Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, AFL-CIO Local 2553	
Petitioner,	PERB Case No. 16-A-14
v.	Opinion No. 1597
District of Columbia Water and Sewer Authority	
Respondent.	

DECISION AND ORDER

I. Introduction

On June 14, 2016, the American Federation of Government Employees, AFL-CIO Local 2553 ("the Union") filed an Arbitration Review Request ("Request"), pursuant to D.C. Official Code § 1-605.02(6). The Union seeks review of an Arbitration Award ("Award") on the grounds that it violates Article 26 of the parties' Working Conditions Agreement and the Comprehensive Merit Personnel Act, D.C. Official Code § 1-611.01(2), requiring equal pay for substantially equal work.[1] The Union seeks review on the grounds that the award is contrary to law and public policy.

For the reasons stated herein, Petitioner's Request is denied.

II. Statement of the Case

In 2014 the District of Columbia Water and Sewer Authority ("the Authority") reorganized its operating divisions, combining the water delivery and sewer collections systems.[2] On March 14, 2014, as part of the reorganization, the Authority revised the Utility Systems Operator I ("Operator I") and Utility Systems Operator II ("Operator II") job descriptions. The revisions required both Operator I and Operator II employees to become certified in both water delivery and sewer collections rather than specialize in one, as was done in the past.[3] The job

[1] *See* D.C. Code § 1-605.02(6) (2014).
[2] Award at 3
[3] *Id*.

descriptions for Operator I and Operator II are identical except the Operator II position has the additional duty of "Operator in Charge" of the shift.[4] The Operator I position is classified at Salary Grade 10 and the Operator II position is at Salary Grade 11.[5]

A grievance was filed by the Union on June 18, 2015, demanding that all Operators be classified at the Operator II rate at Grade 11 with back pay.[6] The Union claimed that the Authority assigned one Operator to each shift to perform the functions of the "Operator in Charge" regardless of the grade level. The Authority denied the grievance stating that an Operator II was assigned to each shift as the Operator in Charge.[7] The Union appealed the grievance. No settlement was reached and the grievance was advanced to arbitration.[8]

III. Arbitrator's Award

Though the Arbitration Award addressed three issues; the Union requests review of the Award only with respect to the issue of equal pay for Operators I and II.[9]

Reviewing the functions of the two Operator positions, the Arbitrator noted that it was apparent that the two positions contain significant overlap in content; however, an Operator II is responsible for the entire shift including water delivery and sewer collections, while an Operator I is responsible for either water or sewer on a given shift, but not both.[10] He further found that the Operator II responsibility is broad and includes interactions with other employees on the same shift working both water delivery and sewer collection whereas Operator I workers have a narrower scope and are primarily responsible for their own work.[11] These distinctions were based on the essential function present in the Operator II job description, "operator in charge of shift."[12] The Arbitrator concluded that these distinctions were enough to warrant a pay grade differential between the two classifications looking solely at the job descriptions.

Addressing whether the Operator II workers were in fact functioning as "operator in charge of the shift" as stated in their job description, the Arbitrator relied on the testimony of Charles Sweeney, the Director of Distributions and Conveyance Systems. The Arbitrator concluded that training all operators in both water and sewer systems and then training Operator II workers in the requirements of performing their "in charge" function would require significant time and that the Authority had not yet completed all the training.[13] The Authority's reorganization began in November of 2014 and was ongoing when the grievance was filed in

[4] *Id.* at 3-4.
[5] *Id.* at 3.
[6] *Id.* at 6.
[7] *Id*.
[8] *Id*.
[9] The three issues reviewed by the Arbitrator were (1) whether the grievance was timely under Article 58.H of the Working Conditions Agreement, (2) whether the grievance should be dismissed for the Union's failure to exhaust contractual remedies provided in Article 23.B and (3) whether the employer is required to compensate Operator I employees at the same pay rate as Operator II employees based on Article 26 of the Working Conditions Agreement.
[10] Award at 9.
[11] *Id*. at 8.
[12] *Id*.
[13] *Id.* at 11.

June of 2015.[14] The Arbitrator concluded that when the grievance was filed, the Union was premature in its claim that Operator I employees were performing substantially the same work as Operator II employees.[15]

The Union filed this Arbitration Review Request seeking to have the Arbitrator's Award reversed on the grounds that it is contrary to law and public policy.[16]

IV. Discussion

The Comprehensive Merit Personnel Act places specific limits on the Board's review of arbitration awards.[17] Under D.C. Official Code § 1-605.02(6), the Board is authorized 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.[18]

The Union cites D.C. Official Code § 1-611.01(2) which states that "the principle of equal pay for substantially equal work will be supported." Article 26 of the parties' working conditions agreement incorporates this law into the parties' collective bargaining agreement ("CBA").[19] The Union argues that the Arbitration Award is contrary to law and public policy because the Arbitrator's decision violates Article 26 and D.C. Official Code § 1-611.01(2) which requires equal pay for substantially equal work, based on the actual job duties performed by employees.[20]

According to the Union, the Arbitrator's determination of separate duties based on the job descriptions is insufficient because it does not consider the actual duties performed by employees.[21] The Union looks to testimony of employees they presented during arbitration to show that Operator II employees were not being required to perform any different duties than Operator I employees.[22] The Union further argues that the proper standard of review for equal pay is whether the job requires equal skill, effort and responsibility and is performed under similar conditions.[23] The Union cites *Washington Convention Center Authority v. Johnson*[24] and *Corning Glass Works v. Brennan*[25] to support the argument that the Equal Pay Act recognized the need to pay similar wages for work which required equal skill, effort and responsibility when performed under the same working conditions.[26]

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[14] *Id*.
[15] *Id*.
[16] Request at 10.
[17] *See Fraternal Order of Police v. District of Columbia Pub. Employee Relations Bd.*, 973 A.2d 174, 176 (2009).
[18] *UDC v. PERB*, 2012 CA 8393 P(MPA)(2014).
[19] Request at 7.
[20] *Id*. at 2.
[21] *Id* at 8.
[22] *Id*. at 9.
[23] *Id*. at 7.
[24] 953 A.2d. 1064, 1078-9 (D.C. 2008).
[25] 417 U.S. 188, 195 (1974).
[26] Request at 7. The Arbitrator does not address the standard of review for equal pay.

In order for the Board to find that the Award was on its face contrary to law and public policy, the petitioner has the burden to show the applicable law and public policy that mandates a different result.[27] In this case, the Union cites D.C. Official Code § 1-611.01(2) as incorporated by Article 26 of parties' working conditions agreement. The Arbitrator considered Article 26 and found that the Operator I and Operator II positions are not equal because of the Operator II's additional duty of operator in charge of shift.[28]

The Arbitrator further found that once reorganization is complete; "in charge" duties will be more apparent based on testimony by Mr. Sweeney and Jacob Kelly, an employee who was promoted to an Operator II position.[29] Mr. Sweeney's testified that Operator II employees are to perform an important role in the reorganization because they will be taking on the global operation of both water distribution and sewer collection, a higher level of work than Operator I.[30] Mr. Kelly testified that upon his promotion to Operator II, he knew he was to be in charge of the shift rather than just his own station.[31] According to the Arbitrator these statements show there are differences between the two positions; however this may not seem clear until the reorganization is complete. The Arbitrator concluded that as of the filing of the grievance in June of 2015, the evidence is insufficient to state that Operator I employees perform substantially equal work as Operator II employees.[32]

The Union's argument that the Award is contrary to law and public policy is based on a disagreement with the Arbitrator's interpretation of Article 26 and the factual findings based on testimony from both the Union and the Authority's witnesses. The Board has long held that it will not overturn an Arbitrator's findings on the basis of a disagreement with the Arbitrator's determination.[33] By submitting a matter to arbitration, parties are bound by the Arbitrator's interpretation of the CBA, related rules and regulations, and evidentiary and factual findings.[34] Accordingly, the Board finds that the Union's request is merely a dispute of the Arbitrator's evidentiary findings and conclusions.

V. Conclusion

The Board finds that the Union has not cited any specific law or public policy that was violated by the Arbitrator's Award. Thus, the Board rejects the Union's arguments and finds no cause to set aside or modify the Arbitrator's Award. Accordingly, the Union's request is denied and the matter is dismissed in its entirety with prejudice.

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[27] See *Fraternal Order of Police v. D.C. Pub. Emp. Relations Bd.*, 2015 CA 006517 P(MPA) at p. 8.
[28] Award at 10.
[29] *Id*. at 12
[30] *Id*. at 11.
[31] *Id*. at 12.
[32] *Id*.
[33] *Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comms. v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 9798, Slip Op. No. 1271, PERB Case No. 10-A-20 (2012).
[34] *See D.C. Dep't of Health v. AFGE, Local 2725, AFL-CIO*, Slip Op. No. 1383, PERB Case No. 13-A-01 (2013); see also *D.C. Metro. Police Dep't v. Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 11329, Slip Op. No. 1295, PERB Case No. 09-A-11 (2012).

ORDER

IT IS HEREBY ORDERED THAT:

1. **The arbitration review request is hereby 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 Yvonne Dixon, Ann Hoffman, and Douglas Warshof. Member Barbara Somson was not present.

October 20, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-14, Op. No. 1597 was sent by File and ServeXpress to the following parties on this the 31 day of October, 2016.

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