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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
District of Columbia Office of the Chief Financial Officer,)	
)	
Petitioner,)	PERB Case No. 22-A-07
)	
v.)	Opinion No. 1825
)	
American Federation of State, County, Municipal Employees, Local 2401,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

On June 29, 2022, the District of Columbia Office of the Chief Financial Officer (OCFO) filed an arbitration review request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA) seeking review of an arbitration award (Award) dated June 6, 2022.¹ In the Award, the Arbitrator determined that an employee (Grievant) had performed higher-graded duties and was entitled to back pay.² The OCFO seeks review of the Award on the grounds that the Arbitrator exceeded his authority and that the Award is contrary to law and public policy.³ The American Federation of State, County, Municipal Employees, Local 2401 (Local 2401) filed an opposition requesting that the Board deny the OCFO's Request.

Upon consideration of the Arbitrator's conclusions, applicable law, and the record presented by the parties, the Board concludes that the Arbitrator did not exceed his authority and that the Award is not contrary to law and public policy. Therefore, the Board denies the OCFO's Request.

¹ D.C. Official Code § 1-605.02(6).

² Award at 24.

³ Request at 3-4.

II. Arbitration Award

A. Background

The Arbitrator made the following factual findings. The Grievant worked as a DS-9 accounts payable technician for the OCFO starting in 2006.⁴ In 2008, Michael Payne, who worked as a DS-11 cash management specialist, retired.⁵ After Mr. Payne retired, the OCFO requested volunteers to perform his duties.⁶ The Grievant volunteered, believing that the reassignment of the cash management specialist's duties to her would be temporary.⁷ The OCFO redistributed the cash management specialist's primary responsibilities, which included reassigning some of those duties to the Grievant and some of the Grievant's previous duties to other employees.⁸ The Grievant continued to perform these cash management specialist duties until September 2014.⁹ On July 2, 2014, one of the Grievant's supervisors, Delicia Moore, the Associate Chief Financial Officer, Human Support Services Cluster (HSSC), sent an email to Lasharn Moreland, the Director of the OCFO's Human Resources Division (HR), advocating for the Grievant to receive compensation for performing cash management specialist duties from fiscal years 2010 through 2014.¹⁰ Ms. Moore also stated in an email that one of the cash management specialist's individual performance plan "Smartgoals" had been made one of the Grievant's Smartgoals.¹¹ On May 21, 2015, Ms. Moore emailed Ms. Moreland again to follow up in order to avoid the situation escalating to a union grievance.¹²

On September 25, 2015, Ms. Moreland denied the request, responding that

[p]rior to the HRD's approval of this request, the Accounts Payable Technician and the Cash Management Specialist position descriptions were evaluated to ensure the most appropriate classification (i.e. title and grade). It was determined that the additional duties assumed by [the grievant], specifically reviewing invoices, are within the scope of the duties at the DS-9 level Accounts Payable Technician position.¹³

On December 10, 2015, Local 2401 filed a step 2 grievance on behalf of the Grievant, arguing that the Grievant performed duties that fell under DS-11 cash management specialist and DS-12 supervisory cash management specialist positions.¹⁴ On December 23, 2015, Ms. Moreland denied the step 2 grievance, contending that "the position of Supervisory Cash Management Specialist is not a position recognized and/or used by the OCFO," that the OCFO has "independent personnel authority and as such the [CMPA] does not govern the terms and conditions of employment of the District's financial personnel," and that "per OCFO written policy, the OCFO

⁴ Award at 2.

⁵ Award at 2.

⁶ Award at 21.

⁷ Award at 17.

⁸ Award at 2.

⁹ Award at 2.

¹⁰ Award at 2-3.

¹¹ Award at 3.

¹² Award at 3.

¹³ Award at 4.

¹⁴ Award at 4.

Human Resources Division Director shall be responsible for determining the appropriate grade, step and salary levels of all OCFO positions.”¹⁵ Ms. Moreland also noted that HR had denied HSSC’s previous request to detail the Grievant to the cash management specialist position.¹⁶ She repeated the assertion that the duties the Grievant performed between 2008 and 2014 fell within the scope of the Grievant’s DS-9 accounts payable technician position.¹⁷ Ms. Moreland argued that the Grievant’s position description included the language, “Performs other related duties as assigned,” which covered the duties the Grievant assumed after Mr. Payne’s retirement.¹⁸

On January 8, 2016, Local 4201 filed a step 3 grievance.¹⁹ In its grievance, Local 2401 reiterated its assertion that the Grievant had performed higher-graded duties for years that “clearly meets the scope and level of expertise required for a Grade 11 position at minimum [sic].”²⁰ On April 4, 2016, the OCFO denied the step 3 grievance, finding no support that the Grievant “worked outside the requirements of her assigned duties.”²¹ On April 19, 2016, Local 2401 filed a step 4 grievance, which the OCFO denied on May 25, 2016.²² On August 22, 2016, Local 2401 invoked arbitration.²³

B. Arbitrator’s Findings

The parties each submitted a statement of the issue(s) to the Arbitrator. The OCFO asserted, “The primary issue in this case is did the Agency deny the [G]rievant compensation based upon an analysis of her job duties and position description, and if not, what should the remedy be. There’s also a secondary procedural issue of timeliness, as the union did not invoke arbitration until some months after the alleged violation.”²⁴ Local 2401 submitted the issue as, “[w]hether the Agency/Government is required to compensate Employee, Charlotte Robinson, an Accounts Payable Technician, based upon her performance of Mr. [Michael] Payne’s Cash Management Specialist duties for four years (2010-2014) [sic].”²⁵ The Arbitrator defined the issues as: (1) “whether the grievance is arbitrable;” and (2) “whether the City is required to compensate the grievant, a DS-9 Accounts Payable Technician, for performing the duties of a retired DS-11 Cash Management Specialist and, if so, what shall be the appropriate remedy.”²⁶

The OCFO argued that Local 2401’s request for arbitration was untimely and failed to state a violation of the parties’ master agreement (CBA).²⁷ The OCFO alleged that “it is management’s right to determine and assign job duties, and that [the Grievant’s] assigned duties were within her

¹⁵ Award at 6.

¹⁶ Award at 6.

¹⁷ Award at 7.

¹⁸ Award at 7.

¹⁹ Award at 7.

²⁰ Award at 8.

²¹ Award at 8.

²² Award at 8.

²³ Award at 8.

²⁴ Award at 10 (citing Agency’s Post-Hearing Brief at 1).

²⁵ Award at 10 (citing Grievant’s Post-Hearing Brief at 3).

²⁶ Award at 10.

²⁷ Award at 12 (citing Agency’s Post-Hearing Brief at 3-4). The OCFO did not raise the untimeliness issue in its Request.

duties as an accounts payable technician.”²⁸ As a result, the OCFO argued that the grievance fell under Article 13, Section 8(C) of the CBA and that Ms. Moreland’s determination had been made properly under that section.²⁹ The OCFO further argued that the grievance attempted to “limit management’s ability to assign duties to the [G]rievant within her position and grade,” and therefore infringed upon the OCFO’s management rights under the CMPA.³⁰

Local 2401 argued that its request for arbitration was timely under the parties’ CBA. Local 2401 contended that the Grievant performed duties previously assigned to Mr. Payne for four years, well beyond the CBA’s minimum amount of time to require compensation for performing higher grade duties.³¹ Local 2401 further contended that, during that four-year period, the Grievant’s supervisors assigned her “the same work that Payne performed without qualification”³² and evaluated her using “the same performance goals as Payne during the period in which she performed his duties.”³³ Local 2401 conceded that “setting the grade and title of employees is within the [District’s] discretion.”³⁴ However, Local 2401 argued that the OCFO’s “discretion is not absolute when it violates the CBA and D.C. Personnel Regulations.”³⁵ Local 2401 further argued that the OCFO had not provided corroborating evidence to support its contention that it intended to regrade and standardize positions, including Mr. Payne’s position after he retired, nor communicated that intent to the Grievant’s supervisors, nor standardized the position “soon after Payne’s departure,” nor attempted to “backfill” Mr. Payne’s position to the “correct” grading.³⁶

The Arbitrator found that the grievance was timely and arbitrable.³⁷ He determined that the CBA’s grievance procedures did not require a grievant to identify the allegedly violated provision of the CBA with specificity, and, therefore, that Local 2401 had established a violation of the parties’ CBA.³⁸ The Arbitrator found a material distinction between the accounts payable

²⁸ Award at 12.

²⁹ Master Agreement between AFSCME, District Council 20, AFL-CIO and the Government of D.C., Art. 13, Sec. 8(C) states, “Issues involving changed or additional duties assigned to an employee, within his/her present position, shall be considered in accordance with position classification procedures.” CBA at 25.

³⁰ Award at 19 (citing Agency’s Post-Hearing Brief at 6). The OCFO relies on *In the Matter of: AFGE Locals 383, 1000, 1975, 2725, 2741, and 2978 v. RHC, et al.*, Slip Op. No. 1798, PERB Case No. 21-N-03 (2021) (holding that AFGE’s proposal attempting to define ‘duties as assigned’ would limit the employer’s ability to assign duties to employees, therefore infringing on the management right to “direct employees.”).

³¹ Award at 13 (citing Grievant’s Post-Hearing Brief at 4). Local 2401 cited Art. 13, Sec. 8(A), which states, in relevant part, “Employees detailed or assigned to perform the duties of a higher graded position for more than four (4) pay periods in any calendar year shall receive the pay of the higher graded position. Assignments to a higher position for periods of at least one (1) pay period shall count toward the accumulation of the four (4) pay period requirement. The applicable rate of pay will be determined by application of D.C. government procedures concerning grade and step placement for temporary promotions, and will be effective the first pay period beginning after the qualifying period has passed...Advance notice will be given to the Union of any detail exceeding one pay period.” CBA at 24-25.

³² Award at 14 (citing Grievant’s Post-Hearing Brief at 6).

³³ Award at 13 (citing Grievant’s Post-Hearing Brief at 4-5).

³⁴ Award at 14.

³⁵ Award at 14 (citing Grievant’s Post-Hearing Brief at 7).

³⁶ Award at 14 (citing Grievant’s Post-Hearing Brief at 6-7).

³⁷ Award at 15.

³⁸ Award at 18-19 (citing Art. 22, Sec. 1, which states, “Any grievance or dispute which may arise between the parties involving the application, meaning or interpretation of this Agreement, shall be settled as described in this Article unless otherwise agreed to by the parties.” CBA at 34.).

technician and cash management specialist duties “sufficient to cause the grievant to have a reasonable expectation that[,] by performing Payne’s demand payment duties[,] ... that she was performing duties above the level of her grade or classification and would be compensated at the same DS-11 grade.”³⁹ The Arbitrator determined that the Grievant had relied on this reasonable expectation in continuing to volunteer to perform demand payment duties.⁴⁰ He found that the OCFO “sought a volunteer to perform *ad hoc* and episodic duties that can’t be done in a routinized way, evaluated her performance based on the new duties, and never informed her that that position was in the process of being down-graded or that it already had taken place.”⁴¹ He found that the Grievant was entitled to compensation and that finding in favor of the Grievant would not infringe on the OCFO’s management rights.⁴² The Arbitrator calculated the percentage of duties assumed by the Grievant and the length of time she spent performing them, and then used those calculations to determine the amount of back pay owed to the Grievant.⁴³

III. Discussion

Section 1-605.02(6) of the D.C. Official Code permits the Board to modify, set aside, or remand a grievance 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 public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.⁴⁴ The OCFO requests the Board’s review of the Award on the grounds that the Arbitrator exceeded his jurisdiction and that the Award is contrary to law and public policy.

A. The Arbitrator did not exceed his jurisdiction in issuing the Award

The OCFO contends that the Arbitrator exceeded his authority and jurisdiction by deciding a classification issue “when the CBA clearly states that such issues are to be decided using the procedure outlined in the District Personnel Manual.”⁴⁵ The OCFO states that the sections covering grievance and arbitration procedures in the parties’ CBA⁴⁶ preclude the Arbitrator from having contractual authority to arbitrate this dispute because: (1) “[a]t OCFO, classification issues are handled by the agency’s human resources division;” and (2) “[t]he [parties’] CBA has no provisions in regard to classification.”⁴⁷

When determining whether an arbitrator exceeded his or her authority in rendering an award, the Board analyzes whether the award “draws its essence” from the parties’ collective bargaining agreement.⁴⁸ The Board’s analysis is limited to whether the resolved dispute was

³⁹ Award at 20.

⁴⁰ Award at 20.

⁴¹ Award at 22.

⁴² Award at 22.

⁴³ Award at 22-24. The Arbitrator found that the OCFO owed the Grievant \$16,791.78 in back pay. Award at 24.

⁴⁴ D.C. Official Code § 1-605.02(6).

⁴⁵ Request at 3.

⁴⁶ Art. 13, Sec. 8(c), which states that “[i]ssues involving changed or additional duties assigned to an employee, within his/her present position, shall be considered in accordance with position classification procedures.” Request at 4.

⁴⁷ Request at 4.

⁴⁸ *AFGE, Local 272 v. D.C. Housing Authority*, 61 D.C. Reg. 9071, Slip Op. No. 1481 at 8, PERB Case No. 13-A-11 (2014).

committed to arbitration and whether the arbitrator was arguably construing or applying the contract in resolving legal and factual disputes.⁴⁹ The Board avoids intervention in arbitration awards even where an arbitrator arguably has made “serious, improvident, or silly errors” in resolving the dispute as long as an arbitrator does not “offend” the above requirements.⁵⁰

The Arbitrator synthesized the parties’ disparate issue statements and addressed both arbitrability and timeliness. The Arbitrator’s framing of the issues included the essence of each party’s issue statement – whether the OCFO owed the Grievant compensation for the duties she had previously performed. The parties do not dispute that they submitted the matter to the Arbitrator to determine the issues.⁵¹ The Board has long held that “an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties’ collective bargaining agreement.”⁵² As evidenced in the Award, the Arbitrator relied on the parties’ CBA and determined that the grievance involved a compensation issue rather than a classification issue.⁵³ Although the CMPA guarantees management’s right “[t]o direct employees of the agencies,”⁵⁴ the D.C. Personnel Regulations and the parties’ CBA also establish that employees who “perform the duties of a higher graded position for more than four (4) pay periods in any calendar year shall receive the pay of the higher graded position.”⁵⁵ Furthermore, the parties’ CBA does not exclude compensation or back pay grievances from resolution through arbitration.⁵⁶ Therefore, the Board finds that the Arbitrator did not exceed his jurisdiction in issuing the Award.

B. The Award is not contrary to law and public policy

The OCFO requests review of the Award on the grounds that the remedy is contrary to law and public policy.⁵⁷ The Board’s review of an arbitration award on the grounds that it is contrary to law and public policy is an “extremely narrow” exception to the rule that reviewing bodies must defer to an arbitrator’s ruling.⁵⁸ The narrow scope limits potentially intrusive judicial review under the guise of public policy.⁵⁹ The petitioning party has the burden to specify “applicable law and

⁴⁹ *Id.* at 8 (citing *D.C. Child & Family Servs. Agency v. AFSCME, Dist. Council 20, Local 2401, AFL-CIO*, 60 D.C. Reg. 15960, Slip Op. No. 1025, PERB Case No. 08-A-07 (2010)).

⁵⁰ *Id.* at 8.

⁵¹ Request at 3.

⁵² *University of the District of Columbia v. AFSCME Local 2087*, 59 D.C. Reg. 15167, Slip Op. No. 1333 at 6, PERB Case No. 12-A-01, *rev’d sub nom University of the District of Columbia v. D.C. PERB*, 2012 Daily Wash. L. Rptr. 8393 (D.C. Super. Ct. 2013), *rev’d sub nom. AFSCME v. University of the District of Columbia*, 166 A.3d 967 (D.C. 2017) (citing *MPD v. FOP/MPDLC*, 59 DCR 12709, Slip Op. No. 1327, PERB Case No. 06-A-05 (2012) (reversing D.C. Superior Court order to vacate award and reinstating the Board’s affirmation of arbitration award as falling under the arbitrator’s inherent equitable powers)).

⁵³ Therefore, the Board need not reach the issue of whether a classification issue is arbitrable under the parties’ CBA.

⁵⁴ D.C. Official Code § 1-617.08(a)(1).

⁵⁵ Art. 13, Sec. 8(a). *See also* D.C. Personnel Regulations, Ch. 8 Career Service, Sec. 841.1.

⁵⁶ Collective Bargaining Agreement, Art. 22, Sec. 2 at 34-35.

⁵⁷ The D.C. Court of Appeals recently considered whether the word “and” should be read as “or” in this statutory context. *MPD v. PERB*, No. 19-CV-1115, Mem. Op. & J. at 10-11 (D.C. Sept. 15, 2022). The Board finds that the OFCO has not provided a public policy argument. As a result, the Board finds it unnecessary to address the Court of Appeals statutory construction issue in the present case.

⁵⁸ *MPD v. FOP/MPD Labor Comm.*, 59 D.C. Reg. 3959 Slip Op. No. 925 at 12, PERB Case No. 08-A-01 (2012).

⁵⁹ *Id.* at 12.

definite public policy that mandates that the Arbitrator arrive at a different result.”⁶⁰ The violation must be “so significant that law or public policy ‘mandates that the arbitrator arrive at a different result.’”⁶¹ A mere “disagreement with the arbitrator’s interpretation...does not make the award contrary to...public policy.”⁶² The Board may not modify or set aside an Award as contrary to law in the absence of a clear violation on the face of the Award.⁶³

The OCFO argues that the grievance constitutes a classification issue and that the Arbitrator’s determination restricts the OCFO’s ability to assign duties to employees, therefore infringing on the OCFO’s statutory right “to direct employees.”⁶⁴ The OCFO asserts that the CMPA reserves the right to management to “direct employees,”⁶⁵ including the “right to assign duties to its employees,”⁶⁶ and that “[a]nything that limits Management’s ability to assign duties to its employees is a violation of this code provision.”⁶⁷ The OCFO contends that it had lowered the grade of the cash management specialist position in order to correct previous mistakes in grading the position.⁶⁸ The Arbitrator rejected the OCFO’s argument and determined that the evidence did not reflect any communication of this reclassification to the Grievant, her supervisors or her union.⁶⁹ The Grievant performed cash management specialist duties for over four years with the understanding that she was performing higher grade duties than in her original accounts payable technician position. Based on his evidentiary findings, the Arbitrator found that the matter involved the Grievant’s compensation for higher-graded duties, rather than the classification of a position.

The Board finds that the OCFO’s argument is mere disagreement with the Arbitrator’s evidentiary findings. The Award does not prevent the OCFO from exercising its management rights to reclassify or regrade positions. The Board finds that the Award does not restrict the OCFO’s ability to assign duties to an employee, but rather requires the OCFO to compensate an employee for the duties that the OCFO has assigned.⁷⁰ As a result, the Award requires transparency in the OCFO’s communication about classification and grade changes. The Arbitrator’s remedy of back pay does not prevent the OCFO from reclassifying these positions in line with the proper grade and position/duty descriptions. The OCFO has not demonstrated that any law required the Arbitrator to reach a different result. Therefore, the Board finds that the Award is not contrary to law and public policy.

⁶⁰ *Id.* at 12.

⁶¹ *D.C. DYRS and DCHR v. FOP/D.C. DYRS Labor Comm.*, 68 D.C. Reg. 46, Slip Op. No. 1800 at 10, PERB Case No. 21-A-09 (2021) (quoting *United Paperworkers Int’l Union, AFL-CIO v. Misco, Inc.*, 484 US 29 at 43, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987)).

⁶² *MPD v. FOP/MDP Labor Comm.*, Slip Op. No. 1516 at 7, PERB Case No. 14-A-12 (2015) (quoting *MPD v. FOP*, Slip Op. No. 933, PERB Case No. 07-A-08 (2008)).

⁶³ *MPD v. FOP/MPD Labor Comm.*, 64 D.C. Reg. 13401, Slip Op. No. 1644 at 3, PERB Case No. 17-A-09 (2017) (holding that arbitrator’s determination that adverse action panel had not adequately assessed *Douglas* factors was not contrary to law).

⁶⁴ Request at 5.

⁶⁵ See D.C. Official Code § 1-617.08(A)(1).

⁶⁶ Request at 5.

⁶⁷ Request at 5.

⁶⁸ Award at 7.

⁶⁹ Award at 22.

⁷⁰ Award at 22.

IV. Conclusion

The Board rejects the OCFO's arguments and finds no cause to modify, set aside, or remand the Award. Accordingly, the OCFO's Request is denied, and the matter is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons and Peter Winkler.

November 9, 2022
Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.