GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
FRATERNAL ORDER OF POLICE/ METROPOLITAN POLICE DEPARTMENT LABOR COMMITTEE,	PERB Case No. 01-A-09
	Opinion No. 670
Petitioner,	
and	
DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT,	
Agency.	

DECISION AND ORDER

On August 31, 2001, the Fraternal Order of Police ("FOP" or "Union") filed an Arbitration Review Request ("Request"). FOP seeks review of an Arbitration Award (Award) which found a grievance non-arbitrable on the basis of untimeliness. FOP contends that the: (1) Award is contrary to law and public policy; and (2) Arbitrator exceeded his authority by denying the grievance on the basis of untimeliness. (Request a p. 2) The District of Columbia Metropolitan Police Department ("MPD" or "Agency") 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§1-615.2(6).

The underlying grievance arose out of MPD's failure to promote Juan Espinal, a police officer, to the rank of sergeant on December 15, 1991. (Request at p.2) This was the case, despite

the fact that the Grievant ranked sixteenth (16th) on the written portion of the selection process and ranked 120th out of a pool of 230 eligible officers at the end of the entire process. Employees who ranked above and below him were promoted during the effective period of the list.[1]

Since MPD failed to promote Espinal to Sergeant, he filed a grievance at the Agency level challenging the Agency's decision. Thereafter, pursuant to the parties' collective bargaining agreement, the Union filed for arbitration. The Arbitrator determined that FOP's grievance was not arbitrable because it was not timely filed (Award at p.19). Specifically, Article 19B §2 of the parties' collective bargaining agreement requires that a grievance be initiated not later than ten (10) days from the date of the occurrence giving rise to the grievance or within ten (10) days of the employee's knowledge of the occurrence. However, the Arbitrator found that more than ten days had elapsed between the time the Grievant learned of being passed over for the promotion and the time the original grievance was filed. The Arbitrator explained that the Grievant knew as early as November 1991 and as late as June 30, 1992 (the date the promotion list expired), that he had not received the promotion. Therefore, the Arbitrator concluded that the Grievant should have grieved the failure to promote no later than ten days after June 30, 1992. The Arbitrator was not persuaded by the Grievant's argument that he did not believe he could grieve the promotion decision until he returned to full duty status.[2] In response to this argument, the Arbitrator found that if the Grievant reasonably believed this, he should have filed his grievance at some time closer to his July 1999 reinstatement date, instead of the October 1999 filing date. Having concluded that the Grievant failed to file his grievance in the time frame specified by the parties' collective bargaining agreement, the Arbitrator deemed the grievance non-arbitrable.

FOP takes issue with the Arbitrator's decision and advances several arguments in support of its position. First, FOP asserts that the Arbitrator exceeded his authority by rendering the grievance non-arbitrable on timeliness grounds. Specifically, FOP claims that the timeliness argument was not raised by the Department when the grievances were originally filed; therefore, FOP asserts that MPD could not raise that issue at arbitration. [3] In addition, FOP contends that MPD's previous responses to the earlier grievance steps acted as a waiver on the timeliness issue. Furthermore, FOP argues that the Grievant "did not believe ...that he could grieve this issue prior

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[1] The promotional register was effective from July 1, 1990 through June 30, 1992. When the promotional register expired in 1992, the Grievant had not been promoted.

[2] As a result of an adverse psychological evaluation, the Agency placed the Grievant in a limited duty status on January 16, 1991. This evaluation was performed in connection with a work related physical examination. The Grievant remained on limited duty status until 1999.

[3]FOP relies on Article 19E, §5(2) of the contract which provides that: "the parties to the grievance or appeal shall not be permitted to assert in such arbitration proceedings any ground or to rely on any evidence not previously disclosed to the other party."

to being returned to full duty in 1999." (Request at p. 7.) As a result, FOP asserts that the Step One grievance was not filed until October 13, 1999. (Request at p. 3) In view of the above, FOP claims that the grievance was timely filed.

MPD agrees with the Arbitrator's ruling and concludes that the original grievance should have been filed well before October of 1999. (Opposition at p. 3) Specifically, MPD asserts that the language of the contract makes it clear that FOP should have filed the grievance as soon as they knew or should have known of the grievable matter. In addition, relying on Washington Teachers' Union v. D.C. Public Schools, MPD claims that the Arbitrator has authority to rule on the arbitrability and timeliness of a grievance, even if these issues were not raised prior to hearing. 45 DCR 4019, Slip Op. No. 543, PERB Case No. 98-A-02 (1998).

In essence, MPD claims that FOP is merely "quarreling with the findings and conclusions of the Arbitrator on the issue of timeliness." (Opposition at 3) As a result, MPD relies on Board precedent to supports its contention that "disagreeing with the Arbitrator's decision does not suffice to render an Arbitrator's Award reviewable" [by this Board]. Council of School Officers, Local 4 v. D.C. Public Schools, ____DCR____, Slip Op. No 416, PERB Case No. 95-A-03 (1995).

As stated earlier, FOP claims that the Arbitrator's Award on its face is contrary to law and public policy. D.C. Code §1-605.2 (6). We disagree. 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. MPD v. FOP/MPD Labor Committee, 47 DCR 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000). In the present case, FOP did not cite any law or public policy that the Arbitrator's Award violated. Instead, FOP merely disagrees with the Arbitrator's interpretation of Article 19 §2 of the parties' collective bargaining agreement. Moreover, FOP's public policy argument does not rely on a well-defined policy or legal precedent. Thus, FOP has failed to point to any clear or legal public policy which the award contravenes. Therefore, we cannot reverse the Arbitrator's decision on public policy grounds.

Also FOP contends that the Arbitrator exceeded his authority by considering an argument not raised at the initial grievance stage. We disagree. We have held that by submitting a matter 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 and conclusions on which the decision is based." MPD v. FOP/MPD Labor Committee, 47 DCR 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000). This jurisdictional authority applies equally to issues of arbitrability. Washington Teachers' Union Local 6, AFT, AFL-CIO and District of Columbia Public Schools, 45 DCR 4019, Slip Op. No. 543, PERB Case No. 98-A-02 (1998). "[E]ven if the Arbitrator misconstrues the parties' agreement, he would not thereby have exceeded his authority to interpret the contractual provision." Id. at p. 2; University of the District of Columbia and University of the District of Columbia Faculty Association, NEA, 36 DCR 3635, Slip Op. No. 220, PERB Case No. 88-A-03 (1989). Moreover, the Board will not substitute its own interpretation

for that of the duly designated Arbitrator. MPD v. FOP/MPD Labor Committee, 47 DCR 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000) Here, the Arbitrator determined that the grievance was not timely filed and that MPD did not violate the parties' agreement by first raising the timeliness argument at the arbitration stage. In view of the above, we conclude that the Arbitrator did not exceed his authority.

For the reasons discussed in this Opinion, 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. In the present case, FOP disagrees with the Arbitrator's conclusion. 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. In light of our disposition regarding the issue of arbitrability, it is not necessary to address FOP's contentions concerning the merits of the grievance.[4] For the reasons discussed above, we find that no statutory basis exists for settling aside the Award; the Request is therefore, denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Review Request is denied.

2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

November 16, 2001

[4]Before making a decision on the merits of FOP's grievance, the Arbitrator dismissed the arbitration on procedural grounds. Therefore, the Board will not consider the merits of the grievance.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 01-A-09 was transmitted via Fax and/or U.S. Mail to the following parties on this 16th day of November 2001.

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