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

In the Matter of:)	
)	
Metropolitan Police Department,)	
)	
Petitioner,)	PERB Case No. 04-A-15
)	
and)	Opinion No. 790
)	
National Association of Government Employees,)	
Local R3-5 (on behalf of Betty Bibb),)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case:

The Metropolitan Police Department (MPD), filed an Arbitration Review Request (“Request”) on June 15, 2004. MPD seeks review of the May 21, 2004 arbitration award (“Award”) issued by Arbitrator Abbot Kominers (“Arbitrator”). The Arbitrator ordered the reinstatement of Betty Bibb (“Grievant”) following her termination from employment as an MPD Telephone Receipt Clerk (“TRC”). MPD contends that the “Arbitration Award is contrary to law and public policy and an abuse of discretion.” (Request at p. 3). MPD asserts that the National Association of Government Employees, Local R3-5 (“NAGE” or “Union”) did not timely invoke arbitration. Specifically, MPD claims that despite NAGE’s undisputed failure to timely invoke arbitration, the Arbitrator concluded that the Grievant may have been confused as to her rights and he ignored the fact that the Grievant was represented by NAGE, a party to the Agreement. (See Request at p. 5) NAGE opposes the Arbitration Review Request.

The issue before the Board is whether “the award on its face is contrary to law and public policy.” D.C. Code § 1-605.02 (6) (2001 ed.).

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The Grievant had been an MPD employee since 1991 and, at the time of her termination, she was a TRC assigned to the District of Columbia Public Safety Communications Center ("PSCC"). (Award at p. 5). MPD's Request seeks review of only a timeliness issue and concerns the procedural arbitrability of the Grievant's termination appeal. Specifically, the MPD Request is based on a narrow challenge of the Arbitrator's conclusion as regards the timeliness of NAGE's invocation of arbitration appealing the Grievant's termination. The MPD Request does not seek that the Board review the substance of the Arbitrator's decision concerning the Grievant's termination under the appropriate statutory provisions. Nonetheless, if the MPD Request is sustained, then NAGE's invocation of arbitration was untimely. Therefore, it must follow that the Arbitrator lacked jurisdiction to decide the merits of the Grievant's termination and the Award must be vacated. For these reasons and based on the narrow scope of the MPD Request, this Decision and Order does not reach the merits of the Grievant's termination as considered by the Arbitrator.

The record of the arbitration proceeding and the parties' exhibits (Ex) establish the following undisputed and relevant sequence of events which concern the issue of timeliness of the Union's invocation of arbitration:

On May 9, 2003, the Grievant was served with MPD's Recommendation of the Hearing Officer (Ex 3);

On July 24, 2003, MPD served the Grievant with a Notice of Final Decision to remove her from her TRC position (Ex 4);¹

On September 5, 2003, in a letter to Charles Ramsey, Chief of Police, Deborah Ennis, President, NAGE, invoked arbitration (Ex 5);

On October 24, 2003, Ramsey responded to Ennis asserting that the "invocation of arbitration is untimely under Article 25, Section E, subsection 2" of the Agreement (Ex 6); and

On May 21, 2004, the Arbitrator issued the Award in which he concluded "that there is insufficient basis to dismiss the grievance based on the Agency's claim of untimeliness." (Award at p. 30).

¹ MPD's Request initially asserts that MPD served the Grievant with a notice of final decision removing her from her TRC position on June 24, 2003. (Request p. 3). In the Discussion section of MPD's Request, the MPD states that "[t]he final agency decision was issued on July 24, 2003." (Request p. 5). The Award states that the date of the final MPD decision was July 24, 2003 and the record contains a copy of the final decision letter which is dated July 24, 2003. (Award p. 29; Ex 4). For all these reasons, the Board concludes that MPD's initial reference to June 24, 2003 (as the date of the final decision to terminate the Grievant in its Request) is a mere typographical error.

The specific language of the Award, which the MPD Request challenges, reads as follows:

The evidence establishes that the Deciding Official's July 24, 2003 termination letter to Grievant made specific reference to an appeal process and a 30-day time limit for the conduct of that appeal. The appeal identified in the termination letter was, however, to the OEA, not to arbitration pursuant to the Agreement; indeed, the termination letter omitted completely any notice of Grievant's rights under the Agreement.

The Agency might not have been obligated to advise Grievant with respect to her rights pursuant to the Agreement. The record shows, however, that MPD gave the Grievant notice of appeal rights to the OEA but was silent as to the time period in the Agreement pursuant to which she also had rights. It is, therefore, reasonable to conclude that the Grievant was misled as to the time periods available to pursue an appeal, and she should not be held to the time periods stated in the Agreement. Further, the Agency has not demonstrated harm or injustice resulted due to the Union's invocation of arbitration on September 5, 2003. For all these reasons, I conclude that there is insufficient basis to dismiss the grievance based on the Agency's claim of untimeliness. (Award at pgs. 29-30).

MPD asserts that the "Grievant did not invoke arbitration until September 5, 2003, or forty-three days after the final agency decision was issued." (Request p. 5).² Therefore, MPD maintains that the Award is contrary to law and public policy and an abuse of discretion.

II. The MPD Request for Review

MPD asserts that the Agreement provides that in order to appeal the disciplinary action of removal the Union must advance the matter to arbitration within ten days of the decision of the Chief of Police. MPD argues that it served the Grievant with a notice of final decision to remove her from her position on July 24, 2003, but the "Grievant did not invoke arbitration until September 5, 2003, or forty-three days after the final agency decision was issued." (Request p. 5).

MPD claims that the July 24, 2003 notice of final decision advised the Grievant of her right to appeal to the Office of Employee Appeals ("OEA") as required by OEA regulation 605.1. Furthermore, MPD argues that the Agreement does not require it "to advise employees of their rights

² The Agreement at Article 25, Section E, subsection 2 states:

[w]ithin ten (10) days of the . . . the final Agency Action, on a disciplinary action that is appealable to arbitration, the Union, on behalf of an employee may advance the matter to arbitration.

to invoke arbitration.” (Request at p. 5). MPD argues that the record establishes that by April 1, 2003 and thereafter, the Grievant was represented by NAGE which is a party to the Agreement. Therefore, MPD contends that the Grievant cannot assert that her failure to invoke arbitration was due to confusion regarding her right to arbitrate, as the Arbitrator concluded, because NAGE was representing her.

Based on *Link v. Wabash Railroad Co.*, 370 US 626, 633-634 (1962) (*Link*), MPD asserts that “[i]t is well settled that a party is bound by the consequences of his representative’s conduct, which includes both his acts and omissions.” (Request at p. 6). MPD argues that *Link* establishes that the Grievant is bound by the acts of NAGE, which failed to timely invoke arbitration. As a result, MPD contends that the Grievant should not benefit because NAGE failed to timely invoke arbitration.

For the above-noted reasons, the MPD requests that the Award be reviewed and reversed. (Award at p. 6).

III. Discussion

The Board has long recognized that arbitrators have broad powers to rule on procedural arbitrability, particularly as to timeliness of grievances and contractual appeals. (*Washington Teachers’ Union and D.C. Public Schools*, 45 DCR 4019, Slip Op. No. 543, PERB Case No. 98-A-02 (1998); *AFSCME Council 20 and D.C. General Hospital*, 38 DCR 4145, Slip Op. No. 253, PERB Case No. 90-A-04 (1991); *University of the District of Columbia and University of the District of Columbia Faculty Association*, 36 DCR 3344, Slip Op. No. 219, PERB, PERB Case No. 88-A-02 (1988). The Board has also found that: (1) arbitrators’ decisions that grievances are untimely or timely do not violate law or public policy and (2) arbitrators even have the authority to rule on timeliness issues even when raised for the first time at hearing. (*Fraternal Order of Police/Metropolitan Police Department Labor Committee and D.C. Metropolitan Police Department*, 49 DCR 817; Slip Op. No. 670, PERB Case No. 01-A-09 (2001); *D.C. Water and Sewer Authority and AFGE Locals 631, 872, 2553, AFSCME Local 2091, NAGE Locals R3-05 and -06*, 48 DCR 8137, Slip Op. No. 652, PERB Case No. 01-A-03 (2001).

This Board has found that by submitting 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 his evidentiary findings and conclusions upon which the decision is based.” *University of the District of Columbia and University of the District of Columbia Faculty Association*, 39 DCR 9628, Slip Op. No. 320 at p.2, PERB Case No. 92-A-04 (1992). Also, “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 No. 246*, 34 DCR 3616, Slip Op. No. 157 at

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p. 3, PERB Case No. 87-A-02 (1987). Furthermore, with respect to the Arbitrator's findings and conclusions, we have stated that resolution of "disputes over credibility determinations" and "assessing what weight and significance such evidence should be afforded" is within the jurisdictional authority of the Arbitrator. See, *American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO and District of Columbia General Hospital*, 37 DCR 6172, Slip Op. No. 253 at p. 2, PERB Case No. 90-A-04 (1990) and *University of the District of Columbia and District of Columbia Faculty Association/NEA*, 37 DCR 5666, Slip Op. No. 248 at n. 8, PERB Case No. 90-A-02 (1990).

In the present case, based on the record developed by the parties, the Arbitrator concluded that the Grievant's termination letter omitted notice of the Grievant's rights to appeal her discharge under the Agreement; however, he found that the letter did notify the Grievant of her rights to appeal to OEA. As a result, the Arbitrator determined that because MPD's termination letter was silent as to the time period to appeal under the Agreement by invoking arbitration, it was reasonable to conclude that the Grievant was misled as to the contractual time to appeal her termination. In addition, the Arbitrator found that based on the record MPD had not demonstrated harm or injustice as a result of the Union's invocation of arbitration on September 5, 2003. For these reasons he concluded that there was insufficient reason to dismiss the Union grievance arbitration as untimely.

The MPD Request only asserts disagreement with the Arbitrator's conclusion on the timeliness of NAGE's invocation of arbitration with regard to the grievance and asserts no other grounds for review by the Board.

The Board finds the portion of the Arbitrator's Award challenged by the MPD concerns procedural arbitrability as to the timeliness of the grievance and arbitration processes. Based on well established Board precedent, *infra*, such arbitrator rulings are within the equitable powers of the Arbitrator and do not violate law or public policy. Furthermore, the Arbitrator's conclusion on the timeliness of NAGE's invocation of arbitration, specifically that the Grievant was misled as a result of MPD's July 24, 2003 termination notice coupled with MPD's silence on her appeal rights under the Agreement, constitutes assessing the weight and significance of the evidence and, therefore, is within the jurisdictional authority of the Arbitrator.

Therefore, with regard to the timeliness of NAGE's invocation of arbitration, the Arbitrator's decision is grounded in his exercise of equitable powers described within the Agreement as well as on matters within his jurisdiction. For all these reasons, the Board will not substitute its own interpretation or that of the MPD for that of the duly designated arbitrator. Moreover, the MPD Request constitutes mere disagreement with the Arbitrator's conclusions which are based on assessing the weight and significance of the evidence.

For the reasons discussed above, MPD's Arbitration Review Request is denied.

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ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department'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
Washington, D.C.

August 18, 2005