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Government of the District of Columbia

Public Employee Relations Board

In the Matter of:)	
)	
District of Columbia Water and Sewer Authority,)	
)	
)	PERB Case No. 15-A-01
Petitioner,)	
)	Opinion No. 1502
v.)	
)	
American Federation of Government Employees,)	
Local 2091,)	
)	
Respondent.)	

DECISION AND ORDER

The Petitioner District of Columbia Water and Sewer Authority (“Authority”) filed a timely arbitration review request (“Request”) appealing an award issued in a grievance arbitration brought by the Respondent American Federation of Government Employees, Local 2091 (“Union”). The Authority bases its request upon the Board’s authority to modify, set, aside, or remand an award where the arbitrator exceeded his jurisdiction. D.C. Official Code § 1-605.02(6). The Authority contends that the arbitrator exceeded his jurisdiction by modifying a provision in the parties’ collective bargaining agreement (“CBA”) concerning the time for filing grievances. As we find that the arbitrator did not exceed his jurisdiction, we deny the Request.

I. Statement of the Case

The grievance before the arbitrator was filed with the Authority as a Step 3 grievance on April 24, 2014. The grievance alleged that the Authority (referred to in the Award as “the Company”) violated and was continuing to violate the CBA by failing to pay employees in the bargaining unit for one hour of travel when they are called back to work. (Award 2.) The Authority moved that the arbitrator dismiss the grievance as untimely. The Arbitrator found the grievance timely and sustained it. The Authority then filed its Request, arguing that in finding the grievance timely the arbitrator exceeded his jurisdiction by modifying the CBA. The

Authority requests that the award be vacated. The Union did not file an opposition. The Authority's Request is before the Board for disposition.

II. Discussion

In its Request, the Authority contends that the arbitrator exceeded his jurisdiction. That is one of the three narrow grounds upon which the Board may modify, set aside, or remand an arbitration award.¹

The Authority contends that the arbitrator exceeded his jurisdiction by modifying a provision of the parties' CBA that limits the time within which the Union may file a grievance. Article 17, section G of the CBA states in pertinent part, "If a grievance is filed directly at Step 3, it shall be filed within fifteen (15) workdays from the time the Union becomes aware of the occurrence or issue giving rise to the grievance." (Request Ex. 2 at 30.) Article 17, section D(3) adds, "All time limits shall be strictly observed unless the parties mutually agree in writing to extend the time limits." (Request Ex. 2 at 28.)

At the hearing, the Authority contended "that since there were a number of call-backs from November 2013 onward and employees were paid pursuant to the Company's interpretation, the Union was therefore aware of the issue months before it filed the grievance" on April 24, 2014. (Award 3.) The Union's chief shop steward "testified that it was not until the meeting [with the Authority's manager of labor relations and compliance] on April 11, 2014 that it became apparent to the Union that the parties could not resolve their differing interpretations of the new call-back provision." (Award 4.) The arbitrator held:

The Company may be correct that "the collective bargaining agreement requires the Union to grieve after becoming aware of the issue giving rise to the grievance, not upon reaching an understanding of the Authority's position." But here the evidence is not sufficient to show the Union truly became aware of the Company's position before April 11, 2014. At the arbitration hearing the Company's explanation of how it applied the new call-back provision was murky and confused so it is not unreasonable that the Union was not aware of the Company's actual position till mid-April 2014. The language of Article 17 refers to when "the Union becomes aware of the occurrence or issue giving rise to the grievance," rather than when it reasonably becomes aware. I believe the evidence was insufficient to show the grievance was untimely.

(Award 4.)

In appealing this holding of the arbitrator, the Authority notes that the CBA states "[t]hat the arbitrator shall not have power to add to, subtract from or modify the provisions of this Agreement through the award." (Art. 17, § H(8), Complaint Ex. 2 at 31.) The Authority

¹ D.C. Official Code § 1-605.02(6); PERB R. 538.3. The other grounds, which are not alleged, are that "the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means."

contends that the arbitrator modified the agreement—and thus exceeded his jurisdiction—by replacing the CBA’s standard for when the time to file a grievance begins to run with a standard of the arbitrator’s own invention.

The Authority acknowledges that the Board has adopted the test expressed in *Michigan Family Resources, Inc. v. SEIU Local 517M*, 475 F.3d 746 (6th Cir. 2007), which asks, “in 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.” *Id.* at 753 (quoting *United Paperworkers Int’l Union, AFL-CIO v. Misco*, 484 U.S. 29, 38-39 (1987)). The Authority argues that the Arbitrator decided that the standard for when a grievance accrued was when the Union “truly became aware of the Company’s position” and not when the Union “became aware of ‘the occurrence o[r] issue giving rise to the grievance’ as required by the terms of the CBA.” (Request 11.)

The arbitrator’s holding clearly satisfies the test set forth above. The arbitrator was not substituting a new standard; rather, he was interpreting “occurrence or issue” and applying that standard to the facts of the case in order to specify what it was that the Union needed to become aware of in this case before it had to file its grievance.

The Authority further argues that “even by the standard created by the Arbitrator, the Respondent failed to submit its grievance within the 15-day time-limit set forth in the CBA.” (Request 7.) In support of this position, the Authority discusses testimony and exhibits that it contends refute the arbitrator’s conclusion that “the evidence was insufficient to show the grievance was untimely.” The Authority’s disagreement with that conclusion does not present the Board with grounds to conclude that the arbitrator exceeded his jurisdiction. “The Board does not act as a finder of fact nor does it substitute its judgment for that of the arbitrator on credibility determinations and the weight attributed to the evidence.” *Metro. Police Dep’t and F.O.P./Metro. Police Dep’t*, 61 D.C. Reg. 11295, Slip Op. No. 1491 at 4, PERB Case No. 09-A-14 (R) (2014) (on remand).

In view of the above, we can find no basis for the Authority’s contention that the arbitrator exceeded his jurisdiction. Therefore, the Authority has not presented a statutory basis for review.

ORDER

IT IS HEREBY ORDERED THAT:

1. The 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 Donald Wasserman,
Keith Washington, Ann Hoffman, and Yvonne Dixon

Washington, D.C.

December 22, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-01 is being transmitted to the following parties on this the 23d day of December, 2014.

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/s/ Sheryl V. Harrington
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Secretary