

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,)	
)	PERB Case No. 01-A-02
Petitioner,)	
)	Opinion No. 647
and)	
)	
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee)	
(on behalf of Grievant Terence Shepherd),)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

On November 27, 2000, the District of Columbia Metropolitan Police Department (MPD), filed an Arbitration Review Request (Request). MPD seeks review of an arbitration award (Award) which rescinded the termination imposed on a bargaining unit employee. MPD contends that the: (1) Award is contrary to law and public policy; and (2) Arbitrator was without authority to grant the Award. (Request at p. 2) The Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) opposes the Request.

The issue before the Board is whether “the award on its face is contrary to law and public policy” or whether “the arbitrator was without or exceeded his jurisdiction. . . .” D.C. Code Sec. 1-605.2(6).

MPD terminated the Grievant, a police officer, for negligently firing his weapon in the shooting death of a civilian. (Request at p. 3). The Arbitrator determined that MPD had sufficient cause to take adverse action against the Grievant. (Award at p. 19). Nonetheless, the Arbitrator found that termination was an excessive penalty for the Grievant’s actions. (Award at p. 19). Specifically, the Arbitrator concluded that despite “the tragic consequences of the shooting, the *Douglas* factors require a conclusion that the most severe penalty of termination for a first offense

Decision and Order
PERB Case No. 01-A-02
Page 2

would not be reasonable or justified.”¹ (Award at pg. 19) . As a result, he determined that the Grievant should : (1) serve a 180-day suspension; and (2) be reinstated as a civilian employee with full back pay and benefits. Id.

MPD takes issue with the Arbitrator’s Award. MPD asserts that the Arbitrator exceeded his authority by reducing the Grievant’s termination to a suspension. Specifically, MPD asserts that although the Arbitrator determined that there was cause for taking disciplinary action, he crafted his own mitigating circumstances and assessed his own penalty.

As a second basis for review, MPD contends that the Arbitrator exceeded his authority by reinstating the Grievant to a civilian position at MPD. Specifically, MPD claims that the Arbitrator’s jurisdiction extended only to the Grievant’s employability as a police officer. Therefore, once the Arbitrator determined that the Grievant was unfit to be a police officer, the Arbitrator should have concluded the matter. Furthermore, the issue of alternative employment for the Grievant, was not before the Arbitrator. Finally, MPD contends that the civilian position awarded to the Grievant, amounts to an employment bonus. (Request at p.5) .

We have reviewed the pleadings in this case. However, we are not prepared to rule on this matter at this time. Instead, we will hold this matter in abeyance for thirty days. During this period we are requesting that the parties submit briefs concerning this matter. The briefs should address, among other things, the following issues:

1. Does the parties’ collective bargaining agreement place limitations on the arbitrator’s equitable power? If so, what are those limitations?
2. Does the parties’ collective bargaining agreement cover police officers and civilian employees of the Metropolitan Police Department?
3. If it is determined that an employee is unfit to serve as a police officer, where does the arbitrator get the authority to place the employee in a civilian position? Does the arbitrator have authority over civilian positions?

The parties’ briefs shall be filed within fifteen (15) days from the service of this Decision and Order.

^{1/} The Arbitrator relied on the mitigating factors enumerated in Douglas v. V.A., 5 MSPR 280 (1981).

Decision and Order
PERB Case No. 01-A-02
Page 3

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Review Request is held in abeyance for thirty days.
2. The parties shall submit briefs concerning this matter. The parties' briefs shall be filed fifteen (15) days from the service of this Decision and Order.
3. 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.

May 4, 2001

CERTIFICATE OF SERVICE

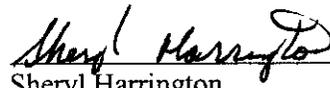
This is to certify that the attached Certification in PERB Case No. 01-A-02 was transmitted via U.S. Mail to the following parties on this 4th day of May 2001.

Leslie Deak, Esq.
14 W. Madison Street
Baltimore, MD 21201

U.S. Mail

Frank McDougald, Esq.
Chief of Personnel & Labor Relations
Labor Relations Section
441 4th Street, N.W.
Suite 1060N
Washington, D.C. 20001

U.S. Mail



Sheryl Harrington
Secretary