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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. 06-A-04
)	
and)	
)	Opinion No. 910
)	
Fraternal Order of Police/Metropolitan Police)	
Department Labor Committee (on behalf of Ivan)	
Singleton),)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

I. Statement of the Case:

The District of Columbia Metropolitan Police Department ("MPD"), filed an Arbitration Review Request. MPD seeks review of an Arbitration Award ("Award") that rescinded the termination of Ivan Singleton ("Grievant"), a bargaining unit member.

Arbitrator James Johnson was presented with the three following issues: (1) whether MPD violated the 55-day rule contained in the parties' collective bargaining agreement; (2) whether sufficient evidence existed to support the Grievant's termination for cause; and (3) whether termination was an appropriate penalty. (See Award at p. 1). The Arbitrator decided that the case should be addressed on the merits and not on the procedural claims. Arbitrator Johnson found that the Assistant Chief of Human Resources did not have the authority to increase the penalty recommended by the three member Adverse Action Panel. (See Award at p. 4). As a result, the Arbitrator rescinded the Grievant's termination and opined that the appropriate discipline in this case should be a thirty-day (30) suspension. (See Award at p. 5). MPD is seeking review of the Award on the grounds that the: (1) Award on its face is contrary to law and public policy and (2) arbitrator

was without authority to grant the award. (See Request at p. 2). The Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP” or “Union”) opposes the Arbitration Review Request (“Request”).

The issues before the Board are whether the “award on its face is contrary to law and public policy” and whether the “arbitrator was without authority or exceeded the jurisdiction granted.” D.C. Code § 1-605.02 (6) (2001 ed.).

II. Discussion

The Grievant was employed by MPD. The circumstances in this case involved the Grievant’s conduct “in the context of the break-up of his relationship with a woman with whom he had resided for a period of time, centering on a dispute over personal possessions. In the course of attempting to obtain some of these possessions, [the Grievant] inappropriately and, among other actions, was alleged to have placed an embarrassing photo of his former partner, with an extortionate note within her abode.” (Award at pgs. 1-2). The Grievant’s former girlfriend complained to MPD and an investigation was initiated. As a result of the investigation the Grievant was charged with conduct unbecoming an officer and with knowingly making a false statement to an official about the event. The Grievant received notice of the charges and requested a hearing before an Adverse Action Panel (“Panel”). The Panel found the Grievant guilty of both charges and recommended that he be suspended for thirty days. (See Award at p. 2).

The Panel’s recommendation was submitted to Shannon Cockett, Assistant Chief for Human Resources, for final action. Assistant Chief Cockett “accepted the Panel’s finding of guilt, but rejected the recommended action, increasing the penalty from a thirty-day suspension to a permanent discharge.” (Award at p. 3). Pursuant to the parties’ collective bargaining agreement, FOP invoked arbitration on behalf of the Grievant.

In an Award issued on January 14, 2006, Arbitrator Johnson noted that:

In compliance with Department Regulation 1202.1.G. b(2), the Panel’s findings of facts, conclusions of law and recommendations were submitted to Assistant Chief, Human [Resources,] Shannon Cockett. That officer, however, chose to reject the conclusions and recommendations of the Panel with respect to the measure of discipline to be assessed, and decided upon her own initiative to increase the discipline to permanent discharge.

I agree with the Union and find that Assistant Chief, Human [Resources] Shannon Cockett’s decision was an abuse of the authority given her under Department Regulation 1202.1.G. b(3). I find

nothing in the regulation . . . that permits the Administrative Services officer to increase the penalty recommended by [the] Adverse Action Panel. The clear language of the regulation authorizes that Officer to “remand the case to the same or a different board” or issue a final decision “affirming, reducing or setting aside the action.”

Further, even if Assistant Chief Cockett were empowered to increase the disciplinary penalty recommended by the Panel, I find the Adverse Action Panel’s reasoning and conclusions sound, but Assistant Chief Cockett’s reasoning and analysis to be arbitrary, capricious and unsound. This record does not support discharge or any discipline in excess of that recommended by the Panel. (Award at p. 4, emphasis in original.)

In light of the above, the Arbitrator rescinded the Grievant’s termination and imposed a thirty-day (30) suspension. In addition, the Arbitrator directed that the Grievant be reinstated “with seniority and other rights unimpaired, and with pay for wages lost, less outside earnings. . .”. (Award at p. 5).

MPD contends that the: (1) Award is on its face is contrary to law and public policy and (2) arbitrator was without authority to grant the Award. (See Request at p. 2). FOP opposes the Request on the ground MPD has failed to establish a statutory basis for the Board’s review of this case.

When a party files an arbitration review request, the Board’s scope of review is extremely narrow. Specifically, the Comprehensive Merit Personnel Act (“CMPA”) authorizes the Board to modify or set aside an arbitration award in only 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 possibility of overturning an arbitration decision on the basis of public policy is an “extremely narrow” exception to the rule that reviewing bodies must defer to an arbitrator’s interpretation of the contract. American Postal Workers Union, AFL-CIO v. United States Postal Service, 789 F.2d 1, 8 (D.C. Cir. 1986). “[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of ‘public policy.’” Id. A petitioner must demonstrate that the arbitration award “compels” the violation of an explicit, well-defined, public policy grounded in law or legal precedent. See United Paperworkers International

Union, AFL-CIO v. Misco, Inc. 484 U.S. 29, 43; Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co., 442 F.2d 1234, 1239 (D.C. Cir. 1971). The violation must be so significant that the law or public policy “mandates that the Arbitrator arrive at a different result.”¹ The party seeking to overturn the award has the burden to specify “applicable law and definite public policy that mandates that the Arbitrator arrive at a different result.” MPD v. FOP/MPD Labor Committee, 47 DCR 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). As the Court of Appeals has stated, we 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 Local 246, 54 A.2d 319, 325 (D.C. 1989).

MPD argues that the Arbitrator’s conclusion that Assistant Chief Shannon Cockett did not have the authority to increase the penalty recommended by the Panel, is contrary to the District of Columbia Metropolitan Police Department General Order (GO) 1202.1.G.3.b(3) which reads as follows:

After reviewing the Board’s recommendations, the Administrative Services Officer may remand the case to the same or a different board, or issue a final notice of adverse action (decision) affirming, reducing or setting aside the action, as originally proposed in the notice of proposed adverse action.

MPD asserts that the Arbitrator failed to rely on the entire text of GO 1202.1.G.3.b(3) instead focusing only on a portion and omitting the phrase “as originally proposed in the notice of proposed adverse action.” (See Request at p. 5). Specifically, MPD claims that the “Arbitrator’s interpretation does not take into account the action originally proposed and focuses entirely on the recommendation of the adverse action panel. [MPD] contends that this is an erroneous interpretation of the General Orders[,] is contrary to law and should therefore be reversed.” (Request at p. 5). Also, MPD argues that the Arbitrator’s interpretation of GO 1202.1.G.3.b(3) conflicts with the entire disciplinary process.² (See Request at p. 4).

¹ MPD v. FOP/MPD Labor Committee, 47 DCR 7217, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000) (citing AFGE, Local 631 and Dep’t of Public Works, 45 DCR 6617, Slip Op. 365 at p. 4 n, PERB Case No. 93-A-03 (1998); see District of Columbia Public Schools and American Federation of State, County and Municipal Employees, District Council 20, 34 DCR 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987).

² MPD claims that “[i]t is clear from the language of GO 1202.1.G.3b(1) that the disciplinary process begins with a proposed notice of adverse action. In the instant matter, [the] Grievant received notice that the Employer proposed to terminate him for the alleged acts of misconduct. Subsequent to an adverse action hearing and recommendation from the adverse action panel, [Assistant Chief Cockett] affirmed the adverse action ‘as originally proposed in the

We find that MPD has not cited any specific law or public policy that was violated by the Award. Instead, MPD's ground for review involves a disagreement with the Arbitrator's interpretation of GO 1202.1.G.3.b(3). MPD merely requests that we adopt its interpretation of GO 1202.1.G.3.b(3). This we will not do. Furthermore, this Board has 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, 48 DCR 10955, Slip Op. No. 413 at pgs. 2-3, PERB Case No. 95-A-02 (1995). Therefore, MPD's claim does not present a statutory basis for review. As a result, we cannot reverse the Award on this ground.

MPD also claims that the arbitrator was without authority to grant the Award. (See Request at p. 2).³ We disagree.

We have held that by 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. See, University of the District of Columbia and University of the District of Columbia Faculty Association, 39 DCR 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992). In addition, 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 . . . as well as his evidentiary findings and conclusions . . ." Id. Moreover, "[this] Board will not substitute its own interpretation or that of the Agency for that of the duly designated arbitrator." District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246, 34 DCR 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987). In the present case, the parties submitted their dispute to an Arbitrator and MPD's disagreement with the Arbitrator's interpretation of the language in General Order 1202.1.G.3.b(3) is not grounds for reversing the Arbitrator's Award. See, Metropolitan Police Department v. Public Employee Relations Board, D.C. Sup. Ct. No. 04 MPA 0008 (May 13, 2005)) and Metropolitan Police Department v. Public Employee Relations Board, D.C. Sup. Ct. No. 01 MPA 18 (September 17, 2002).

Also, we find that Arbitrator Johnson was within his authority to rescind the Grievant's termination. We have held that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provision." D.C. Department of Public Works and AFSCME, Local 2091, 35 DCR 8186, Slip Op. No. 194 at p. 2, PERB Case No. 87-A-08 (1988). In addition, we have found that an arbitrator does not exceed his authority by exercising his equitable power,

notice of adverse action." (Request at pgs. 4-5).

³ MPD asserts that the Arbitrator's interpretation of GO 1202.1.G.3b(3) completely ignores and is contrary to the language contained in that section of the General Order. Therefore, MPD suggests that the arbitrator lacked authority to rescind the termination.

unless it is expressly restricted by the parties' collective bargaining agreement.⁴ See, District of Columbia Metropolitan Police Department and Fraternal Order of Police/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). Furthermore, the

Supreme Court held in *United Steelworkers of America v. Enterprise Wheel & Car Corp.* 363, U.S. 593, 597 (1960), that arbitrators bring their "informed judgment" to bear on the interpretation of collective bargaining agreements, and that is "especially true when it comes to formulating remedies." [Also,] [t]he. . . courts have followed the Supreme Court's lead in holding that arbitrators have implicit authority to fashion appropriate remedies . . . (See, Metropolitan Police Department v. Public Employee Relations Board, D.C. Sup. Ct. No. 04 MPA 0008, at p. 6 (May 13, 2005).

In the present case MPD does not cite any provision of the parties' collective bargaining agreement that limits the Arbitrator's equitable power. Therefore, once Arbitrator Johnson concluded that General Order 1202.1.G.3.b(3) did not permit Assistant Chief Shannon Cockett to increase the penalty recommended by the Panel, Arbitrator Johnson had the authority to determine what he deemed to be the appropriate remedy.

In view of the above, we find no merit to MPD's arguments. The Arbitrator's conclusions are based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law or public policy. Therefore, no statutory basis exists for setting aside this Award. As a result, we deny MPD's Arbitration Review Request.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia 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.

July 19, 2007

⁴ We note that if MPD had cited a provision of the parties' collective bargaining agreement that limits the Arbitrator's equitable power, that limitation would be enforced.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No.06-A-04 was transmitted via Fax and U.S. Mail to the following parties on this the 19th day of July 2007.

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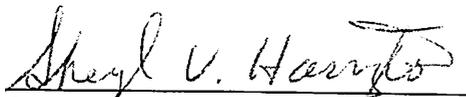
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