Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department Petitioner,	PERB Case No. 10-A-19
v.	Opinion No. 1261
Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Jeffrey V. Robinson) Respondent.	

I. Statement of the Case

The District of Columbia Metropolitan Police Department ("the Department" or "Petitioner") removed from the force Officer Jeffrey V. Robinson ("Officer Robinson" or "Robinson"), whereupon the Fraternal Order of Police ("FOP" or "Respondent") requested arbitration on Officer Robinson's behalf. The Opinion and Award of the Arbitrator ("Award") ordered the reinstatement of Officer Robinson.

The Department filed with the Board an arbitration review request and a supporting brief. The Department submitted with its brief the disciplinary record of Officer Robinson in this matter ("Disciplinary Record"). The FOP filed an opposition to the arbitration review request.

II. Background

The facts in the case are unfortunate. On January 14, 2000, Officer Robinson's wife called him at court, accusing him of adultery with another police officer and threatening to throw his belongings out of their house. Robinson rushed home, where his wife met him at the door in an agitated state. As Robinson gathered his clothes, his wife argued with him and threatened to kill herself or him. Officer Robinson was able to disarm her of a pair of scissors and then of a kitchen knife, which she had brandished. His wife then retrieved the knife and grabbed Officer Robinson's service pistol out of his holster. It was later determined that the nylon clip-on holster which Robinson was using at the time was not approved by the Department. When Robinson

attempted to disarm his wife of the pistol, it discharged. The single round that discharged struck and killed her. (Award at pp. 1-3.)

Following the shooting, the Department conducted a criminal investigation, which found that no crimes had been committed. An administrative investigation resulted in a Notice of Proposed Adverse Action recommending Robinson's removal on two charges. The first charge was that at the time of the altercation Officer Robinson was wearing an unauthorized holster that made his weapon accessible to his wife. The second charge was conduct unbecoming an officer. (Award at pp. 3-4.)

At a hearing before an adverse action panel, Robinson pleaded guilty to the charges, and his counsel and the Department's counsel presented a settlement agreement entailing a ninety-day suspension. (Award at p. 4; Disciplinary Record at pp. 346-51.) Assistant Chief Shannon Crocket remanded the case back to the same panel. (Award at pp. 4-5; Disciplinary Record at p. 9.) The panel recommended a sixty-day suspension. (Award at p. 5; Disciplinary Record at p. 33.) On April 26, 2004, Assistant Chief Crockett issued a Final Notice of Adverse Action in which she notified Robinson he would be removed from the force, affirming the removal originally proposed in the Notice of Proposed Action. (Award at p. 5; Disciplinary Record at 443-47.) The chief of police denied Robinson's appeal on May 19, 2004. (Award at p. 5; Disciplinary Record at p. 460.)

The FOP took the matter to arbitration, where the parties agreed that the Final Notice of Adverse Action had been issued about 33 days beyond the 55-day limit for giving such notice established by article 12, section 6 of the parties' collective bargaining agreement.[1] The arbitrator held that Officer Robinson had not waived a defense based on the violation of that time limit by failing to raise it in his appeal to the chief of police. Additionally, the arbitrator also held that the 33-day violation was neither *de minimis* nor harmless error. Therefore, the arbitrator ordered Robinson reinstated with back pay and benefits. (Award at p. 14.)

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[1] Article 12, section 6 of the agreement states:

The employee shall be given a written decision and the reasons therefore [sic] no later than fifty-five (55) days after the date the charges are preferred or the date the employee elects to have a departmental hearing, where applicable, except that:

(a) when an employee requests and is granted a postponement or continuance of a scheduled hearing, the fifty-five (55) day time limit shall be extended by the length of the delay or continuance, as well as the number of days consumed by the hearing;

(b) when the employee requests and is granted an extension of the time allotted for answering the notice of proposed action, the fifty-five (55) day time limit shall be extended by the length of the extension of time; and

(c) when the employee agrees to an extension of time requested by the agency, the fifty-five (55) day time limit shall be extended by the length of the extension of time.

(Award at p. 6).

III. Discussion

Although under the heading "The Department Did Not Violate Section 6 of Article 12 of the Collective Bargaining Agreement" the Department's brief acknowledges that the Department *did* violate section 6 of article 12 (Department's Brief at pp. 7-8), the argument the Department actually makes under that same heading of its brief is that the 33-day violation is *de minimis* and harmless error. (*Id.* at p. 8.)

On that issue, both sides cite *Metropolitan Police Department v. District of Columbia Public Employee Relations Board*, 901 A.2d 784 (D.C. App. 2006). The FOP correctly points out that the court held in that case that no provision of the Comprehensive Merit Protection Act or of the rules of this Board requires consideration of whether an agency's error is harmless or *de minimis* before the erroneous action of the agency may be reversed. *Id.* at 787. The Department stresses the concurring opinion of Judge Schwelb, who opined:

> Contracts must be construed to avoid irrational results, and an interpretation of the collective bargaining agreement in this case as meaning that the slightest imperfection in the process requires the reinstatement of an officer, however culpable, with back pay, notwithstanding the absence of any demonstrable prejudice, strikes me as so irrational that the parties should not be deemed to have intended such a result. . . . [T]he parties bargained for a decision by the arbitrator, and that is what they got. At some point, however, a ruling even by an arbitrator becomes so unreasonable that its enforcement would be contrary to public policy.

Id. at 790-91(Schwelb, J., concurring) (footnote omitted).

The principle Judge Schwelb's concurrence intimates, that contracts should interpreted so as to avoid unreasonable or absurd results, is one of contract interpretation.[2] The parties to the collective bargaining agreement agreed that contract interpretation would be done by the arbitrator. Neither this Board nor a reviewing court may substitute its contract interpretation for the arbitrator's. *Id.* at 789 (majority opinion). There is a very narrow exception to the deference that a reviewing body is required to give to an arbitrator's contract interpretation. The exception is that an arbitration award may be overturned on public policy grounds. The petitioner bears the burden of specifying applicable law and definite public policy that mandate that the arbitrator arrive at a different result. The public policy must be explicit, well defined, and grounded in law or legal precedent. *Teamsters Local Union 639 and D.C. Bd. of Educ.*, Slip Op. No. 995 at pp. 3-4, PERB Case No. 01-A-10 (Oct. 11, 2011).

The Department takes the position that certain of its general orders establish a public policy in favor of removing police officers who do not carry their weapons safely and who do not conduct their private and professional lives in a manner demonstrating fidelity, stability, and morality. (Petitioner' Brief at p. 12.) The asserted implications of general orders cannot

[2] *See Hastings Mut. Ins. Co. v. Safety King Inc.*, 778 N.W.2d 275, 297 (Mich. App. 2009); *Forest Oil Corp. v. Eagle Rock Field Servs.*, 349 S.W.2d 696, 699 (Tex. App. 2011).

supersede the arbitrator's decision because general orders are among the matters entrusted to the arbitrator for interpretation. The Department agreed to be bound by the arbitrator's decision, which necessarily includes his interpretation of the agreement as well as related regulations, including general orders. *D.C. Metro. Police Dep't and F.O.P./Metro. Police Dep't Labor Comm.*, Slip Op. No. 1015 at p. 12, PERB Case No. 09-A-06 (July 16, 2010). All of the general orders the Department cites in its brief—plus others—were before the arbitrator as those orders were cited in the charges and specifications of the Notice of Proposed Action reproduced in the Award. (Award at pp. 3-4.) The Department had the opportunity to make an argument that those general orders establish principles overriding the 55-day rule. The Board will not substitute its views for the arbitrator's on the applicability and interpretation of those general orders. *D.C. Metro. Police Dep't*, Slip Op. No. 1015 at p. 12.

Therefore, the Opinion and Award of the Arbitrator is sustained. The argument that the violation of the 55-day rule was harmless or *de minimis* is not a basis for overturning the Award. Although the Award could be overturned on public policy grounds, no public policy in conflict with the Award has been suggested. The only other bases upon which the Board may set aside an arbitration award are that the arbitrator exceeded his jurisdiction and that the award was procured by unlawful means. D.C. Code § 1-605.02(6). The Department has not argued that either of those bases is present.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Award is sustained. Therefore, the arbitration review request of the Metropolitan Police Department is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

April 24, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-A-19 is being transmitted via U.S. Mail to the following parties on this the 25th day of April 2012.

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