

In Opinion No. 1873, the Board noted the following:

In the Award, the Arbitrator noted that it is necessary to acknowledge the fact that the Grievant was in a non-contact status and his police powers had been revoked because he was under investigation and later federally indicted for unrelated crimes.⁴ However, the Arbitrator noted that the indictment “is not a conviction, and it is not appropriate for this Arbitrator to make any negative inference as to the Grievant’s ability to be rehabilitated or the appropriateness of alternative sanctions in light of the indictment.”⁵ Notwithstanding, the Arbitrator states in a footnote that, “[a]ny intervening conviction may, of course, impact remedy.”⁶

The Board determined that the Arbitrator had retained jurisdiction on remedy in this case. Therefore, the Board remanded the case back to the Arbitrator for consideration of the reinstatement remedy in light of the Grievant’s subsequent conviction.

FOP notes that, “[o]n January 26, 2024, unbeknownst to PERB, the MPD requested that Arbitrator Espinosa reconsider her Award based upon [the Grievant]’s criminal conviction in the unrelated criminal matter.”⁷ On January 29, 2024, FOP notes that the Arbitrator denied the MPD’s request that she reconsider her remedy.⁸ Neither MPD’s request to the Arbitrator, nor the Arbitrator’s denial was presented to PERB as part of the full record of the case for decision.

The Board will deny motions for reconsideration that are based upon mere disagreement with the initial decision, or which do not provide a statutory basis for reversal.⁹ The Board has held that it will not consider evidence presented for the first time or new arguments raised in a motion for reconsideration.¹⁰

FOP’s arguments that the remand Order would deprive the Grievant of due process, and is outside the scope of the Arbitrator’s jurisdiction, lack merit. Arbitrators not infrequently retain jurisdiction regarding part or all of a remedy.¹¹ The Board’s remand Order in Opinion No. 1873 did not set aside the Award or any of the Arbitrator’s findings. The Board did not order the Arbitrator to reconsider new disciplinary charges based on the Grievant’s subsequent criminal conviction. Instead, the Board ordered the Arbitrator to consider whether the criminal conviction

⁴ Award at 28.

⁵ Award at 28.

⁶ Award at 28.

⁷ Motion at 3 (citing to Exhibit 1).

⁸ Motion at 3 (citing to Exhibit 1).

⁹ *AFGE, Local 1000 v. Dep’t of Emp. Servs.*, Slip Op. No. 1486, PERB Case No. 13- U-15 (2014).

¹⁰ *Andebrhan Berhe v. WTU*, 66 D.C. Reg. 15811, Slip Op. No. 1723 at 2, PERB Case No. 19-U-08 (2019); *Kenneth Johnson v. D.C. Gov’t and MPD*, 63 D.C. Reg. 6485, Slip Op. No. 1567 at 2, PERB Case No. 15-U-40 (2016).

¹¹ *DCPS v. Council of School Officers, Local 4, American Federation of School Administrators*, 60 D.C. Reg. 12075, Slip Op. No. 1402 at 2, PERB Case No. 13-A-09 (2013).

impacted the remedy consistent with the Arbitrator's retention of jurisdiction as stated in the Award.

MPD's request to the Arbitrator and the Arbitrator's subsequent denial were not part of the full record before the Board for decision in Opinion No. 1873. Therefore, they are properly excluded from consideration in this Motion. FOP's argument that MPD waived any right to remand is similarly excluded from consideration.

The Motion for Reconsideration does not provide any authority to compel reversal of the Board's initial decision. Therefore, FOP's Motion is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration of Opinion Number 1873 is denied; and
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.

August 20, 2024

Washington, D.C.

APPEAL RIGHTS

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.