

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,)	
)	
Petitioner,)	PERB Case No. 16-A-11
)	
v.)	Opinion No. 1625
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Michael Muldrow))	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Introduction

Before the Board is an Arbitration Review Request (“Request”) filed by the Metropolitan Police Department (“MPD”), pursuant to D.C. Official Code § 1-605.02(6) (2001 ed.) of the Comprehensive Merit Personnel Act (“CMPA”). MPD requests the Board to review an arbitration award (“Award”) that sustained the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) on behalf of Officer Michael Muldrow (“Grievant”). The Arbitrator determined MPD did not have cause to discipline the Grievant and ordered MPD to rescind the disciplinary action against the Grievant, and reimburse him for back pay for the 20-day suspension that he served, plus pre-judgment and post-judgment interest. MPD asserts in its Request that the award of 4% prejudgment interest and 10% post-judgment interest exceeds the Arbitrator’s jurisdiction and is contrary to law and public policy.¹ FOP filed an Opposition to Arbitration Review Request, asserting that MPD has failed to state any grounds upon which the Board may modify or set aside the Award and that the Request should be dismissed.²

¹ Request at 2.

² Opp’n to Arbitration Review Request at 1.

In accordance with the D.C. Official Code § 1-605.02(6), the Board is permitted to modify or set aside an 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.³ Having reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law, the Board concludes that the Arbitrator did not exceed his jurisdiction and that the Award on its face is not contrary to law and public policy. Therefore, the Board lacks the authority to grant the requested Review.

II. Arbitrator's Award

The Grievant was appointed to MPD in 2008.⁴ On July 7, 2010, the Executive Steward of FOP forwarded a letter of complaint made against the Grievant to the Office of the Inspector General.⁵ The letter of complaint alleged that the Grievant engaged in misconduct while investigating an incident on May 3, 2010.⁶ On July 27, 2010, the Inspector General referred the complaint to the Chief of Police, who then forwarded the matter to the Internal Affairs Bureau.⁷ On October 22, 2010, the matter was forwarded to the United States Attorney's Office, which declined criminal prosecution the same day.⁸ On March 2, 2011, the Grievant was served with a Notice of Proposed Adverse Action, recommending a 20-day suspension.⁹ The parties then proceeded to arbitration on February 8, 2016.¹⁰

III. Discussion

Prejudgment Interest

MPD's contentions against the Arbitrator's prejudgment interest award can be grouped into three arguments: (1) there is no provision in the parties' collective bargaining agreement to support the award of prejudgment interest;¹¹ (2) D.C. Official Code § 15-109¹² prohibits

³ *Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 62 D.C. Reg. 12587, Slip Op. 1531, PERB Case No. 15-A-10 (2015) (citing D.C. Code § 1-605.02(6) (2001 ed.)).

⁴ Award at 3.

⁵ Award at 5.

⁶ Award at 5.

⁷ Award at 6.

⁸ Award at 6.

⁹ Award at 6. The Award does not state the results of the administrative investigation that led to the Grievant's 20-day suspension.

¹⁰ Award at 6.

¹¹ Request at 5.

¹² D.C. Official Code § 15-109 states: "In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only. This section does not

prejudgment interest in this case;¹³ and (3) the facts of the case do not support prejudgment interest.¹⁴

Prejudgment Interest Is Not Restricted by the Collective Bargaining Agreement

MPD's argument that prejudgment interest is not permitted by the collective bargaining agreement involves only a disagreement with the Arbitrator's Award. The test the Board uses to determine whether an Arbitrator has exceeded his jurisdiction and was without authority to render an award is "whether the Award draws its essence from the collective bargaining agreement."¹⁵ The arbitrator's authority to review the actions of MPD in the instant case constitutes an exercise of his equitable powers arising out of the parties' collective bargaining agreement.¹⁶ The Board has held that an arbitrator does not exceed his authority by exercising his equitable powers, unless these powers are expressly restricted by the parties' collective bargaining agreement.¹⁷ Here, MPD does not cite to any provisions of the collective bargaining agreement that restrict the arbitrator's authority to determine an appropriate remedy in this case. Therefore, MPD's disagreement with the Arbitrator's award of prejudgment interest does not present a statutory ground for review.

Prejudgment Interest Is Not Prohibited by D.C. Law

Similarly, MPD's contention that D.C. Official Code § 15-109 prohibits prejudgment interest in this case is misguided. MPD asserts that D.C. Official Code § 15-109¹⁸ governs the payment of prejudgment interest for damages in contract or tort, and that the D.C. District Court has interpreted D.C. Official Code § 15-109 to only authorize prejudgment interest awards in contract cases.¹⁹ MPD cites to *Romero v. ITW Food Equipment Group LLC*,²⁰ where the U.S. District Court for the District of Columbia held that prejudgment interest is not available in a

preclude the jury, or the court, if the trial be by court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest."

¹³ Request at 5.

¹⁴ *Id.* at 6.

¹⁵ *Metro. Police Dep't and Fraternal Order of Police/Metro. Police Dep't Labor Comm., (on behalf of Jacobs)*, 60 D.C. Reg. 3060, Slip Op. 1366 at 5-6, PERB Case No. 12-A-04 (2013).

¹⁶ See Request, Ex. 6 at 27 (Article 19, Part E, Section 5 of the parties' collective bargaining agreement states: "The arbitrator shall hear and decide only one grievance or appeal in each case.")

¹⁷ *E.g., 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); *MPD v. FOP/MPDLC*, 59 D.C. Reg. 12709, Slip Op. 1327 at 4-5, PERB Case No. 06-A-05 (August 27, 2012); *D.C. Metro. Police Dep't and FOP/MPD Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633, PERB Case No. 00-A-04 (2000).

¹⁸ D.C. Official Code § 15-109 states: "In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only. **This section does not preclude the jury, or the court, if the trial be by court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest.**"

¹⁹ Request at 5.

²⁰ 118 F. Supp. 3d 349, 352 (D.D.C. 2015).

products liability action.²¹ However, MPD's reliance on D.C. Official Code § 15-109 and the U.S. District Court for the District of Columbia's interpretation of this statute is misplaced. The current matter does not concern breach of contract or tort. Further, even if this section of the D.C. Official Code were applicable, the section explicitly states that it is not intended to preclude an award of interest.²² Therefore, MPD has not shown that the award on its face contrary to law and public policy.

Additionally, MPD has provided no basis for showing that the Arbitrator was without, or exceeded the scope of jurisdiction granted. As stated previously, the Board has held that an arbitrator does not exceed his authority by exercising his equitable powers, unless these powers are expressly restricted by the parties' collective bargaining agreement.²³ MPD again does not cite to any provisions of the collective bargaining agreement that restrict the arbitrator's authority to determine an appropriate remedy in this case.

Factual Disagreements Are Not Grounds for Overturning the Arbitrator's Award

Finally, MPD asserts that the facts of the case do not support prejudgment interest. Specifically, MPD asserts that prejudgment interest is inappropriate because FOP caused the five-year delay in proceeding to arbitration.²⁴

It is well settled that "[b]y agreeing to submit 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 his decision is based."²⁵ A mere disagreement with the arbitrator's award does not constitute a statutory basis for setting aside the award.²⁶ Here, MPD's statement amounts to nothing more than a disagreement with the Arbitrator's decision. The Board rejects MPD's argument on this issue.

²¹ *Id.*

²² *See n.* 18.

²³ *E.g., 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); *MPD v. FOP/MPDLC*, 59 D.C. Reg. 12709, Slip Op. 1327 at 4-5, PERB Case No. 06-A-05 (August 27, 2012); *D.C. Metro. Police Dep't and FOP/MPD Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633, PERB Case No. 00-A-04 (2000).

²⁴ Request at 6.

²⁵ *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at 3, PERB Case No. 00-A-04 (2000); *D. C. Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (on behalf of Fisher)*, 51 D.C. Reg. 4173, Slip Op. 738, PERB Case No. 02-A-07 (2004); *University of the District of Columbia Faculty Association/NEA and University of the District of Columbia*, 39 D.C. Reg. 9628 at 9629, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

²⁶ *D.C. Fire & Emergency Med. Servs. and Int'l Ass'n of Firefighters, Local 36*, 59 D.C. Reg. 3818, Slip Op. 895 at 5, PERB Case No. 06-A-20 (2007).

Post-Judgment Interest

Post-Judgment Interest Is Not Restricted by the Parties' Collective Bargaining Agreement

MPD contends that the 10% post-judgment interest award exceeds the Arbitrator's jurisdiction and is contrary to law and public policy.²⁷ First, MPD asserts that Article 46 of the parties' collective bargaining agreement "provides for the *possibility* of interest on back pay when the employee does not receive a back pay check within sixty days from the date of the final determination that they are entitled to reimbursement."²⁸ Since sixty (60) days have not yet passed, MPD argues that the Arbitrator exceeded his authority by "add[ing] to, subtract[ing] from or modify[ing]" the collective bargaining agreement.²⁹ Notwithstanding the Arbitrator's broad remedial authority previously discussed in this Decision and Order, nothing in Article 46 of the parties' collective bargaining agreement restrict the arbitrator's authority to award interest on back pay.³⁰ Therefore, MPD's disagreement with the Arbitrator's award of post-judgment interest does not present a statutory ground for review.

Post-Judgment Interest Is Not Limited by D.C. Law

Second, MPD argues that D.C. Official Code § 28-3302(b) limits interest awards to 4% per annum, and therefore, the Arbitrator's Award violates the law.³¹ Under D.C. Official Code § 28-3302(b), interest on judgments against the District of Columbia cannot exceed 4% per annum "when authorized by law."³² In support of its contention that § 28-3302(b) applies to the Arbitrator's award of interest, MPD cites the Board's Decision and Order in *University of the District of Columbia Faculty Association v. University of the District of Columbia*.³³ In that case, the Board held that the Board's remedial authority to "make whole" those "who[m] the Board finds [have] suffered adverse economic effects in violation of [the CMPA]" is subject to D.C. Official Code § 15-108, which limits prejudgment interest on liquidated debt to 4% per

²⁷ Request at 6.

²⁸ Request (emphasis by MPD); Exhibit 6 at 41 (Article 46: Back Pay: "The Employer shall issue members their pay checks within sixty (60) days from the date of the final determination that they are entitled to reimbursement. In the event the FOP arbitrates a claim of failure to comply with this Article, an arbitrator may, if appropriate, order interest.")

²⁹ Request at 6-7 (citing Exhibit 6 at 28: "The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision of the issue presented and shall confine his decision solely to the precise issue submitted for arbitration.")

³⁰ See, *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) (Stating that an arbitrator does not exceed his authority by exercising his equitable powers, unless these powers are expressly restricted by the parties' collective bargaining agreement.)

³¹ Request at 7; D.C. Official Code § 28-3302.

³² D.C. Official Code § 28-3302(b) states: "Interest, when authorized by law, on judgments or decrees against the District of Columbia, or its officers, or its employees acting within the scope of their employment, is at the rate of not exceeding 4% per annum."

³³ 39 D.C. Reg. 8594, Slip Op. 285, PERB Case No 86-U-16 (1992).

annum.³⁴ However, here, MPD fails to distinguish the Board's remedial authority to require the payments of costs, which is "authorized by law", i.e., D.C. Official Code § 1-618.13, from an arbitrator's remedial powers, which "[are] a matter of contract," i.e., the parties' collective bargaining agreement.³⁵

The contentions raised by MPD here do not differ significantly from those made in the Arbitration Review Request filed by the University of the District of Columbia ("UDC") in *UDC and UDC Faculty Association*, PERB Case No. 92-A-02.³⁶ In that case, the Board concluded that an arbitrator's authority to award interest is derived from contract, not law, and as such is not subject to the 4% per annum interest rate limitation prescribed under D.C. Official Code § 28-3302(b).³⁷ Here, the Board finds no basis for distinguishing MPD's arguments against post-judgment interest from those presented before the Board in *UDC and UDC Faculty Association* and concludes, once again, that MPD's contentions do not present a statutory basis for review.

IV. Conclusion

Based on the foregoing, the Board finds that the Arbitrator did not exceed his authority and that the Arbitrator's Award is not contrary to any specific law and public policy. Accordingly, MPD's Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The 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

By the unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman and Douglas Warshof.

May 18, 2017

Washington, D.C.

³⁴ *Id.* at 15-17 (citing D.C. Official Code § 1-617.13(a)).

³⁵ *UDC and UDC, Faculty Ass'n*, 41 D.C. Reg. 2738, Slip Op. 317 at 3, PERB Case No. 92-A-02 (1992).

³⁶ *Id.*

³⁷ *Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-11, Op. No. 1625 was sent by File and ServeXpress to the following parties on this the 9th day of June, 2017.

Mark Viehmeyer, Esq.
Metropolitan Police Department
300 Indiana Avenue, N.W., Room 4126
Washington, DC 20001

Marc Wilhite, Esq.
Pressler & Senftle, P.C.
1432 K Street, N.W.
Washington, DC 20005

/s/ Sheryl Harrington
Administrative Assistant