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

In the Matter of:	)	
	)	
National Association of Government Employees, Local R3-05, SEIU, AFL-CIO,	)	
	)	
Petitioner,	)	PERB Case No. 02-A-01
	)	
and	)	Opinion No. 732
	)	
District of Columbia Metropolitan Police Department,	)	
	)	
Respondent.	)	
	)	

**DECISION AND ORDER**

The National Association of Government Employees, Local R3-05, SEIU, AFL-CIO (NAGE), filed an Arbitration Review Request (Request) in the above-captioned matter. NAGE seeks review of an Arbitrator's Award (Award) which denied a grievance filed by NAGE. Specifically, the Arbitrator found that the: (1) Metropolitan Police Department was not a proper party to the grievance/arbitration proceeding; and (2) Metropolitan Police Department did not violate the collective bargaining agreement, when it failed to implement a compensation agreement. In addition, the Arbitrator determined that since the Metropolitan Police Department (MPD) was not a proper party to the grievance, he could not conclusively address the issue of whether the Grievants were entitled to the negotiated pay increases. NAGE contends that the Award is contrary to law and public policy. As a result, NAGE is requesting that the Board reverse the Award. MPD opposes the Request.

The issue before the Board is whether "the award on its face is contrary to law and public policy".... D.C. Code Sec. §1-605.02(6) (2001).<sup>1</sup> Upon consideration of the request, we find that NAGE has not established a statutory basis for our review. Therefore, pursuant to Board Rule 538.4, NAGE's request for review is denied.

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<sup>1</sup>Prior codification D.C. Code Sec. 1-605.2(6) (1981).

NAGE is the exclusive bargaining representative of approximately 500 civilian employees of MPD. Included in the bargaining unit are approximately 175 employees in the Communications and Cellblock Divisions. NAGE and MPD are parties to a 1988 Working Conditions Agreement, which is currently in effect. In addition, NAGE and MPD are parties to a Compensation Agreement covering approximately 15,000 District of Columbia employees in Compensation Units 1 & 2.<sup>2</sup> The current Compensation Agreement covers Fiscal Years 1997-2000. The 1997-2000 Compensation Agreement provided for base salary increases in the amount of 3.8% for fiscal year 2000. All employees represented by NAGE received negotiated wage increases for Fiscal Years 1997, 1998 and 1999. However, employees in the Communications and Cellblock Divisions did not receive base salary increases for Fiscal Year 2000.

On June 17, 1998, E. Barrett Prettyman, Jr., Inspector General, submitted a Report of Investigation to Charles H. Ramsey, Chief of Police, concerning the Metropolitan Police Department's 911 and 1010 Emergency Telephone System. Among other things, the Inspector General found that District employees were substantially underpaid in comparison with the immediate surrounding jurisdictions. As a result, the Inspector General recommended that the salaries for these employees be increased so that they could be comparable to most surrounding jurisdictions. Subsequently, the District of Columbia City Council directed the Agency to submit a Resolution and pay schedule to implement the Inspector General's recommendation.

On or about September 16, 1998, NAGE and MPD entered into a Memorandum of Understanding (MOU). The MOU is silent concerning the impact of the MOU on the negotiated Compensation Agreements concerning employees in the Communications and Cellblock Divisions of MPD. By Resolution #12-767, dated November 10, 1998, the District of Columbia City Council (City Council) declared an emergency in recruiting and retaining civilian Communications and Cellblock employees. As a result, by Resolution #12-788, dated November 27, 1998, the City Council approved, on an emergency basis, the MOU and a specific pay schedule designed to improve the recruitment and retention of civilian Communications and Cellblock employees. The pay schedule attached to the MOU granted an approximate 22% base salary increase to civilian Communications and Cellblock employees. The salary increase was to become effective on October 11, 1998.

On or about November 9, 1999, NAGE advised MPD that the Communications and Cellblock employees did not receive the 3.8% base salary increase. On or about March 1, 2000, MPD responded claiming that no authority existed for the pay increase and that the 1998 MOU superseded the negotiated pay increase. Subsequently, MPD attempted to pay the contested 3.8% salary increase to Grievants in the Communications Division and the Cellblock Unit. However, the payroll system rejected the attempt. All other NAGE represented employees in the Agency received the contested 3.8% pay increase.

In view of the above, NAGE filed a grievance alleging that MPD violated the parties'

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<sup>2</sup>Several other District agencies and international unions are also parties to this Compensation Agreement.

collective bargaining agreement (CBA) by failing to provide employees in the Communications Division and Cellblock Unit with the 3.8% salary increase. The grievance was denied. As a result, NAGE invoked arbitration.<sup>3</sup>

The Arbitrator reasoned that the D.C. Code “confers exclusive authority on the Office of the Mayor to negotiate the Compensation Agreement.”(Award at p. 13). Also, he determined that the Compensation Agreement does not contain a “detailed grievance” procedure. As a result, he found that the Compensation Agreement is incorporated by reference into the Working Conditions Agreement (non-compensation) “in order to utilize the grievance/arbitration procedure found in the Working Conditions Agreement.” (Award at p. 14). Therefore, he concluded that the “practical effect of this arrangement is that the parties who negotiated the Compensation Agreement (i.e., ‘the Government of the District of Columbia’, represented by the OLRCB, and the Union) are directed to resolve any grievances over the terms of the Compensation Agreement through the grievance procedures provided in the Working Conditions Agreement.” Id.

Furthermore, “the Arbitrator determined that the arrangement noted above,” does not confer any authority or responsibility on MPD to resolve the grievance over the “failure to provide the 3.8% pay increase.”<sup>4</sup> In addition, he found that the authority to negotiate and implement the provisions of the Compensation Agreement remain exclusively with the District Government as “represented by the Office of the Mayor through OLRCB.” (Award at p. 14) Therefore, he opined that the “responsibility to respond to, and adjust, grievances over the interpretation and application of the provisions of the Compensation Agreement... also rest with the party which negotiated the agreement, i.e., the Office of the Mayor.” Id. Moreover, he observed that the Office of the Mayor did not delegate to subordinate agencies such as, MPD, its authority to implement and administer the provisions of the Compensation Agreement. Finally, the Arbitrator concluded that although MPD must abide by the Compensation Agreement and the Non-compensation Agreement, it did not have authority to implement the wage provisions of the negotiated Compensation Agreement. In light of the above, the Arbitrator ruled that the “role of subordinate Agencies like MPD... is a ministerial one under the current scheme.” (Award at p. 15). Therefore, he found that MPD is not the proper party

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<sup>3</sup>By written agreement, executed on August 20, 2001, the parties stipulated that the issues to be resolved at arbitration were as follows:

- a. Whether the Agency violated the Collective Bargaining Agreement or law by failing to implement the Compensation Agreement, Article 1 (Wages), Section C. If so, what shall be the remedy?
- b. Whether MPD is properly a party to this grievance/arbitration or whether the party should be the Office of the Mayor or Office of Labor Relations and Collective Bargaining (OLRCB)?
- c. Whether the 1998 MOU superceded the 1997-2000 Compensation Agreement?

<sup>4</sup>This 3.8% pay increase is a provision contained in the Compensation Agreement.

in the grievance proceeding that was before him. Moreover, since MPD was not a proper party to the grievance, he could not address or consider the issue of whether the Grievants were entitled to the 3.8% pay increase which was negotiated in the Compensation Agreement. Id.

NAGE takes issue with the Arbitrator's Award. NAGE contends that the Arbitrator's finding that "MPD has no authority to administer the terms of the Compensation Agreement ...is contrary to law." (Request at p. 8). Specifically, NAGE claims that the award contradicts the "stipulated facts and D.C. Code [§1-603.01 (2001)]."<sup>5</sup> In addition, NAGE asserts that the Arbitrator relied on the unsworn testimony of MPD Payroll Manager, Ms. Ashby Wallace, in reaching his decision and award.<sup>6</sup> Absent the Arbitrator's reliance on Ms. Wallace's affidavit, NAGE believes that it is quite probable that the Arbitrator would not have ruled that MPD lacked authority to implement the terms of the Compensation Agreement. Furthermore, NAGE claims that the Arbitrator's reliance on this unsworn affidavit is contrary to law. (Award at pgs. 8-9).

In light of the above, we believe that NAGE's ground for review only involves a disagreement with the Arbitrator's: (1) interpretation of both the Compensation Agreement and the Working Conditions Agreement; and (2) findings and conclusions. We have determined that such disagreement is not a sufficient basis for concluding that an award is contrary to law or public policy, or that the arbitrator exceeded his jurisdiction. See D.C. Metropolitan Police Department and Fraternal Order of Police, Metropolitan Police Department Labor Committee, 31 DCR 4159, Slip Op. N. 85, PERB Case No. 84-A-05 (1984).

In the present case NAGE merely requests that we adopt its: (1) interpretation of the parties' agreements; and (2) evidentiary findings and conclusions. However, 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

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<sup>5</sup> NAGE contends that once the D.C. Council reviews the compensation agreement and either takes no action or fails to reject it, the agreement becomes effective by its terms. (See D.C. Code §1-618-17.) Moreover, NAGE claims that no dispute exists concerning the fact that the terms of the Compensation Agreement were in effect. Accordingly, in making its "contrary to law" argument, NAGE asserts that pursuant to D.C. Code §1-603.01 (2001), all subordinate agencies of the Mayor had authority to administer all provisions of the compensation agreement. Furthermore, NAGE argues that MPD as a subordinate agency of the Mayor had authority, and indeed, the obligation, to implement the terms of the compensation agreement. In view of the above, NAGE concludes that the Arbitrator's ruling that MPD possessed no such authority is contrary to law and must be reversed.

<sup>6</sup>The affidavit stated, in pertinent part, that MPD has no role in negotiating compensation issues and that it has no pay authority, with the exception of supplemental adjustments. However, NAGE asserts that it never had the opportunity to cross-examine the affiant concerning all the facts contained in the document. Moreover, NAGE claims that the document is not in a proper form for introduction into evidence. Accordingly, NAGE concludes that the arbitrator's reliance on this document denied NAGE due process and an opportunity for a fair hearing.

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." University of the District of Columbia and University of the District of Columbia Faculty Association, supra. Moreover, "the Board will not substitute its own interpretation or that of the [union] 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). See also, D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 87-A-04 (1992); and University of the District of Columbia and UDC Faculty Association/NEA, 39 DCR 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).

With respect to NAGE's argument that the Arbitrator's reliance on the Payroll Manager's affidavit generated an Award that is on its face contrary to law and public policy, we have observed that the Arbitrator has jurisdiction to determine the admissibility of evidence. See, University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 38 DCR 1580, Slip Op. No. 262, PERB Case No. 90-A-08 (1991). Also, in the present case, NAGE "does not cite any law [or Board precedent] that mandates a contrary decision nor a public policy that the award transgresses." Id. at p. 5.

NAGE asserts a policy argument as a second basis for review. Specifically, NAGE contends that the Board has not addressed the issue of whether a subordinate agency is a proper party to grievances filed over provisions included in compensation agreements. Therefore, NAGE claims that this issue has wide ranging impact, not only for all agencies and labor organizations that are parties to existing and future Compensation Agreements for Units 1 and 2, but also, for all parties to agreements in all Compensation Units.

In addition, NAGE asserts that the practical effect of the arbitrator's decision will require that a labor organization first determine whether a particular matter is covered by a provision in the compensation agreement or the non-compensation agreement. If it is covered by the compensation agreement, the labor organization would presumably file the initial grievance with the Office of Labor Relations and Collective Bargaining or other entity authorized by the Office of the Mayor.<sup>7</sup> If the matter is covered by both the compensation and non-compensation agreements, the labor organization would be required to determine whether to file separate grievances with the subordinate agency and with the Office of the Mayor or a single grievance against both entities. NAGE argues that such distinctions "will create havoc on an already overburdened labor management relations system and will result in additional litigation." (Request at p.). In view of the above, NAGE argues that it is in the interest of public policy to require subordinate agencies to defend grievances alleging violations of compensation agreements.

We have held that 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

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<sup>7</sup>NAGE argues that since no grievance procedures are included in the Compensation Agreement, labor organizations and the Office of the Mayor would have to negotiate or agree upon a formal process for the filing of such grievances at various stages prior to the invocation of arbitration.

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, NAGE's claim involves only a disagreement with the Arbitrator's interpretation of the parties' compensation and working conditions agreement. Furthermore, NAGE has not pointed to any applicable law which mandates that the Arbitrator arrive at a different result. Therefore, NAGE has not presented a sufficient basis for concluding that the Award is contrary to law or public policy.<sup>8</sup>

In addition, NAGE asserts that the Award will create havoc on an already overburdened labor management relations system. However, this argument does not rely on a well-defined policy or legal precedent. Therefore, NAGE has failed to point to any clear or legal public policy which the Award contravenes.

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. 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 Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Washington, D.C.

November 6, 2003

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<sup>8</sup>As previously noted, we have 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, PER Case No. 95-A-02 (1995).

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 02-A-01 was served via Fax and U.S. Mail to the following parties on this the 6<sup>th</sup> day of November 2003.

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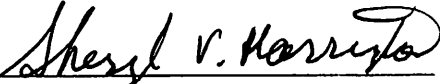
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