

The review standards are clearly established by the statutes for the review of grievance arbitration awards. D.C. Code Section 1-605.2 permits review, and the overturning of an award, "only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion or other similar and unlawful means..." These are also the standards uniformly accepted for the administrative or judicial review of arbitration awards. This position is reflected in the statement filed by both parties and the Board considers these standards applicable in this case.

Turning now to the substantive challenges raised by MPD, the Board states the following:

A. Choice of Criteria: MPD argued that the Three-Member Interest Arbitration Panel erred when it looked to the criteria set forth in D.C. Code Section 1-618.2(d) in deciding the issue. MPD contended that the Panel strayed beyond its mandate when it considered the criteria set forth in D.C. Code 1-618.2(d) because those criteria were meant to be applied only in cases involving working conditions and not in compensation arbitration. The Board disagreed.

D.C. Code Section 1-618.17(f), the statute that creates a Three-Member Interest Arbitration Panel "... to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute" (emphasis added) is silent as to the criteria the Panel is to use in achieving its objective. The Panel found guidance in several parts of the statute without taking as controlling or determinative any single or particular part. Among the criteria that the Panel found useful in approaching its task were those set out in D.C. Code Section 1-618.2(d). Those factors are: "(1) existing laws and rules and regulations which bear on the item in dispute; (2) ability of the District to comply with the terms of the award; (3) the need to protect and maintain the public health, safety and welfare; and (4) the need to maintain personnel policies that are fair, reasonable and consistent with the objectives of this chapter." This Board found the Panel's approach to be appropriate under the circumstances. Faced with a standard as broad as "prompt and fair", it was indeed judicious of the Panel to examine the statute as a whole for guidance.

This Board examined the Panel's painstaking and careful Opinion in great detail and concluded that the MPD's challenge is ill-founded. While it is true that, from time to time, the Panel's Opinion adverts to standards found in statutes other than D.C. Code Section 1-618.17(f), this Board found that the Panel was justified in doing so. The criteria set forth in D.C. Code Section 1-618.17(f) are, as noted above, extremely broad. The fact that the Panel chose to analogize or proceed by comparison

with other parts of the statute does not invalidate the conclusions of the Panel or indicate that the Panel has strayed beyond its statutory mandate. The Three-Member Interest Arbitration Panel's occasional references to other statutes concerning non-compensation issues were both helpful in carrying out the task that the Panel confronted and appropriate to a fair resolution of the issues. It would be a curious rule of law that forbade a forum such as the Panel from advertent or considering other statutes which, while not controlling, provide helpful guidance concerning the proper resolution of the issues.

B. Misconstruction of Criteria: MPD further challenged the Panel's decision on the grounds that, even if the criteria from other statutes were appropriately considered the Panel had misconstrued at least two of the factors in D.C. Code Section 1-618.2(d). In summary, the District first argued that the Panel defined "the need to protect and maintain the public health, safety and welfare" far too narrowly. MPD argued that the Panel had considered the police protection function separately from other municipal needs such as fire protection and public health. Second, the MPD argued that the Panel misconstrued the "fair, reasonable and consistent" criterion. We turn now to each of those arguments.

1. "Public Health and Safety." First, this Board found that the MPD's argument concerning the Panel's treatment of the "public health, safety and welfare" issue is belied by a reading of the Panel's Opinion. Although the Panel certainly focused on the issue of police protection -- a focus that the Board found appropriate in a case that concerns compensation for the organized employees of the police department -- the Panel also considered these issues in a broader context. The Panel's Opinion contains frequent references to the role of the firefighters in this city and elsewhere; and the record before the Panel is replete with evidence concerning the compensation, both current and past, of other District employees. See, e.g. Panel Opinion at 43-45. MPD's assertion that the Panel considered only police protection in arriving at its conclusions was inconsistent with the Panel's stated reasons, and this Board so found.
2. "Fair, Reasonable, and Consistent." MPD argued that by reaching the conclusion that it did, the Panel has overturned a lengthy history of parity of compensation between the police and the firefighters in this city. The Panel took pains to address in great detail the MPD's argument in this regard. The Panel rejected the MPD's challenge for two principal reasons. First, the Panel found that parity between the police and firefighters

is not required by any statute nor by any written agreement ^{2/} .
The Panel found that the lack of any statutory or contractual basis for the MPD's position weighed heavily against it.

The Panel rejected the MPD's argument concerning parity for a second important reason. The Panel found that parity would not, in fact, exist if the MPD's last best offer were adopted. After an exhaustive comparison of the collective bargaining agreement between the MPD and the firefighters with MPD's last best offer to the Union representing the police, the Panel concluded that the MPD's package was worth significantly less in economic terms than the package agreed upon between the District and the firefighters. At pages 41 and 42 of its Opinion, the Panel lists in considerable detail the differences between the firefighters' contract and the offer made by the MPD to the police. Thus, the Panel appropriately found that even if it had chosen the MPD's last best offer, parity would not be achieved between the firefighters and the police.

C. Retiree Benefits: MPD's last best offer would have left pre-1980 retirees with no increase in retirement benefits while the Union's proposal would have had the automatic effect of increasing their benefits. The question was whether this increase in retiree benefits ought to be considered in choosing the most desirable last best offer.

The issue further turns on the differences in treatment of wage rates between the last best offers of the two parties. MPD's last best offer contemplated no change in the basic wage rate for current policy officers while the Union's last best offer contained a percentage increase in the basic wage rate.

^{2/} Indeed, the Panel addressed the MPD's parity argument in two separate contexts. First, the MPD argued that the asserted practice of maintaining parity between the police and the firefighters imposed upon the FOP a burden of proof in the proceedings below. The Panel rejected this argument outright, and the Board agreed with the Panel's reasoning. Second, the Panel agreed with the MPD that parity, at least to the extent that it was shown to exist, was a viable argument on the merits. The Panel took the MPD's parity argument seriously and considered it at great length when it reached the merits of the dispute. It seemed to the Board that the MPD was simply seeking to re-litigate in this Board the merits of an issue that it had a full and fair opportunity to air before the Panel. As we have stated above, this Board did not consider it to be its function to re-litigate the issues but rather to conduct an appellate review of the Panel's findings according to the standards that we have discussed above.

This is a complicated issue but one that the Panel handled with considerable skill. First, the issue of retiree benefits concerns only those police who retired before 1980. Increases in the retirement benefits for pre-1980 retirees are tied to increases in the pay rate for current police officers ^{3/}. The connection between pay rates for current officers and retirement benefits for pre-1980 retirees is set by statute and cannot be altered by collective bargaining. Nevertheless, inasmuch as collective bargaining affects the wage rates for current police officers, the retirement benefits of pre-1980 retirees are, by operation of statute, affected by collective bargaining over current wages.

MPD tried to have both sides of this question. In costing the last best offers, the MPD included the cost of increased benefits to the retirees while FOP did not. Having included the cost of the increase in its calculations, the MPD argued, on the other hand, that the benefits paid to pre-1980 retirees were set by statute and therefore could not be considered by the Panel. The Panel found that the MPD was, in effect, arguing that the cost of retiree benefits should be taken into account when considering the cost of the FOP's package but that they could not be taken into account when considering the fairness and reasonableness of the personnel policies contained in each of the two offers. The inconsistency in the MPD's argument was damaging to the force of the MPD's challenge both before the Panel and before this Board.

While conceding that it had no jurisdiction over retiree benefits inasmuch as they are set by statute, the Panel found that the effect of current wage rates on retiree benefits could not be ignored when considering the fairness of the two last best offers. The Panel was struck by the unfairness in giving current police officers additional wages in the form of a bonus thereby effectively cutting the pre-1980 retirees out of the process because their benefits are tied only to base wage rates.

This Board found that reasoning compelling and therefore rejected MPD's challenge to the findings on this point of the Three-Member Interest Arbitration Panel.

D. Court Pay and the Fair Labor Standards Act: MPD's last best offer included a provision under which police officers would continue to be compensated for court appearances during off-duty hours by the award of "compensatory time." The Panel found that the continuation of the practice of awarding compensatory time instead of overtime pay for off-duty court appearances was no longer legally permissible under the recent Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, ___ U.S. ___, 105 S. Ct. 1005 (1985), which upheld application of the Fair Labor Standards Act overtime provisions to state and local governments.

^{3/} Increases for those who retired after 1980 are tied to the Consumer Price Index and not to current wage rates.

The Panel pointed out that MPD had adduced no evidence to show that its proposed compensation system for off-duty court appearances could be upheld under the Fair Labor Standards Act. Absent such proof, this Board could not sustain MPD's challenge to the Panel's conclusion.

E. "Contrary to Law and Public Policy": MPD raised a series of five other challenges to the Panel's findings, arguing that the findings were contrary to law and public policy. Two of those five challenges concern arguments already raised: (1) the issue of whether the Panel utilized the correct criteria in reaching its decision; and (2) the issue of parity between the firefighters and the police. This Board had already considered both of those arguments in other contexts. Neither gains any force by being categorized as "contrary to law and public policy."

Third, MPD argued that the payment of premiums covering the cost of dental, optical, and legal services programs through FOP rather than directly to the providers of services violates the law in the District of Columbia. This would simply continue the practice previously acquiesced in by the District of Columbia and, in any event, FOP has offered to give up its role as a conduit for these benefit premiums so that they may be paid directly to the providers of benefits ^{4/}. The Board, therefore, rejected MPD's argument.

Fourth, MPD raised a further challenge asserting that the Panel did not attach sufficient weight to a comparison between the pay awarded to D.C. government employees other than the firefighters and the District's last best offer to the FOP. To the contrary, at pages 43-44 of its Opinion, the Panel directly confronted this issue and decided it against the MPD. That decision was based on the Panel's finding that parity, or even comparability, does not now as a matter of fact exist between the police and other non-firefighter employees of the District of Columbia. This Board found that, contrary to the MPD's argument, the Panel did consider the issue and did consider it with sufficient care.

Fifth, MPD challenged the Panel's use of the projected Consumer Price Index (CPI) for the Washington Metropolitan Area in considering the comparative fairness of the two last best offers. The Board reviewed the Panel's use of the CPI and found that it was appropriate. The CPI is a relevant factor in weighing the relative values of the offers. We noted that the CPI was only one of several factors that the Panel properly considered in choosing among the competing last best offers. Accordingly, the MPD's challenge on this issue was found to be without merit.

^{4/} See the Panel's unanimous denial of the MPD's Application for Modification of the Award dated June 19, 1985.

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In conclusion, we reaffirm the result stated in the Board's previous Opinion No. 114 on this Arbitration Review Request. To reiterate, it was the judgment of the majority of the Board that the MPD's allegations reflect only disagreement with the Arbitration Panel regarding the merits of the issues presented to it; we found that in no respect did the Panel exceed its jurisdiction or reach a conclusion that, on its face, is contrary to law and public policy; and we found that there was no evidence of fraud or collusion.

ORDER

IT IS ORDERED THAT:

The Request for Review of the Arbitration Award on the Compensation Package in PERB Case No. 85-I-06 is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
December 6, 1985