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**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-22
)	
and)	Opinion No. 788
)	
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee)	
(on behalf of Michael Murphy),)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of Case

The District of Columbia Metropolitan Police Department ("MPD") filed an Arbitration Review Request ("Request") in the above-captioned matter. MPD seeks review of an arbitration award ("Award"), which found that MPD violated the contractual selection process of Article 4 of the parties' collective bargaining agreement ("CBA") in connection with its action in filling ten dog handler positions in its Canine Unit in September 2003. As a remedy for that violation, Arbitrator Michael Wolf ordered that the MPD retroactively award the grievant a dog handler position in the Canine Unit. 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...." 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 for review is denied.

II. Discussion

In May 2003, MPD posted two vacancy announcements for dog handlers in its Special Operations Division. The postings did not list a fixed number of vacancies to be filled. Subsequently, on September 17, 2003, MPD selected nine Officers who had undergone the contractual selection process. Additionally, and of particular relevance here, it is undisputed that MPD bypassed the established selection procedures for a tenth vacancy, awarding that tenth position, instead, to an Officer in settlement of a pending civil action. Arbitrator Michael Wolf determined that MPD violated Article 4 of the parties' CBA. Specifically, the Arbitrator concluded that it was uncontested that the grievant would have been awarded the tenth position but for the MPD's wrongful action in bypassing the selection procedures in filling the tenth position. In addition, the Arbitrator found that the MPD's interest in settling the liability claim did not excuse the Agency's violation of the parties' CBA. In view of the above, the Arbitrator awarded the grievant a position in the Canine Unit as a dog handler, retroactive to the date of the appointment of the other nine Officers who were awarded positions pursuant to the established selection process.

MPD asserts that the Arbitrator was without authority or exceeded his jurisdiction by modifying the terms of the CBA to award a remedy "not provided for in the CBA." MPD also asserts that the remedy violates its exclusive right to assign members and to determine the number of members assigned to a unit, and disputes the arbitrator's conclusion that the bypassing of contractual selection procedures violated Article 4 of the parties' CBA.

We believe that FOP claims that MPD challenges only the arbitrator's exercise of remedial authority, and argues that it is well-settled under Board precedent that arbitrators are free to fashion an appropriate remedy unless expressly limited by the terms of the CBA or other applicable authority.

MPD's Request is based on a mere disagreement with the arbitrator's interpretation of the CBA and consequent exercise of remedial authority. Specifically, the arbitrator interpreted the CBA as precluding MPD from bypassing the established contractual selection process in order to effectuate a settlement of a pending civil action to which neither the Union nor the grievant was a party. In so concluding, the arbitrator did not add to or modify the terms of the CBA with respect to the Agency's right to determine the number of employees assigned to the Canine Unit or to assign employees to positions within MPD, because the Arbitrator did not create a new position for the grievant; rather, the arbitrator concluded that the Agency determined to fill 10 vacancies, and then filled one of the ten vacancies in the Canine Unit in violation of what the arbitrator found to be uncontested contractual selection requirements, and therefore did not comply with applicable laws, rules and regulations, as required by Article 4 of the CBA. In addition, the arbitrator found it to be uncontested that the grievant was qualified for that position, and would have been assigned to that position but for MPD's wrongful determination to bypass the contractual selection procedures in favor of effectuating a settlement of another Officer's claim, to which settlement neither the FOP nor the grievant was a party.

MPD agreed to be bound by the arbitrator's interpretation of the parties' CBA as well as his evidentiary findings and conclusions. Mere disagreement with the arbitrator's interpretation of the CBA is not a sufficient basis for concluding that the arbitrator exceeded his jurisdiction. D.C. Metropolitan Police Department and Fraternal Order of Police, Metropolitan Police Department Labor Committee, PERB Case No. 02-A-07, Slip Op. No. 738 at 5 (2004). Moreover, an arbitrator does not exceed his remedial authority by exercising equitable power, unless such power is expressly restricted by the parties' collective bargaining agreement, and MPD does not identify any contractual limitation to the arbitrator's remedial authority. Slip Op. No. 738 at 4 (citations omitted); D.C. Housing Authority and American Federation of Government Employees, Local 2725, AFL-CIO, PERB Case No. 97-A-02, Slip Op. No. 519 at 3 (1997).

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-22 was transmitted via Fax and U.S. Mail to the following parties on this the 30th day of September 2005.

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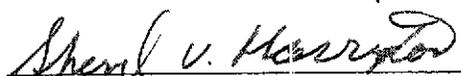
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