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 thy may be corrected before publishing the decision. This notice is not intended to provide and 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, and Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Grievant Vernon Gudger), Respondent.	PERB Case No. 01-A-08 Opinion No. 663

DECISION AND ORDER

On August 6, 2001, the District of Columbia Metropolitan Police Department (MPD), filed an Arbitration Review Request (Request). MPD seeks review of an arbitration award (Award) which rescinded a thirty day suspension that had been imposed on a bargaining unit employee. MPD contends that the: (1) Arbitrator was without authority to grant the Award; and (2) Award is contrary to law and public policy. The Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy" or whether "the arbitrator was without or exceeded his or her jurisdiction. . . ." D.C. Code Sec. 1-605.2(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 for review is denied.

MPD imposed a thirty day (30) suspension on the Grievant, a police officer, for conduct unbecoming an officer which would "affect adversely the employee's or the agency's ability to perform effectively". Before ruling on the merits of the case the Arbitrator determined that the Grievant's suspension was in violation of the procedural rights guaranteed to him by the parties' collective bargaining agreement (CBA). (Request at p. 8). Specifically, the Arbitrator concluded that MPD violated Article 12, Section 7 of the parties' CBA when the Chief of Police failed to respond

to the employee's appeal within the fifteen (15) day time limit. As a result, the Arbitrator rescinded the suspension and ordered that the Grievant be made whole.

MPD takes issue with the Arbitrator's Award. MPD asserts that the Arbitrator exceeded her authority by dismissing the Grievant's suspension. Specifically, MPD contends that the Arbitrator: (1) rendered an award that conflicts with the express terms of the agreement and (2) imposed an additional requirement not expressly provided in the agreement.

In support of its argument, MPD cites Article 12, Section 7, of the parties' CBA which provides as follows:

> The employee shall be given fifteen (15) days advance notice in writing prior to the taking of an adverse action. Upon receipt of this notice, the employee may within ten (10) days appeal the action to the Chief of Police. **The Chief of Police shall respond to the employee's appeal with[in] (sic) fifteen (15) days.** In cases in which a timely appeal is filed, the adverse action shall not be taken until the Chief of Police has replied to the appeal. The reply of the Chief of Police will be the final agency action on the adverse action. (Emphasis Added)

MPD asserts that the plain language of the foregoing provisions of the CBA does not impose a penalty for noncompliance of the fifteen (15) day time limit within which the Chief of Police "shall respond to the employee's appeal." Therefore, by imposing a penalty where none was expressly stated or intended, MPD contends that the Arbitrator added to and modified at least one provision of the CBA in violation of Article 19, Section 5(4). In addition, MPD claims that the Arbitrator issued an award that not only conflicts with the express terms of the agreement, but also imposes additional requirements not expressly provided for in the agreement. [1]

In light of the above, MPD's ground for review only involves a disagreement with the Arbitrator's interpretation of Article 12, Section 7 of the parties' CBA. Moreover, MPD merely requests that we adopt its interpretation of the above referenced provision of the CBA.

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[1]MPD relies on Dobbs, Inc. v. Local 614, International Brotherhood of Teamsters, which held that an arbitrator exceeds his authority if he adds to, subtracts from, or modifies the provisions of a collective bargaining agreement in arriving at a decision. Dobbs, Inc. v. Local 614, International Brotherhood of Teamsters, 813 F.2d 85 (6th Cir. 1987). In Dobbs the Court concluded that the Arbitrator created his own contract rather than apply the contract that was agreed upon by the parties. Specifically, the Arbitrator's award contradicted a table of penalties which was agreed to by the parties and contained in the collective bargaining agreement. Id. However, the present case involves a disagreement with the Arbitrator's interpretation of a provision contained in the agreement. Therefore, Dobbs is not applicable.

Based on the above and the Board's statutory basis for reviewing arbitration awards, MPD contends that the Arbitrator exceeded her authority. We disagree.

We have held that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." D.C. Dept. of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). Furthermore, we have determined that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement. See, D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). In the present case, MPD does not cite any provision of the CBA which limits the Arbitrator's equitable power.[2] Therefore, the Arbitrator had the authority to rescind the discipline imposed on the Grievant due to MPD's failure to comply with procedural rights guaranteed to the Grievant by the CBA.

In addition, we have held that "[b]y agreeing to submit the settlement of [a] grievance to arbitration, it [is] the Arbitrator's interpretation, not the Board's, that the parties have bargained for." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320 at p.2, PERB Case No 92-A-04 (1992 Also, we have found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." Id. Moreover, "[t]he Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator." District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union No. 246, 34 DCR 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987).

MPD also claims that the Arbitrator's Award is contrary to law and public policy. We have held that a "disagreement with the arbitrator's interpretation. . . does not make the award contrary to law and public policy." AFGE, Local 1975 and Dept. of Public Works, Slip Op. No 413, PERB Case No. 95-A-02 (1995). To set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the arbitrator arrive at a different result. See, AFGE, Local 631 and Dept. of Public Works, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1993). In the present case, MPD's claim involves only a disagreement with the Arbitrator's interpretation of Article 12, Section 7 of the CBA. Moreover, MPD's public policy argument does not rely on well-defined policy or legal precedent. Thus, MPD has failed to point to any clear or legal public policy which the Award contravenes.

We find that the Arbitrator's conclusion is based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. In the present case, MPD disagrees with the Arbitrator's conclusion. This is not a sufficient basis for concluding that the: (1) Arbitrator has exceeded her authority; or (2) Award is contrary to law or public policy. For the reasons discussed, no statutory basis exist for setting aside the Award; the Request is therefore, denied.

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[2]We note, that if the parties' collective bargaining agreement limits the arbitrator's discretion concerning penalties, that limitation would be enforced.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

September 25, 2001

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 01-A-08 was transmitted via Fax and/or U.S. Mail to the following parties on this 25th day of September 2001.

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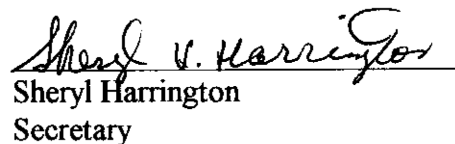

Sheryl Harrington
Secretary