Government of the District of Columbia
Public Employee Relations Board

Fraternal Order Of Police/ Metropolitan Police Department Of Labor Committee, Petitioner, and, District Of Columbia Metropolitan Police Department, Respondent.	)	**PERB Case No. 11-A-07** **Slip Opinion No. 1221** **STAFF RECOMMENDATION**

DECISION AND ORDER

I. Statement of the Case

On April 8, 2011 the Fraternal Order of Police ("FOP/MPDLC", "Union" or "Complainant") filed an Arbitration Review Request ("Request") in the above captioned matter. FOP/MPDLC seeks review of an arbitration award ("Award") that denied FOP's grievance filed with the District of Columbia Metropolitan Police Department ("MPD"). The grievances concerned two separate but related programs in the Office of the District of Columbia Metropolitan Police Department ("MPD"): the Officer-to-Sergeant Promotional Exam and the Sergeant-to-Lieutenant Promotional Exam.

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) (2001 ed).

II. Discussion

On January 12, 2005, the Fraternal Order of Police/ Metropolitan Police Department of Labor Committee ("FOP") submitted a Group Grievance on behalf of Kristopher Baumann and

all similarly situated employees regarding the Office-to-Sergeant Promotional Exam. The Group submitted a Demand for Arbitration on February 7, 2005. The FOP then filed two grievances regarding the Sergeant-to-Lieutenant Promotional Exam. The first was a Group Grievance filed on January 19, 2005. The MPD denied the grievance on January 24, 2005; the denial that was faxed to the Union was dated February 18, 2005. On January 19, 2005, the FOP submitted a Group Grievance on behalf of Sergeant Fulvia Brooks and all similarly situated employees also regarding the Sergeant–to-Lieutenant Promotional Exam. The Group submitted a Demand for Arbitration on March 1, 2005; it was not date-stamped until March 3, 2005. This grievance concerned the time-in-grade eligibility for the promotion from Sergeant to Lieutenant. The regulations were changed to require Sergeants to serve three years-in-grade instead of the previous requirement of one year-in-grade.

On October 19, 2001, then-Chief of Police Charles H. Ramsey adopted emergency rulemaking that, inter alia, amended the time-in-rank requirements for the officers seeking promotion to the rank of sergeant, sergeants seeking promotion to the rank of lieutenant, and lieutenants seeking promotion to the rank of captain. The time-in-rank requirement for officers seeking promotion to sergeant was increased from three years to five years; the time-in-rank requirement for sergeants seeking promotion to lieutenant was increased from one year to three years; and the time-in-rank requirement for lieutenants seeking promotion to captain was increased from one year to two years. Although not published in the D.C. Register until November 2, 2001, the amendments were effective October 19, 2001.

The issue for the Arbitrator in both cases was whether the manner in which the 2005 Officer-to-Sergeant and the 2005 Sergeant-to-Lieutenant promotional exams were administered violated Article 4 of the CBA. The Arbitrator decided the Arbitration Award in favor of the MPD. On April 8, 2011, the FOP submitted a Request for Arbitration Review ("Request"). On April 28, 2011, the MPD submitted an Opposition to the Arbitration Request.

Section 1-605.02(6) of the CMPA provides the Board with the authority to overturn an arbitrator's award only: (1) "if the arbitrator was without, or exceeded, his or her jurisdiction"; (2) where "the award on its face is contrary to law and public policy"; or (3) "was procured by fraud, collusion, or other similar and unlawful means." D.C. Code § 1-605.02(6) (2001). The deference the Board gives to arbitration awards is rooted not only in the CMPA, but also in the well-established principle that the MPD and FOP have granted "the authority to the arbitrator to interpret the meaning of their contract's language..." *Eastern Associated Coal Corp. v. United Mine Workers of America*, Dist. 17, 531 U.S. 57, 61-62 (2000) (citing United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (I960)).

When parties agree to arbitrate disputes under a CBA, the parties are bound by the arbitrator's interpretation of the contract, and the Board is not authorized to substitute its own interpretation of the CBA. *United Paperworkers Int'l. Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 37-38 (1987); District of Columbia Metropolitan Police Dept. v. District of Columbia Public Employee Relations Board*, 901 A.2d 784, 789 (D.C. 2006) (quoting *Am. Postal Workers v. U.S. Postal Serv.* 789 F.2d 1,6 (D.C. Cir. 1986)). In sum, the Award is subject to "the greatest deference imaginable." *Utility Workers Union of America, Local 246 v. N.L.R.B.*, 39 F.3d 1210, 1216 (D.C. Cir. 1994).

A. The Award was not contrary to law or public policy.

The FOP bases its Arbitration Review Request upon the allegation that the Award is "contrary to law and public policy." (See Request p.2) The Request does not allege that the Arbitrator exceeded his jurisdiction.

Pursuant to D.C Code § 1-605.02(6), MPD must show that "the award on its face is contrary to law and public policy." Parties seeking reversal of an arbitration award based on law and public policy have a high burden. The Supreme Court has stated that a public policy allegedly violated by an arbitration award "must be well defined and dominant and is to be ascertained 'by reference to laws and legal precedents, and not from general considerations of supposed public interests.'" *W.R. Grace and Co. v. Local Union 759, Intern. Union of United Rubber. Cork, Linoleum and Plastic Workers of America*, 461 U.S. 757, 766 (1983) (quoting *Muschany v. United States*, 324 U.S. 49,66, (1945)). MPD, therefore, must demonstrate that the public policy violation "suffice[d] to invoke the 'extremely narrow' public policy exception to enforcement of arbitrator awards." *District of Columbia Metropolitan Police Dept. v. District of Columbia Public Employee Relations Board,* 901 A.2d 784, 789 (D.C. 2006) (citing *American Postal Workers Union, AFL-CIO v. U.S. Postal Service*, 789 F.2d 1,8 (D.C. Or. 1986)).

The "public policy exception" is "narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of' public policy." See *American Postal Workers Union* 789 F2d at 8. Furthermore, the public policy exception:

> is not available for every party who manages to find some generally accepted principle which is transgressed by the award. Rather, the award must be so misconceived that it 'compels the violation of law or conduct contrary to accepted public policy.[1]

Even if an arbitrator's award runs contrary to some generally recognized policy, it still does not justify applying the "public policy exception," unless the award is itself illegal or requires a party to act illegally. See *District of Columbia Dept. of Corrections v. Teamsters Union Local No. 246,* 554 A.2d 319, 323 (D.C. 1989) (refusing to "apply some free-floating notion of "policy"').

The Board must also defer to the arbitrator's interpretation of external law incorporated into the contract:

> When construction of the contract implicitly or directly requires an application of external law, 'statutory or decisional law'..., the parties have necessarily bargained for the arbitrator's interpretation of the law and are bound by it. Since the arbitrator is the 'contract reader' his

[1] See *Revere Copper and Brass Inc. v. Overseas Private Inv. Corp.*, 629 F.2d 81, 83 (D.C. Cir. 1980), cert, denied, 446 U.S. 983 (1980) (citing Union Employers Division of Printing Industry, Inc. v. Columbia typographical Union No. 101,353 F.Supp. 1348,1349(D.D.C.1973)).

> interpretation of the law becomes part of the contract and thereby part of the private law governing the relationship between the parties to the contract.[2]

Thus, the Board may not set aside the Award solely because the arbitrator may have made some legal error in reaching his conclusions.

Moreover, it is not enough for the FOP to raise supposed deficiencies in the arbitrator's legal reasoning. FOP bargained for the Arbitrator's interpretation of the CBA. Therefore FOP must show that carrying out the Award would compel the violation of law and public policy. The Arbitrator decided that the demand for arbitration concerning the 2005 Officer-to-Sergeant promotional exam and the demand for arbitration concerning the 2005 Sergeant-to-Lieutenant promotional exam were timely filed, thus deciding in FOP's favor on the procedural issue. On the merits, he decided in favor of the MPD. The Arbitrator decided that the manner in which the 2005 Officer-to-Sergeant promotional exam the Sergeant-to - Lieutenant were administered did not violate Article 4 of the CBA. The Arbitrator ordered that the grievances be denied in their entirety. Carrying out this Award would not breach any law or public policy. Even if the arbitrator arrived at this result through arguably faulty logic or a misapplication of the law that is not enough for the Board to modify or set aside the Award. See D.C. Code § 1-605.02(6); *District of Columbia Public Employee Relations Bd*, 901 A.2d at 789.

The Board finds that the FOP has not cited any specific law or public policy that was violated by the Arbitrator's Award. The Board declines the FOP's request that we substitute the Board's judgment for the Arbitrator's decision for which the parties bargained. The FOP had the burden to specify "applicable law and public policy that mandates that the Arbitrator arrive at a different result." *MPD and FOP/MPD Labor Committee*, 47 DCR 717, Slip Op No. 633 at p. 2, PERB Case No. 00-A-04 (2000). We have held that a disagreement with the Arbitrator's interpretation does not render an award contrary to law. See *DCPS and Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO*, 49 DCR 4351, Slip Op. No. 423, PERB Case No. 95-A-06 (2002). Here, the parties submitted their dispute to the Arbitrator. FOP's disagreement with the Arbitrator's findings and conclusions is not a ground for reversing the Arbitrator's Award. See *University of the District of Columbia and UDC Faculty Association*, 38 DCR 5024, Slip Op. No. 276, PERB Case No. 91-A-02 (1991).

The Board holds that the Arbitrator's decision was not contrary to law or public policy. Therefore, the Board denies the FOP's request for an Arbitration Review.

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Metropolitan Police Labor Committee's Arbitration Review Request is denied.

2. Pursuant to Rule 559.1, this Decision and Order is final upon issuance.

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[2] *District of Columbia Public Employee Relations Bd.*, 901 A.2d at 789.

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

November 17, 2011.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 11-A-07 are being transmitted via Fax and U.S. Mail to the following parties on this the 17th day of November, 2011.

Anthony M. Conti, Esq.
CONTI FENN & LAWRENCE LLC
36 South Charles Street, Suite 2501
Baltimore, Maryland 21201
Telephone: 410 837-6999
Fax: 410 510-1647

FAX & U.S. MAIL

Mark Viehmeyer, Esq.
Metropolitan Police Department
300 Indiana Avenue, N.W.
Room 4126
Washington, D.C. 20001
Telephone: 202 724-4253
Fax: 202 727-1109

FAX & U.S. MAIL

Sheryl V. Harrington
Secretary