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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 (On behalf of)
Officer William Dolan, et al.),)

Respondent.)

PERB Case No. 94-A-04
Opinion No. 394

DECISION AND ORDER

On April 26, 1994, the District of Columbia Metropolitan Police Department (MPD) filed an Arbitration Review Request with the Public Employee Relations Board (Board). MPD requests that the Board review an award (Award) rendered in an arbitration proceeding involving the Fraternal Order of Police, Metropolitan Police Department Labor Committee (FOP), sustaining a grievance filed by Officer William Dolan on behalf of himself and other similarly situated officers. MPD contends that the Arbitrator exceeded his jurisdiction and was without authority in deciding the Award; and that the Award is contrary to law and public policy. The FOP filed an Opposition to the Arbitration Review Request on May 20, 1994, arguing that the Arbitrator's Award does not present a statutory basis for review and therefore MPD's appeal should be dismissed.

The issue before the Board is whether or not a statutory basis for relief is presented by the request for review. 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 Arbitrator was without, or exceeded his jurisdiction; 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 in MPD's Arbitration Review Request do not present a statutory basis for our review.

The Arbitrator decided a grievance that challenged MPD's decision to temporarily alter the tour of duty of all sworn staff members of the Department's Training division, by changing their hours of work on Fridays. The Arbitrator found that MPD did not exercise that decision in accordance with the parties' collective bargaining agreement. Based on this conclusion, the Arbitrator awarded the affected officers compensation at the overtime rate for the hours of work in question.

MPD's appeal of the Award turns on its contention that the Arbitrator "acted outside the scope of his authority when he read a requirement into the law [, i.e., D.C. Code Sec. 1-613.1(b)(3),] that is not supported by law or logic nor argued by either party to the arbitration." (Req. at 2.) Section 1-613.1(b)(3) provides the following:

(b) Except when the Mayor determines that an organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, tours of duty shall be established to provide, with respect to each employee in an organization, that,

(3) The working hours in each day in the basic workweek are the same; ...

With respect to the statutory provision, the Arbitrator made a finding that the record evidence did not contain "a statement declaring a state of emergency by the Mayor or her staff, that would have waived the [above provision of the] District of Columbia Code". (Award at 2-3.) MPD asserts that nonconformance with the statutory work schedule is not limited to declared states of emergency by the Mayor.^{1/} MPD contends that by rendering an Award based on such a finding, the Arbitrator acted outside the scope of

^{1/} Notwithstanding MPD's assertion that this finding by the Arbitrator misstates the statutory circumstances that allow for deviation from the statutory tours of duty, MPD fully acknowledges that the Mayor made no "specific determination" with respect to the explicit statutory criteria. (MPD's Br. to Arb. at 10.) Therefore, the actual import of the Arbitrator's finding, i.e., that the record contained no evidence authorizing or permitting MPD, pursuant to D.C. Code Sec. 1-613.1(b), to deviate from the tour of duty established by D.C. Code Sec. 1-613.1(b)(3).

his authority and the Award is contrary to law.

The issue before the Arbitrator, however, was whether or not MPD's decision to change the hours of work on the Fridays in question was in accordance with Article 4, Management Rights and Article 24, Scheduling, of the parties' collective bargaining agreement. The Arbitrator found that "MPD failed to exercise the relevant clauses[, Article 4 and Article 24, Section 2,] in the collective bargaining agreement" that "would have granted the MPD the legal collective bargaining rights to implement the desired changes in scheduling and tours of duty" as MPD did. (Award at 3.)^{2/} The Arbitrator concluded that MPD's decision to change the

^{2/} MPD also argued that the Arbitrator exceeded his jurisdiction by a finding that "the Chief of Police did not exercise his rights under Article 24, Section 2, to suspend the contract provision" since the provision also authorizes the Chief of Police's "designee" to do so also. MPD claims that Captain McDonald, in issuing the various memoranda concerning the changes in the hours of work in question, acted in the capacity of the Chief of Police's designee. The Arbitrator further exceeded his authority, MPD asserts, by finding that MPD's disputed action was taken pursuant to Article 24, Section 1, since the absence of specifically bargained-for procedures for implementing Article 24, Section 2, leaves that procedure in the reasonable discretion of MPD.

We have held that "[b]y agreeing to submit a matter to arbitration the parties [that] also agreed 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." (emphasis added.) UDC Faculty Assoc. and University of the District of Columbia, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992). It is the Arbitrator's interpretation of the contractual provisions in question for which the parties bargained. See, e.g., University of the District of Columbia and UDC Faculty Assoc., 36 DCR 3639, Slip Op. No. 220, PERB Case No. 88-A-03 (1989). We have further held that " 'a party's disagreement with an arbitrator's interpretation of a provision in the parties' collective bargaining agreement does not mean that the arbitrator exceeded his jurisdiction' or...that the Award is rendered on its face contrary to law and public policy." Teamsters Local Union 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and D.C. Department of Corrections, _____ DCR _____, Slip Op. No. 304 at 4, PERB Case No. 91-A-06 (1992) quoting University of the District of Columbia and UDC Faculty Assoc., 38 DCR 5024, Slip Op. No. 276 at 5, PERB Case No. 91-A-02 (1991).

hours of work in question was governed by Article 24, Section 1, which requires schedules to be posted 28 days in advance.^{3/} The Arbitrator further concluded that MPD's decision to change the hours in question could not be exercised pursuant to the management rights provision under Article 4 since that provision "does not award management the right to redefine the 'tour of duty' from that definition set in the code of the District of Columbia", i.e., D.C. Code Sec. 1-613.1(b)(3). (Award at 3.)

Therefore, notwithstanding the Arbitrator's observation that there was no waiver of the statutorily established tour of duty under D.C. Code Sec. 1-613.1(b)(3), the Award did not turn on this finding but rather his findings with respect to the above-noted contractual provisions. For the foregoing reasons, we find no merit to MPD's contention that the Arbitrator was without, or exceeded his jurisdiction or that the Award on its face is contrary to law and public policy.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.
June 29, 1994

^{3/} Article 24, Section 2 provides that "The Chief or his designee may suspend the posted schedule for a declared emergency or for crime." Article 4, which paraphrases and encompasses rights accorded management under CMPA, includes, in relevant part, the right to "take any action necessary to carry out the mission of the Department, in an emergency situation, and to alter, rearrange, change, extend, limit or curtail its operations or any part thereof."