

**Notice:** This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
District of Columbia	)	
Metropolitan Police Department,	)	
	)	
Petitioner,	)	PERB Case No. 04-A-18
	)	
and	)	Opinion No. 789
	)	
Fraternal Order of Police/Metropolitan	)	
Police Department Labor Committee	)	
(on behalf of Pablo Figueroa),	)	
	)	
Respondent.	)	
	)	

**DECISION AND ORDER**

The District of Columbia Metropolitan Police Department ("MPD" or "Agency") filed an Arbitration Review Request ("Request") in the above-captioned matter. MPD seeks review of an arbitration award ("Award"), which, *inter alia*, upheld the timeliness of FOP's underlying group grievance, and awarded the five grievants the status of Detective Sergeant pursuant to D.C. Code § 5-543.02(c) and backpay of \$595 *per annum* retroactive to the date of the grievants' assignment to those positions.<sup>1</sup> The Fraternal Order of Police, Metropolitan Police Department Labor Committee ("FOP" or "Union") opposes the Request.

The issue before the Board is whether "the arbitrator was without or exceeded his or her jurisdiction," and whether "the Award on its face is contrary to law and public policy." D.C. Code § 1-605.02(6). Upon consideration of the Request, we find that MPD has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, MPD's Request is denied.

Of relevance here, the arbitrator concluded that the group grievance, dated December 12, 2003, was timely on a variety of theories. The arbitrator rejected MPD's proffered interpretation

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<sup>1</sup> Although the arbitrator did not specify that the payments would be *per annum*, D.C. Code § 5-543(c) provides only for a *per annum* stipend, and the Board presumes the arbitrator's intent was to abide by the clear dictates of the law.

of Article 19, Section B of the CBA, which provides that a grievance must be presented "not later than ten (10) days from the date of the occurrence giving rise to the grievance or within ten (10) days of the employee's knowledge of its occurrence," concluding that the 10-day filing period did not begin to run until the grievants discovered the statutory basis for their grievance, *i.e.*, D.C. Code § 5-543.03(c). In so holding, the arbitrator concluded that MPD was estopped from raising its timeliness defense because the grievants had relied to their detriment on MPD's representations, presumably dating back to the date of the grievants' assignments to these positions, that the Detective Sergeant position did not exist.<sup>2</sup> The arbitrator also concluded that the grievance, insofar as it is pay-related, is a continuing one. Additionally, and independent of the foregoing, the arbitrator noted the undisputed fact that MPD did not raise its timeliness defense until the arbitration hearing. The arbitrator therefore rejected MPD's timeliness defense on the basis of Article 19(E), Section 5(2) of the CBA, which provides that, "the parties to the grievance shall not be permitted to assert in such arbitration proceedings any ground ... not previously disclosed to the other party."

On the merits, the arbitrator concluded that the grievants did, in fact, perform the duties of Detective Sergeants at relevant times, and consequently awarded the grievants "the status of Detective Sergeants pursuant to D.C. Code § 5-543.02(c) and back pay of \$595.00 retroactive to the date that each grievant was assigned to the position of Detective Sergeant."<sup>3</sup> Based on the equitable theory of detrimental reliance, the arbitrator concluded that the back pay award should be retroactive to the date of the grievants' respective assignments to the position of Detective Sergeant, due to the Agency's misrepresentation as to the existence of that position.

MPD claims that the arbitrator was without authority and exceeded his jurisdiction in finding the underlying grievance to be timely. MPD argues that Article 19 of the CBA provides a 10-day filing period, and that the arbitrator modified that provision by finding that it is triggered not by some action by the Agency, but by the Union's alleged discovery of the claimed violation. MPD also claims that the Award is contrary to law and public policy insofar as any remedy must be tied to the 10-day grievance-filing period of Article 19 of the CBA, and cannot relate back to the date the grievants first were assigned to the Detective Sergeant positions. In this same regard, MPD claims that the arbitrator improperly modified the CBA by ignoring the relationship of the 10-day grievance-filing period to the resulting remedy.

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<sup>2</sup> Neither the Award, nor MPD's Request, nor FOP's Opposition specify the date of the grievants' assignment to the Detective Sergeant position, or the date on which MPD first represented to the grievants that the position did not exist. The Board proceeds with the understanding that the dates of the grievants' respective assignments to the Detective Sergeant positions are undisputed.

<sup>3</sup> As already noted, we presume that the back pay award is for \$ 595 per annum, consistent with the provisions of D.C. Code § 5-543.02(c).

FOP claims that MPD merely disagrees with the arbitrator's conclusion, based on his interpretation of Article 19 of the CBA, that the grievance is timely. FOP also claims that nothing in the CBA or law or public policy limits the arbitrator's remedial authority to award back pay retroactive to the date of the grievants' assignment to the Detective Sergeant position. In this regard, FOP denies that Article 19 has any bearing on the arbitrator's remedial authority.

The arbitrator acts well within the ambit of his authority when he concludes that the underlying grievance is timely. Interpreting Article 19(E), Section 5(2) of the CBA, the arbitrator concluded that the parties' negotiated a waiver provision that applies to a timeliness defense, and therefore rejected as untimely MPD's claim that the grievance itself was untimely. Additionally, the arbitrator ruled that the grievance, involving pay issues, is a continuing one within the meaning of Article 19, and that the 10-day filing period did not begin to run until the grievants learned of the alleged violation. MPD's claim regarding the timeliness of the grievance constitutes mere disagreement with the arbitrator's fact-finding and interpretation of Article 19 of the Agreement, and therefore is not statutorily cognizable. Accordingly, the claim must be denied. D.C. Metropolitan Police Department and Fraternal Order of Police, Metropolitan Police Department Labor Committee, Slip Op. No. 738 at p. 5, PERB Case No. 02-A-07 (2004).

We similarly reject MPD's claim that the back pay award constitutes an improper modification of the CBA. We cannot conclude that Article 19 constitutes an express restriction on the arbitrator's remedial authority, and no other express limitation is cited by MPD. As we have held, absent such an express limitation in the CBA, the arbitrator does not exceed his remedial authority. Slip Op. No. 738 at 4 (citations omitted); D.C. Housing Authority and American Federation of Government Employees, Local 2725, AFL-CIO, Slip Op. No. 51 at p. 3, PERB Case No. 97-A-02 (1997).

As for MPD's claim that the back pay award is contrary to law and public policy, we have held that in order for us to set aside an award as contrary to law and public policy, the petitioner must present applicable law and definite public policy mandating the arbitrator to arrive at a different result. See, D.C. Housing Authority and American Federation of Government Employees, Slip Op. No. 738 at 4 PERB Case No. 02-A-07 (1997). MPD cites no such applicable law or definite public policy.

No statutory basis exists for setting aside the Award; the Request is therefore denied.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Metropolitan Police Department's Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**  
Washington, D.C.

September 30, 2005

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No.04-A-18 was transmitted via Fax and U.S. Mail to the following parties on this the 30<sup>th</sup> day of September 2005.

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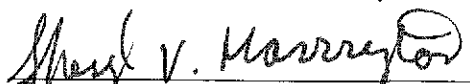
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