ARBITRATION PURSUANT TO APPOINTMENT BY
FEDERAL MEDIATION AND CONCILIATION SERVICE

In the matter of the Arbitration Between:

METROPOLITAN WASHINGTON AIRPORTS POLICE ASSOCIATION INTERNATIONAL UNION OF POLICE ASSOCIATIONS LOCAL 5004

Grievance of the **Bargaining Unit** Parking Lot

and

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

FMCS No. 180319-02665

Before Abbot Kominers, Arbitrator

OPINION AND AWARD

This proceeding takes place pursuant to Article 31 (Grievances) and Article 32 (Arbitration) of the Collective Bargaining Agreement (the "Agreement" or "CBA") dated February 2011 between Metropolitan Washington Airports Police Association International Union of Police Associations Local 5004 (the "Union", "IUPA", "Local 5004") and Metropolitan Washington Airports Authority (the "Authority", the "Employer", "MWAA"). Article 1 of the 2011 CBA identifies the parties to the CBA as the "Police Department of the Metropolitan Washington Airports Authority" and the Union. There is no dispute that MWAA and the Union are the contracting parties to the current CBA. This proceeding between MWAA and the Union (collectively MWAA and the Union are the "Parties") is to resolve a timely grievance on behalf of the Bargaining Unit regarding the parking facilities at Ronald Reagan Washington National Airport ("Reagan National", "DCA").

The Parties were unable to resolve the grievance through the steps of the negotiated Grievance Procedure; and the matter proceeded to arbitration. From a list provided by the Federal Mediation and Conciliation Service ("FMCS") and in accordance with the procedures of the Parties, I was selected to arbitrate the dispute in April 2018. Two days of hearing were scheduled for September 2018. Those two days of hearing were cancelled by the

Parties shortly before the hearing was to occur as part of a negotiation and settlement process between the Parties.

The Parties embarked on a period of negotiation regarding the dispute. The Parties entered into a Settlement Agreement (the "Settlement Agreement") dated November 30, 2018. In response to an email from me in April 2019 inquiring as to the status of the case (which I believed still to be active) I was advised that the Parties "did reach a settlement agreement and have a signed agreement, and will be mediating one final piece." One provision of the Settlement Agreement provided that if the Union decided to pursue the grievance, it could "proceed directly to arbitration" and that "the Parties agree to the selection of Arbitrator Abbot Kominers if he is available to serve as arbitrator." I was unaware of the execution of the Settlement Agreement and of the text of the entire Settlement Agreement, including this provision regarding future arbitration, until November 2021.

On April 19, 2019, I invoiced the Parties for the cancellation of one day of hearing (September 21, 2018) and waived the fee for the second scheduled day of hearing (September 28, 2018) on a one-time, non-precedential basis.

Pursuant to the Settlement Agreement, the Parties engaged in binding mediation of an issue involving hang tag fees. Mediator John E. Kloch issued an Opinion ("Mediation Decision") in this matter dated September 30, 2019.

By email dated November 16, 2021, MWAA advised me that the Parties requested that I arbitrate the instant dispute pursuant to the terms of their Settlement Agreement. Upon confirming that the selection was made mutually by both Parties, I accepted the selection.

A hearing was convened at the Authority's Headquarters in Arlington, Virginia on March 30, 2022, at which time the Union was

represented by Heidi E. Meinzer, Esq. and the Authority was represented by Bruce F. Heppen, Esq.

The Parties were each afforded full opportunity to present testimony, documentary and other evidence, to make argument, to cross-examine witnesses, and to challenge evidence offered by the other. By agreement of the Parties, witnesses were not sworn. Testifying at the call of the Union were: Corporal Paul Alexander (retired), Corporal Gregory Price, and Corporal Edward Morris. Testifying at the call of MWAA were: Mr. Richard Golinowski, Vice President and Airport Manager at Washington Dulles International Airport ("IAD") and Ms. Tara Dahbi, Claims Program Manager in MWAA's Risk Management Department. Joint Exhibits 1-5 ("JX_"), Union Exhibits 1-13 ("UX_"), and Authority Exhibit 1-3 ("AX_) were offered and received into the record. A court reporter was present and compiled a stenographic record and transcript ("Tr.__") of the proceeding, which, by agreement of the Parties, constituted the official record of the proceeding.

Following the conclusion of the hearing, the Parties entered into extensive and extended negotiations in a very dedicated, diligent, and professional effort to resolve this dispute. I arranged and met with the Parties in numerous post-hearing conference calls over a period of six-plus months, discussing and receiving reports regarding the status of those settlement discussions. At a conference call on October 7, 2022, the Parties advised that they were unable to resolve this matter by negotiation and would proceed to briefing the case for decision.

The Parties agreed to close by written post-hearing briefs and reply briefs. Upon timely receipt of the last post-hearing reply brief, on December 7, 2022, the record of proceeding closed.

By email dated January 2, 2023, I advised the Parties that I would not complete this Opinion and Award within 30 days of the submission of the reply briefs. No objection was indicated by the Parties.

At the hearing, there was no challenge to arbitrability and the Parties stipulated that the transcript would be the official record of the proceeding. The Opinion and Award is based on the record. It considers the arguments presented by the Parties and interprets and applies the Agreement.

ISSUES FOR DETERMINATION

The Parties agreed that the issues for determinations are:

> Is the proposed lot (*i.e.*, areas three and five also known as Lot A at Ronald Reagan National Airport, also known as DCA) in compliance (meaning "secure" and "adjacent") with Article 26 of the [Collective Bargaining Agreement]? And if not, what is the remedy? (Tr. 12-13).

APPLICABLE PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Article 1 - Preamble

Section 2

> This Agreement sets forth conditions of employment wit the intent and purpose of promoting and improving relations between the Parties, as well as promoting a level of employee performance consistent with safety, good health, and sustained effort. The Parties agree to establish and promote a sound and effective labor-management relationship in order to achieve mutual cooperation with respect to practices, procedures and matters affecting conditions of employment and to continue working toward this goal.

Article 6 - Management Rights

Section 1

> Subject to Section 2, nothing in this agreement shall affect the authority of any Management official:

a. to determine the mission, budget, organization, number of employees, and internal security practices of the Airports Authority; . . .

* * *

Section 2

Nothing in this Article shall preclude the Employer and the Union from negotiating:

a. Procedures which Management officials of the Airports Authority will observe in exercising any authority under this section; or

b. Appropriate arrangements for employees adversely affected by the exercise of any authority under this section.

This constitutes the Union's impact and implementation bargaining rights.

Article 26 - Parking

Section 1

Bargaining Unit employees shall, upon payment of the prevailing periodic fees, be entitled to a secure parking location adjacent to each station at either Airport without additional charge. However, the employees must obtain the appropriate hang tag.

Article 32- Arbitration

Section 3

* * * The decision of the Arbitrator shall be final and binding on both parties unless on its face it is contrary to law or to an Airports Authority regulation applicable to all Authority employees and mandated by law; or unless the award has been obtained by corruption, fraud, evident partiality, misconduct prejudicing the rights of a party, or any other undue means. The arbitrator shall have no authority to add to or modify any terms of this Agreement and will confine the hearing to the specific issue(s) in dispute. * * *

Section 4

The employer and the Union will share the arbitrator's fees and expenses equally. * * * (JX 5).

STATEMENT OF FACTS

The Parties and the Workplace

This grievance concerns the security and location of the parking lot that is proposed for use by Bargaining Unit members at DCA.

The Authority is a public body created with the consent of the Congress of the United States. Among other activities, it manages and operates DCA and IAD. The Union is the collective bargaining representative for a bargaining unit of law enforcement officers who perform police duties at DCA and IAD. Officers are primarily assigned to one of the two airports and/or to a specialty assignment. The record indicates that there are approximately 160-170 corporals and officers in the Bargaining Unit, the vast majority of whom are members of the Union. (Tr. 59-60). The Authority and the Union are Parties to the 2011 CBA. (JX 5).

This dispute originally involved the parking lots used by Bargaining Unit members at both DCA and IAD. As explained elsewhere, the dispute regarding the parking lot at IAD has been generally resolved in other forums and through the actions of the Parties. The situation with respect to the parking facilities at DCA is the setting for the instant dispute, although some elements of the dispute at IAD and the personnel assigned to IAD are involved in the matter at issue here.

IAD is located in northern Virginia, 20-plus miles west of Washington, D.C. The record indicates that it is set on an approximately 17,000 acre campus. There is no dispute that the parking facilities at IAD for the police officers in the Bargaining

Unit had been reconstructed since the filing of this grievance. The Parties stipulated that, as of October 1, 2021, the parking facilities for Bargaining Unit employees at IAD is "secure" within the meaning of the CBA. (Tr. 9). The testimonial evidence and exhibits showed that the current parking facilities at IAD possessed: A controlled gate that was operated by a card swipe reader; an approximately eight-foot tall fence around the lot that was topped with barbed wire; and upgraded and additional lighting as well as security cameras.

DCA is also located in Virginia. It is immediately across the Potomac River from Washington, D.C. DCA's location is primarily south of Washington, D.C. but is also west of the eastern portions of Washington, D.C. (including parts of the South West quadrant of Washington, D.C. and much of the South East quadrant of Washington, D.C.). The record indicates that DCA is set on an approximately 860 acre campus.

At the time this dispute arose, the police station at DCA was located in the Historic Terminal building (also referred to as "Terminal A"). The parking lot currently used by the members of the Bargaining Unit is Lot D (also the "Current Lot"). Lot D is adjacent to the Historic Terminal. Testimony from various witnesses and the photographic exhibits show that there is no gate present at Lot D to control access to the lot. In addition, the undisputed testimony shows that numerous commercial vehicles enter Lot D and its passage areas in order to access both trash dumpsters and the loading dock area. At the arbitration hearing, MWAA stipulated that Lot D is not secure. (Tr. 43).

Cpl. Alexander (former Union President) testified, without contradiction, that MWAA police officers are typically assigned primarily to either IAD or DCA as well as to various so-called "specialty assignments". (Tr. 22). According to Cpl. Alexander, that assignment to one or the other airport does not necessarily last throughout an officer's entire career. Rather, he explained, an officer could be transferred based on the needs and

circumstances from one airport to the other. Cpl. Alexander indicated that such transfers (also characterized as "reassignment") could be for various lengths of time and are based on need. (Tr. 59, 66, 71).

Cpl. Price (current head shop steward at DCA) indicated that MWAA police officers can be tasked to go to either IAD or DCA depending on special events or other needs regardless of where the officers are assigned. He explained that staffing shortages have opened up the possibility of working at an airport to which an officer is not assigned. (Tr. 84-86).

Posture of the Dispute

The record indicates that this grievance was filed in 2017. As described in detail above, the grievance was originally set for hearing but the two days of hearing were cancelled by the Parties. The Parties then engaged in negotiations that led to a Settlement Agreement dated November 30, 2018. The Settlement Agreement provided, in relevant part:

> * * *
>
> WHEREAS, both Parties acknowledge the desirability of improving the security of the Bargaining Union employee parking locations at Dulles International Airport ("IAD") and Reagan National Airport ("DCA");
>
> THEREFORE, the parties have come to a resolution regarding the Grievance that will avoid the need to participate in the arbitration scheduled in this matter for September 21, 2018 and September 28, 2018, and hereby enter into this Agreement.
>
> **I. <u>ARTICLE 26 OF THE CBA</u>**
>
> The Parties agree that nothing in this Agreement shall be construed as an admission by either Party that the Bargaining Unit employee parking locations are currently "secure" or "not secure."

II. SECURITY MEASURES FOR BOTH LOTS

The Employer agrees to and shall implement the following measures to improve security at the Bargaining Unit employee parking locations at both IAD ("IAD Lot") and DCA ("DCA Lot") (collectively "Lots"):

- Increased area/beat checks for all shifts
- Increased camera monitoring by the desk officer on shift
- Ongoing and regular communication, including at roll calls, aimed to improve awareness of security issues

. . .

The Union agrees that the Employer makes the final decisions concerning specific security measures and practices to be implemented at the lots, subject to an arbitrator's determination of the meaning of "secure" in the event this Grievance is ultimately submitted to arbitration.

* * *

III. IAD LOT

* * * Some of the security improvements that are anticipated for the IAD Lot include an eight-foot fence with angled bared wire around the perimeter, mechanical gates with controlled access for all three vehicle entrances, and two pedestrian gates. * * *

IV. DCA LOT

The Parties understand that the Employer is exploring relocation of the DCA police station and DCA Lot in the long term, and that the most likely long-term plan will involve relocation of the DCA police station and the DCA lot to an existing building or construction of a new building on the south end of DCA.

In the short-term, the Employer has been exploring security improvements to the existing DCA Lot, and will continue these efforts. These efforts include assessing the feasibility of moving the DCA Lot short-term to a location near the station that is amenable to the Parties. In the event that it is infeasible to move the

DCA lot short-term, the employer will continue to explore the feasibility of security improvements of the DCA Lot, including whether the dumpsters currently in the DCA Lot can be relocated, whether commercial vehicles can be redirected to turn around in a location other than the DCA Lot, and whether the Loading Dock A security guards located by the DCA Lot may provide additional security of the DCA Lot.

VII. MISCELLANEOUS

. . .

C. **Fees and Costs.** Except as described further in this Agreement, the Parties shall bear their own costs, expenses and attorneys' fees incurred in connection with the Grievance and this Agreement. In any future grievance or arbitration relating to the Grievance and/or this Agreement in which the Union is the substantially prevailing party, the Employer shall pay the Union's expenses and costs, including the costs for the arbitrator, court reporter and transcripts. (JX 2).

As indicated, by the terms of the Settlement Agreement, the Parties stated their understanding that the Authority planned to make improvements to the parking lot at IAD. In addition, the Authority agreed to explore relocation of the lot at DCA and to improve security at the then-existing lot at DCA. In the Settlement Agreement, the Parties also agreed to proceed to binding mediation on the matter of hang tag fees. (JX 2).

In June 2019, the Settlement Agreement proceeded to binding mediation before Mediator John E. Kloch. The Authority challenged the Settlement Agreement based on the arguments that: 1. The Settlement Agreement was an invalid contract because it lacked consideration; 2. The MWAA signators to the Settlement Agreement had no authority legally to bind the Authority; and 3. No standards were set forth in the Settlement Agreement that would allow a mediator to make a finding as to whether or not the parking lots were "secure".

Mediator Kloch concluded that there was adequate consideration for the Settlement Agreement and that the representatives of the MWAA who signed the Settlement Agreement did, indeed, possess the authority to negotiate for and to bind the MWAA to the provisions of the Settlement Agreement.

With respect to the issue of secure parking, Mediator Kloch found that, pursuant to the Settlement Agreement, the "MWAA would consider some negotiated settlement of both past and further hang tag fees until MWAA could comply with the language of Articles 26" of the CBA. (JX 3). Mediator Kloch found further that:

> From MWAA's legal brief and from the discussions at the mediation session, it is clear that it is MWAA and not the Union which is in charge of building and providing secure parking. It is therefore MWAA's duty to prove that it has provided secure parking as a condition to a right to receive hang tag fees. Until it is demonstrated that MWAA has complied with the entitlements within the language of Article 26, past and future [hang] tag fees, by the terms of the Settlement Agreement, are negotiable by mediation and, if not successful, then settled by binding mediation.
>
> **CONCLUSION AND AWARD**
>
> In accordance with this opinion, I find that Union employees are entitled to reimbursement of any hang tag fees for the year 2018 and any paid in 2019, and they are likewise entitled to suspension of such hang tag fees for the years 2020, 2021 and 2022, or until MWAA has shown that it has complied with the language of Article 26 (CBA).
>
> Pursuant to Paragraph (VII)(C) [*i.e.*, VII.C.] of the Settlement Agreement, Union is awarded $4515.00 [sic] in attorney's fees.
>
> Should any part of this award be later challenged, hang tag fees are suspended until final resolution, and additional attorney's fees may be awarded.
>
> . . . (JX 3).

As indicated, Mediator Kloch ordered that the hang tag fees for 2018 be reimbursed and he suspended further hang tag fees either final resolution of this dispute or until MWAA has "shown that it has complied with the language of Article 26 [of the CBA]." He also awarded the Union attorney's fees pursuant to the Settlement Agreement and provided for the future award of further attorney fees as well as apportioning the cost of the mediation equally between the two parties. (JX 3).

As indicated above, in November 2021, the Parties contacted me regarding the instant matter, indicating that they were doing so pursuant to the Settlement Agreement concerning Article 26 of the CBA.

Lot A at DCA and Associated Parking Matters

During the course of this dispute, the Authority proposed to relocate the police parking lot at DCA to Area 3 and 5, also known as "Lot A", which is situated across several lanes of vehicular traffic and some open area from the Historic Terminal.

Cpl. Alexander testified that the Union did not find Lot A (the lot to which MWAA proposed to move police parking at DCA) to be "secure". He explained that Lot A would be "regulated" but not "secure". Cpl. Alexander acknowledged that Lot A had a gate, but he pointed out that anyone can simply walk around the gate and gain entry to Lot A. He also pointed out that Lot A was not "adjacent" to the police station at DCA. (Tr. 55-56). In explaining the Union's concern about a "secure" parking lot at DCA, Cpl. Alexander cited his personal experience of, ". . . losing two friends in an unsecured parking lot and any number of other examples across the country where officers have been ambushed in unsecured locations next to their police station." (Tr. 58-59).

Cpl. Alexander testified that the Union's primary concern about the parking arrangement at DCA was having a "secure" lot. He explained that the Union had indicated its willingness to "work

with" the Authority on the question of the parking lot's being "adjacent". (Tr. 79). Cpl. Alexander expressed concerns about the parking situation requiring officers to walk through public spaces transporting weapons (apparently including long arms) and other equipment. (Tr. 79-80).

Cpl. Alexander indicated that police officers put on and take off police equipment, including such items as their body armor and gun belt, in the parking lot. He cited examples involving Lot D such as walking by an officer who was putting on her gun belt and then her body armor at her car in that parking lot. (Tr. 68).

In conjunction with photographs in the record (UX 8), Cpl. Alexander testified in detail about the recently-built police parking facility at IAD. He explained that the parking lot has an approximately eight-foot-tall fence topped by three strands of barbed wire. Cpl. Alexander testified that the IAD parking lot has a gate and a card swipe device that officers can operate when entering or leaving the lot in their personal vehicles. Cpl. Alexander stated further that additional lighting had been installed, which he characterized as a "fantastic job" as well as surveillance cameras. (Tr. 54). Cpl. Alexander confirmed that the Union has stipulated that, as of October 1, 2021, the parking lot at IAD is "secure". (Tr. 55). Cpl. Alexander testified that the new parking lot at IAD was the "gold standard". (Tr. 73-74).

Cpl. Price testified that Lot A at DCA is not acceptable to the Union for several reasons. He pointed out that there are three lanes of vehicular traffic between Lot A and Terminal A. Cpl. Price testified that crossing the lanes of traffic especially when an officer is carrying his/her gear is hazardous. He also explained that officers' being exposed and in view of the public while doing so is of concern in light of the way police are currently viewed by the public. He expressed the same concerns for safety relative to the officers' cars' being visible to the public. Cpl. Price then described the convoluted walking route that an officer would have to take in order to exit Lot A, cross the three

lanes of traffic, enter the terminal, and then navigate the stairs to the police station. He acknowledged that there is an alternative route outside but noted that route involved descending stairs that might be hazardous in certain weather conditions. Cpl. Price went on to state that there are minimal or no barriers around Lot A and/or at its entrances and/or exits that would prevent entry by the public in general and specifically by persons seeking to harm officers. (Tr. 90-94).

Cpl. Price explained that an "adjacent" and "secure" lot is important to officers because of issues of officer safety. He pointed out that officers are prohibited from leaving anything in their vehicles because the parking lot is not "secure" and, thus, officers are carrying items such as long arms, body armor, and other equipment which then puts officers at a disadvantage if they are attacked while carrying all of that gear. Cpl. Price testified that such attacks on officers at their stations have occurred and that is why officer safety is so important to the Bargaining Unit. (Tr. 97-98). Cpl. Price acknowledged that he had no personal knowledge of officers being attacked at the parking lots at the stations. He also acknowledged the presence of uniformed Traffic Control Officers ("TCO") in the areas adjacent to Lot A. (Tr. 104) Cpl. Price testified that the TCOs are not sworn law enforcement officers and that they are not armed. (T.106).

Cpl. Price testified that there had been discussions with MWAA about relocating the police station and/or parking lot at DCA. (Tr. 98-100).

Cpl. Morris (current Union President) testified regarding the importance of an "adjacent and secure[]" parking lot. He explained that there are specific general orders regarding the securing of extra equipment in vehicles. These orders are different if the vehicle is in a lot that is secured versus a non-secured area. Cpl. Morris further described the heightened sense of concern regarding property damage and violence against police officers across the nation, noting the danger an officer faces especially

when off duty, such as in a parking lot at a police station and/or at home. (Tr.112-113) Cpl. Morris testified that in the "secure" lot at IAD, an officer can keep gear such as a jacket or raincoat in the trunk of the car, whereas doing so at DCA would be against the general orders because the lot is not "secure". Commenting on the situation where Cpl. Alexander walked up to a female officer who was putting on her police equipment in the parking lot at DCA, Cpl. Morris testified that if the parking lot had been a "secure" lot, it would have prevented a pedestrian or vehicle from approaching the officer while she was putting on her equipment. (Tr. 114).

The record indicates that an MWAA police officer was seriously injured while on foot and in pursuit of a vehicle that was exiting the parking lot at IAD. Cpl. Alexander explained that the injury of this officer plus his own experience with the Fairfax County (Virginia) Police Department where two officers lost their lives in an unsecured parking lot led to the Union's filing the instant grievance. (Tr. 24-27)

Mr. Golinowski, Vice President and Airport Manager at IAD, who the record shows had 23 years of experience at DCA before assuming higher level duties within MWAA, testified that Lot A has a "secure access point with a gate arm, card reader access". (Tr. 133). Mr. Golinowski explained that Lot A "has high visibility to employees and police officers as they patrol that area." (Tr. 133). Mr. Golinowski confirmed that there is a police officer in a police cruiser stationed adjacent to Lot A. He stated that, insofar as he could ascertain, there are no standards that determine or measure if an airport parking lot is "secure". Mr. Golinowski testified that, as the term "secure" relates to a parking lot, "secure would mean limited access." (Tr. 127). Mr. Golinowski stated further that the security measures that are necessary at one airport might not be the same security measures required at a different airport. (Tr. 127-128).

Mr. Golinowski stated that it would take between one and two minutes to walk from the proposed Lot A to the current Lot D. He further stated that the walk from Lot A across the lanes of traffic into the Historic Terminal to the police station therein would take between two to three minutes. Mr. Golinowski testified that Lot A was "highly visible" and he characterized that visibility as an "advantage" in terms of security because "more eyes are on what's going on." He indicated that Lot A would provide secure parking for the Authority's police. (Tr. 134-136).

Mr. Golinowski acknowledged that he was unaware of the measures taken by surrounding jurisdictions regarding security for police officers in the parking lots of police facilities. He testified that he was not aware of any criminal activity around or just outside of lot A, including matters such as trespass or being drunk or using drugs in public. Mr. Golinowski asserted that he would generally be aware of such activities via a police blotter report that he receives every morning. He acknowledged, however, that he was not aware if "everything makes it into that police blotter" or whether some items were not included. (Tr. 143-145; 150-151).

With respect to the installation of fencing at Lot A, Mr. Golinowski testified that such fencing would impede the evacuation of the Historic Terminal/Terminal A. He noted that he worked for the Authority on September 11, 2001, and testified that people who had been in the Historic Terminal evacuated that building and moved to Lot A following the news of the attacks that morning by terrorists against the United States. Mr. Golinowski indicated that the presence of a fence around Lot A would have interfered with persons fleeing from the Historic Terminal and he noted that Lot A is used as an assembly space during such evacuations. (Tr. 136-138).

Mr. Golinowski testified further that the Virginia State Historic Preservation Office ("SHPO") is an entity that "review[s] changes that are being made to historic structures in the

Commonwealth of Virginia." (Tr. 138). He indicated that SHPO has jurisdiction over the Historic Terminal and asserted that the erection of an eight-foot-tall fence with barbed wire would trigger a review by SHPO. Mr. Golinowski opined that he did not think SHPO would approve such a fence because it would "change[] the view shed of the [Historic] Terminal." (Tr. 139). Mr. Golinowski testified that he did not think it would be feasible to erect a fence around Lot A because of the safety requirements in terms of evacuation of the Historic Terminal and because of the requirements imposed by SHPO. He asserted that he would be open to suggestions from the Bargaining Unit to enhance security in Lot A, but that he had received none and that he did not think there were any alternative sites that would meet the requirement under the CBA to be adjacent to the police station. (Tr. 139-140). Mr. Golinowski acknowledged that there had been no discussions (either official, informal, or advisory) with SHPO regarding possible fencing of Lot A, stating that MWAA does not communicate with SHPO unless MWAA has a "defined project". (Tr. 151).

Ms. Dahbi, Claims Program Manager in MWAA's Risk Management Department, described her job as being "the conduit" through which MWAA reports "any and all" insurance claims. She testified that she manages all workers' compensation claims. Ms. Dahbi stated that if any MWAA employee is either injured or nearly injured on the job, the employee is supposed to report the incident and that information is used for preventing future losses in addition to ensuring that the insurance carriers are notified and that the affected employee is cared for properly. Ms. Dahbi indicated that all incidents, whether assaults or accidents, are supposed to be reported and that she reviews incidents involving police officers on a daily basis. Ms. Dahbi explained that she records all incidents involving a potential claim in a data base known as Origami. (Tr. 156-159). Ms. Dahbi testified that her search through the data base did not generate any indications of incidents involving "robbery, criminal assault, combative behavior, injuries from hitting scratching, biting, or fighting" involving police officers in a garage or parking lot from January 1, 2000 to the

time of the hearing. (Tr. 161). Ms. Dahbi further indicated that an additional search showed no injuries for police officers due to assaults in parking lots or garages. She acknowledged that there might be injuries due to accidents (such as slipping on ice) and that there were injuries to officers involving arrests, but that none of the injuries involved an assault. (Tr. 162-163).

Cpl. Alexander testified in rebuttal that he was injured while chasing an escaped prisoner on a foot across the previously-unsecured parking lot at IAD on February 18, 2017. (See AX 2). He stated that if the security that is now present at the IAD parking lot been in place at the time of the 2017 incident, it is "highly unlikely" that the escape and the subsequent pursuit and injury would have occurred. (Tr. 172-175). Cpl. Alexander indicated that this incident was part of the reason underlying the Union's filing a grievance. (Tr. 175-176).

Cpl. Morris testified in rebuttal that he believed that seeing a plain clothes officer in an airport with any type of firearm, especially a long arm, would panic the civilians in the airport. With respect to the MWAA Police Department Daily Journal ("Journal") (AX 3) that reports incidents involving police at the MWAA facilities, Cpl. Morris stated that in the few weeks leading up to the hearing, the Journal has become "a lot more inclusive that what it has the rest of my career before that." (Tr. 176-177). He pointed out that he would not have reported an occurrence such as encountering a civilian in a secured parking lot who had walked through an open door and wound up in that secured parking lot. Of such an incident, Cpl. Morris stated:

> . . . That would not be a report. That would not be anything that would ever make it to that because nobody but myself would, there was no criminal activity. The person made a mistake and in that case that would not be put in the daily log. (Tr. 178).

Cpl. Morris also denied that "everything" is recorded in the Journal. Noting that supervisors make their best effort, he noted

that "sometimes things get busy" and that due to human error, some items do not make it into the Journal. (Tr. 178).

With respect to the security set up at parking lots in other jurisdictions, Cpl. Morris listed a number of police facilities in Virginia with which he was familiar. He cited several northern Virginia police departments and testified that ". . . everyone has a lot that's very similar to what we have at Dulles. That's pretty much an industry standard." Reflecting on his work across much of northern Virginia, Cpl. Morris stated that ". . . all of those departments have secured lots the police use. That appear to be like Dulles." (Tr. 179).

Hang Tag Fees

The record indicates that MWAA officers at both DCA and IAD have hang tags in their vehicles that are used in connection with parking in the designated lots. In the ordinary course of operations, a hang tag fee in the amount of $130 per year is charged to each officer.

Cpl. Alexander testified that the Union believed that the hang tag fees should remain suspended "until such time as both lots [are] secured." In this regard, he noted again that officers (himself included) are periodically reassigned to a different airport and are required to park in unsecured lots. (Tr. 59).

Cpl. Morris testified that, pursuant to the Mediation Decision, no officers in the Bargaining Unit should pay hang tag fees through 2022. He also asserted that the Authority had not complied with the Mediation Decision and/or Article 26 of the CBA with respect to providing a "secure" parking location. Cpl. Morris pointed out that officers regularly assigned to IAD are sent to DCA from time to time for various purposes. (Tr. 114-115).

The Grievance

There is no dispute that the Union timely invoked arbitration. The grievance proceeded through the various steps and processes described earlier, including the November 30, 2018 Settlement Agreement and September 30, 2019 Mediation Order. The relevant portion of the grievance remained unresolved. As indicated, the hearing process was activated on November 16, 2021 pursuant to a provision of the Parties' Settlement Agreement. This proceeding followed.

POSITIONS OF THE PARTIES

The positions of the Parties were set forth at the hearing and in their post-hearing briefs and reply briefs. They are summarized as follows:

Opening Brief of the Union

T**he Union** argues that the Proposed Lot/Lot A at DCA is not secure and, therefore, is in violation of Article 26 of the CBA. The Union maintains that the Authority made no effort to fulfill its obligation under the CBA to provide a secure parking area until a grievance was filed in 2017. The Union contends that the Authority must provide a secure parking area at DCA, that Bargaining Unit members should not be required to pay hang tag fees until such a secure parking area is provided, and that the Authority should be ordered to pay all costs, fees, and related expenses of both the Union and the Arbitrator in connection with this matter.

The Union argues that the language of Article 26 of the CBA is clear and that this plain language of the CBA must be enforced as a matter of law. It contends that the word "secure" must be given its ordinary meaning. Acknowledging that its chosen definition is drawn from a financial context, the Union maintains that "secure"

means, ". . . not exposed to danger, safe; so strong stable or firm as to insure safety and financial security." See *Black's Law Dictionary* at 1354 (6th Ed. 1990). The Union asserts that the Settlement Agreement provides that deciding on the meaning of the term "secure" and determining whether the Authority is in compliance with Article 26 are matters that are to be determined by the Arbitrator. The Union contends that the Authority has demonstrated what it understands "secure" to mean by the measures the Authority has implemented at IAD, specifically: Installation of a high/barbed wire fence to preclude foot and vehicular traffic; installation of a controlled gate and arm operated via a card-swipe reader; and installation of additional and improved lighting as well as security cameras. The Union acknowledges that the measures that are in place at IAD satisfy the definition of "secure".

The Union rejects what it claims to be the Authority's argument that "secure" means "limited access" along with such advantages as high visibility and high traffic. The Union notes the Authority's reliance on police blotters for its information on criminal activity and argues that such information is not reliable. It also takes issue with the Authority's alleged lack of knowledge about the measures taken by local police departments to secure their parking lots. The Union vigorously rejects the Authority's alleged position that the Union seeks only a more convenient parking lot, not, apparently, a more secure one.

The Union asserts that the Authority knows what constitutes a "secure" lot, pointing out that the Authority established one such lot at IAD. Citing examples, the Union further asserts that the Authority has taken numerous "unreasonable" positions in the course of trying to resolve this matter while claiming that it (the Union) has been "understanding and reasonable". The Union notes that it has always acknowledged that securing the DCA lot would be more complicated than securing the IAD lot and that it has been "flexible" regarding the requirement that the DCA lot be "adjacent" to the police station at DCA. The Union claims that the Authority simply does not want to spend the money on establishing a parking

lot that is "secure" at DCA. It notes the Authority's rejection of the Union's proposal to suspend the hang tag fees until a "secure" lot is created at DCA. The Union concedes that the Authority appears to be agreeable to suspending the hang tag fees for Bargaining Unit member working at DCA until a "secure" parking lot can be established. The Union argues, however, that the suspension of the hang tag fee should apply to all Bargaining Unit members because police officers do not always work exclusively at IAD or DCA; some officers usually assigned to IAD will frequently work at DCA. The Union contends that the Authority is the party who materially breached the CBA and, as such, the Authority cannot enforce the CBA.

With respect to its claim for attorney fees, expenses, and costs, the Union relies on the fee shifting provision of Paragraph VII.C. of the Settlement Agreement as the basis for its position.

The Union urges that the grievance be sustained and that I find that Lot A at DCA (the proposed lot) is not "secure" and is in violation of Article 26 of the CBA. The Union further argues that all Bargaining Unit members should be found exempt from paying hang tag fees unless and until the Authority provides a lot that complies with Article 26. In addition, the Union seeks the award of attorney fees, expenses, and costs accrued and continuing to accrue, and that the Authority be ordered to pay the costs of this arbitration, including the arbitrator's fee and expenses. Finally, the Union seeks such other remedy as may be deemed "necessary and just."

Opening Brief of the Authority

The Authority argues that it has provided a "secure" environment in Parking Lot A by limiting access and by "deterring the potential actions of wrongdoers." MWAA contends that it has satisfied the requirements of the CBA and the Settlement Agreement in that it has provided "secure" parking at DCA for the members of the Bargaining Unit. The Authority further contends that the

members of the Bargaining Unit should be required to pay the same parking fee as is paid by other employees of the Authority.

The Authority maintains that Settlement Agreement provides that the Authority shall make the final determinations regarding the security "measures and practices implemented at the Lots", acknowledging that the definition of "secure" is subject to arbitration. MWAA further contends that the management rights provisions of the CBA give it the right to determine "internal security practices".

The Authority notes that Lot A is a significant improvement over Lot D. The Authority rejects the Union's argument that the parking lot at DCA must include the same features as the lot at IAD in order to be deemed "secure". MWAA points out that the parking lot and the police station at IAD are located at a remote part of IAD that is not routinely visited by passengers. It argues that the fencing at IAD is necessary for deterrence due to the remote location. By contrast, argues the Authority, no such fencing is required at DCA because Lot A is located in front of the Historic Terminal. The Authority contends that deterrence at DCA comes by means of Lot A's being in full public view and from the presence of a police cruiser and uniformed Transportation Control Officers - who are also employees of the Police Department.

The Authority maintains that Lot A provides secure parking for Bargaining Unit members. MWAA asserts that no evidence of written industry standards for a "secure parking lot" at an airport was placed in the record in this proceeding. It cited the testimony of Mr. Golinowski to support its assertion and noted that the only evidence presented by the Union regarding comparable facilities was its assertion that the parking facilities at IAD were the "gold standard". The Authority points out that the Union witnesses failed to testify as to specific elements of the parking facilities at their former law enforcement employers. MWAA challenges the expertise of the witnesses on matters of parking lot security and asserted that their testimony was "general" and lacked specifics.

The Authority argues that the CBA does not require the "gold standard", but rather, simply requires a "secure" parking lot. The Authority contends that the specific setting of each airport location determines what is necessary to render a lot "secure" and it maintains there is no definition of the term "secure". MWAA also points out that nothing in the CBA requires that a "secure" parking lot be fenced. The Authority notes that the Union could have bargained for that specific feature in the past and can bargain for it in the future, but, argues MWAA, the specific feature of a fenced parking lot is not mandated by the terms of the current CBA. The Authority goes on to assert that the requirement for a fenced lot may not be imposed via the arbitration process.

The Authority contends that the parking lots at IAD and DCA present different situations. Noting that the IAD parking lot is isolated on a vast campus while the DCA parking lot is directly across from the terminal on a relatively small campus, the Authority argues that security at the DCA lot is enhanced by the high visibility of the parking lot and that the lot has a police officer in a cruiser stationed outside the lot and that uniformed traffic control officers patrol the area. The Authority also points out that both the IAD and DCA lots have a secure access point equipped with a gate arm and card reader entrance.

The Authority argues that the evidence shows that Lot A is the only viable alternative to Lot D, in light of the fact that the police station is currently located in the Historic Terminal. MWAA argues further that the configuration of Lot D cannot be changed because of the necessity for access by trash trucks to the dumpsters and because delivery trucks and other vehicles need access to the loading docks.

The Authority maintains that the record demonstrates that installing barbed wire at Lot A is not feasible because it would impede a mass evacuation of the terminal, such as occurred on September 11, 2001. MWAA also argues that such a fence is not an option because, in Mr. Golinowski's opinion, an eight-foot-tall

triple barbed wire fence would not withstand review by the Virginia State Historical Preservation Office ("SHPO") because the Historic terminal is considered a landmark by the Commonwealth of Virginia. The Authority asserts that Virginia landmark law protects not only a building's physical structure but also how it is viewed and an eight-foot-tall fence would impair the view of the Historic Terminal.

As part of the rationale for not seeking increased security measures around the parking lot for Bargaining Unit employees, the Authority asserts that there is an "absence of any known threat or danger to officers at DCA which would require the installation of a barbed wire fence in lieu of the security measures already in place." The Authority argues that there is no evidence of anyone's being the subject of any criminal activity in any of the employee parking lots at DCA going back to 2001. The Authority notes Mr. Golinowski's testimony regarding the absence of criminal activity around or just outside of Lot A during his tenure with the Authority and it asserts that the Union produced no evidence of actual incidents, threats, or dangers at that location; MWAA acknowledged that there is, however, considerable discussion about perceived risks. The Authority maintains that there is no evidence in the record of what harm, threat, or danger would be remedied by installation of the fencing sought by the Union.

MWAA cites several definitions of "secure". It points out that the definition in Merriam Webster is being "free from danger; affording safety". The Authority notes that the American Heritage Dictionary defines "secure" as "not likely to give way or stable". The Authority asserts that the general law of torts provides that "a property owner is not a guarantor of the safety of the users of its property", while the law in Virginia holds that "a property owner has no duty of care toward either an invitee, or toward a person to whom a higher degree of care applies in the absence of some reasonably foreseeable harm". The Authority argues that there was no evidence in the record that any harm was reasonably foreseeable and that there is no evidence of assaults or criminal

behavior in the employee parking lots at either IAD or DCA in the last 20 years, noting that most of those lots are not secured (in contrast to Lot A). Thus, argues MWAA, there is no reasonably foreseeable risk of harm and there is no evidence in the record that would justify erection of a fence around Lot A of the nature sought by the Union. The Authority strongly maintains that the measures presently in place are sufficient to provide reasonable security "against all foreseeable risks".

The Authority notes the testimony about alleged deficiencies regarding the Current Lot/Lot D. It acknowledges that Lot D is not gated and that people and vehicles come and go at will while on the way to and from dumpsters and the loading dock. The Authority contends that moving the parking for the Bargaining Unit to Lot A provides far more security than the parking in Lot D. MWAA asserts that by limiting vehicular access to Lot A, by stationing a police cruiser at the entrance to Lot A, and by having the area patrolled by uniformed Traffic Control Officers, the Authority is providing far greater security to the police officers.

The Authority argues that deference must be given in arbitration to the decisions made by the Authority based on the recognition in the Settlement Agreement that the Authority makes "the final decision concerning the specific security measures and practices." MWAA contends that the language of the Settlement Agreement is derived from Article 6, Section 1.a. of the CBA.

In sum, the Authority urges that it has met the requirements of the CBA and the Settlement Agreement in that it is providing a "secure" parking location at DCA. The Authority also argues that Bargaining Unit members should be required to pay the same fee as is paid by other employees of the Authority.

Reply Brief of the Union

In its reply brief, **the Union** argues that the Authority's actions with respect to securing the IAD parking lot demonstrate

that the Authority fully understands what it means to have a "secure" parking area. The Union asserts that the Authority simply does not want to pay for establishing a lot that is "secure" within the meaning of the CBA.

In response to the Authority's arguments, the Union rejects the Authority's position that Lot A is "secure". The Union contends that the Authority arrived at this asserted conclusion without consulting industry experts, neighboring police departments, or the Union. The Union vigorously maintains that the facts of a control arm at the entrance to the Lot A and the "high visibility" of Lot A plus a nearby cruiser and unarmed traffic control officers do not make Lot A "secure". The Union argues that its evidence establishes that a "secure" lot must have in place methods and systems that keep out vehicular and foot traffic so that officers can safely come and go from their workplace, put on and take off their firearms and equipment, and safely store their equipment in their vehicles. According to the Union, the methods and systems proposed for Lot A fail to provide this safety.

The Union also rejects the Authority's argument that DCA is different from IAD in terms of what is necessary to provide a "secure" parking area. The Union points out that the threats to officers at DCA are just as real as the threats to them at IAD and/or at MWAA Police Headquarters. The Union rejects MWAA's position that the security measures at IAD are some sort of "unrealistic pipe dream[]", noting that the security measures that it advocates for the DCA parking lot are the same ones in effect at MWAA Police Headquarters and at parking lots for police facilities throughout the region.

The Union maintains that the threats at DCA are just as real as the threats at IAD. The Union contends that the Authority's assertion that having "lots of eyes" and exposure to the public provides adequate security at DCA is patently incorrect. The Union points out that Lot A is more exposed to foot and vehicular traffic than the Current Lot.

The Union rejects that Authority's argument that the Authority has the sole discretion to determine what constitutes a "secure" parking location. The Union maintains that the provisions of Article 26 of the CBA regarding providing a "secure" parking location narrow the management rights set forth in Article 6 of the CBA. Further, argues the Union, both the Preamble to the CBA (Article 1) and the Settlement Agreement require the Parties to work together collaboratively. The Union acknowledges that MWAA has some discretion in determining what constitutes a "secure" parking location. The Union also contends that it has worked with the Authority in a collaborative fashion to relax its insistence on a parking location that is "adjacent" to the police station at DCA, but that the matter of a "secure" parking location is too vital to the CBA and the lives of the Bargaining Unit members to ignore.

The Union rejects the case law and definitions cited by the Authority in its brief. The Union maintains that those cases, dealing with tort liability of a landlord to a third party, are irrelevant to the issues in the proceeding. Insofar as the Authority's cited definition of "secure" drawn from the Miriam-Webster Online Dictionary, the Union argues that the Authority left out relevant portions of the definition which included the language, "Free from danger or risk of loss; safe". The Union cites further definitions of "secure" from the American Heritage Dictionary and the Oxford English Dictionary. The Union notes that the Authority concedes that the Current Lot (Lot D) is "completely unsecured" and points out that the Authority initially claimed that Lot D was "secure" by virtue of having a sign at the entrance.

The Union contends that the Authority's action in securing the IAD parking lot demonstrates that the Authority fully understands what is necessary to establish a "secure" lot. It maintains that the Authority at one point asserted that a sign and sandwich board was sufficient to provide a "secure" parking location at both Lot D and at IAD but that MWAA eventually backed away from that position relative to the parking situation at IAD. The Union reprises its arguments regarding suspension of the hang tag fees

for all Bargaining Unit members, pointing out that officers frequently find themselves working at DCA even if those same officers are assigned to another location (usually IAD) or to some other specialized police work.

With respect to remedy, the Union repeats its earlier-claimed remedies, updating the dollar amounts claimed to cover additional items since the initial brief.

Reply Brief of the Authority

In its reply brief, **the Authority** argues that the Union failed to sustain its burden to prove that the proposed move of the parking lot for the Bargaining Unit at DCA to Lot A would not satisfy the CBA's requirement to provide "secure" parking. The Authority maintains it was within its management rights to determine that a secure, guarded parking lot located in a visible public setting (*i.e.*, Lot A) was preferable to Lot D, that was uncontrolled, unguarded, and located in a dark, secluded area. MWAA emphasizes that the managements rights provisions of the CBA and the Settlement Agreement provide it with the right to make this determination. MWAA urges that its judgment as to what constitutes a "secure" parking lot and the selection of a lot that satisfies that requirement should not be set aside in arbitration, noting particularly the lack of expert testimony put on by the Union as to what constitutes a "secure" parking lot. The Authority urges that the testimony of Mr. Golinowski should be credited instead.

The Authority contends that a fence is not required to render a parking lot "secure" within the meaning of the CBA. MWAA argues that the Union has failed to present sufficient evidence to prove that a fence is necessary to produce a parking lot that is "secure". It further argues that the Union presented no evidence as to the danger that would be reduced by the presence of the fencing, no evidence of any danger posed by persons walking through Lot A on pathways, and no evidence that the presence of the police cruiser and traffic control officers would fail to mitigate any

possible danger or threat from such persons. The Authority notes that Lot A is "highly visible" and asserts that there was no evidence that pedestrians passing through such lots posed any danger. MWAA rejects the Union's assertion that "trespassing, larceny[,] and vehicle break-ins" are criminal acts with which officers must deal on a regular basis. The Authority points out that vehicle break-ins and problems with homeless people do occasionally occur in garages, but it distinguishes garages from highly visible parking areas such as Lot A.

The Authority vigorously rejects the Union's assertion that MWAA's disinclination to erect a fence around Lot A is based on the cost of such a fence. MWAA cites Mr. Golinowski's denial that cost is a factor in support of its position. The Authority also points out that the Union offers no proposal or evidence of any means to enhance the security of Lot A other than the erection of a fence.

The Authority asserts that the presence of a police cruiser and of the uniformed Traffic Control Officers act as a deterrent to the danger of ambushes in locations that are allegedly not secured.

MWAA asserts that IAD and DCA are two very different facilities. It argues that what might work at IAD in terms of a "secure" parking situation is not the right answer to the question of security at DCA. The Authority contends that requiring different elements in different settings is perfectly reasonable. The Authority further contends that if the Union had wanted the Authority to build a parking lot with a fence around it, the Union could have bargained for that. The Authority asserts that such a contract term cannot be written into the CBA by means of an arbitration award. The Authority acknowledges, however, that the arbitrator must determine whether the "safety and security features associated with Lot A" meet the obligation in the CBA to prove a parking lot that is "secure".

The Authority contends that there is no evidence of any history of assaults against police officers in airport parking

lots. It concedes, however, that the danger of violence exists. The Authority asserts that Lot A is a "secure" parking facility.

The Authority maintains that officers assigned to IAD should be required to pay hang tag fees. The Authority notes that the Union acknowledges that parking facility at IAD is the "gold standard". Therefore, argues MWAA, there is no reason that the officers parking there should not pay the hang tag fee. The Authority contends that this dispute is not about the money and argues that there is no inducement to make any changes at DCA by denying it the hang tag fees for IAD.

The Authority rejects the Union's cited case authority regarding material breaches of a contract. The Authority argues that its entitlement to hang tag fees does not derive from the CBA but is based on its status as the owner of the property on which the officers are parking. It notes that other unionized employees at the airports pay hang tag fees. In addition, the Authority asserts that, in a worst-case analysis, it did not materially breach the CBA and that, therefore, the language about material breach cited by the Union does not apply.

The Authority contends that the Union should not be awarded attorney fees. Citing the Settlement Agreement, the Authority points out that there is provision for the payment of the Union's "costs and expenses" in future grievances or arbitrations regarding the Settlement Agreement but that there is no provision for the payment of attorney fees. The Authority points out that this is in stark contrast to the provision earlier in the same section of the Settlement Agreement that the Parties "shall bear their own costs, expenses and attorneys' fees" of the grievance and the related Settlement Agreement.

In sum, the Authority argues that it has satisfied the requirements of the CBA and the Settlement Agreement and that it has provided "secure" parking at DCA in Lot A. In the event that Lot A is found not to be "secure", the Authority seeks payment of

the hang tag fee commencing as of October 1, 2022 from officers assigned to IAD or to MWAA Police Headquarters. The Authority additionally contends that the Union should not be found to be the substantially prevailing party (as set forth in the Settlement Agreement) and that no monies be awarded to the Union, including and especially attorney fees.

The Authority urges that the grievance be denied.

DISCUSSION AND ANALYSIS

Burden of Proof

The Union had the burden to prove that Lot A at DCA is not in compliance with Article 26 (meaning "secure" and "adjacent") of the CBA. For the reasons that follow, I find that the Union has met its burden and the grievance is sustained.

Lot A Is Not "Secure"

The record shows that Lot A is an open-air lot (*i.e.*, not a garage) situated across several lanes of traffic from the Historic Terminal at DCA. The evidence establishes that, in order to drive a vehicle through the entrance of Lot A, a card reading device must be activated in order to raise a control arm, thus allowing the vehicle to pass into Lot A. The evidence demonstrates that pedestrians can enter or exit Lot A by walking across the surface of the surrounding roadways and/or walkways and/or green space. The record indicates that the only barriers around Lot A are disconnected and do not form a single, unbroken perimeter. The evidence shows that in some places, there is a single strand of a chain is suspended between two poles. The record shows that, in other areas, bike racks have been set up adjacent to one another in an apparent effort to create some sort of a barrier. The evidence also establishes that there are barriers made of two parallel pipes affixed to vertical posts in some areas.

The evidence shows further that Lot A is visible from the surrounding areas of DCA. The record establishes that a police patrol car is parked in Lot A and that TCOs are present around Lot A as they fulfill their traffic control duties.

The evidence makes clear that MWAA police officers use the parking lots (presently Lot D) as a place to assemble and put on their law enforcement equipment (such as body armor and gun belts) at the start of their workdays and also to remove and store those same sorts of items at the close of their workdays. There was no evidence presented that shows that a different procedure or routine would become customary or required if the parking for the police officers at DCA is moved to Lot A from Lot D. Therefore, I conclude that officers would use Lot A in the same way that they presently use Lot D for the purposes of assembling and putting on their gear and/or packing up and removing their gear.

Article 6, Section 1.a. of the CBA provides that the CBA does not affect the authority of "any management official to determine . . . internal security practices of [MWAA]". Likewise, Paragraph II of the Settlement Agreement provides that ". . . the Employer makes the final decisions concerning specific security measures and practices to be implemented at the Lots" subject to a determination by an arbitrator as to the meaning of "secure". Notwithstanding MWAA's accurate recitations of its authority that is laid out in these two documents, it still must comply with the requirements of Article 26; the Authority cannot simply make the requirements of Article 26 disappear by asserting that it is exercising its right to make decisions pursuant to Article 6 of the CBA or Paragraph II of the Settlement Agreement.

In its opening statement the Authority acknowledged that "as far as [the Authority is] aware there is no standard which provides guidance to the term secure parking lot." The Authority further noted that "[the arbitrator's] task then is to determine what is reasonable." (Tr. 119).

The record shows that neither Party presented evidence regarding any industry standards regarding what constitutes a "secure" parking facility at an airport such as DCA or anywhere else. Insofar as the record indicates, the inquiries made by the Authority among its staff as to industry standards of this sort yielded only indications that no such standards exist.

The Authority's argument that Lot A is "secure" is not persuasive. The Authority bases its argument on the facts that entry to Lot A is controlled by a gate arm with a card swipe reader; that Lot A is open and is highly visible to employees and police officers going about their regular duties (and, presumably visible to the public, as well); and that Lot A has a police patrol car parked in it while TCOs perform their duties around Lot A.

As noted, a determination must be made as to what is reasonable. "Secure" can mean different actions and different procedures in different places, in different circumstances, and at different times. A finding of reasonability must be a product of objective reality. In that regard, I take arbitral notice of the significant spike in the number of acts of conspiracy, aggression, and/or violence again law enforcement officers around the United States in recent years. I note also that a future threat does not necessarily mimic or flow logically and/or sequentially from a past threat; new types and/or methods of threats can develop at any time. In a world where police officers who are out in public are ambushed in their patrol vehicles or while on foot patrol, it is easy to envision police officers who are standing next to their personal vehicles possibly while putting on or removing their gear before or after being on duty or who are simply walking across a parking lot who then become the subject of an attack in an open parking lot. Where the Authority sees visibility as an advantage and a deterrent to attack or vandalism, a criminal attacker might find high visibility to mean a clear line of sight with an open field of fire for an attack on police officers or an open route of advance for an anti-police ambush.

With respect to the existing impediments to entry around the perimeter of Lot A, the evidence establishes that they do not restrict entry to Lot A. The totality of the evidence indicates that the single strand of chain hanging between two posts presents no meaningful barrier because a person can quickly step over it or move under it without significant effort. Similarly, the evidence indicates that the bike racks are not affixed to the surface of the ground or the lot and can be moved out of the way with only minimal effort. Therefore, the bike racks do not present a significant barrier to entry either. According to the record, the pipe-based fencing does not link up to other immovable perimeter barriers when it ends; there is considerable space between the two pipes that are parallel to the ground and between the lower pipe and that ground; and the top pipe that is parallel to the ground does not appear to be taller than the average human being or a sport utility vehicle. Therefore, the pipe-based fencing does not provide a significant barrier to entry because of the apparent ease with which a reasonably mobile human being could travel over, under, around, or through the fence.

In sum, a parking lot through which members of the public can pass with little or no impediment while on foot is objectively not secure. Indeed, a highly visible parking lot with no meaningful barriers to entry on foot offers a would-be attacker a target-rich environment.

With respect to the Authority's reliance on the parked police patrol car to provide security in Lot A, the record does not show that the patrol car is always occupied by a police officer. In addition, even if the patrol car is occupied by a police officer all the time, there was no evidence presented as to whether a police officer in that patrol car could readily and constantly observe all of Lot A and maintain security across all compass points.

The evidence establishes that the Authority's reliance on TCOs as security is also misplaced. The record makes clear that the

TCOs are not law enforcement officers and are not armed. From those facts, I conclude that the TCOs have limited ability and limited authority to deter, prevent, and/or resist violence against police personnel or the destruction of property in Lot A.

For all of these reasons and based on the entirety of the evidence adduced at the hearing, I conclude that Lot A is not presently "secure".

Insofar as the arguments regarding what measures should be taken in order to render Lot A secure, there is insufficient evidence in the record to make that determination. There are many unanswered questions in the record such as the possibility of working with the Virginia SHPO to determine what measures might be acceptable and/or whether exceptions to SHPO's normal standards could be obtained. As a matter of plain logic and in keeping with the notion that what constitutes "secure" in one situation might not be the same in a different situation or might not be feasible due to external factors, there is insufficient basis to conclude that only the plan implemented for the lot at IAD would satisfy the requirement of Article 26 at DCA. The evidence shows that neither party called expert witnesses to present proposals as to what would constitute a "secure" parking facility at DCA or what the standards for such a parking facility are. There is also no evidence in the record that either Party consulted such industry experts as to what measures would render Lot A "secure" and what security methodologies were best suited to the circumstances at Lot A. In addition to the absence of sufficient evidence in the record from which could be fashioned a design for or a thorough narrative description of a "secure" parking facility at Lot A, the record makes clear that the Parties' statement of the issue in arbitration did not place the determining of the particulars for the design of a "secure" parking lot before me. While the remedy is before me, the remedy for finding that Lot A is not "secure" is to make Lot A "secure".

As noted above, the Parties made significant and commendable efforts over a period of many months to find a resolution to this dispute and explored numerous alternatives for the location of both the police station and the parking lot. The Parties clearly worked together in good faith to try to resolve this matter, including extensive searching for a different location for the parking lot and/or the police station at DCA that would be or could be made consistent with Article 26. Nevertheless, the record is insufficient to allow a decision maker who is not also a subject matter expert to develop the design or even the parameters for a "secure" parking facility. More importantly, the question of designing a "secure" parking facility is expressly not before me. Therefore, it must be resolved, if at all, in another forum and/or via a process other than this arbitration.

Lot A Is Not "Adjacent"

The evidence establishes that Lot A is not "adjacent" to the police station at DCA. There is no dispute that Lot A is separated from the Historic Terminal by several lanes of traffic. The testimony as well as a review of the photographic evidence presented at the hearing as well as the map of DCA that was placed in evidence makes clear that those lanes of traffic plus some limited green spaces must be traversed in order to proceed from Lot A to the terminal. In addition, the record shows that it would likely take one to two minutes to walk from Lot A to Lot D and two to three minutes to walk from Lot A to the Historic Terminal. While neither period of time is extreme, they are not consistent with Lot A's being "adjacent" to the police station at DCA. Moreover, such distances can appear be significant for a police officer who has a valid concern about possible ambush.

I note that the Union indicated that, in an effort to resolve the problem of establishing a "secure" lot the Union had worked collaboratively with MWAA and "relax[ed]" its position relative to the matter of establishing an "adjacent" lot at DCA. Notwithstanding that commendable collaborative effort by both

Parties, the issue, as formulated by the Parties, of an "adjacent" lot is still before me. The evidence conclusively establishes that Lot A is not "adjacent" to the police station at DCA. That said, there is nothing in this conclusion that bars the Union from continuing to "relax" the "adjacent" requirement that is set forth in Article 26. Likewise, nothing in this conclusion bars the Union from working cooperatively with the Authority to position a parking lot that is functional and "secure". The record shows and the Parties acknowledge that the geographic and space constraints of the DCA campus are significant and many.

Hang Tag Fees

The Parties made vigorous and extensive argument regarding the appropriateness of hang tag fees under the present conditions as well as the future obligation of Bargaining Unit members to pay the hang tag fees depending on the decision as to Lot A's being or not being "secure" and "adjacent". It also appears as though the status of the hang tag fees and the obligation to pay them or the relief from paying them turns on the determination as to whether Lot A is "secure" and "adjacent" as agreed to by the Parties in Article 26 of the CBA. Indeed, insofar as the record indicates, that was an element of the Conclusion and Award issued by Mediator Kloch in the Mediation Decision.

Notwithstanding the above facts and arguments, the Parties did not place the issue of the past, current, or future payment of hang tag fees before me in their statement of the issue. One result of the failure to include this as an issue before me is that certain facts that might have been adduced had that issue been before me, especially in terms of remedy, were not sought or adduced. Matters such as whether a data base is or could be maintained that records which officers park at which facilities (IAD or DCA) on which days were never explored on the record. The feasibility of charging pro rata for days parked at a "secure" facility versus an unsecured facility was not developed. Not pursuing such avenues of inquiry or evidence made logical sense in the context of the non-inclusion

of the matter of the hang tag fee in the statement of the issue to which the Parties agreed. Therefore, it is inappropriate for me to make a finding regarding payment or non-payment of hang tag fees in the various time periods during the pendency of this dispute or going forward based on the present record and the posture of the case. While the payment or non-payment of the hang tag fee might be amenable to further, focused arbitration or mediation or even the subject of negotiation and/or amendment of the CBA or the Settlement Agreement, my directing the Parties to pursue such avenues of resolution is beyond the scope of this proceeding and beyond the scope of my authority.

Costs, Expenses, Attorney Fees

Article 32 Section 3 of the CBA provides that:

> The arbitrator shall have no authority to add to or modify any terms of this Agreement and will confine the hearing to the specific issue(s) in dispute. (JX 5).

The Union argues that it is entitled to the payment of its costs, expenses, attorney fees, in addition to the 100% of the costs of this arbitration. In support of its position, the Union cites the Settlement Agreement, especially Paragraph VII.C., as well as the Mediation Decision.

Paragraph VII.C. of the Settlement Agreement provides that:

> C. **Fees and Costs.** Except as described further in this Agreement, the Parties shall bear their own costs, expenses and attorneys' fees incurred in connection with the Grievance and this Agreement. In any future grievance or arbitration relating to the Grievance and/or this Agreement in which the Union is the substantially prevailing party, the Employer shall pay the Union's expenses and costs, including the costs for the arbitrator, court reporter and transcripts. (JX 2).

The evidence shows that the plain meaning of Paragraph VII.C. is that the Parties were required to pay, "their own costs,

expenses and *attorneys' fees* [emphasis supplied]" that they incurred in the course of the grievance (commenced in 2018) and in reaching the agreements that were memorialized in the Settlement Agreement. Paragraph VII.C. also requires that the MWAA pay the Union's "expenses and costs" in any future grievance or arbitration in which the Union is the substantially prevailing party. By the terms of the Settlement Agreement, those costs include the cost of the arbitrator, court reporter, and the transcripts.

As found above, the Union's sustaining its burden to prove that Lot A is not "secure" and not "adjacent" places it in the position of being the substantially prevailing party. Based on that finding and in keeping with Paragraph VII.C. of the Parties' Settlement Agreement, the Authority must pay the Union's "expenses and costs" including the "cost[]" of the "arbitrator, court reporter[,] and the transcripts."

Notable by its absence from Paragraph VII.C. of the Settlement Agreement, however, in the phrase "Union's expenses and costs" that are to be paid by the Authority if the Union is the substantially prevailing party in a future grievance or arbitration is the line item "attorneys' fees". The reasonable conclusion to draw from the omission of the line item "attorneys' fees" is that the Parties did *not* agree that the Authority would be liable for the payment of the fees for the Union's attorney(s) in the event the Union was the "substantially prevailing party" in "any future grievance or arbitration". Therefore, there is no basis for the award of attorney fees to the Union.

The record makes clear that Mediator Kloch awarded attorney fees to the Union as part of the Mediation Decision. There is, however, no evidence in the record before me as to the rules and/or procedures that governed the mediation conducted by Mediator Kloch. In addition, there is no evidence as to the authority granted to Mediator Kloch or the limitations on his authority in the mediation proceeding. Furthermore, there is no evidence in the present record as to what evidence was presented to Mediator Kloch in the

binding mediation proceeding. Finally, the record is silent on whether the Mediation Decision is to be considered precedential in future proceedings. In the absence of such evidence and in the presence of the clear statements in the CBA and the Settlement Agreement, attorney fees cannot be awarded in this proceeding.

Union Counsel provided an affidavit setting forth costs and expenses (as well as attorney fees) incurred in connection with this matter. Those costs and expenses were:

Paul Alexander travel:	$ 592.25
Cost of court reporter:	$ 962.19

Article 32, Section 4 of the CBA provides for the Parties' "shar[ing] the arbitrator's fees and expenses equally." The totality of the record, however, indicates that the Parties intended that the agreed-upon provisions in the Settlement Agreement for the shifting of these costs should be controlling over the language in the CBA. The Award so reflects.

A W A R D

The Union sustained its burden to prove that the proposed lot known as Lot A is not in compliance with Article 26 of the CBA.

The Authority shall establish a parking area at DCA that is in compliance with Article 26 of the CBA.

The Authority shall pay the Union's costs and expenses in the amount of $1,554.44.

The Authority shall pay the costs of this arbitration including the fees of the arbitrator, court reporter, and transcript based on invoices to be submitted.

The grievance is sustained.

Issued at Chevy Chase, Maryland this 17th day of February, 2023.

/s/
Abbot Kominers, Arbitrator