Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Grievant, Eduardo Ashby)	PERB Case No. 03-A-02
Petitioner,	
and	Opinion No. 723
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

The Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP), filed an Arbitration Review Request (Request) on behalf of Grievant, Eduardo Ashby ("Grievant" or "Ashby"). FOP seeks review of an arbitration award (Award) which upheld a 10-day suspension that had been imposed on a bargaining unit employee. The 10-day suspension was upheld, despite the fact that MPD had failed to respond to the disciplinary action appeal within 15-days.[1]

[1]In support of its argument, FOP cites Article 12, Section 7, of the parties' CBA which provides as follows:

> The employee shall be given fifteen (15) days advance notice in writing prior to the taking of an adverse action. Upon receipt of this notice, the employee may within ten (10) days appeal the action to the Chief of Police. **The Chief of Police shall respond to the employee's appeal with[in] (sic) fifteen (15) days.** In cases in which a timely appeal is filed, the adverse action shall not be taken until the Chief of Police has replied to the appeal. The reply of the Chief of Police will be the final agency action on the adverse action. (Emphasis added).

Specifically, FOP contends that the Arbitrator's Award is contrary to law and public policy because the Arbitrator did not rescind the disciplinary action based on MPD's violation. The Metropolitan Police Department (MPD) opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy" pursuant to D.C. Code Sec. 1-605.2(6)(b) (2001 ed.)[2]. Upon consideration of the Request, we find that FOP has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, FOP's request for review is denied.

MPD imposed a ten (10) day suspension on the Grievant, a police officer, for misconduct based on an allegation of insubordination.[3] On the procedural issue raised by FOP, Arbitrator Dorman concluded that MPD violated Article 12, Section 7 of the parties' collective bargaining agreement (CBA) when the Chief of Police failed to respond to the employee's appeal within the fifteen (15) day time limit. However, the Arbitrator did not rescind the suspension, nor did he order that the Grievant be made whole based on this procedural violation, as some other Arbitrators have done in other cases involving the 15-day rule. As to the discipline issue, the Arbitrator determined that cause existed to discipline Ashby. As a result, he upheld the 10-day suspension against Ashby.

FOP takes issue with the Arbitrator's Award on the basis that the Arbitrator's decision ***not*** to rescind the Grievant's suspension is, on its face, contrary to law and public policy. Specifically, FOP contends that the Arbitrator: (1) rendered an award that conflicts with the express terms of the agreement; and (2) improperly ignored decisions of other Arbitrators which have found that Article 12, Section 7, is mandatory, and that MPD's failure to issue a decision regarding the employee's

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[2]All references to the D.C. Code refer to the 2001 edition.

[3]On April 12, 2000, the Grievant, Officer Eduardo Ashby ("Officer Ashby" or "Ashby") was assigned to a civil disturbance during the International Monetary Fund (IMF) demonstrations in D.C. It is alleged that Ashby failed to obey a request by a superior officer and thus, was charged by the MPD with misconduct and was suspended for 10 days. The Grievant sent a complaint to the Chief of Police (Chief Ramsey) alleging that the superior officer assaulted him which was supported by about 19 members of the platoon of officers on the scene at the time of the occurrence. The Grievant requested that the MPD investigate the incident, whereby the MPD found that the Grievant without provocation or justification refused a lawful order given by Lieutenant Hill to fall into formation. Officer Ashby then refused to stop talking when told to do so by Lieutenant Hill. He then refused to move when ordered to walk over a parked cruiser. (Award at pg.3). The Agency's report further stated that the superior officer's actions of physically removing the Grievant from the scene were "proper, necessary and justified." As a result, the Agency determined that the Grievant should be charged with "willfully disobeying orders or insubordination." (Award at pg. 3). The Grievant appealed the 10-day suspension to Chief Ramsey on January 26, 2001. The appeal was denied on February 21, 2001. This denial letter was issued 11 days beyond the required 15-day time limit required by the collective bargaining agreement (CBA). The matter was then sent for arbitration to the Federal Mediation and Conciliation Service. (Award at pg. 3).

appeal within 15 days, voids the disciplinary action. (See, Request a p.5).

In addition, FOP relies on a D.C. Superior Court[4] ruling in MPD v. DCPERB, 01-MPA-18 (2002). FOP contends that Judge Neil E. Kravitz held, *inter alia,* that the Chief of Police's failure to meet the 15-day requirement to respond to an employee's appeal was a violation of the Officer's substantive rights under the CBA. See, D.C. Metropolitan Police Department v. Fraternal Order or Police/Metropolitan Police Department Labor Committee (on behalf of Vernon Gudger), 48 DCR 10989, Slip Op. No. 663, PERB Case No. 01-A-08 (2001). Furthermore, FOP argues that Judge Kravitz supported the Board's view that the Arbitrator was not obligated to find harmful error by the Agency in order to impose a penalty against it for violating the 15-day rule. As a result, FOP argues in the present case, that there is no requirement that the Arbitrator find harmful error before he may rescind the disciplinary action against Ashby. (See, pgs. 5-8).

MPD asserts that the plain language of the foregoing provisions of the CBA does not impose a penalty for non-compliance of the fifteen (15) day time limit within which the Chief of Police "shall respond to the employee's appeal."[5] MPD relies on another D.C. Superior Court ruling in MPD v. D.C. PERB, where it asserts, *inter alia,* that Judge Albrecht found that the Chief of Police did not violate any substantive rights of the employee (Officer Anthony Brown), by failing to adhere to the 15 day- time limit required by Article 12, §7; therefore, ***no harmful error*** was committed which would justify reversing the decision. See, 01-MPA-19 and (Request at p. 7). Finally, FOP relies on MPD v. FOP/ MPD Labor Committee for the proposition that "the interpretation of a contract is reserved to the arbitrator and not the Board or a party to a dispute." 48 DCR 10989, Slip Op. No. 663, PERB Case No. 01-A-08 (2001).

Notwithstanding the authority cited above, we find that FOP's ground for review only involves a disagreement with the Arbitrator's interpretation of Article 12, Section 7 of the parties' CBA. Moreover, FOP merely requests that we adopt its interpretation of the above referenced

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[4]The D.C. Superior Court (Superior Court) cases cited by both FOP and MPD evidence two different arbitrators' contrary treatment of the effect of the 15-day rule. Furthermore, we note that the Superior Court only has limited authority to determine whether the Board's decision is supported by substantial evidence in the record and not clearly erroneous. See, Ware v. D.C. Department of Consumer and Regulatory Affairs, 46 DCR 3367, Slip Op. No. 471, PERB Case No. 96-U-21 , aff'd sub nom, Ware v. PERB, MPA 98-33 (2000). In the Superior Court case involving Vernon Gudger, Judge Kravitz found that our decision to affirm the Arbitrator's decision was supported by the record. See, MPD v. D.C. PERB , 01-MPA-18 (2002). In the Superior Court case involving Anthony Brown case, Judge Albrecht found that our decision to affirm the Arbitrator's decision was not supported by the record. See, DC MPD v. D.C. PERB, O1-MPA-19 (2002).However, neither of these matters have been decided by the D.C. Court of Appeals and thus, are not binding authority on the Board.

[5]MPD also argues FOP's Arbitration Review Request should be dismissed because it is not double spaced as suggested by the Board's Rule requiring double spacing. We find that this argument lacks merit. We have held that the Board's procedural rules are liberally construed. AFSCME, D.C. Council 20, Local 1959 v D.C. Public Schools, 34 DCR 3623, Slip Op. No. 159, PERB Case No. 85-N-01 (1987).

provision of the CBA.

Based on the above and the Board's statutory basis for reviewing arbitration awards, FOP contends that the Arbitrator's Award is on its face contrary to law. We disagree.

We have held that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." D.C. Dept. of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). Furthermore, we have determined that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement. See, D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). In the present case, FOP does not cite any provision of the CBA which limits the Arbitrator's equitable power.[6] While the Arbitrator had the authority to rescind the discipline imposed on the Grievant due to MPD's failure to comply with procedural rights guaranteed to the Grievant by the CBA, this arbitrator chose not to in this case. [7]

In addition, we have held that "[b]y agreeing to submit the settlement of [a] grievance to arbitration, it [is] the Arbitrator's interpretation, not the Board's, that the parties have bargained for." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320 at p.2, PERB Case No 92-A-04 (1992). Also, we have found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based." Id. Moreover, "[t]he Board will not substitute its own interpretation or that of the Agency's 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 p. 3, PERB Case No. 87-A-02 (1987).

We have also held that a "disagreement with the arbitrator's interpretation. . . does not make the award contrary to law and public policy." AFGE, Local 1975 and Dept. of Public Works, Slip Op. No 413, PERB Case No. 95-A-02 (1995). To set aside an award as contrary to law and public policy, the Petitioner must present applicable law and definite public policy that mandates that the arbitrator arrive at a different result. See, AFGE, Local 631 and Dept. of Public Works, 45 DCR 6617, Slip Op. No. 365, PERB Case No. 93-A-03 (1993). In the present case, FOP's claim involves only a disagreement with the Arbitrator's interpretation of Article 12, Section 7 of the CBA and the arbitrator's discretion to impose a penalty for the violation. Moreover, FOP does not cite any applicable legal precedent or any public policy to support its position. Thus, FOP has failed

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[6]We note that if the parties' collective bargaining agreement limits the arbitrator's discretion concerning penalties, that limitation would be enforced. FOP pointed to no provision in the CbA which limited the arbitrator's discretion in this matter.

[7]FOP cites other arbitrators' decisions where the Arbitrator decided to rescind the discipline action due to a 15-day rule violation. However, these decisions are unpersuasive. The Board has held that conflict between arbitral awards does not, *per se*, render any of the conflicting awards "contrary to law and public policy. AFGE, Local 727 v. D.C Board of Parole, 45 DCR 5071, Slip Op. No. 551, PERB Case No. 98-A-01 (1998).

to point to any clear or legal public policy which the Award contravenes.

After a careful review, we find that the Arbitrator's conclusion is based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. In the present case, FOP merely disagrees with the Arbitrator's conclusion. This is not a sufficient basis for concluding that the Arbitrator's Award is contrary to law . For the reasons discussed, no statutory basis exist for setting aside the Award; the Request is therefore, denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Review Request is denied.

2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

September 30, 2003