

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:)	
)	
Metropolitan Police Department)	
)	
Petitioner)	PERB Case No. 17-A-10
)	
and)	Opinion No. 1645
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (Devonnie Gregory))	
)	
Respondent)	
)	

DECISION AND ORDER

I. Introduction

On August 29, 2017, the Metropolitan Police Department (“MPD”) filed this Arbitration Review Request (“Request”) pursuant to the Comprehensive Merit Personnel Act of 1979 (“CMPA”), D.C. Official Code § 1-605.02(6), seeking review of an Arbitrator’s Opinion and Award (“Award”) that sustained the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Union”) on behalf of Devonnie Gregory (“Grievant”). The Arbitrator’s Award reversed the Grievant’s termination and reinstated the Grievant with back pay and benefits.¹ MPD asserts that the Arbitrator exceeded his jurisdiction.²

In accordance with section 1-605.02(6) of the D.C. Official Code, 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

¹ Award at 26.

² Request at 2. In its initial Arbitration Review Request, MPD also alleged that the Arbitrator’s Award is contrary to law and public policy, but did not provide any support for this contention in its Request or supporting Memorandum.

public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.³ 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. Therefore, the Board denies the Request.

II. Arbitrator's Award

The Grievant was a 21-year veteran police officer with MPD in November 2010.⁴ As the result of an off-duty domestic incident involving a former domestic partner on November 13, 2010, MPD issued a Notice of Proposed Adverse Action ("Notice") to the Grievant on March 22, 2011.⁵ The Notice contained two charges.⁶ Charge 1 provided, in pertinent part, that the Grievant was "deemed to have been involved in the commission of [an] act that would constitute a crime. . . ."⁷ Charge 2 stated, in pertinent part, that the Grievant was engaged in "[c]onduct unbecoming an officer including acts detrimental to good discipline . . . or violations of any law . . . of the District of Columbia."⁸ An internal hearing before an Adverse Action Panel ("Panel") was held on June 21, 2011.⁹ The Panel sustained both Charges, recommending termination with respect to Charge 1, and a 30-day suspension with respect to Charge 2.¹⁰ The Panel's recommendations were upheld by MPD's Human Resources Management Division on August 9, 2011.¹¹ The Grievant unsuccessfully appealed to Chief of Police Cathy Lanier and the parties proceeded to arbitration.¹²

In an Arbitration Award issued on August 3, 2017, the Arbitrator found that the factors cited by the Panel in Charge 1 did not meet the preponderance of the evidence standard.¹³ For instance, the Arbitrator determined that the Panel was dismissive of evidence provided by the Grievant that undermined the former partner's version of events.¹⁴ The Arbitrator noted that two judges denied the former partner's request for a protective order and the State's Attorney's office decided not to prosecute the criminal summons.¹⁵ Additionally, the Arbitrator determined that the medical records and photographs did not show injuries on the former partner consistent with the physical assault alleged.¹⁶ As to Charge 2, the Arbitrator found that MPD proved by substantial evidence that the Grievant participated in a physical confrontation instead of diffusing the

³ D.C. Official Code § 1-605.02(6).

⁴ Award at 4.

⁵ Award at 4.

⁶ Award at 4.

⁷ Award at 4.

⁸ Award at 5.

⁹ Award at 5.

¹⁰ Award at 6.

¹¹ Award at 6.

¹² Award at 6.

¹³ Award at 18.

¹⁴ Award at 15.

¹⁵ Award at 15-16.

¹⁶ Award at 17.

situation as she was trained.¹⁷ However, since the Arbitrator concluded that there was insufficient evidence to support the physical assault alleged, the Arbitrator only sustained part of Charge 2.¹⁸ Therefore, based on the Arbitrator's finding that MPD did not prove Charge 1, the Arbitrator determined that termination was not the appropriate penalty.¹⁹ Since the Arbitrator only sustained Charge 2 in part, the Arbitrator reduced the Grievant's suspension on this Charge to 21 days.²⁰ The Arbitrator ordered that the Grievant be reinstated with back pay and benefits, minus the 21-day suspension.²¹

On August 29, 2017, MPD filed the present Request, seeking review of the Arbitrator's Award as well as a request for additional time to file a memorandum in support of its Request.²² On September 5, 2017, MPD submitted its Petitioner's Memorandum in Support of its Arbitration Review Request and on September 20, 2017, the Union submitted FOP's Opposition to Arbitration Review Request.

III. Discussion

MPD contends that the Board should overturn the Arbitrator's decision that the Panel's findings are not supported by the record, because the Arbitrator's decisions on Charges 1 and 2 are in conflict.²³ Specifically, MPD maintains that the Arbitrator's determination that the Grievant engaged in a verbal altercation and physical assault is inconsistent with his finding that the Panel did not prove Charge 1 by a preponderance of the evidence.²⁴ Further, MPD contends that the Arbitrator exceeded the scope of his authority when he "re-weighed the evidence" and substituted his judgment for that of the Panel and MPD Chief Lanier.²⁵ Accordingly, MPD claims that the Award should be reversed.²⁶

An arbitrator derives his or her jurisdiction from the consent of the parties, as expressed through their collective bargaining agreement.²⁷ To determine if an arbitrator has exceeded his or her jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement."²⁸ The Board looks to

¹⁷ Award at 19-20

¹⁸ Award at 19-20.

¹⁹ Award at 21.

²⁰ Award at 23.

²¹ Award at 26.

²² Request at 7, 34.

²³ Request at 6.

²⁴ Request at 8.

²⁵ Request at 6.

²⁶ Request at 12.

²⁷ *Washington Teachers' Union, Local No. 6, Am. Fed'n of Teachers v. D.C. Pub. Sch.*, 77 A.3d 441, 446 (D.C. 2013).

²⁸ *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Jacobs)*, 60 D.C. Reg. 3060, Slip Op. 1366 at 5-6, PERB Case No. 12-A-04 (2013).

whether the arbitrator resolves a dispute not committed to arbitration, commits fraud, has a conflict of interest, or is arguably construing or applying the contract.²⁹

Contrary to MPD's challenge to the Award on the grounds that the arbitrator exceeded his authority by re-weighing the evidence, the Board has held since 1988 that the arbitrator's authority is derived from the parties' collective bargaining agreement.³⁰ In this case, Article 12, Section 8 of the parties' collective bargaining agreement states, in pertinent part, that an employee may appeal to arbitration and when doing so, the arbitrator has the authority to review the evidentiary ruling of the Panel.³¹ Moreover, at the arbitration hearing, the parties requested the Arbitrator to evaluate: (1) whether the evidence presented by MPD was sufficient to support the charges; and (2) whether termination is an appropriate remedy.³² This required the Arbitrator to evaluate the evidence first reviewed by the Panel including witness testimony, the Grievant's employment records, medical records, criminal records, and similar MPD misconduct cases. After weighing this evidence, the Arbitrator determined the Panel did not meet its burden of proof to sustain Charge 1 and part of Charge 2. In so doing, the Arbitrator did not exercise any authority outside of the parties' collective bargaining agreement; and he ruled in accordance with the parties' instructions to him. Accordingly, the Request offers no plausible reason for the Board to find that the Arbitrator exceeded his jurisdiction.

The entire focus of MPD's Request is on the reasoning and the evidentiary conclusions of the Arbitrator rather than the scope of the Arbitrator's authority. The Board consistently has held that by agreeing to submit the resolution of a grievance to arbitration, it is the Arbitrator's interpretation, not the Board's, which the parties have bargained for.³³ "[T]he parties agree to be bound by the Arbitrator's interpretation of the parties' collective bargaining agreement . . . as well as his evidentiary findings and conclusions"³⁴ The Board has stated that "resolution of disputes over credibility determinations and assessing what weight and significance such evidence should be afforded is within the jurisdictional authority of the arbitrator."³⁵ The Board has specifically held that it "will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator."³⁶ Accordingly, MPD's disagreement with the Arbitrator's findings and conclusions does not constitute grounds for the Boards' review. Therefore, there is no basis upon which to modify, set aside, or remand the Award.

²⁹ See *id.* at 6 (quoting *Michigan Family Res., Inc. v. Serv. Emp. Int'l Union, Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007)).

³⁰ *D.C. Dep't of Pub. Works v. AFSCME Local 2091*, 35 D.C. Reg. 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988).

³¹ Award at 3.

³² Award at 2.

³³ See *Univ. of D.C. v. Univ. of D.C. Faculty Ass'n*, 39 D.C. Reg. 9628, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Dep't of Corrs. v. Int'l Bhd. Of Teamsters, Local Union No. 246*, 34 D.C. Reg. 3616, Slip Op. No. 157 at 3, PERB Case No. 87-A-02 (1987).

IV. Conclusion

Based on the foregoing, the Board finds that the Arbitrator did not exceed his jurisdiction. 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 559.1, this Decision and Order shall become final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By the unanimous vote of Board Chairperson Charles Murphy, Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

November 30, 2017

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-A-10, Op. No. 1645 was sent by File and ServeXpress to the following parties on this the 27th day of December, 2017.

Andrea G. Comentale, Esq.
Office of the Attorney General
441 4th Street, NW, Suite 1180 North
Washington, DC 20001

Marc Wilhite, Esq.
Pressler, Senftle & Wilhite, P.C.
1432 K Street, N.W., Twelfth Floor
Washington, DC 20005

/s/ Sheryl Harrington
PERB