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

In the Matter of:)	
)	
Metropolitan Police Department)	
)	PERB Case No. 20-A-08
Petitioner)	
)	Opinion No. 1759
v.)	
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee)	
)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

On August 24, 2020, the Metropolitan Police Department (MPD) filed this Arbitration Review Request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA), D.C. Official Code § 1-605.02(6).¹ MPD seeks review of a supplemental award (“Award”) granting the Fraternal Order of Police/ Metropolitan Police Department Labor Committee’s (FOP) request for attorney fees and ordering the payment of pre-judgment and post-judgment interest on back pay on behalf of the Grievant. MPD seeks review of the Award arguing that the Arbitrator exceeded his jurisdiction and that the Award is contrary to law and public policy.

Upon consideration of the record and the parties’ filings, the Request is denied for the reasons stated herein and in PERB Case. No 1625.

¹ MPD filed a document styled *Supplementary Memorandum in Support of the Petitioner’s Arbitration Review Request* in PERB Case No. 20-A-07. The Memorandum sought review of the Arbitrator’s award of remedies (“Award”) rather than an award on the merits of the grievance (“Merits Award”) at issue in PERB Case No. 20-A-07. The Memorandum was accepted as an Arbitration Review Request and assigned PERB Case No. 20-A-08 because the Memorandum satisfied the Board’s rules for an Arbitration Review Request.

II. Background and Supplemental Award

On June 15, 2020, the Arbitrator issued an award on the merits of the grievance (“Merits Award”).² In the Merits Award, the Arbitrator reversed the Grievant’s termination, reduced a 30-day suspension to a 15-day suspension, and ordered back pay. The Arbitrator retained jurisdiction for sixty (60) days for the purpose of determining whether additional remedies of interest on back pay and attorney fees were warranted.³ The Arbitrator requested briefs from the parties on the remedial issues.⁴ On June 23, 2020, FOP submitted its brief and petition for attorney fees.⁵ On July 7, 2020, MPD submitted its brief in opposition to the petition.⁶

Before the Arbitrator, FOP argued that it was entitled to an award of interest on the back pay and attorney fees under the Federal Back Pay Act⁷ (BPA) and CMPA.⁸ FOP argued that the Arbitrator derived the authority to award attorney fees and interest under Article 19, Paragraph E, Section 5.4 of the Collective Bargaining Agreement (CBA).⁹ FOP also argued that PERB precedent permitted such an award.¹⁰

MPD argued that there was no express provision in the CMPA, DPM, or the CBA that authorized an award of attorney fees.¹¹ MPD argued that the BPA did not apply to police officers, because MPD adopted a new compensation system for its employees.¹² Further, MPD argued that FOP failed to meet its burden to show that the Arbitrator was authorized to award interest.¹³ MPD argued that the Arbitrator did not have the authority under Article 19, Paragraph E, Section 5.4 to award pre-judgment and post-judgment interest. MPD asserted that an award of interest would be contrary to Article 46 of the CBA.¹⁴

The Arbitrator found that MPD failed to cite any provision of the CBA that restricted the Arbitrator’s authority to award back pay or interest.¹⁵ Further, the Arbitrator relied on PERB precedent¹⁶ to confirm that arbitrators have the authority to apply the BPA.¹⁷ The Arbitrator found that an award of reasonable attorney fees was in the interest of justice and that FOP’s request for

² MPD filed an Arbitration Review Request of the Merits Award. In PERB Case No. 20-A-07, the Board held that the Arbitration Review Request was untimely filed and dismissed the case. *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1756, PERB Case No. 20-A-07 (2020).

³ Award at 1.

⁴ Award at 2.

⁵ Request at 1.

⁶ Request at 1.

⁷ 5 U.S.C. § 5596.

⁸ Award at 2.

⁹ Award at 3.

¹⁰ Award at 4 (citing *MPD v. FOP/MPD Labor Comm.*, 64 D.C. Reg. 13394, Slip Op. No. 1643 at 4, PERB Case No. 17-A-07 (2017)(affirming a supplemental award of attorney fees under the BPA and an award of interest on back pay)).

¹¹ Award at 8.

¹² Award at 9.

¹³ Award at 10.

¹⁴ Award at 8.

¹⁵ Award at 13.

¹⁶ *MPD v. FOP/MPD Labor Comm.*, 64 D.C. Reg. 13394, Slip Op. No. 1643 at 4, PERB Case No. 17-A-07 (2017).

¹⁷ Award at 13.

attorney fees was reasonable.¹⁸ The Arbitrator granted the request for attorney fees and ordered interest on the Grievant's back pay award.¹⁹

III. Discussion

Section 1-605.02(6) of the D.C. Official Code permits the Board to modify, set aside, or remand a grievance arbitration award in only three narrow circumstances: (1) if an 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.

In its Request, MPD argues that (1) the CBA does not authorize the Arbitrator to award attorney fees and/or interest,²⁰ and (2) the BPA does not authorize the award of attorney fees and/or interest.²¹ FOP argues that MPD merely disagrees with the Award and asserts that the Request should be denied.

MPD asserts that the CBA does not expressly grant the Arbitrator the authority to award attorney fees.²² MPD argues that Article 46 provides for the award of interest in limited circumstances and, therefore, the Arbitrator does not have authority in this case to award interest on back pay.²³ FOP argues that the Board should deny MPD's Request because the Award is well supported by prior arbitration awards between the parties, PERB precedent upholding these awards, Superior Court precedent, and the BPA.²⁴

The Board has 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 CBA.²⁵ In a similar case involving MPD and FOP, the Board held that an arbitrator has authority to award pre-judgment and post-judgment interest.²⁶ MPD has not raised any new arguments beyond those noted in Board Opinion 1625. Therefore, the Board denies MPD's Request because the Arbitrator did not exceed his authority by awarding pre-judgment and post-judgment interest and attorney fees.

Furthermore, MPD has the burden to demonstrate that the Award itself violates established law or compels an explicit violation of "well defined public policy grounded in law and or legal precedent."²⁷ Here, MPD has not presented any authority that would prevent the Arbitrator from

¹⁸ Award at 14-15.

¹⁹ Award at 15.

²⁰ Request at 4.

²¹ Request at 6.

²² Request at 5.

²³ Request at 6.

²⁴ Opposition at 11.

²⁵ *MPD v. FOP/MPD Labor Comm. ex rel. Gutterman*, 39 D.C. Reg. 6232, Slip Op. 282 at 3-4, PERB Case No. 87-A-04 (1991). *UDC v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. 1333 at 6, PERB Case No.12-A-01 (2012).

²⁶ *MPD v. FOP/MPD Labor Comm.*, 64 D.C. Reg. 7604, Slip Op. 1625, PERB Case No. 16-A-11 (2017).

²⁷ *American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986). *Accord MPD v. FOP/MPD Labor Comm. ex rel. Pair*, 61 D.C. Reg. 11609, Slip Op. 1487 at 8, PERB Case No. 09-A-05 (2014); *MPD v. FOP/MPD Labor Comm. ex rel. Johnson*, 59 D.C. Reg. 3959, Slip Op. 925 at 11-12, PERB Case No. 08-A-01 (2012).

applying the BPA.²⁸ Therefore, the Board finds that the Award is not contrary to law or public policy.

IV. 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 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

September 17, 2020

Washington, D.C.

²⁸ The Court of Appeals has upheld the Board in finding that an award of attorney fees under the BPA is not contrary to law and public policy. *See, AFSCME District 20, Local 2087 v. UDC*, 166 A. 3d 967, 973 (D.C. 2017) ("Absent direct legal authority prohibiting [the Arbitrator's] interpretation of the applicability of the B[ack] P[ay] A[ct] in this case, his decision in this matter cannot be considered contrary to law. There is also no law or policy that prohibits an arbitrator from awarding attorney's fees to the employee's union.").

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order, Slip Op. 1759, in PERB Case No. 20-A-08 served electronically via File & ServeXpress to the following parties on this the day of September 23, 2020:

Milena Mikailova
Office of the Attorney General
441 4th Street NW, Suite 1145 South
Washington, D.C. 20001

Daniel J. McCartin
Conti Fenn LLC
36 South Charles Street, Suite 2501
Baltimore, MD 21201

/s/ Royale Simms
Royale Simms
Attorney Advisor
Public Employee Relations Board