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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. 16-A-06
)	
v.)	Opinion No. 1618
)	
Fraternal Order of Police/Metropolitan Police)	
Department Labor Committee)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Introduction

On February 16, 2016, the District of Columbia Metropolitan Police Department (“MPD”) filed an Arbitration Review Request (“Request”) in this matter, seeking review of the supplemental arbitration award of attorneys’ fees to the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”). MPD contended that the arbitrator exceeded his jurisdiction by awarding attorneys’ fees. The Board has reviewed the Arbitrator’s conclusions, the pleadings of the parties and applicable law, and concludes that the Arbitrator did not exceed his jurisdiction. Therefore, Petitioner’s Request is denied.

II. Background

MPD accused Officer Christopher N. Johnson of stealing evidence and suspended him for 10 days.¹ Officer Johnson challenged the suspension. On October 29, 2015, the Arbitrator held that MPD failed to initiate disciplinary action against Officer Johnson within 90 days of its knowledge of the alleged misconduct, as required by the parties’ Collective Bargaining Agreement (CBA).² The Arbitrator ordered the agency to rescind Officer Johnson’s suspension, expunge it from his record, make him whole for wages, benefits and seniority lost as a result of MPD’s actions and amend his personnel records to reflect the rescission.³

¹ Merits Award at 13.

² *Id.* at 25.

³ *Id.* at 28.

The Arbitrator retained jurisdiction to resolve a dispute between the parties over FOP's Petition for Attorneys' Fees and Expenses.⁴ On July 14, 2016, the Supplemental Award granted FOP attorneys' fees and costs in the amount of \$15,680.65.

III. Arbitrator's Supplemental Award

The Arbitrator stated in the Supplemental Award that it was undisputed that he had wide discretion to fashion a remedy so long as it was not inconsistent with the parties' CBA.⁵ The Arbitrator stated that attorneys' fees were an appropriate remedy and consistent with the CBA. Furthermore, he stated that case law and arbitral precedent supported such an award.⁶

The Arbitrator rejected MPD's argument that attorneys' fees violated the plain language of Article 19 of the CBA.⁷ According to the Arbitrator, Article 19 provides that the parties have a right to legal assistance at the hearing at their own expense and, therefore, it does not allow FOP the right to attorneys' fees in all grievance arbitrations. The Arbitrator stated that by incorporating the payment of attorneys' fees into a remedy only under specified and appropriate circumstances, it was not a modification of the CBA.⁸ The Arbitrator drew similarities between this case and a previous PERB Decision and Order, name of case, PERB Case No. 11-A-11, Slip Op. No. 1382, which stated that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' CBA.⁹

The Arbitrator stated that the Back Pay Act (BPA) is applicable to the parties and also supported an award of attorneys' fees to FOP.¹⁰ The Arbitrator looked to the Merit Systems Protection Board's ("MSPB") for the standard under BPA §7701(g), to justify an award of attorneys' fees. Such fees, he wrote, must be: (1) incurred, (2) the employee must be the prevailing party, (3) the award of attorneys' fees must be in the interest of justice and (4) the attorneys' fees must be reasonable.¹¹ The Arbitrator concluded that FOP is entitled to attorneys' fees and costs in the amount of \$15,680.65.

IV. Discussion

MPD seeks review of the Supplemental Award on the grounds that the Arbitrator exceeded his jurisdiction in "finding that attorney's fees were authorized under the parties' labor agreement."¹² As it argued before the Arbitrator, MPD asserts that Article 19, Part E, § 5(3) of the parties' collective bargaining agreement expressly provides that the legal costs are to be

⁴ Supplemental Award at 1.

⁵ *Id.* at 9.

⁶ *Id.*

⁷ *Id.* at 10.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 12.

¹¹ *Id.* at 13-14.

¹² Request at 2.

borne by the parties at their own expense.¹³ MPD also notes that the language of Article 19, Part E, § 5(3) stands in contrast to Article 19, Part E, § 5(7) of the collective bargaining agreement, which states that the arbitrator's fee and expense "shall be borne by the losing party."¹⁴ MPD argues that the contrast in these two sections shows that the language chosen by the parties in § 5(3) was "express and deliberate," and demonstrates that the parties intended for the each side to bear their own legal expenses at arbitration.¹⁵ MPD contends that since there is no authority for the Arbitrator to award attorneys' fees, the Supplemental Award conflicts with Article 19, Part E § 5(4), which prohibits an arbitrator from issuing an award that would modify, subtract from, or add to the collective bargaining agreement.¹⁶

The Board has repeatedly held that an arbitrator does not exceed his or her authority by exercising his equitable power to formulate a remedy unless the collective bargaining agreement expressly restricts his or her equitable power.¹⁷ 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 power.¹⁸ Further, the Board has held that Article 19, Part E, § 5 (7) of the parties' collective bargaining agreement, requiring the losing party to pay the arbitrator's fees, does not preclude the Arbitrator from awarding attorney's fees and that MPD must show that the collective bargaining agreement expressly limits an arbitrator's equitable powers.¹⁹

Contrary to MPD's allegations, the Board finds that the Arbitrator did not exceed his authority by issuing a remedy that awarded attorneys' fees to the Union.²⁰ The language of Article 19, Part E, §5 (3) does not provide an express limitation to an arbitrator's equitable power. Accordingly, the Arbitrator did not exceed his authority and the Board will not overturn the Award on this ground. For the Board to overturn an arbitrator's award as in excess of the arbitrator's authority, MPD must show that the collective bargaining agreement expressly limits an arbitrator's equitable power.²¹ MPD's attempt to parse the language of Article 19, Part E does

¹³Request at 4. Article 19, Part E, § 5(3) states, in pertinent part: "All parties shall have the right at their own expense to legal and/or stenographic assistance at this hearing."

¹⁴Request at 4. Article 19, Part E, § 5(7) states, in pertinent part: "The fee and expense of the arbitrator shall be borne by the losing party, which shall be determined by the Arbitrator."

¹⁵ *Id.* at 4-5.

¹⁶Request at 5. Article 19, Part E, § 5(4) states, in pertinent part: "The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision..."

¹⁷ See *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 p. 8, PERB Case No. 09-A-12 (2011); *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992).

¹⁸ *Id.*

¹⁹ *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Committee*, D.C. Reg. 7193, Slip Op. No. 1382 at 3, PERB Case No. 11-A-11 (2013).

²⁰ In PERB Case Nos. 16-A-15 and 16-A-17 the Board likewise determined that the language of Article 19, Part E, §5 (3) does not provide an express limitation to an arbitrator's equitable power. Accordingly, the Board found the arbitrators did not exceed their authority in awarding attorneys' fees.

²¹ *Metro. Police Dep't v. Fraternal Order of Police*, Slip Op. 1382 at 3, PERB Case No 11-A-11 (citing *Metro. Police Dep't, supra*, Slip Op. 1133 at p. 8).

not provide the Board with such a limitation.²² Instead, MPD asks the Board to accept its interpretation of the collective bargaining agreement over that of the Arbitrator.²³

The Board has long held that it will not overturn an arbitration award based simply upon the petitioning party's disagreement with the arbitrator's findings.²⁴ 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."²⁵ Therefore, MPD's disagreement with the Arbitrator's award of attorneys' fees does not present a statutory ground for review.

V. Conclusion

Based on the foregoing, the Board finds that the Arbitrator did not exceed his authority. 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 Metropolitan Police Department's 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 the unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman and Douglas Warshof.

March 23, 2017

Washington, D.C.

²² *Id.*

²³ *Id.*

²⁴ *Fraternal Order of Police/Dep't of Corrections Labor Comm. v. Dep't of Corrections*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 6, PERB Case No. 10-A-20 (2012).

²⁵ *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at , PERB Case No. 00-A-04 (2000); *Metro. Police Dep't and Fraternal Order 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).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-06, Op. No. 1618 was sent by File and ServeXpress to the following parties on this the 10th day of April, 2017.

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