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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

Metropolitan Police Department)

Petitioner,)

and)

Fraternal Order of Police,)
Metropolitan Police Department)
Labor Committee,)

Respondent.)

PERB Case No. 96-A-07
Opinion No. 479

DECISION AND ORDER

On June 5, 1996, the District of Columbia Metropolitan Police Department (MPD) filed an Arbitration Review Request seeking review of an arbitration award (Award) that sustained a grievance filed by the National Association of Government Employees, Local R3-105 (NAGE) on behalf of a bargaining unit employee who was detailed to a higher grade position without receiving the higher compensation. MPD contends that the Award is contrary to law and public policy. NAGE filed an Opposition to the Arbitration Review Request, contending that MPD has failed to show that any law or public policy was contravened by the Award.

The issue before the Board is whether or not there is a statutory basis for our review of the Award. Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-605.2(6), the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed only if ... the award on its face is contrary to law and public policy... ." Upon review of the Award, the pleadings of the parties and applicable Board law, the Board concludes that the reasons presented by MPD do not present a statutory basis for our review.

The Arbitrator concluded that MPD's failure to compensate the grievant during the time MPD had effectively promoted her to a higher grade position violated its internal rules and regulations, which he ruled were incorporated by reference in the parties' collective bargaining agreement. The Arbitrator ordered that the grievant receive a temporary promotion with retroactive pay for the time in question and retroactive pay to the extent that the step of

her grade at any time would have been affected by the promotion.

MPD contends that the Award violates the D.C. Court of Appeals decision in Whitt v. District of Columbia, 413 A.2d 1301 (1980). MPD cites, in pertinent part, the following passage from that decision:

The first [principle] is that an employee is only entitled to be compensated for the position to which he or she was appointed; if performing duties of a higher grade level, compensation at the higher level is possible only on promotion or by job reclassification.

The second principle is that the decision to promote an employee is discretionary, and unless it can be shown that a failure to promote an employee violates some mandatory duty retroactive promotion and back pay cannot be awarded. Whitt, 413 A.2d at 1303. (emphasis added.)

MPD acknowledges that the only exception to the above ruling is provided under District Personnel Manual (DPM) Section 8.15(C). It provides as follows:

Possible exceptions. Certain collective bargaining agreements contain articles which provide for back pay based on details to higher graded positions. Accordingly, claims review must include a determination of whether the claimant was or is (1) a member of a bargaining unit during the time covered by the claim and, if so, (2) whether there are relevant contract provisions. Where these conditions are present, determinations are to be made in accordance with the terms of the collective bargaining agreement. (Emphasis added.)

MPD's main contentions concerning the Award are twofold: (1) the grievant is not entitled to back pay pursuant to Whitt, since she was neither promoted nor was her job reclassified and (2) since promotions are a discretionary act, any failure by MPD to promote the grievant cannot be recompensed by back pay since MPD had no mandatory duty to promote her.

The Arbitrator concluded that the collective bargaining agreement incorporates by reference agency regulations including the above DPM provision. As such, related DPM regulations were subject to the Arbitrator's interpretation as part of the parties' collective bargaining agreement. The Arbitrator found that DPM regulation 8.15 "is in reality a reference to a Corporation Counsel

memorandum ... which in turn relies on Whitt," (Award at 5.) In finding that MPD had "constructively promoted" the grievant, the Arbitrator ruled that the grievant's stint in the higher-grade position fell within the scope of promotions entitled to compensation at the higher level as observed by the Court in Whitt.

Thus, given the Arbitrator's findings of fact that the grievant was constructively promoted by MPD, there was no failure to promote. While MPD may not have had a mandatory duty to promote the grievant, the Arbitrator found that MPD had temporarily done so for the period in question. The Arbitrator decided that by failing to pay the grievant during the time of this promotion at the higher graded position, MPD had violated its own personnel regulations -- incorporated by reference in the collective bargaining agreement-- and the grievant was therefore entitled to back pay under the provisions at issue.

We have held that "[b]y agreeing to submit a matter to arbitration the parties also agree to be bound by the Arbitrator's decision which necessarily includes the Arbitrator's interpretation of the parties' agreement and related rules and/or regulations as well as the evidentiary findings and conclusions upon which the decision is based." University of the District of Columbia Faculty Association/NEA and University of the District of Columbia, 39 DCR 9628, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

Given the authority and findings of the Arbitrator, MPD has provided no basis for finding the Award contrary to law and public policy. In view of the above, the Request presents no statutory ground under the CMPA to modify or set aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

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

August 15, 1996