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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
District of Columbia Metropolitan Police Department,)	PERB Case No. 09-A-05
)	
Petitioner,)	Opinion No. 1487
)	
v.)	
)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee, (on behalf of Thomas Pair),)	Decision and Order
)	
Respondent.)	
)	
)	

DECISION AND ORDER

On April 3, 2009, the District of Columbia Metropolitan Police Department (“MPD” or “Department” or “Petitioner”) filed an arbitration review request (“Request”) seeking review of an arbitration award (“Award”)¹ that overturned the termination of Grievant Thomas Pair (“Grievant”), alleging that the Award violated law and public policy, and that the Arbitrator acted without authority and/or exceed her jurisdiction. On April 23, 2009, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP” or “Union”) filed an Opposition to the Request (“Opposition”). As reasoned below, and pursuant to D.C. Official Code § 1-605.02(6) (2001 ed.), MPD’s Request is denied.

I. Statement of the Case

The matter before the Board arises from a grievance filed by FOP challenging MPD’s termination of Grievant’s employment. (Award at 4). MPD asserts that after Grievant was terminated on September 30, 2005, he took no action to challenge MPD’s determination until November 2007, when he presented the matter to MPD for conciliation in accordance with Article 19, E, Section 4, of the parties’ Collective Bargaining Agreement (“CBA”).² (Request at 5). On November 28, 2007, MPD sent a letter to FOP stating that “[t]he Chief of Police

¹ Included with MPD’s Request as Attachment 1.

² Article 19, E, Section 4 states: “Submissions to arbitration shall be made within ten (10) business days from any attempt at conciliation.” (Request, Attachment 4, Exhibit 9 at 24); (Opposition, Attachment 5 at 24).

considered but ultimately does not want to settle [Grievant's case and others] at this time." (Request, Attachment 4, Exhibit 8).

On December 18, 2007, FOP sent a letter to MPD requesting that Grievant's case, among others, be "promptly scheduled for arbitration proceedings through the Federal Mediation and Consultation Service ("FMCS")...." (Request, Attachment 5, Sub-Attachment 2). On January 29, 2008, FOP sent another letter to MPD asking what steps the Department was taking to schedule the arbitrations FOP had requested in its December 18th correspondence. (Opposition, Attachment 3). On February 6, 2008, MPD sent a letter to FOP stating that FOP was responsible for contacting FMCS to schedule the arbitrations because FOP represented the parties that were requesting the arbitrations. (Request, Attachment 5, Sub-Attachment 4). MPD asserts that FOP then failed to submit Grievant's case to FMCS for arbitration "until on or about March 4, 2008." (Request at 4).

MPD argued in its Brief before the Arbitrator that Grievant's case was not arbitrable because FOP's request for arbitration did not comply with Article 19, E, Section 4 of the parties' CBA, which MPD asserted required FOP to file the request within ten (10) business days of MPD's November 28, 2007, letter that rejected FOP's attempt to conciliate Grievant's case. (Award at 9-10). In her March 9, 2009, Opinion and Award, the Arbitrator invoked her authority under Article 19, E, Section 3³ and other language in the CBA to resolve MPD's arbitrability question as a threshold issue before addressing the case's merits. *Id.* Relying on precedent established in a previous arbitration between the parties that dealt with the same 10-day provision in the CBA⁴, the Arbitrator found that MPD's statement in its November 28, 2007, letter that the Chief of Police did not want to settle Grievant's case "at this time" did not definitively "conclude" the conciliation process and that the 10-day requirement in Article 19, E, Section 4 therefore did not begin to run. *Id.* at 10-11. The Arbitrator reasoned that including the words "at this time" left "open the possibility for future consideration and the possibility of a change of position, ... even if remote", and that had MPD not used those words, it would have been "clearly understood that the MPD had ended conciliation efforts." *Id.* The Arbitrator found that "[t]here must be clear language used to provide sufficient notice before a contractual right to proceed could be lost." *Id.* The Arbitrator then cited various examples from other MPD correspondences in which the Department's language was "clear and detailed and provided instructions on contractual rights which could be lost if procedural timetables [were] not followed." *Id.* at 12-13. The Arbitrator reasoned that by adding the words, "at this time", MPD failed in its duty of notification by not using language that was indisputable. *Id.* at 13. The Arbitrator further noted that MPD did not raise the timeliness issue in its February 6, 2008, letter

³ Article 19, E, Section 3, in pertinent part, states: "If the Department believes the issue is not arbitrable and the Union disagrees or if agreement cannot be reached on a joint stipulation of the issue, each party shall submit its own statement of the issue to arbitration and the arbitrator will rule on arbitrability as a threshold issue before proceeding to a hearing on the merits." (Request, Attachment 4, Exhibit 9 at 24); (Opposition, Attachment 5 at 24).

⁴ *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, FMCS Case No. 08-54130-A (December 15, 2008) (holding that the 10-day period in Article 19, E, Section 4 begins to run only after the conciliation attempt has fully concluded because having the period begin at the outset of conciliation would defeat the purpose of the conciliation requirement). (Request, Attachment 5, Sub-Attachment 5).

to FOP or at any other time prior to the arbitration. *Id.* at 13-14. Based on these reasons, the Arbitrator found that MPD “did not provide clear and sufficient notification that efforts at conciliation had ended”, that the 10-day period in Article 19, E, Section 4 therefore never began to run, and that the merits of Grievant’s case were therefore arbitrable. *Id.* at 14, 33. Addressing the merits of Grievant’s case, the Arbitrator overturned the Panel’s findings and penalty determinations on grounds that they were not supported by substantial evidence, and ordered Grievant to be reinstated and made “whole” subject to certain specified mitigating factors and considerations.⁵ *Id.* at 33.

On April 3, 2009, MPD filed the instant Arbitration Review Request, challenging only the Arbitrator’s procedural finding that the case is arbitrable. (Request at 4-7).

A. MPD’s Arguments that the Award Violated Law and Public Policy

MPD contends the Arbitrator’s finding is contrary to law and public policy because it violates the 10-day time period in Article 19, E, Section 4. *Id.* at 4-5. MPD asserts Grievant “let this matter lie dormant for approximately two and one-half years” until November 2007, and then attempted conciliation. *Id.* at 5. MPD argues that when it rejected Grievant’s conciliation effort in its November 28, 2007, letter to FOP, the 10-day period in Article 19, E, Section 4 began to run and Grievant had until December 12, 2007, to request arbitration. *Id.* at 5. MPD states, “Grievant failed to submit this matter to FMCS until on or about March 4, 2008, sixty-five (65) days from the date of the attempt to conciliate” and therefore, “Grievant failed to timely submit this matter to arbitration and it is not arbitrable.” *Id.* MPD likened the 10-day requirement in this case to another time limit in the CBA that requires MPD to issue final adverse action decisions within 55-days, which the D.C. Court of Appeals has stated is a “bargained-for right which created in essence a substantive right, [...and] failure to issue [a] decision within the 55 days, as pr[e]scribed, must be viewed as a harmful error.” *Id.* at 5-6 (quoting *D.C. Metropolitan Police Department v. D.C. Public Employee Relations Board*, 901 A.2d 784, 786 (2006)). MPD asserts that, similarly, Grievant’s request for arbitration sixty-five (65) days after the 10-day period expired created a harmful error that the Arbitrator was obligated to recognize and follow. *Id.* at 5-6. As such, MPD argues the Arbitrator’s finding is inconsistent with the standard articulated in *MPD v. PERB*, *supra*, 901 A.2d 784, because the Arbitrator disregarded MPD’s November 28, 2007, letter rejecting Grievant’s conciliation efforts. *Id.* at 6. Further, MPD contends the Arbitrator’s finding violates Article 19, E, Section 5(4)⁶ of the CBA because the Arbitrator applied a finality requirement that is not stated in or required by the CBA or any other legal authority. *Id.* at 6.

⁵ Throughout almost the entirety of the Award, the Arbitrator refers to FOP as the “FOB”. Every indication shows, however, that this was done in error and that the Arbitrator intended to use the acronym “FOP.” (Award at 1). Therefore, the Board considers all references to the “FOB” in the Award to actually mean the FOP.

⁶ Article 19, E, Section 5 (4) states: “The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision of the issue presented and shall confine his [or her] decision solely to the precise issue submitted for arbitration.” (Request, Attachment 4, Exhibit 9 at 25); (Opposition, Attachment 5 at 25).

B. MPD's Arguments that the Arbitrator Acted Without Authority and/or Exceeded Her Jurisdiction

MPD contends that, in accordance with Article 19, E, Section 5(4), the Arbitrator also acted without authority and/or exceeded her jurisdiction when she "expanded the terms of the 'conciliation clause'" by adopting a new, unwritten, and unprecedented standard requiring MPD to prove that its rejection of Grievant's conciliation effort was final. *Id.* at 6. MPD states:

The phrase 'any attempt at conciliation' [in Article 19, E, Section 4] is not defined in the CBA. In the construction of a contract the intention of the parties is to prevail, and in ascertaining this intention the language is to be given its plain and ordinary meaning. [*Friedman v. Decatur Corp.*, 77 U.S. App. D.C. 326, 135 F.2d 812 (1943)]. Webster's Dictionary defines 'conciliate', *inter alia*, as 'to make compatible: cause to be in accord.' An 'attempt' is defined, *inter alia*, as 'an effort or a try.' The [Department's] letter of November 28, 2007, states, '[t]he Chief of Police has reviewed the cases the FOP has presented and has made the following decisions....' It further states, '[t]he Chief of Police has considered but ultimately does not want to settle the following cases at this time. ... Thomas Pair.' It is clear from the letter that FOP presented Grievant's case to the Chief of Police (COP) for consideration and that the COP considered and rejected a settlement. Thus, there was an 'attempt at conciliation,' pursuant to Article 19, E, [Section] 2 of the CBA. The Arbitrator essentially added the requirement that there be evidence that the COP's decision was final. That requirement is not contained in the CBA. Accordingly, the Arbitrator violated [Article 19, E, Section 5(4)] of the CBA which forbids an arbitrator from, *inter alia*, adding to provisions of the agreement.

Id. at 6-7. MPD asserts that by relying on a finality requirement that is not in the CBA, the arbitrator fashioned her "own brand of industrial justice" when she determined the matter was arbitrable. *Id.* at 7 (citing *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987); and *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 597 (1960)). As such, MPD argues that the Arbitrator's finding of arbitrability did not draw its essence from the CBA, which required Grievant to request arbitration "within ten (10) business days from any attempt at conciliation" and was inconsistent with the express requirement that the arbitrator not "add to, subtract from, or modify the provisions" of the CBA and should therefore be reversed. *Id.*; see also (Request, Attachment 4, Exhibit 9 at 24-25); and (Opposition, Attachment 5 at 24-25).

C. FOP's Opposition

On April 23, 2009, FOP filed its Opposition to MPD's Request asserting that: 1) MPD's Request is untimely; 2) MPD's law and public policy arguments are misplaced; and 3) the Arbitrator's arbitrability finding is consistent with the CBA. (Opposition at 4-14).

No other pleadings having been filed, MPD's Request and FOP's Opposition are now before the Board for disposition.

II. Analysis

A. Timeliness of MPD's Request

FOP's contention that MPD's Request is untimely does not prevail. FOP asserts that pursuant to PERB Rule 538.1, MPD had twenty (20) days after service of the Award to file its Request. (Opposition at 5-6). FOP relies on MPD's Affidavit of Service in which MPD certified that it received the Award by "first class mail" on March 13, 2009. *Id.* (citing Request, Attachment 2). FOP calculates that MPD's Request was due on April 2, 2009, and that MPD did not file it until April 3, 2009. *Id.* PERB Rule 538.1 requires arbitration review requests to be filed within twenty (20) days from service of the award, but the Rule also states that, "[s]ervice of the award shall be complete on personal delivery during business hours[;] depositing the document in the United States mail, properly addressed, first class postage prepaid[;] electronic mail[;] or by facsimile transmission", and that "[w]henever an award is served by United States mail, five (5) days shall be added to the prescribed period of time to file a request for review with the Board." MPD and FOP both assert MPD received the Award *via* "first class mail" on March 13, 2009. (Request, Attachment 2); (Opposition at 5-6). If the Board assumes the Arbitrator mailed the Award and thus completed service on the earliest possible day, March 9 (the same day she signed the Award), then in accordance with PERB Rules 501.5 and 538.1, the deadline to file an Arbitration Review Request was April 3, not April 2 as FOP asserts. (See PERB Rules 501.5 and 538.1). Therefore, because PERB's time-stamp shows that MPD's Request was filed on April 3, the Board finds it was timely filed in accordance with PERB's Rules. *Id.*; and (Request at 1).

B. Arbitrability

The CMPA authorizes the Board to modify or set aside an arbitration award in only three limited 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. D.C. Official Code § 1-605.02(6).

MPD requests reversal of the Award in this case based on its assertions that the Arbitrator's arbitrability finding was contrary to law and public policy, and that the Arbitrator exceeded her authority. (Request at 4-7).

1. Deferral to Arbitrator on Questions of Procedural Arbitrability

The D.C. Court of Appeals has stated, “issues of procedural arbitrability, i.e., whether prerequisites such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate have been met, are for the arbitrators to decide.” *Washington Teachers’ Union, Local No. 6, AFT v. D.C. Public Schools*, 77 A.3d 441, 446, fn. 10 (2013).

In this case, the Board finds the Arbitrator had jurisdictional authority to determine whether the underlying grievance was arbitrable, and defers to the Arbitrator’s conclusion. First, since the crux of MPD’s argument is that Grievant’s case was not arbitrable because FOP did not submit Grievant’s request for arbitration within the 10-day time limit stated in Article 19, E, Section 4 of the CBA, the Board finds that MPD’s contention is procedural in nature and is therefore exclusively for the arbitrator to decide. *Id.* Second, Article 19, E, Section 3 of the parties’ CBA expressly authorized the Arbitrator to determine whether Grievant’s case was arbitrable. (Request, Attachment 4, Exhibit 9 at 24); (Opposition, Attachment 5 at 24). The record shows that the Arbitrator followed the process outlined in Article 19, E, Section 3 of the CBA by first ruling on the arbitrability question as a threshold issue before proceeding to her analysis of the merits. (Award at 9-14). As such, the Board defers to the Arbitrator’s analysis and conclusion that Grievant’s case was arbitrable. *Id.*

2. Deferral to Arbitrator’s Interpretations of the Parties’ CBA

Additionally, the Board defers to the Arbitrator’s interpretation of the words “at this time” in MPD’s November 28, 2007, letter rejecting Grievant’s efforts to conciliate as meaning MPD’s decision was not final. (Award at 10-13).

The Board has long held that by agreeing to submit the settlement of a grievance to arbitration, it is the arbitrator’s interpretation, not the Board’s, for which the parties have bargained. *See University of the District of Columbia and University of the District of Columbia Faculty Association*, 39 D.C. Reg. 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992). The Board has also adopted the Supreme Court’s holding in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, that arbitrators bring their “informed judgment” to bear on the interpretation of collective bargaining agreements....” 363 U.S. 593, 597 (1960). By submitting the matter to arbitration, “the parties agree[d] to be bound by the arbitrator’s interpretation of the parties’ agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based.” *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. No. 738 PERB Case No. 02-A-07 (2004). Finally, the “Board will not substitute its own interpretation or that of the agency for that of the duly designated arbitrator.” *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 D.C. Reg. 3616, Slip Op. No. 157, PERB Case No. 87-A-02 (1987).

In this case, even if the Board would have come to a different interpretation of whether

MPD's rejection of Grievant's conciliation efforts was sufficiently final to invoke the 10-day requirement in Article 19, E, Section 4, it is not the Board's interpretation for which the parties have bargained. *UDC and UDCFA, supra*, Slip Op. No. 320, PERB Case No. 92-A-04. Rather, the Arbitrator brought her "informed judgment" to bear on the question before her, reasonably applied her interpretation of the CBA, and concluded that the 10-day period did not begin to run when MPD issued its November 28th letter. *United Steelworkers, supra*; and (Award at 10-13). Therefore, because the parties agreed beforehand to be bound by the Arbitrator's interpretation of their CBA and the evidentiary findings upon which that interpretation was based, the Board cannot and will not substitute its own interpretation or that of MPD for that of the duly designated Arbitrator. *MPD v. FOP, supra*, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04; and *DOC and Teamsters, Local Union 246, supra*, Slip Op. No. 157, PERB Case No. 87-A-02.

3. The Arbitrator's Arbitrability Finding was Not Contrary to Law

The Board rejects MPD's contention that the Arbitrator's finding is contrary to law because it violates the 10-day time period in Article 19, E, Section 4. (Request at 4-6).

In order to find that an arbitrator's award is facially contrary to law, the asserting party bears the burden to specify the "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 59 D.C. Reg. 11329, Slip Op. No. 1295, PERB Case No. 09-A-11 (2012); *MPD v. FOP, supra*, Slip Op. No. 633, PERB Case No. 00-A-04. Additionally, the Board has held that a mere "disagreement with the Arbitrator's interpretation ... does not make the award contrary to law...." *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, Slip Op. No. 933, PERB Case No. 07-A-08 (2008) (quoting *AFGE, Local 1975 and Dept. of Public Works*, 48 D.C. Reg. 10955, Slip Op. No. 413, PERB Case No. 95-A-02 (1995)).

In this case, MPD fails to demonstrate or show how the provision in Article 19, E, Section 4 "mandates" a different result in the Arbitrator's ruling that the matter was arbitrable. *MPD and FOP, supra*, Slip Op. No. 1295, PERB Case No. 09-A-11. As stated previously, the parties agreed to present the question of whether MPD's November 28, 2007, letter invoked the 10-day period in Article 19, E, Section 4 to the Arbitrator and to be bound by her conclusion. *UDC and UDCFA, supra*, Slip Op. No. 320, PERB Case No. 92-A-04; *see also MPD v. FOP, supra*, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04. Additionally, since MPD raised this same argument before the Arbitrator, the Board finds that raising it again here constitutes nothing more than mere disagreement with the Arbitrator's conclusion. (Award at 9-10); *MPD and FOP, supra*, Slip Op. No. 933, PERB Case No. 07-A-08. As such, the Board cannot overturn the Arbitrator's finding because there is nothing on the face of Article 19, E, Section 4 that mandates the Arbitrator reach a different result. *MPD and FOP, supra*, Slip Op. No. 1295, PERB Case No. 09-A-11; and *DOC and Teamsters, Local Union 246, supra*, Slip Op. No. 157, PERB Case No. 87-A-02.

Similarly, the Board rejects MPD's contention that the Arbitrator's arbitrability finding is contrary to law because she applied a finality requirement that is not stated in or required by the CBA, in violation of Article 19, E, Section 5(4). (Request at 6). Again, the Board finds that the Arbitrator's interpretation, analysis, and conclusion concerning Article 19, E, Section 4 is not facially contrary to any law. *UDC and UDCFA, supra*, Slip Op. No. 320, PERB Case No. 92-A-04. The Board further finds that the Arbitrator did not fashion her "own brand of industrial justice" when she determined that Grievant's case was arbitrable because her finding relied on practices established in a previous arbitration case between the same parties that dealt with the same issue. (Request at 7) (*citing United Paperworkers, supra*, 484 U.S. at 36); (Award at 10-11). In *MPD and FOP, supra*, FMCS Case No. 08-54130-A, it was held that the 10-day period in Article 19, E, Section 4 begins to run only after the conciliation attempt has fully concluded, since having the period begin at the outset of conciliation would defeat the purpose of the conciliation requirement. *See* (Request, Attachment 5, Sub-Attachment 5). As such, since the Arbitrator's findings reasonably relied on an interpretation of the same provision that was established in a previous arbitration case between these same parties, the Board defers to the Arbitrator's finding that Grievant's case was arbitrable. *MPD v. FOP, supra*, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04; *and DOC and Teamsters, Local Union 246, supra*, Slip Op. No. 157, PERB Case No. 87-A-02.

4. The Arbitrator's Arbitrability Finding was Not Contrary to Public Policy

Next, the Board rejects MPD's argument that the Arbitrator's decision was contrary to public policy. (Request at 4-7).

PERB's review of an arbitration decision on the basis of public policy is an "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's ruling. "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy." *Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (on Behalf of Kenneth Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012) (*quoting American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986)). A petitioner must demonstrate that the award "compels" the violation of an explicit, well defined public policy grounded in law and or legal precedent. *See United Paperworkers, supra*, 484 U.S. 29. The violation must be so significant that the law or public policy "mandates that the arbitrator arrive at a different result." *MPD v. FOP, supra*, Slip Op. No. 633, PERB Case No. 00-A-04. Again, mere "disagreement with the arbitrator's interpretation . . . does not make the award contrary to . . . public policy." *MPD and FOP, supra*, Slip Op. No. 933, PERB Case No. 07-A-08.

In this case, the Board finds that MPD's reliance on the D.C. Court of Appeals' decision in *MPD v. PERB, supra*, 901 A.2d 784 regarding the 55-day rule is misplaced because the 55-day provision in that matter is only loosely comparable, if at all, to the 10-day provision in this case. The arbitration case the Arbitrator relied on, however, is directly on point concerning Article 19, E, Section 4 and is therefore more directly comparable to the facts of this case.

(Award at 10-11); *see also* (Request, Attachment 5, Sub-Attachment 5). Furthermore, the Court's ruling in *MPD v. PERB*, *supra*, 901 A.2d 784 did not establish an "explicit, well defined public policy" related to Article 19, E, Section 4, and MPD's comparison did not articulate a violation of public policy so significant that the Arbitrator was "mandated" to "arrive at a different result." *United Paperworkers*, *supra*, 484 U.S. 29; *MPD v. FOP*, *supra*, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04. Therefore, because the D.C. Court of Appeals recognizes a public policy strongly in favor of arbitrability, the Board finds that MPD has not stated a public policy exception to warrant upsetting the Arbitrator's finding that Grievant's case is arbitrable. *District of Columbia Public Employee Relations Board v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 987 A.2d 1205 (D.C. 2010).

5. The Arbitrator Did Not Exceed Her Authority

Lastly, the Board rejects MPD's contention that the Arbitrator exceeded her authority because she applied a finality requirement that is not stated in or required by the CBA, in violation of Article 19, E, Section 5(4) of the CBA. (Request at 4-6). In order to determine if the arbitrator has exceeded his jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement." *MPD and FOP (on Behalf of Kenneth Johnson)*, *supra*, Slip Op. No. 925, PERB Case No. 08-A-01 (*quoting D.C. Public Schools v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156, PERB Case No. 86-A-05 (1987)); *see also Dobbs, Inc. v. Local No. 1614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 813 F.2d 85 (6th Cir. 1987). The U.S. Court of Appeals for the Sixth Circuit in *Michigan Family Resources, Inc. v. Service Employees International Union Local 517M*, has explained what it means for an award to "draw its essence" from a collective bargaining agreement by stating the following standard:

[1] Did the arbitrator act 'outside his authority' by resolving a dispute not committed to arbitration?; [2] Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?"; "[a]nd [3] [I]n resolving any legal or factual disputes in the case, was the arbitrator arguably construing or applying the contract"? So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made "serious," "improvident" or "silly" errors in resolving the merits of the dispute.

475 F.3d 746, 753 (6th Cir. 2007).

As stated previously, the Arbitrator in this case did not fashion the finality requirement on her own, but instead reasonably relied on a previous arbitration case between the same parties that dealt with the same issue. *See* (Request, Attachment 5, Sub-Attachment 5). In so doing, the Arbitrator reasonably (1) considered the parties' positions; (2) exercised her express authority to analyze and interpret the applicable provisions of the CBA; and (3) concluded that Grievant's

case is arbitrable. *MPD v. FOP*, *supra*, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04; *and DOC and Teamsters, Local Union 246*, *supra*, Slip Op. No. 157, PERB Case No. 87-A-02. As such, because the Arbitrator did not act outside of her authority; did not commit fraud; did not have a conflict of interest or otherwise act dishonestly in issuing the Award; and because the Arbitrator arguably and reasonably construed and applied the parties' CBA in applying a previously established finality requirement to Grievant's case, the Board finds that the Arbitrator's decision drew its essence from the parties' CBA and therefore did not violate Article 19, E, Section 5(4). *See Michigan Family Resources*, *supra*, 475 F.3d at 753. Therefore, the Board rejects MPD's argument and finds no cause to upset or reverse the Arbitrator's arbitrability finding.

C. Conclusion

The Board finds that MPD's Request was timely under PERB Rules 501.5 and 538.1. Additionally, because (1) the D.C. Court of Appeals has held that issues of procedural arbitrability are for the arbitrators to decide; (2) the Arbitrator's finding that Grievant's case was arbitrable drew its essence from the parties' CBA; (3) the Arbitrator's arbitrability determination was not contrary to law or public policy per D.C. Official Code § 1-605.02(6); and (4) the Arbitrator did not exceed her authority per D.C. Official Code § 1-605.02(6), the Board denies MPD's Request for a review of the Arbitrator's Award. *WTU v. DCPS*, *supra*, 77 A.3d at 446, fn. 10; *MPD and FOP (on Behalf of Kenneth Johnson)*, *supra*, Slip Op. No. 925, PERB Case No. 08-A-01.

ORDER

IT IS HEREBY ORDERED THAT:

1. MPD's 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 unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman and Keith Washington

August 21, 2014

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-A-05, Opinion No. 1487, was transmitted *via* US Mail and e-mail to the following parties on this the 17th day of September, 2014.

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