Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee	
Petitioner	PERB Case No. 24-A-15
v.	Opinion No. 1906
District of Columbia Metropolitan Police Department	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On August 19, 2024, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed an amended[1] arbitration review request (Request), seeking review of an arbitration award (Award) dated August 5, 2024, pursuant to the Comprehensive Merit Personnel Act (CMPA).[2] The Award found that MPD did not violate the law or the parties' collective bargaining agreement (CBA) when it refused to provide an officer (Grievant) with four (4) additional weeks of paid family medical leave (PFML) for the birth of her child.[3]

FOP requests that the Board vacate the Award on the grounds that it is contrary to public policy.[4] FOP further requests that the Board remand this matter to the Arbitrator with instructions to find in favor of the Grievant and order MPD to compensate her for the PFML it denied.[5] MPD filed an opposition to FOP's Request.

Upon consideration of the Arbitrator's conclusions, applicable law, and the record presented by the parties, the Board finds that the Award is not contrary to public policy. Therefore, the Request is denied in its entirety.

[1] The amended arbitration review request cured a minor deficiency identified in FOP's initial submission.
[2] D.C. Official Code § 1-605.02(6).
[3] Award at 19.
[4] Request at 3, 8-16.
[5] Request at 16.

II. Background

The Arbitrator made the following factual findings. Pursuant to D.C. Official Code § 1-612.04a of the CMPA, titled "Paid parental, family, and medical leave":

> (a)(1) An eligible employee shall be entitled to receive leave with pay for not more than 8 workweeks total in a 12-month period for any combination of leave as follows:
>
> (A) Up to 8 workweeks for qualifying parental leave events;
>
> (B) Up to 8 workweeks for qualifying family leave events; and
>
> (C) Up to 2 workweeks for qualifying medical leave events.

In October of 2022, the Council of the District of Columbia (D.C. Council) enacted the District Government Paid Leave Enhancement Act of 2022 (Act),[6] effective December 21, 2022.[7] The Act amended § 1-612.04a by adding § 1204a(b), which provides that:

> (b) Beginning on the applicability date of this subsection, an eligible employee shall be entitled to receive leave with pay for not more than 12 workweeks in a 12-month period for any combination of leave as follows:
>
> (1) Up to 12 workweeks for qualifying parental leave events;
>
> (2) Up to 12 workweeks for qualifying family leave events; and
>
> (3) Up to 12 workweeks for qualifying medical leave events.
>
> (4) Up to 2 workweeks for qualifying pre-natal leave events for qualifying pre-natal leave events, except that qualifying pre-natal leave shall count against paid leave otherwise available to the employee pursuant to this section for qualifying medical leave events but shall not count against leave available for qualifying parental leave events.

Thus, pursuant to the Act, the eight (8) workweeks of PFML currently available to District employees will be extended to 12 (twelve) workweeks, pending applicability.[8] Section 3 of the Act explains that "applicability" occurs when funding for the PFML extension is approved:

> (1) Except as provided in paragraph (2) of this subsection, section 2 shall apply as of January 1, 2023.

[6] D.C. Law 24-212.
[7] Award at 4.
[8] Award at 4.

> (2) New section 1204a(b) of the District of Columbia Government Comprehensive Merit Personnel Act, passed on 2nd reading on October, 2022 (enrolled version of bill 24-615), added by Section 2(d), shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

The Grievant is an MPD officer who has been employed with the Agency since approximately 2016.[9] In December of 2022, the Grievant requested eight (8) weeks of PFML for the impending birth of her child.[10] MPD approved her request.[11] Due to prenatal health issues, the Grievant began using her approved PFML on January 6, 2023.[12] However, she did not give birth until April 11, 2023.[13] The Grievant experienced complications during delivery, which required surgery and substantial recovery time.[14] The Grievant exhausted the eight (8) weeks of approved PFML and used an additional fifty (50) to eighty (80) hours of personal sick leave to recuperate and care for her newborn.[15] After the Grievant exhausted her PFML and sick leave, she returned to work on light duty.[16]

Shortly after her child was born, the Grievant learned of the Act and emailed the Director of the MPD Human Resources Management Division, requesting the full twelve (12) weeks of PFML described therein.[17] On April 18, 2023, the MPD Lead Human Resources Specialist responded by denying the Grievant's request and explaining that "the maximum family leave remains at 8 weeks within a 12-month period for D.C. government employees."[18]

On April 20, 2023, FOP filed a Step 1 grievance with MPD, asserting that, by denying the Grievant's request for additional leave, MPD violated D.C. Official Code § 1204a(b), as well as Articles 1 and 4 of the CBA.[19] MPD denied the Step 1 grievance.[20] On April 26, 2023, FOP filed a Step 2 grievance.[21] MPD denied the Step 2 grievance, and this matter proceeded to arbitration.[22] An arbitration hearing was held on June 5, 2024.[23]

[9] Award at 3.
[10] Award at 3.
[11] Award at 3.
[12] Award at 3-4.
[13] Award at 4.
[14] Award at 4.
[15] Award at 4.
[16] Award at 4.
[17] *See* Award at 5.
[18] Award at 5.
[19] *See* Award at 5-6.
[20] Award at 5.
[21] Award at 5.
[22] Award at 5.
[23] Award at 1.

III. Arbitrator's Findings

The Arbitrator considered the issue of whether MPD's refusal to provide the Grievant with four (4) additional weeks of PFML violated Articles 1 and 4 of the CBA, or any other applicable laws, rules, or regulations.[24]

The Arbitrator reviewed Articles 1 and 4 of the CBA.[25] In relevant part, those provisions read as follows:

> **Article 1 – Preamble**
>
> Section 1
> This collective bargaining Agreement (this Agreement) is entered into between the Metropolitan Police Department (the Department or the Employer), and the D.C. Police Union (Fraternal Order of Police/Metropolitan Police Department (FOP/MPD) Labor Committee or the Union.
>
> Section 2
> The parties to this Agreement hereby recognize that the collective bargaining relationship reflected in this Agreement is of mutual benefit and the result of good faith collective bargaining between the parties. Further, both parties agree to establish and promote a sound and effective labor-management relationship in order to achieve mutual understanding of practices, procedures and matters affecting conditions of employment and to continue working toward this goal.
>
> Section 3
> The parties hereto affirm without reservation the provisions of this Agreement, and agree to honor and support the commitments contained herein. The parties agree to resolve whatever differences may arise between them through the avenues for resolving disputes agreed to through negotiations of this Agreement.
>
> Section 4
> It is the intent and purpose of the parties hereto to promote and improve the efficiency and quality of service provided by the Department. Therefore, in consideration of mutual covenants and promises contained herein, the Employer and the Union do hereby agree as follows:…
>
> **Article 4 – Management Rights**
>
> Section 1
> The Department shall retain the sole right, authority, and compete discretion to maintain the order and efficiency of the public service entrusted to it, and to

[24] Award at 1.
[25] Award at 5.

> operate and manage the affairs of the Metropolitan Police Department in all aspects including, but not limited to, all rights and authority held by the Department prior to the signing of this Agreement.
>
> Section 2
> Such management rights shall not be subject to the negotiated grievance procedure or arbitration. The Union recognizes that the following rights, when exercised in accordance with applicable laws, rules and regulations, which in no way are wholly inclusive, belong to the Department:…

The Arbitrator found that FOP had the burden of demonstrating, by preponderant evidence, that MPD violated the CBA.[26] The Arbitrator observed that the CBA does not discuss PFML benefits.[27] However, the Arbitrator ruled that, if FOP could show that MPD violated the law, that demonstration would be sufficient to prove that MPD violated Article 4 of the CBA.[28]

Before the Arbitrator, FOP asserted that, by refusing to provide the Grievant with twelve (12) weeks of PFML, MPD failed to bargain in good faith, thereby violating Article 1, Section 2 of the CBA.[29] FOP also asserted that MPD's denial of the request for additional PFML did not comply with MPD's duty, under Article 4 of the CBA, to exercise its management rights "in accordance with applicable laws, rules and regulations."[30] Specifically, FOP alleged that MPD violated D.C. Official Code § 1204a(b) of the CMPA.[31] FOP further contended that the Department of Employment Services (DOES) website misled District employees by stating that "Parental Leave provides twelve (12) weeks of benefits in a year to bond with a new child."[32] At arbitration, FOP argued that MPD's conduct constituted a repudiation of the CBA.[33] FOP requested relief in the form of an order directing MPD to provide the Grievant with compensation equal to four (4) weeks of leave, as well as punitive back pay.[34]

At arbitration, MPD argued that, under Section 3 of the Act, the additional four (4) weeks of PFML described in D.C. Official Code § 1204a(b) was not applicable because it was never included in an approved budget.[35] MPD asserted that granting employees this extended PFML would cost the District $23 million for Fiscal Year 2023, and $94.4 million through Fiscal Year 2026.[36] MPD contended that its budget for Fiscal Years 2023 through 2026 could not accommodate those expenses and thus, the 4-week PFML extension had not reached applicability

[26] Award at 12.
[27] Award at 12.
[28] Award at 12.
[29] Award at 6-7.
[30] Award at 7.
[31] *See* Award at 7.
[32] Award at 6.
[33] Award at 6-7.
[34] Award at 7.
[35] *See* Award at 7-8.
[36] Award at 7-8.

under Section 3 of the Act.[37] Concerning FOP's request for retroactive pay or leave, MPD asserted it had no statutory authority to retroactively apply the Act.[38]

FOP challenged MPD's assertions, arguing that the Agency can and should independently fund and implement the 4-week PFML extension.[39] FOP asserted that public records indicate both MPD and the District consistently experience end-of-year budgetary surpluses, which could be used to fund PFML.[40] FOP also asserted that because MPD did not backfill the Grievant's position during her absence, the Agency would be able to retroactively compensate her at no extra cost.[41] FOP argued that MPD had budgeted almost $5 million to fund other portions of the Act, money which could be used to fund four (4) additional weeks of PFML for the Grievant.[42] FOP also argued that the District of Columbia Department of Human Resources (DCHR) maintains a leave bank which could have been used to supplement the Grievant's PFML, had she been informed of its existence.[43]

Regarding FOP's allegation that the DOES website was misleading, the Arbitrator found that the twelve (12) weeks of leave mentioned therein referred to a separate leave program, titled the Universal Paid Leave Amendment Act (UPLA), which is administered by DOES, not MPD.[44] The Arbitrator determined that if an individual read the website thoroughly, they would be able to discern that it concerned UPLA, as opposed to D.C. Official Code § 1204a(b).[45] The Arbitrator was also unpersuaded by FOP's contention that the leave bank could have supplemented the Grievant's PFML.[46] The Arbitrator explained that the Grievant had already availed herself of the eight (8) weeks of PFML provided to her under D.C. Official Code § 1-612.04a of the CMPA and could not circumvent that limit by using the leave bank.[47] Concerning FOP's requests for independent funding and selective treatment for the Grievant, the Arbitrator noted that the CBA does not provide for implementation of benefits randomly or arbitrarily for a select few employees.[48]

FOP cited the D.C. Superior Court's decision in *W.P Company, LLC d/b/a/ The Washington Post v. District of Columbia* (the *Post* case) "for the premise that a statutory funding provision can be lawfully disregarded by MPD in order to effectuate a D.C. law."[49] In the *Post* case, the Washington Post (newspaper) filed several Freedom of Information Act[50] (FOIA)

[37] Award at 7-8.
[38] Award at 9.
[39] Award at 10.
[40] Award at 11.
[41] Award at 11.
[42] Award at 12.
[43] Award at 12.
[44] Award at 9.
[45] Award at 13.
[46] Award at 12.
[47] Award at 12.
[48] Award at 12-13.
[49] Award at 13 (citing *W.P Company, LLC d/b/a/ The Washington Post v. District of Columbia*, Case No. 2023-CAB-000951 (Sept. 29, 2023)).
[50] D.C. Official Code DC Code § 2-534.

requests with MPD, seeking copies of an officer's disciplinary records.[51] MPD denied the requests, arguing that pursuant to D.C. Official Code § 2-534 (a)(2) (FOIA Exemption 2), the officer's disciplinary records were exempt from disclosure because producing them would constitute "a clearly unwarranted invasion of personal privacy," which was more than *de minimis* in nature.[52] The newspaper disagreed, asserting that newly-enacted D.C. Law 24-345 § 134 of the Comprehensive Policing and Justice Reform Amendment Act (CPJRAA) prohibited MPD from denying FOIA requests for disciplinary records on the basis that they constituted an unwarranted invasion of personal privacy.[53] The newspaper further contended that even if the CPJRAA did not apply, MPD was still obligated to produce the requested records, as the public interest served by disclosing the records outweighed the officer's personal privacy interest.[54]

In the *Post* case, the court determined that, under D.C. Law 24-345 § 301, the CPJRAA would not take effect until its fiscal impact had been included in an approved budget and financial plan.[55] Finding that this condition had not been met, the court concluded that the CPJRAA did not apply.[56] Nevertheless, the court determined that MPD must produce the requested records.[57] In reaching this determination, the court employed a traditional balancing test and concluded that, although the officer had more than a *de minimis* personal privacy interest in maintaining the confidentiality of his disciplinary records, that interest was outweighed by the public interest in favor of disclosure.[58]

In the instant matter, the Arbitrator was unpersuaded by FOP's analogy to the *Post* case.[59] The Arbitrator concluded that FOP had conflated the court's analysis of FOIA Exemption 2 with the court's analysis of the CPJRAA.[60] In the *Post* case, the court ruled against MPD, but not out of adherence to an unfunded statute. Rather, the court conducted a separate balancing test and found that MPD must respond to the newspaper's FOIA request, in furtherance of the public interest.[61] The Arbitrator also suggested that the *Post* case supported MPD's position, remarking that "when faced with an amended statute that was not yet funded or implemented versus the existing statute, the [c]ourt relied on the existing statute."[62]

Like the court in the *Post* case, the Arbitrator in this matter relied on the existing statute, as opposed to the unfunded mandate. The Arbitrator determined that the extended PFML provided for under D.C. Official Code § 1204a(b) of the CMPA was subject to funding and concluded that, although the amended Act went into effect in December of 2022, the provision of D.C. Official

[51] *W.P Company, LLC d/b/a/ The Washington Post*, Case No. 2023-CAB-000951 at 1-2.
[52] *See id*. at 2, 4-6, 8, 10.
[53] *Id*. at 7.
[54] *Id*. at 6-7.
[55] *Id*. at 7.
[56] *Id*.
[57] *W.P Company, LLC d/b/a/ The Washington Post*, Case No. 2023-CAB-000951 at 12-14.
[58] *Id*. at 8-14.
[59] Award at 17.
[60] Award at 13.
[61] *W.P Company, LLC d/b/a/ The Washington Post*, Case No. 2023-CAB-000951 at 8-14.
[62] Award at 17.

Code § 1204a(b) which would extend District employees' PFML to twelve (12) weeks was never included in a budget.[63] Thus, the Arbitrator found that § 1204a(b) was inapplicable and concluded that FOP had failed to show by preponderant evidence that MPD violated the CBA or any other applicable laws, rules, or regulations.[64] Accordingly, the Arbitrator declined to award the relief FOP requested.[65] In reaching this decision, the Arbitrator stated that the outcome was an unfortunate but unavoidable one.[66]

FOP seeks review of the Award.

IV. Discussion

Section 1-605.02(6) of the D.C. Official Code permits the Board to modify, set aside, or remand a grievance arbitration award in only three narrow circumstances: (1) if an arbitrator was without, or exceeded his or her authority; (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.[67] FOP requests review on the grounds that the Award is contrary to public policy.[68]

Section 1-605.02(6) of the D.C. Official Code authorizes the Board to set aside an arbitration award if the award "on its face is contrary to law and public policy." However, the D.C. Court of Appeals has held that the word "and" should be read as "or" in this statutory context.[69] The Board has adopted the court's interpretation.

Nonetheless, the public policy exception is an "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's interpretation of a contract.[70] For the Board to overturn an award as contrary to public policy, the "public policy alleged to be contravened must be well-defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests."[71] "[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.'"[72] The petitioner bears the burden of demonstrating that the Award itself compels an explicit violation of well-defined public policy grounded in law and or legal precedent.[73] To prevail on its claim, the petitioner has the burden to specify applicable public

[63] Award at 10.
[64] *See* Award at 18-19.
[65] Award at 19.
[66] Award at 19.
[67] D.C. Official Code § 1-605.02(6).
[68] Request at 3, 8-16.
[69] *MPD v. PERB*, No. 19-CV-1115, Mem. Op. & J. at 10-11 (D.C. Sept. 15, 2022).
[70] *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6056, Slip Op. No. 1702 at 4, PERB Case No. 18-A-17 (2019) (citing *Am. Postal Workers Union v. USPS*, 789 F.2d 1, 8 (D.C. Cir. 1986), *accord MPD v. FOP/MPD Labor Comm. ex rel. Pair*, 61 D.C. Reg. 11609, Slip Op. No. 1487 at 8, PERB Case No. 09-A-05 (2014); *MPD v. FOP/MPD Labor Comm. ex rel. Johnson*, 59 D.C. Reg. 3959, Slip Op. No. 925 at 11-12, PERB Case No. 08-A-01 (2012)).
[71] *MPD v. PERB*, No. 19-CV-1115, Mem. Op. & J. at 10-11 (D.C. Sept. 15, 2022) (quoting *MPD v. PERB*, 901 A.2d 784, 789 (D.C. 2006)).
[72] *MPD*, Slip Op. No. 1702 at 4.
[73] *FOP/PSD Labor Comm. v. DGS.*, 70 D.C. Reg. 781, Slip Op. No. 1853 at 15, PERB Case No. 23-A-07 (2023).

policy that mandates that the Arbitrator arrive at a different result.[74] Disagreement with an arbitrator's decision does not render an award contrary to public policy.[75]

In its Request, FOP argues that the Board should overturn the Award because it is contrary to well-defined and dominant public policy favoring the expansion of PFML benefits.[76] FOP asserts that this public policy "was explicitly established by the Councilmembers and government officials who proposed, supported, and passed the law expanding PFML benefits for D.C. government employees."[77] In support of this assertion, FOP cites written testimony from the Director of DCHR concerning the value of the Act as a means of prioritizing District employees and maximizing their quality of life.[78] FOP also cites public statements from D.C. Councilmembers, describing the Act as a crucial step toward providing the competitive benefits necessary to attract and retain a qualified workforce.[79]

The Board finds this argument unpersuasive. The testimony cited does not demonstrate the existence of a well-defined and dominant public policy in favor of expanding PFML benefits where statutory funding provisions have not been satisfied. The Board finds no indication that the District officials quoted in the Request were proposing implementation of the PFML extension prior to the applicability date described in Section 3 of the Act.

FOP also argues that the public policy favoring expansion of PFML benefits is rooted in "the CMPA's explicit, decades-long policy 'to assure that the District of Columbia government shall have a modern flexible system of public personnel administration which shall…establish the means to recruit, select, develop and maintain an effective and responsive work force.'"[80] FOP asserts that evidence-based studies demonstrate the value of expanded PFML benefits as a method of improving employee retention and minimizing inequality .[81] FOP also asserts that the District's history of providing its employees with PFML,[82] as well as the existence of the leave bank,[83] demonstrate the statutory basis for FOP's position.[84] Additionally, FOP notes that, under Board precedent, the failure of the D.C. government to bargain over paid parental leave benefits is an unfair labor practice.[85] Thus, FOP argues, the public policy at issue concerns more than a supposed public interest.[86] The Board is unpersuaded. FOP merely describes the benefits of PFML, in

[74] *MPD v. FOP/MPD Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at 2, PERB Case No. 00-A-04 (2000).
[75] *FOP/MPD Labor Comm. v. MPD*, 47 D.C. Reg. 5315, Slip Op. No. 626 at 2, PERB Case No. 00-A-02 (2003)
[76] Request at 9.
[77] Request at 9-10.
[78] Request at 10-11.
[79] Request at 11.
[80] Request at 12 (citing D.C. Official Code § 1-601.02(a)(7)).
[81] Request at 12-13.
[82] Request at 13 (citing the Fiscal Year 2015 Budget Support Act of 2014, D.C. Law 20-155, Sec. 1052 (Feb. 26, 2015) and D.C. Official Code § 1-612.04(a) (establishing PFML for private sector employees in the District), as well as Universal Paid Leave Act of 2015, D.C. Law 21-264 (Apr. 7, 2017) and D.C. Code §§ 32-541.01, et seq. (establishing PFML for public sector employees in the District)).
[83] Request at 13 (citing D.C. Official Code § 1-612.05).
[84] Request at 13.
[85] Request at 13 (citing *AFGE Local 631 v. WASA*, Slip Op. No. 1866 at 4, PERB Case No. 24-U-09 (2024)).
[86] Request at 12-13.

general terms. FOP has not demonstrated the existence of a well-defined and dominant public policy mandating that the Arbitrator order MPD to extend the Grievant's PFML by four (4) weeks, despite the lack of funding.

Lastly, FOP argues that the *Post* case demonstrates that statutory funding provisions may be lawfully disregarded to effectuate the public policy underlying District law.[87] FOP asserts that in the *Post* case, the court chose to disregard the funding provision regarding D.C. Law 24-345 § 134 of the CPJRAA for the sake of promoting police transparency and accountability.[88] As the Arbitrator observed in the Award, FOP's analogy to the *Post* case is based on a misinterpretation of the court's holding. In the *Post* case, the court required MPD to produce the officer's disciplinary records because the court determined that under FOIA Exemption 2, the District "failed to demonstrate a privacy interest in nondisclosure that outweigh[ed] the public interest in disclosure of the requested records."[89] The court's reason for ordering MPD to disclose the disciplinary records was not tied to D.C. Law 24-345 § 134 of the CPJRAA. The *Post* case does not establish that statutory funding provisions may be lawfully disregarded to effectuate the public policy underlying District law. Thus, the court's decision does not mandate that the Arbitrator reach a different result.

The Board finds that DCPS has not demonstrated that the Award compels an explicit violation of well-defined public policy grounded in law and or legal precedent or shown that applicable public policy mandates a different result. Therefore, the Board finds that the Award is not contrary to public policy.

V. Conclusion

The Board rejects FOP's arguments and finds no cause to modify, set aside, or remand the Award. Accordingly, FOP's Request is denied, and this matter is dismissed in its entirety.[90]

[87] Request at 13-14.
[88] Request 14-15 (citing *W.P Company, LLC d/b/a/ The Washington Post v. District of Columbia*, Case No. 2023-CAB-000951 (Sept. 29, 2023)).
[89] *W.P Company, LLC d/b/a/ The Washington Post*, Case No. 2023-CAB-000951 at 12.
[90] This decision was issued contemporaneously with Opinion No. 1907 in PERB Case No. 24-A-13 and Opinion No. 1908 in PERB Case No. 24-A-14. The arbitration review requests in those matters presented the same issues and were denied on the same grounds.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

February 26, 2025
Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.