

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 formal errors to that they 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:	)	
	)	
Metropolitan Police Department	)	
	)	
Petitioner,	)	
	)	
and	)	PERB Case No. 96-A-03
	)	Opinion No. 460
	)	
Fraternal Order of Police,	)	
Metropolitan Police Department	)	
Labor Committee,	)	
	)	
Respondent.	)	
	)	
	)	

**DECISION AND ORDER**

On December 22, 1995, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of the District of Columbia Metropolitan Police Department (MPD) filed an Arbitration Review Request with the Public Employee Relations Board (Board). OLRCB requests that the Board review an arbitration award (Award) that sustained a class grievance filed by the Fraternal Order of Police, Metropolitan Police Department Labor Committee (FOP) on behalf of members of the bargaining unit whose salaries were reduced in violation of the parties' collective bargaining agreement. MPD's Request is based on its contention that the Arbitrator exceeded the authority granted her under the collective bargaining agreement and that the Award is contrary to law and public policy. FOP filed an Opposition to the Arbitration Review Request on January 2, 1996, contending that OLRCB has presented no statutory basis for review and that accordingly, the Request should be dismissed.

The issue before the Board is whether or not there is a statutory basis for our review of the Award. Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-605.2(6), the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed only if the arbitrator was without, or exceeded his or her jurisdiction; the award on its face is contrary to law and public policy... ." Upon review of the Award, the pleadings of the parties and applicable Board law, the Board concludes that the reasons presented in OLRCB's Arbitration Review Request do not present a statutory basis for our

review.<sup>1/</sup>

The Arbitrator decided, in the main, that MPD had formulated an "official" salary schedule that was lower than the schedule provided for by the parties' collective bargaining agreement. The Award reinstated the higher pay schedule afforded by Articles 36 and 37 of the agreement that had been in effect prior to MPD's implementation of its "official" schedule.<sup>2/</sup> OLRCB contends that the Arbitrator disregarded management's evidence supporting its argument that, pursuant to D.C. Code § 1-612.5(d), the authority to design official pay schedules is vested in the D.C. Office of Personnel.<sup>3/</sup> Therefore, when the Arbitrator accepted and based her Award on "an unofficial pay schedule drafted by the FOP and the D.C. Office of Pay and Retirement", she exceeded her authority and jurisdiction and the resulting Award is contrary to law and public policy. (Req. at 2.)

Compensation under the Comprehensive Merit Personnel Act is a

---

<sup>1/</sup> OLRCB stated its intention to present a comprehensive brief setting forth the arguments in support of its Arbitration Review Request. In accordance with Board Rule 538.2, the parties shall be provided an opportunity to file briefs "[i]f the Board finds that there may be grounds to modify or set aside the arbitrator's award... ." Finding no statutory basis for modifying or setting aside the Award, we find no basis for soliciting or considering briefs from either party on the issues presented by the Request.

<sup>2/</sup> Article 36 provides for rates of pay and scheduled increases while Article 37 provides a schedule and method for determining retention differential increases to base pay for certain employees.

<sup>3/</sup> D.C. Code § 1-612.5(d) provides:

The Mayor, in consultation with the personnel authorities named in subsection (a) of this section, shall consider, on an annual basis, changes in the compensation system or systems and in the salary and pay schedules under such system and systems, and shall submit adjustments, if any, to the Council pursuant to § 1-612.6 on September 30, 1980, and on the 1st day in September that the Council is in session, of each year thereafter. The submission to the Council shall include proposed dates on which the adjustments shall become effective.

negotiable matter. D.C. Code § 1-618.8(b) and § 1-618.16. As such, its terms and conditions, to the extent consistent with law, may be bargained over and reduced to provisions of a binding collective bargaining agreement. OLR CB makes no contention -- nor did it before the Arbitrator-- that the parties' collective bargaining agreement or the articles interpreted by the Arbitrator were invalid. Moreover, contrary to OLR CB's contention, nothing contained in D.C. Code § 1-612.5(d) removes compensation in general, or pay schedules specifically, from matters that are properly determined through the collective bargaining process.<sup>4/</sup>

Under the parties' collective bargaining agreement, the parties' have agreed to resolve contractual disputes concerning matters of compensation through grievance-arbitration. Notwithstanding arguments and evidence presented by OLR CB, the Arbitrator declined to find that the contractual provisions in dispute were preempted by statute or other law. Rather, the Arbitrator found that there were contractual obligations that were ignored when the "official" salary schedule was formulated for affected employees.<sup>5/</sup>

---

<sup>4/</sup> OLR CB also cites D.C. Code § 1-602.5 in support of its contention that the Arbitrator's acceptance of a pay schedule other than one "officially legislated by the D.C. Council" or the D.C. Office of Personnel is contrary to law and public policy. (Req. at 3.) D.C. Code § 1-602.5, entitled Development of new personnel system (emphasis added), provides in pertinent part that "the Mayor and each personnel authority shall cause the development of unified systems for all employees of the District of Columbia government." This provision provides no further support for OLR CB's contention concerning how compensation is determined for bargaining unit employees. Moreover, D.C. Code § 1-602.6, expressly acknowledges negotiations concerning compensation and subjects such negotiations to the compensation negotiation provisions of D.C. Code § 1-618.16. D.C. Code § 1-602.6 provides, in pertinent part, as follows:

On the day the provisions of 1-618.16 become operational and negotiations commence concerning compensation matters, all employees of the District government in the appropriate bargaining units under § 1-618.16, including those described in § 1-602.4, shall be subject to the procedures and provisions for establishing compensation provided in § 1-618.16... .

<sup>5/</sup> The Arbitrator correctly observed that "[t]he central issue here is the extent of the parties' contractual obligations. ... Thus, the mere fact that a document is 'official' does not resolve the issue of whether it is valid under the terms of the collective bargaining agreement." (Award at 10.)

**Decision and Order**  
**PERB Case No. 96-A-03**  
**Page 4**

In this regard, the Arbitrator possessed the jurisdictional authority to determine whether or not MPD had complied with the parties' collective bargaining agreement, which necessarily included her interpretation of the meaning of the applicable provisions. D.C. Metropolitan Police Department and Fraternal order of Police, MPD Labor Committee, \_\_\_ DCR \_\_\_, Slip Op. No. 394 at n. 2, PERB Case No. 94-A-04 (1991). We have held 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 Arbitrator's interpretation of the parties' agreement and related rules and/or regulations as well as the evidentiary findings and conclusions upon which the decision is based." University of the District of Columbia Faculty Association/NEA and University of the District of Columbia, 39 DCR 9628, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992). Whatever the authority accorded by the statutory provisions cited by OLRCB, the interpretation of the parties' rights under their collective bargaining agreement are within the jurisdiction of the Arbitrator. See, American Federation of Government Employees, Local 1975, AFL-CIO and D.C. Department of Public Works, Slip Op. No. 413, PERB Case No. 95-A-02 (1995). We have held that parties to a collective bargaining agreement may properly include in their negotiated agreement provisions which modify procedures or rights that may otherwise prevail under statute absent an agreement on the matter. See, D.C. Public Schools and Council of School Officers, Local 4, Slip Op. No. 416, PERB Case No. 95-A-03 (1995).

In view of the above, we can find no basis for OLRCB's contention that the Award is, on its face, contrary to law and public policy for the reasons stated, or that the Request otherwise presents a statutory ground under the CMPA to modify or set aside the Award.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

The Arbitration Review Request is denied.

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

January 17, 1996