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

In the Matter of:)	
)	
Metropolitan Police Department)	
Petitioner,)	PERB Case No. 17-A-04
)	
and)	Opinion No. 1637
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Julius Allen and Japeth Taylor),)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Introduction

On January 3, 2017, the Metropolitan Police Department (“MPD”) filed this Arbitration Review Request (“Request”) pursuant to section 1-605.02(6) of the Comprehensive Merit Personnel Act of 1979 (“CMPA”), as amended, D.C. Official Code § 1-605.01. MPD seeks review of an arbitration award (“Award”) granting an award of interest on back pay to the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Union”) on behalf of Officers Julius Allen and Japeth Taylor (“Grievants”). The Arbitrator determined that MPD did not have cause to terminate the Grievants. Accordingly, the Arbitrator ordered MPD to rescind the disciplinary action against the Grievants, and to reinstate them with back pay and benefits, plus interest. MPD seeks review of the Arbitrator’s interest award on the grounds that the Arbitrator exceeded his jurisdiction and that the Award is contrary to law and public policy.¹

In accordance with section 1-605.02(6) of the CMPA, 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

¹ Request at 2; *See* D.C. Official Code § 1-605.02(6).

means.² 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. Statement of the Case

The Grievants were officers with MPD.³ Following events on September 29, 2009, during which the Grievants failed to make an arrest, the incident was referred to MPD's Internal Affairs Division.⁴ In a Final Investigative Report, the Internal Affairs Division concluded that the Grievants failed to make an arrest in violation of MPD regulations.⁵ The Internal Affairs Division also recommended that MPD charge the Grievants with Neglect of Duty and Untruthful Statements, and recommended termination.⁶ On August 10, 2010, the MPD Adverse Action Panel ("Panel") conducted a hearing on the charges of misconduct.⁷ The Panel issued Findings of Fact and Conclusions of Law that sustained the charges against the Grievants and recommended termination.⁸ The Officers unsuccessfully appealed to Chief of Police Lanier, and the parties proceeded to arbitration.⁹

III. Arbitrator's Award

The Arbitrator concluded that MPD failed to prove cause for the Grievants' removal and determined that a 30-day suspension without pay would have been the appropriate penalty for the Grievants' misconduct.¹⁰ Therefore, the Arbitrator ordered MPD to reinstate the Grievants with "any loss of pay or benefit they sustained since their terminations with interest payable at the appropriate level."¹¹

IV. Discussion

The Board's authority to review an arbitration award is narrow. In accordance with D.C. Official Code § 1-605.02(6), the Board is permitted to modify or set aside an arbitration award in only three circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2)

² D.C. Code § 1-605.02(6).

³ Award at 2.

⁴ Award at 3.

⁵ Award at 3.

⁶ Award at 3.

⁷ Award at 3.

⁸ Award at 3.

⁹ Award at 3.

¹⁰ Award at 17.

¹¹ Award at 17.

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.¹²

The basis of MPD's Request is that the Arbitrator's award of interest on back pay exceeds the Arbitrator's jurisdiction and is contrary to law and public policy.

A. The Arbitrator's Award does not exceed his jurisdiction.

MPD states that the Arbitrator is prohibited from issuing an award that would modify or add to the collective bargaining agreement.¹³ MPD contends that the Arbitrator was without jurisdiction to consider the issue of interest on back pay, as it was not requested by the parties.¹⁴ MPD also argues that the parties' collective bargaining agreement does not contain a provision granting an Arbitrator authority to award back pay interest.¹⁵

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."¹⁶ 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. 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 agreements.¹⁷ Further, a collective bargaining agreement's prohibition against awards that add to, subtract from, or modify the collective bargaining agreement does not expressly limit the arbitrator's equitable powers.¹⁸

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. The Board finds that MPD's argument is merely a disagreement with the Arbitrator's findings. The Board has repeatedly held that it will not overturn an arbitration award based simply upon the

¹² D.C. Code § 1-605.02(6).

¹³ Request at 5.

¹⁴ Request at 5.

¹⁵ Request at 6.

¹⁶ *DC Metro. Police Dep't and Fraternal Order of Police, Metro. Police Dep't Labor Comm., (on behalf of Jacobs)*, 60 DC Reg. 3060, Slip Op. 1366, PERB Case No. 12-A-04 (2013); *See Metro. Police Dep't and Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Johnson)*, 59 D.C. Reg. 3959, Slip Op. 925, PERB Case No. 08-A-01 (2012) (quoting *D.C. Pub. Schools v. AFSCME, Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. 156, PERB Case No. 86-A-05 (1987)). *See also Dobbs, Inc. v. Local No. 1614, Int'l Bhd. of Teamsters*, 813 F.2d 85 (6th Cir. 1987).

¹⁷ *E.g., UDC v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. 1333, PERB Case No. 12-A-01 (2012); *Metro. Police Dep't v. Fraternal Order of Police/ Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 12709, Slip Op. 1327, PERB Case No. 06-A-05 (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 *Metro. Police Dep't v. Fraternal Order of Police/ Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 6787, Slip Op. No. 1133 at 8, PERB Case No. 09-A-12 (2011).

petitioning party's disagreement with the arbitrator's findings.¹⁹ It is well settled that "[b]y agreeing to submit a matter to arbitration, the parties also agree to be bound by the Arbitrator's decision, which necessarily includes the ... evidentiary findings and conclusions upon which his decision is based."²⁰ Therefore, MPD's disagreement with the Arbitrator's award of interest does not present a statutory ground for review.

B. The Arbitrator's Award is not contrary to law and public policy.

MPD asserts that section 6-B1149²¹ of the D.C. Municipal Code governs the procedures for computing back pay and benefits in the District of Columbia, and within this provision, there is no authority that allows an award of interest on back pay for District of Columbia employees.²²

To overturn an arbitration award on the grounds that the award is contrary to law and public policy, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result."²³ Citing to the D.C. Court of Appeals, the Board has stated that it must "not be led astray by our own (or anyone else's) concept of 'public policy' no matter how tempting such a course might be in any particular factual setting."²⁴ In the present case, MPD asserts the Award is on its face contrary to law and public policy. However, MPD does not specify any "applicable law" and "definite public policy" that mandates the Arbitrator arrive at a different result. In fact, this section of the D.C. Municipal Code does not prohibit an arbitrator from awarding interest on back pay.

Further, MPD argues that even if the Board determines that the interest award is appropriate, section 28-3302(b) of the D.C. Official Code limits interest awards to 4% per annum.²⁵ 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."²⁶ However, the Board has

¹⁹ *Fraternal Order of Police/Dep't of Corr. Labor Comm. v. Dep't of Corr.*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 6, PERB Case No. 10-A-20 (2012).

²⁰ *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); *Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. 738, PERB Case No. 02-A-07 (2004); *Univ. D.C. Faculty Ass'n/NEA and Univ. D.C.*, 39 D.C. Reg. 9628 at 9629, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

²¹ D.C.M.R. § 6-B1149 (codified at 52 D.C. Reg. 943 (2005)).

²² Request at 7.

²³ *Metro. Police Dep't v. Fraternal Order of Police/ Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). *See also D.C. Pub. Sch. v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case 86-A-05 (1987).

²⁴ *FOP/ Dep't of Human Serv. Labor Comm. v. Dep't of Human Serv.* 59 D.C. Reg. 6858, Slip Op. 1207 at 3, PERB Case No. 04-A-02 (2011) (citing *D.C. Dep't of Corr.v. Teamsters Union Local 246*, 54 A.2d 319, 325 (D.C. 1989)).

²⁵ Request at 8-9; D.C. Official Code § 28-3302.

²⁶ 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."

held that an arbitrator's authority to award interest is authorized by contract, not law, and therefore not subject to the 4% per annum interest rate limitation prescribed under section 28-3302(b) of the D.C. Official Code.²⁷ Therefore, the Arbitrator's award of interest on back pay is not contrary to law and public policy.

V. 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 law and public policy. Accordingly, MPD's 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 shall become final thirty (30) days after issuance unless a party files a motion for reconsideration or the Board reopens the case within fourteen (14) days after issuance of the Decision and Order.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By the unanimous vote of Board Members Mary Anne Gibbons, Barbara Somson, and Douglas Warshof.

August 17, 2017

Washington, D.C.

²⁷ *UDC and UDC, Faculty Ass'n*, 41 D.C. Reg. 2738, Slip Op. 317 at 3, PERB Case No. 92-A-02 (1992) (citing *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580 (1960)).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-A-04, Op. No. 1637 was sent by File and ServeXpress to the following parties on this the 25th day of August, 2017.

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