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

In the Matter of:)	
)	
District of Columbia)	
Metropolitan Police Department,)	
Petitioner,)	PERB Case No. 11-A-10
v.)	Opinion No. 1341
)	
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee,)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

Petitioner, District of Columbia Metropolitan Police Department (“Petitioner” or “MPD”) filed an Arbitration Review Request (“Request”) seeking review of an arbitration award (“Award”) in which the Arbitrator found that MPD must reinstate Grievant Robert Dixon, Jr. (“Grievant”). (Award at 8). In its Request, MPD alleges the Arbitrator was without or exceeded her authority, and that the Award on its face is contrary to law and public policy. (Request at 2). Respondent, Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Respondent” or “FOP”) filed an Opposition to the Arbitration Review Request (“Opposition”).

Arbitrator Lucretia Dewey Tanner was presented with the following issues:

- (1) [D]id the adverse action panel make sufficient factual findings;
- (2) Did substantial evidence exist to find the Grievant guilty; and
- (3) Was termination an appropriate penalty.

(Award at 1).

The Arbitrator found that: (1) the Grievant should be reinstated to his former status, with seniority, to the time of his termination; (2) the termination be removed from the Grievant’s

personnel records; (3) the Grievant's sick leave be restored and reinstated; (4) any money the Grievant withdrew from the pension fund be refunded at the Grievant's option with no penalties incurred; and (5) the Grievant's returning pay should reflect all pay increases he would have received if he had remained with MPD, and the increases should be paid in a lump sum, with the current pay at the current rate for the Grievant's rank. Further, the Arbitrator determined that the parties should share attorneys' fees. (Award at 8).

The issues before the Board are whether "the arbitrator was without or exceeded his or her jurisdiction," and whether "the award on its face is contrary to law and public policy." D.C. Code §1-605.02(6).

II. Discussion

A. Facts

The Arbitrator found that on February 19, 2006, the Grievant was arrested by the Maryland State Police and charged with first degree assault and second degree assault for intentionally following and ramming his vehicle into a vehicle containing his wife and a companion. (Award at 1-2). The Grievant was brought before a judicial officer in the District Court of Maryland for Prince George's County and charged with first and second degree assault. (Award at 2). Additionally, a final protective order was issued against the Grievant, and he was released under bond. *Id.* The charge of first degree assault was later dropped. *Id.*

On June 16, 2006, the Grievant was served with notice of a proposal to terminate his employment with the MPD. (Award at 2). The charges were "conduct unbecoming," conviction, and "failure to obey orders and directives (failure to make timely and proper notification of his arrest and or criminally charged for any misconduct in any jurisdiction)." *Id.* The Grievant requested a hearing, and a hearing took place on August 30 and September 7, 2006. (Award at 3). Prior to the hearing, the Grievant submitted a letter to the FOP certifying that he had attended eighteen consecutive sessions "relating to skills enabling him to behave in an appropriate manner." *Id.* The hearing panel found the Grievant guilty of the charges against him, and recommended termination. *Id.* The Grievant's appeal was denied, and the Grievant was terminated effective December 8, 2006. *Id.*

B. Position of MPD before the Board

In its Request, MPD contends that the Arbitrator failed to address all of the issues presented to her, thereby modifying the provisions of the parties' collective bargaining agreement ("CBA"). MPD goes on to state that:

[t]he Arbitrator devotes one paragraph to discussion of the basis for reaching her conclusion. Although the paragraph does address issue number three, whether or not termination is the appropriate remedy, there is no mention of issues one and two. The Award makes clear that the Arbitrator did not determine termination to be an appropriate remedy for

the Grievant's misconduct. The Award also makes clear that awarding Grievant five years of back pay for the time he was in terminated status represents too great a windfall. However, absent any discussion regarding issues one and two, the parties are forced to draw their own conclusions regarding these issues.

(Request at 6) (internal citations omitted). From this, MPD concludes that the Arbitrator's decision not to award back pay for the Grievant's five year "suspension" supports MPD's position that the Arbitrator, "despite finding substantial evidence to justify arriving at a conclusion contrary to the Panel's conclusion, also found that substantial evidence exists in support of the Panel's guilty findings for some, if not all, of the charges and specifications." (Request at 6).

Further, MPD contends that substantial evidence supporting the MPD panel's findings means that reinstating the Grievant would violate an explicit, clearly articulated public policy against reinstating an officer found guilty of engaging in felonious misconduct. (Request at 6-7). MPD contends that the fact that all criminal charges against the Grievant were dropped does not justify the Arbitrator's finding that termination was not an appropriate remedy because District Personnel Manual § 1603.5(a) allows for disciplinary action for "[a]ny act or omission which constitutes a criminal offense, **whether or not such act or omission results in a conviction.**" (Request at 7) (emphasis in original). MPD cites to *Boston v. Boston Police Patrolmen's Association* for the position that "[f]or an arbitration award to violate public policy, it need not violate the letter of the statute; rather, felonious misconduct sufficiently meets the standard," as well as that "[i]t is the felonious misconduct, not a conviction of it, that is determinative." 824 N.E.2d 855, 862 (Mass. 2005).

Additionally, MPD alleges that the Award is susceptible to more than one interpretation, and is therefore ambiguous. (Request at 8). MPD asks that the Award be vacated or, at minimum, remanded for clarification. *Id.*

C. Position of FOP before the Board

In its Opposition, FOP contends that MPD has failed to identify any public policy that is violated by the Award, and that MPD has not articulated a reason for its allegation that the Arbitrator lacked the authority to rescind the termination and reinstate the Grievant. (Opposition at 3). FOP alleges that MPD's Request "amounts to nothing more than a mere disagreement with the Arbitrator's decision." (Opposition at 5).

FOP disputes MPD's allegation that substantial evidence exists in support of the MPD panel's guilty verdict because the Arbitrator declined to award the Grievant full back pay. (Opposition at 4). Instead, FOP states that the Arbitrator "clearly concluded after review that the decision to find Grievant guilty of the underlying charges and specifications was faulty." *Id.* In support, FOP quotes from the Award: "[i]t appears to this Arbitrator that there are sufficient contradictions in the record to arrive at a differing conclusion... The charge that Mrs. Dixon's car was not rammed is not apparent from the photos. Further, testimony indicates that [the

companion] turned the car into the Grievant's vehicle." (Opposition at 4) (*quoting* Award at 7). The Arbitrator's language that "termination is not an appropriate penalty," and the fact the Arbitrator mentioned that the charges against the Grievant were dropped, do not overcome the lack of substantial evidence to support the MPD panel's conviction. (Opposition at 5).

D. Analysis

The CMPA authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the 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. Code § 1-605.02(6) (2001 ed.).

The Board's scope of review, particularly concerning the public policy exception, is extremely narrow. A petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law and or legal precedent. *See United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). Furthermore, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *Metro. Police Dep't and Fraternal Order of Police/Metro. Police Dep't Labor Committee*, 47 DC Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000); *see also District of Columbia Public Schools and American Fed'n of State, County and Municipal Employees, District Council 20*, 34 DC Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its judgment for the arbitrator's. *FOP/DOC Labor Committee v. PERB*, 973 A.2d 174, 177 (D.C. 2009).

By submitting the grievance to arbitration, "the parties agree 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 Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 DC Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *District of Columbia Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 DC Reg. 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004). Disagreement with the arbitrator's findings is not a sufficient basis for concluding that an award is contrary to law or public policy. *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 31 DC Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A0-05 (1984).

In the instant case, MPD has failed to specify applicable law and definite public policy that mandates the Arbitrator arrive at a different result. As the Court of Appeals has stated, the Board must "not be led astray by our own (or anyone else's) concept of 'public policy' no matter how tempting such a course might be in any particular factual setting." *District of Columbia Department of Corrections v. Teamsters Union Local 246*, 54 A.2d 319, 325 (D.C. 1989). In the absence of a clear violation of law and public policy evidence on the face of the Award, the Board may not modify or set aside the Award as contrary to law and public policy. Therefore, MPD's allegation must be dismissed.

Additionally, MPD alleges that because the Arbitrator failed to address the issues presented to her, she modified the provision of the CBA and thus exceeded her jurisdiction. (Request at 6). This argument represents a mere disagreement with the Arbitrator's decision, and cannot form the basis for modifying or overturning the Award. *Metro. Police Dep't, Slip Op. No. 85 (1984)*. Therefore, this allegation must be dismissed.

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.

November 9, 2012

CERTIFICATE OF SERVICE

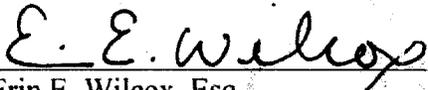
This is to certify that the attached Decision and Order in PERB Case No. 11-A-10 was transmitted via U.S. Mail and e-mail to the following parties on this the 9th day of November, 2012.

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