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

In the Matter of:)	
)	
District of Columbia)	
Department of Corrections)	PERB Case No. 19-A-05
)	
Petitioner)	
)	Opinion No. 1715
v.)	
)	
Fraternal Order of Police/ Department of Corrections Labor Committee)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Introduction

On February 15, 2019, the District of Columbia Department of Corrections (Agency) filed this Arbitration Review Request pursuant to the Comprehensive Merit Personnel Act, (CMPA) section 1-605.02(6) of the D.C. Official Code. The Agency seeks review of an Arbitration Award (Award) based on the claim that the Arbitrator exceeded his jurisdiction.¹ The Fraternal Order of Police/Department of Corrections Labor Committee (Union) filed a timely Opposition to the Request.

Having reviewed the Arbitrator’s conclusions, the pleadings of the parties and applicable law, the Board concludes that there is no basis to overturn the Arbitrator’s Award. Therefore, the Board denies the Agency’s request.

II. Statement of the Case

On May 12 2016, the Agency issued a notice of proposed suspension to four corporals, including the Grievant, for submitting false statements in their incident report regarding a combative inmate.² On June 14, 2016, a final decision was issued by the Agency upholding the

¹ Request at 3.

² Award at 5.

suspension.³ The Grievant and other officers involved in the incident were suspended for nine days.⁴ The Union then invoked arbitration on behalf of the Grievant and other officers.

III. Arbitrator's Award

The parties presented two issues for the Arbitrator to consider: (1) whether the nine day suspensions of the Grievant and others were for just cause and (2) if the suspension was not for just cause then what would be an appropriate remedy.⁵ The Arbitrator had to resolve whether the Grievant's incident report constituted (1) knowing or willful reporting of false and misleading information, or (2) purposeful omission of material facts in violation of District Personnel Manual (DPM) section 1605.4(b) or whether the incident report constituted an "accurate report" as required by the Agency's Program Statement 1280.2F, Section 2.⁶

The Arbitrator found that the Agency did not show that the substance of the Grievant's incident report constituted knowing or willful reporting of false and misleading information, or purposeful omission of material facts, in violation of DPM Section 1605.4(b)(4). The Arbitrator also found that the Agency did not show that the report was inaccurate.⁷

As a remedy, the Arbitrator ruled that the Agency must remove references to this discipline from the Grievant's record and the Grievant shall receive back pay and benefits for the days he was suspended.⁸ Furthermore, the Arbitrator also found that the Grievant was eligible for a promotion to Sergeant but the promotion was blocked or otherwise delayed because of the suspension on his record. As part of the remedy, the Arbitrator ruled that the Grievant shall be retroactively promoted to whatever dates he would have been promoted if the suspension had not been on his record, and he shall receive accompanying back pay and benefits.⁹

IV. Positions of the Parties

The Agency argues that the Arbitrator exceeded his authority when he concluded that the Grievant should be retroactively promoted.¹⁰ According to the Agency, Article 19, section A of the parties' collective bargaining agreement (CBA) specifically states that merit staffing and promotions procedures shall be implemented in accordance with the applicable provisions of the DPM as implemented in the DCHR Merit Staffing Plan and the CBA.¹¹ According to the Agency, by ordering the promotion of the Grievant, the Arbitrator would be adding to and/or modifying the agreement, which the Arbitrator is not empowered to do.

³ Award at 6.

⁴ Award at 5.

⁵ Award at 7.

⁶ Award at 14.

⁷ Award at 16-17.

⁸ Award at 18.

⁹ Award at 18.

¹⁰ Request at 4.

¹¹ Request at 4.

The Union argues that the Arbitrator did not exceed his authority. According to the Union, the Arbitrator gave effect to the Agency's program statements and policies, which were presented and accepted into evidence.¹² Program Statement 3110.3E states that employees who have been proposed for discipline are to be temporarily bypassed for promotion pending final resolution of action. If the disciplinary process is resolved in favor of the employee, the employee shall be retroactively promoted to the next available promotional vacancy.¹³ The Union presented uncontested evidence at the hearing that the Grievant successfully took the promotional examination for a sergeant position prior to the disciplinary proposal.¹⁴ The Union looks to this promotion policy to support its argument that the Arbitrator gave effect to this policy and the CBA which requires that the Grievant be made whole.¹⁵

V. Discussion

The Board's authority to review an arbitration award is narrow. The Board is permitted to modify or set aside an arbitration award "only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means."¹⁶

A. The Arbitrator Did Not Exceed His Authority

To determine if an arbitrator has exceeded his jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement." The U.S. Court of Appeals for the Sixth Circuit, in *Michigan Family Res., Inc. v. Serv. Emp. Int'l Union, Local 517M*,¹⁷ provided the following standard to determine if an award "draws its essence" from a collective bargaining agreement:

[1] Did the arbitrator act 'outside his authority' by resolving a dispute not committed to arbitration?; [2] Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?; [a]nd [3] [I]n resolving any legal or factual disputes in the case, was the arbitrator "arguably construing or applying the contract?" So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made "serious," "improvident" or "silly" errors in resolving the merits of the dispute.

Here there is no evidence the Arbitrator resolved any disputes other than the specific issues the parties placed before him. Neither party argues that the Arbitrator committed fraud, had a conflict of interest, or otherwise acted dishonestly in issuing the award. Though the Agency argues that the Arbitrator is adding to/or modifying the parties' CBA by promoting the

¹² Opposition at 4.

¹³ Opposition at 5.

¹⁴ Opposition at 6.

¹⁵ Opposition at 4-5.

¹⁶ D.C. Official Code § 1-605.02(6)

¹⁷ 475 F.3d 746, 753 (6th Cir. 2007).

Grievant retroactively, the Board has previously stated, “an arbitrator does not exceed his authority by exercising his equitable powers, unless these powers are expressly restricted by the parties’ collective bargaining agreement.”¹⁸ The Agency has not presented anything in the CBA which restricts the Arbitrator’s ability to make the Grievant whole. The promotion is the result of an application of the Agency’s own policies and CBA as interpreted by the Arbitrator. When parties submit a matter to arbitration, they appoint the Arbitrator to be the reader and interpreter of their CBA. The Board cannot substitute the Agency’s competing interpretation for that of the duly appointed Arbitrator.¹⁹

The Union has requested that the Board grant attorneys’ fees and costs incurred in defending against this matter.²⁰ Section 1-617.13 of the D.C. Official Code does not authorize the Board to award attorneys’ fees.²¹ Therefore the request is denied.

VI. Conclusion

The Board rejects the Agency’s arguments and finds no grounds to modify, set aside, or remand the Remand Award. Accordingly, the Agency’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, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Ann Hoffman, Mary Anne Gibbons, and Douglas Warshof.

June 20, 2019

Washington, D.C.

¹⁸ *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, - D.C. Reg. -, Slip Op. No. 933, PERB Case No. 07-A-08 (2008).

¹⁹ *University of the District of Columbia Faculty Association v. University of the District of Columbia*, 64 D.C. Reg. 7617, Slip Op No. 1627, PERB Case No. 17-A-05 (2017).

²⁰ Opposition at 7.

²¹ See, *American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, 59 D.C. Reg. 6003, Slip Op. No. 1003, PERB Case No. 09-U-65 (2012); *International Brotherhood of Police Officers, Local 1445, AFL-CIO/CLC v. District of Columbia General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); *University of the District of Columbia Faculty Association NEA v. University of the District of Columbia*, 38 D.C. Reg. 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 19-A-05, Op. No. 1715 was sent by File and ServeXpress to the following parties on this the 28th day of June, 2019.

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