidence. In addition, the Arbitrator found that the Police Chief had authority to increase the disciplinary penalty from a recommended suspension to a termination.

FOP takes issue with the Arbitrator’s Award. FOP asserts that the Arbitrator exceeded her authority by finding that Chief Ramsey had the authority to increase Powell’s penalty from a 35-day suspension to a termination. Specifically, the Union claims, *inter alia*, that the Arbitrator erred by concluding that: (1) there was substantial evidence to support a finding that Powell committed the alleged acts and (2) Chief Ramsey had the authority to increase the penalty for the disciplinary violation. Additionally, FOP contends that the Arbitrator erred by basing her decision on the Chief’s discretion to “modify” the disciplinary penalty recommended by the Trial Board.⁴

³On March 2, 2000, Sergeant Powell was involved in an altercation with another police officer. As a result, on March 13, 2000, the Metropolitan Police Department (MPD) issued a Notice of Proposed Adverse Action against Sergeant Powell. The Notice charged Sergeant Powell with misconduct and proposed to terminate him. In January 2001, the Proposed Notice against Sergeant Powell was amended and issued. (Award at pg. 2). Subsequently, in March 2001, the Trial Board heard the officer’s grievance against Sergeant Powell. Thereafter, in April 2001, the Trial Board sustained all, but one count against Powell and recommended a reduction in rank and a 35-day suspension. The Union, on behalf of Sergeant Powell, appealed the Trial Board’s decision to Chief Ramsey. Finding that Powell’s misconduct was serious, the Chief of Police decided to affirm the Trial Board’s decision; however, he increased the penalty to a termination. Pursuant to the parties’ collective bargaining agreement, Sergeant Powell appealed the increased penalty. After hearing the case, the Arbitrator affirmed the decision of the Trial Board and confirmed Chief Ramsey’s authority to increase Sergeant Powell’s penalty.

⁴In support of this argument, FOP asserts that the Arbitrator’s reliance on Black’s Law Dictionary’s definition of “modify” is ambiguous and is inconsistent with MPD Manual § 10.1.21, which states that the deciding officer may “confirm the findings and impose the penalty recommended..., reduce the penalty or... declare the Board’s proceedings void and refer

Furthermore, FOP asserts that the Chief's act of modifying the Trial Board's decision is inconsistent with §1-613.2 of the District of Columbia Personnel Manual⁵ (DPM). (Request at pg. 3). Finally, FOP argues that pursuant to Douglas v. Veterans Administration, 5 M.S.P.R. 280 (1981), the Trial Board did not assign "proper" weight to the fact that this situation was the first adverse action initiated against Powell and that Powell was provoked by the other officer when the misconduct occurred

In light of the above, FOP's ground for review only involves a disagreement with the arbitrator's interpretation of DPM §1613.2 and other regulations which are cited in support of its position.⁶ Moreover, FOP merely requests that we adopt its interpretation of the above-referenced provision of the DPM.

Based on the above and the Board's statutory basis for reviewing arbitration awards, FOP contends that the Arbitrator exceeded her authority by affirming the termination. We disagree.

The Board has held that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." D.C. Dept. of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). Furthermore, the Board has held that "[b]y agreeing to submit the settlement of [a] grievance to arbitration, it [is] the Arbitrator's interpretation, not the Board's, that the parties have bargained for." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320 at p.2, 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." Id. Moreover, "[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.

the case to another regularly appointed trial board." (Request at pg. 3).

⁵Chapter 16 of the District of Columbia Personnel Manual (DPM) outlines the District government's regulations concerning the disciplining of employees. DPM §1613.2 provides that: "[t]he deciding official shall either sustain the proposed (disciplinary) penalty, reduce it, remand the action with instruction for further consideration, or dismiss the action with or without prejudice, but in no event shall he or she increase the penalty."

⁶While FOP *did* point to other regulations which were favorable to its position, the Arbitrator noted that she reviewed various provisions of the District Personnel Manual, Statutes, MPD General Orders and other authorities cited by the parties and was not persuaded. (See, Award at p. 6).

246, 34 DCR 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987).

FOP also claims that the Arbitrator's Award is contrary to law. We disagree. In making this determination, we note that a "disagreement with the arbitrator's interpretation. . . does not make the award contrary to law and public policy." AFGE, Local 1975 and Dept. of Public Works, 48 DCR 10955, Slip Op. No 413, PERB Case No. 95-A-02 (2001). To set aside an award as contrary to law and public policy, a 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 (1998).

In the present case, FOP's claim involves only a disagreement with the Arbitrator's interpretation of §1613.2 of the DPM and other authority that is relied on. This is not a sufficient basis for concluding that the: (1) Arbitrator has exceeded his authority; or (2) Award is contrary to law or public policy. Therefore, we find that FOP has failed to point to any clear or legal public policy which the Award contravenes.

We find that the Arbitrator's conclusion is based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. For the reasons discussed, no statutory basis exists for setting aside the Award; the Request is therefore, 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.

June 25, 2003