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

In the matter of:

District of Columbia)	
Department of General Services)	
)	
)	
Petitioner,)	PERB Case No. 15-A-11
)	
v.)	Opinion No. 1586
)	
)	
Fraternal Order of Police/Protective Services Police Labor Committee)	
)	
Respondent.)	
)	

DECISION AND ORDER

On April 17, 2015, Petitioner D.C. Department of General Services (“DGS” or “Petitioner”) filed an Arbitration Review Request (“ARR”) of an Arbitration Award (“Award”) that upheld in part and denied in part a grievance filed by Fraternal Order of Police/Protective Services Police Labor Committee (“FOP” or “Respondent”) alleging that DGS violated the collective bargaining agreement (“CBA”) by failing to adequately train its members serving as Special Police Officers. Petitioner objected only to a limited portion of the Award. For reasons stated herein, Petitioner’s Arbitration Review Request is denied.

I. Statement of the Case

The Respondent represents officers of the District of Columbia Protective Services Division (“PSD”).¹ These officers are responsible for law enforcement activities and physical security of all properties owned, leased or otherwise under the control of the District of Columbia Government.²

In a March 21, 2014 letter³, FOP sent a Step 4 Class Grievance to DGS alleging in part that DGS has violated the provisions of Article 16 of the CBA by failing to (1) provide requisite

¹ Award at 5.

² Id.

³ Joint Exhibit #2.

training to all members of the bargaining unit; (2) offer training by instructors with demonstrated sufficient knowledge of the subject matter; (3) create a training plan; and (4) engage the Union and employees to plan and evaluate appropriate training.

The letter also claimed that by failing to adequately train all members of the bargaining unit, DGS had created unsafe conditions in violation of Article 17. According to FOP, it raised these concerns in a previous meeting on March 14, 2014, but received an inadequate response.⁴

DGS responded in a letter on May 1, 2014⁵ stating that at the March 14, 2014 meeting, it had advised FOP that the training requirements for Special Police Officers are outlined in Title 6A of the District of Columbia Municipal Regulation (DCMR) and that DGS had met, and continued to meet the requirements of the DCMR as it related to Special Police Officers. DGS went on to state that while FOP made no specific references to unsafe conditions in its letter as required under Article 17 of the CBA, DGS made note of the safety concerns voiced at the aforementioned meeting.

FOP invoked arbitration on this matter in March 2014⁶. The pertinent contract provisions of the CBA⁷ are:

ARTICLE 16: TRAINING

Section A:

The employer agrees to provide training to all bargaining unit employees. Such training shall be related to the performance of their official duties in order to increase their knowledge, skill and qualifications in the performance of their duties which help increase the efficiency and effectiveness of the Employer's operations. This training shall be provided in accordance with generally recognized standards for the training of protective services officers. Instructors providing this training must have demonstrated sufficient knowledge of the subject matter.

Section B:

Annually, the Chief shall prepare, in accordance with the provisions of Section C, an employee training plan which shall identify:

- 1. Subject matter areas where training is needed;*
- 2. Location and type of courses and programs which will be used to meet these training needs; and*
- 3. Schedule of training to be carried out over the year.*

⁴ Id.

⁵ Joint Exhibit #3.

⁶ Award at 9.

Section C:

Recognizing the value of employee input, the Employer agrees that during the preparation of the Employee Training Plan he/she shall meet with two (2) designated employee representatives to discuss training needs, objectives, curriculum, including the quality of instructors and costs. It shall also be a function of this ad-hoc Committee to discuss and evaluate the impact, success and quality of the prior employee training programs.

ARTICLE 17: SAFETY

Section A:

The Employer will continue to make a reasonable effort to provide and maintain safe working conditions.

Section D:

The Employer agrees that an employee will not be required to operate equipment that he/she is not qualified to operate, which by doing so might endanger him/herself or other employees.

The parties stipulated to the following issue:

1. Whether DGS Protective Services Division (“PSD”) has failed to engage the Union in a training program and failed to provide adequate training as required by the CBA, Article 16, and if so, what shall be the remedy?⁸

After the parties were unable to agree to a statement of a second issue, they agreed to allow the Arbitrator to frame this issue. The Arbitrator considered the positions of the parties and the evidence and testimony to determine the second issue:

2. Whether DGS PSD has violated Article 17 of the CBA by failing to provide safe working conditions and requiring employees to operate equipment that they are not qualified to operate, and if so, does the Arbitrator have the Authority to determine an unsafe working condition in accordance with Article 17? If the Arbitrator does have the authority, what shall be the remedy?⁹

⁸ Award at 2.

⁹ Award at 2.

II. The Arbitrator's Award

A. DGS failed to engage FOP in a training plan as required by Article 16 of the CBA.

The Arbitrator considered Issue One in two parts. First, the Arbitrator stated that Section B of Article 16 is very specific that the Chief/Director¹⁰ has the responsibility to prepare an employee training plan in accordance with the provisions of Section C.¹¹ The Arbitrator found that, "While the Agency has conducted some ongoing trainings there was no schedule or training plan introduced into evidence listing topic, instructor, hours of training, testing, certification, etc. of the trainings that have been given since 2012 through the present."¹² Section C requires that the Employer, i.e. the Chief/Director, shall meet annually with two designated employee representatives for their input into the training plan.¹³ There was no evidence of any such meetings since 2012. The Arbitrator rejected DGS' contention that it was the responsibility of FOP to start the process of developing an employee training plan by appointing the two employee representatives. Rather, the Arbitrator found that DGS "failed to engage the Union in [the planning for] a training program as required by the Collective Bargaining Agreement, Article 16."¹⁴

B. DGS failed to provide adequate training to unit members as required by Article 16 of the CBA.

With respect to the second issue, the threshold question for the Arbitrator was whether the "Special Police Officers" that are the subject of the grievance are the same as the "Special Police Officers" described in 6-A DCMR § 1100. The Arbitrator stated, "Even though the name (Special Police Officer) is the same, the job description, terms and duties are not and therefore, it is not correct to apply the training design for special police officers appointed under 6-A DCMR § 1000 (sic) to the special police officers described in Agency Exhibit One, Position Description. They are different in many ways, have different job duties, uniform requirements, terms of hire, and their training should appropriately reflect the differences."¹⁵ The Arbitrator concluded that DGS did not meet its training obligation under Article 16 of the CBA for the Special Police Officers that are the subject of the grievance.¹⁶

As a remedy the Arbitrator recommended that the Agency comply with all of the requirements of Article 16 including scheduling the required meeting with Union representatives.¹⁷ The Arbitrator found no violation of Article 17 of the CBA because the Union

¹⁰ Article 16 refers to the "Chief" as the lead representative of the Employer. In its brief at page 9, DGS identifies "Director" as replacement for Chief.

¹¹ Award at 17.

¹² Award at 21.

¹³ Award at 4.

¹⁴ Award at 18.

¹⁵ Award at 20.

¹⁶ Award at 21.

¹⁷ Award at 24.

failed to follow the proper procedure for reporting safety concerns.¹⁸ Neither party objected to this finding by the Arbitrator.

III. Analysis

D.C. Official Code § 1-605.02(6) authorizes the Board to modify or set aside an arbitration award in only three limited 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.¹⁹

DGS asserts that the Arbitrator exceeded her authority and reached a conclusion that is contrary to law and public policy. Specifically, DGS objects to Paragraph 4 of the Arbitrator's Award that states:

The Special Police Officer described in Agency Exhibit No. One and Union Exhibit No. 4 is different from the Special Police Officer described in District of Columbia Municipal Regulation (DCMR), 6A § 1100 and therefore, DCMR 6A § 1100 does not apply."

In assessing whether an arbitrator has exceeded his or her jurisdiction, the Board considers "whether the Award draws its essence from the collective bargaining agreement."²⁰ In this case, the Award concerning training requirements for the Protective Services' Special Police Officers under CBA Article 16 and safety concerns and procedures under CBA Article 17 clearly drew its essence from the CBA. The parties stipulated that the Arbitrator should determine "whether DGS Protective Services Division has failed to engage the Union in a training program and failed to provide adequate training as required by the CBA, Article 16."²¹ As part of that deliberation, it was necessary for the Arbitrator to identify who was covered by the CBA.

The Board has found that when parties submit a matter to arbitration they "agree to be bound by the Arbitrator's interpretation of the parties' agreement and related rules and regulations as well as [her] evidentiary findings and conclusions ... this includes the arbitrator's interpretation of all applicable statutes."²²

¹⁸ Award at 23.

¹⁹ *University of the District of Columbia v. PERB*, 2012 CA 8393 P (MPA) (2014).

²⁰ *D.C. Dep't of Health v. Am. Fed'n of Gov't Employees, Local 2725, AFL-CIO*, 60 D.C. Reg. 7198 (2013), Slip Op. No. 1383 at 6, PERB Case No. 13-A-01 (2013), quoting *D.C. Pub. Sch. v. AFSCME, Dist. Council 20*, 34 D.C. Reg. 3610 (1987), Slip Op. No. 156 at 5, PERB Case No. 86-A-05 (1987), if the arbitrator was even "arguably construing or applying the contract" then she did not exceed her jurisdiction.

²¹ Award at 2.

²² *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Committee*, 59 D.C. Reg. 6115 (2012), Slip Op. No. 1014 at 7, PERB Case No. 08-A-02 (July 16, 2010).

The Board has consistently held that a party's disagreement with the Arbitrator's interpretation of the law does not render an award contrary to law [and public policy].²³ The Board will not substitute its own interpretation or that of the Agency for that of the parties' mutually agreed arbitrator.²⁴ The arguments that DGS stated in its ARR appear to be nothing more than a disagreement with the Arbitrator's conclusions. We are constrained to rely on the Arbitrator's analysis of the evidence presented to her.

DCMR 1100.1 states, "Special police officers may be appointed by the Mayor for duty in connection with the property of or under the charge of a corporation or individual requesting the appointment or appointments." Special Police Officers under 6-A DCMR §§ 1100 and 1101 (also known as §4-114 Appointment) are circumscribed on the face of the commission issued by the Mayor in terms of who they are working for (1101.6), the location(s) at which they are allowed to work (1101.6), the places to be protected and what property is to be transported (1100.3(a), 1101.9, 1101.11 and 1101.13). § 1100.5 states "Each appointment of a special police officer shall be made for a specified time, and no person appointed shall legally exercise any authority conferred by that appointment after the date of expiration of that appointment." Further,

- At 1101.2 special police officers may be appointed "to protect the property of one person or corporation at one location..."
- 1101.4 states "All locations of property, banks, or other places pursuant to § 1101.2 shall be specified upon the face of the commission issued to those special police officers."
- 1101.6 states, "The duties of special police officers appointed pursuant to § 1101.4 shall consist largely of periodically checking doors, windows, etc., in the nature of a 'watchman'..."
- 1101.7 states, "The property which any special police officer shall be appointed to protect ... shall be located within the geographical limits of one police district."
- Under 1101.8, special police officers may be appointed under § 4-114 if employed by one person or corporation....

Training requirements for § 4-114 Special Police Officers consists of 40 hours of pre-assignment training, 16 hours of on-the-job training within ninety (90) working days following employment, and an 8-hour annual in-service training course.

The special police officers described above are obviously different from the Protective Services Police Department Special Police Officers described in Agency Exhibit #1 and on whose behalf the instant grievance was filed. The latter are armed²⁵ uniformed officers "with primary duties of providing security and protection, in addition to performing a variety of average to difficult and complex proactive security functions which range from simple rules

²³ *Teamsters Local 639 a/w Int'l Bhd. Of Teamsters, AFL-CIO v. Dist. of Columbia Bd. Of Educ.*, 59 D.C. Reg. 5538 (2012), Slip Op. No. 995 at 4, PERB Case No. 01-A-10 (October 11, 2011).

²⁴ *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Committee*, 59 D.C. Reg. 6124 (2012), Slip Op. No. 1015 at 12, PERB Case No. 09-A-06 (July 16, 2010)

²⁵ A position description for an unarmed Special Police Officer was also put into evidence. The duties are similar.

violations to felony crimes”²⁶ in buildings owned (or leased?) by the District of Columbia. These officers are D.C. Career Service employees. Specific major duties include:

- Provides access control functions and general protective measures for buildings.
- Observes all activities occurring at the assigned facility, and is constantly alert to acts of a suspicious nature which may result in theft, burglary, pilferage, assault, crimes and other disturbances occurring within the jurisdictional area of authority.
- Questions suspicious persons... May be required to administer first aid or summon for assistance; interviews persons involved; preserves evidence; and prepares written report of incidents.
- Patrols designated areas by foot or in vehicles inspecting the buildings and adjacent grounds to prevent unauthorized removal of D.C. property and access to restricted rooms and areas...
- Patrols entrances to restricted parking areas in compliance with special identification and control procedures, safety measures, and posted regulations...
- Responds to reports of crimes and criminal reports within the jurisdiction of the authority. For offenses not within the jurisdictional authority of the PSPD ... makes immediate notification to the D.C. Metropolitan Police of the offense and action taken.
- When informed of bomb threats, notifies all occupants of the building, makes notification to supervisory and the Metropolitan Police Department. Executes the evacuation plans.
- During periods of civil disturbances, demonstrations, and riots, the incumbent is responsible for maintaining and providing protection to occupants of the facility, preventing unlawful trespass, and protecting the property against damage.
- Assures the participants of demonstrations are allowed maximum freedom in conjunction with D.C. rules, regulations, and federal laws.
- Provides aid for government employees and citizens in emergency situations; and responds to emergency situations reported in assigned facilities district-wide.
- Responds to security alarms; investigates the nature of the alarm and executes appropriate response action.

The only reference in the position description to training for Protective Service Police Department officers is that the Lead Special Police Officer “serves as a Field Training Special Police Officer (FTG) giving on the job training to new Special Police Officers in accordance with established procedures and practices of the agency.”²⁷ The training requirements for Protective Service Special Police Officers are regulated by Article 16 of the CBA. The training requirements for these very different categories of Special Police Officers by necessity must be different and have different requirements to maintain efficiency for their very different job responsibilities. The Arbitrator concluded, “While the title is the same (Special Police Officer) the duties described and terms are different.”²⁸

²⁶ Agency Exhibit #1 (Exhibit 6)

²⁷ Id.

²⁸ Award at 19.

Moreover, as the Arbitrator pointed out, in a recent D.C. Superior Court decision, the court found that PSD officers are not “special police officers” as defined under Chapter 6-A of the DCMR.²⁹ We agree.

IV. Conclusion

The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law, and concludes that the Arbitrator did not exceed her authority and the Award on its face is not contrary to law and public policy. The Board finds 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 Arbitration Review Request is hereby denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of General Services 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

By unanimous vote of Board Chairman Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, Barbara Somson, and Douglas Warshof.

June 14, 2016
Washington, D.C.

²⁹ Award at 20; *see also* *District of Columbia v. John J. Barbusin, Jr.*, No. 2012-CDC-913 at 26-32 (D.C. Sup. Ct. July 29, 2013).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-11, Opinion No. 1586, was served by File & ServeXpress on the following parties on this the 12th day of July, 2016.

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