

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	)	
	)	
The District of Columbia Metropolitan	)	
Police Department,	)	PERB Case No. 84-A-05
	)	Opinion No. 85
	)	
Petitioner,	)	
	)	
and	)	
	)	
The Fraternal Order of Police,	)	
Metropolitan Police Department Labor	)	
Committee (On behalf of Officer Duke	)	
Washington),	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

On April 19, 1984, the District of Columbia Metropolitan Police Department (MPD) filed an "Arbitration Review Request" with the Board seeking review of an arbitration award issued on March 14, 1984. In the Award, the Arbitrator ruled that MPD's failure to issue a written decision stating its grounds for discharging Officer Washington within 55 days of its issuance of a "Notice of Proposed Adverse Action" as required by Article 13, Section 6 of the negotiated Agreement, was harmful error and required that Officer Washington's grievance be sustained. The basis for appeal is MPD's contention that the award, on its face, is contrary to law and public policy.

On May 4, 1984, the Fraternal Order of Police (FOP) filed an "Opposition to Acceptance of Arbitration Review Request," contending that MPD's request for review fails to address the Board's statutory criteria for review of arbitration awards, and that it is merely an attempt to relitigate issues and evidence previously considered by the Arbitrator. FOP contends further that MPD never contested the arbitrability of the substance of Officer Washington's grievance. FOP contends that MPD's position before the Arbitrator was that, procedurally, there was a waiver of the 55 day time period or alternatively, that its failure to adhere to the time period was not a violation of the negotiated Agreement. Finally, FOP contends that MPD's legal argument regarding the applicability of Devine v. White<sup>1/</sup> was considered by the Arbitrator and is now irrelevant because it does not address any of the Board's statutory criteria for review of arbitration awards.

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<sup>1/</sup> See Devine v. White, 225 U.S. Court of Appeals, D.C. Circuit 179, 697 F 2nd. 421 (1983), in which the court held that in an arbitration case based on a contract concluded by the mutual agreement of the parties, "a violation of a clear provision of a collective bargaining agreement would constitute 'harmful error' under the theory that some bargained-for procedural rights are, by definition, substantive rights of an employee."

Officer Washington's grievance arose out a "Notice of Proposed Adverse Action" issued by MPD on July 15, 1983, proposing to terminate his employment for suspected marijuana use in violation of MPD rules. The proposed termination triggered a contractual disciplinary procedure which included a hearing before a 3 member panel. During the course of its deliberations, the panel delayed action in order to have Officer Washington's urine specimen tested at another laboratory. As a result, 120 days beyond the contractual 55 day limitation for issuance of the written decision elapsed. One day before expiration of the contractual 55 day limitation, Officer Washington filed a grievance seeking dismissal of the proposed adverse action because of the failure of MPD to comply with provisions of the negotiated Agreement. The Arbitrator ruled that the 55 day requirement creates a substantive right under the Agreement, and that MPD's failure to comply was harmful error.

In reviewing the Award, the Board finds that on its face, it is neither contrary to law or public policy nor does it appear that the Arbitrator exceeded the jurisdiction granted. The matter is arbitrable under both Articles 13 and 20 of the negotiated Agreement, and MPD did not contest this. The sole issue before the Arbitrator was whether or not MPD's failure to issue the written decision within the 55 day time period required by the negotiated Agreement was harmful error requiring dismissal of MPD's adverse action against Officer Washington. The essence of MPD's request for review is its disagreement with the Arbitrator's interpretation of the disputed time limit and his application of Devine v. White, supra.

The Arbitrator's conclusions are based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. MPD disagrees with the Arbitrator's conclusion. This is not a sufficient basis for concluding that the Award was contrary to law or public policy or that the jurisdiction granted was exceeded by the Arbitrator.

#### ORDER

It is ordered that:

The request for review of the arbitration award is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
July 17, 1984