

Notice: This decision may be formally revised within thirty days of issuance 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 party to challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

_____)	
In the Matter of:)	
)	
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee)	
)	PERB Case No. 24-A-14
Petitioner)	
)	Opinion No. 1908
v.)	
)	
District of Columbia Metropolitan)	
Police Department)	
)	
Respondent)	
_____)	

DECISION AND ORDER

I. Statement of the Case

On August 8, 2024, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed an amended¹ arbitration review request (Request), seeking review of an arbitration award (Award) dated July 22, 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 25.
⁴ Request at 3, 9-15.
⁵ Request at 15.

II. Background

The Arbitrator made the following factual findings. In 2022, the District passed DC Law 24-212 (the Act), which updated the District's paid family leave program to provide additional leave to District government employees, including increasing the amount of paid family and medical leave (PFML) available in a 12-month period from eight (8) weeks to twelve (12) weeks.⁶ The Act does not become effective until it is funded by the District budget.⁷ The District Chief Financial Officer (CFO) submitted a memo to the District of Columbia Council (D.C. Council) noting that the District did not have the funds to implement the enhanced PFML through 2026.⁸

The Grievant is an MPD officer who has been employed with the Agency since approximately 2021.⁹ In March of 2023, the Grievant gave birth to her son.¹⁰ The Grievant experienced complications during delivery, which required her to remain in the hospital for a longer than typical time and required her baby to spend approximately two months in the hospital.¹¹ In April of 2023, the Grievant was approved for eight (8) weeks of PFML and approximately four (4) weeks of "DCFMLA."¹² Because of administrative errors, the Grievant's PFML was interrupted and her sick leave used instead, and then she was placed in a leave without pay ("LWOP") status.¹³ These errors were eventually corrected and the Grievant received compensation for eight (8) weeks of PFML.¹⁴

On May 12, 2023, the Grievant contacted MPD's Human Resources Management Division (HRMD) stating that she had "been told that the government approved a law enhancing PFL benefits to twelve weeks"¹⁵ and requesting receipt of the "enhanced benefits."¹⁶ On May 15, 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."¹⁷

On May 19, 2023, FOP filed a 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.¹⁸ MPD denied the Step 1 grievance.¹⁹ On June 6, 2023, FOP filed a

⁶ Award at 5.

⁷ See Award at 7-8.

⁸ Award at 6.

⁹ Award at 8.

¹⁰ Award at 8.

¹¹ Award at 8.

¹² Award at 8-9.

¹³ Award at 9.

¹⁴ Award at 9.

¹⁵ Award at 9.

¹⁶ Award at 9.

¹⁷ Award at 9.

¹⁸ See Award at 10-11.

¹⁹ Award at 11.

Step 2 grievance.²⁰ MPD denied the Step 2 grievance, and this matter proceeded to arbitration.²¹ An arbitration hearing was held on March 21, 2024.²²

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.²³

The Arbitrator reviewed Articles 1 and 4 of the CBA.²⁴ 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

²⁰ Award at 12.

²¹ Award at 12-14.

²² Award at 2.

²³ Award at 1.

²⁴ Award at 5.

consideration of mutual covenants and promises contained herein, the Employer and the Union do hereby agree as follows:...²⁵

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 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:

1. To direct employees of the Department;
2. To determine the mission, budget, organization, number of employees, number, type and grade of employees assigned, the work project, tour of duty, methods and processes by which such work is performed, technology needed, internal security practices, or relocation of facilities;
3. To relieve employees of duties because of lack of work or other legitimate reasons;
4. To hire, promote, transfer, assign and retain employees in positions within the Department;
5. To suspend, demote, discharge, grant or deny step increases and take other disciplinary actions against employees for cause;
6. To take any action necessary to carry out the mission of the Department in an emergency situation, and to alter, rearrange, change, extend, limit or curtail its operations or any part thereof;
7. To determine the qualifications of employee for appointment, promotion, step increases, and to set standards of performance, appearance and conduct; and,

²⁵ Award at 3-4.

8. 8. To formulate, change or modify Department rules, regulations and procedures, except that no rule, regulation or procedure shall be formulated, changed or modified in a manner contrary to the provisions of this Agreement.²⁶

The Arbitrator established that FOP had the burden of demonstrating, by preponderant evidence, that MPD violated the CBA.²⁷ The Arbitrator referred extensively to a contemporaneous arbitration award between the parties on the same issue regarding a different grievant.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 MPD misled District employees by stating on its website that "Parental Leave provides twelve (12) weeks of benefits in a year to bond with a new child."³² 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

FOP challenged MPD's assertions, arguing that the Agency can and should independently fund and implement the 4-week PFML extension.³⁷ 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.³⁸ 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.³⁹

²⁶ Award at 4.

²⁷ Award at 21.

²⁸ Award at 21-#

²⁹ Award at 17.

³⁰ Award at 13.

³¹ See Award at 14.

³² Award at 12, 17.

³³ Award at 10.

³⁴ Award at 17.

³⁵ See Award at 18-19.

³⁶ Award at 7-8.

³⁷ See Award at 15, 22.

³⁸ Award at 22.

³⁹ Award at 15.

FOP 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.⁴⁰

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.⁴¹ The Arbitrator determined that the DOES clearly distinguished eligible and ineligible employees, that the DCHR website made clear that the enhanced twelve (12) weeks of PFML were not yet available to District government employees, and that the Grievant's supervisor mistakenly advised the Grievant that she could receive twelve (12) weeks of PFML, rather than intentionally misleading her.⁴² The Arbitrator was unpersuaded by FOP's contention that the leave bank could have supplemented the Grievant's PFML, noting that the Grievant did not apply for leave from the leave bank, a requisite step.⁴³ Concerning FOP's requests for independent funding and selective treatment for the Grievant, the Arbitrator noted that the existence of a budget surplus does not negate the determination of the CFO nor trigger the implementation of the enhanced benefits under controlling law.⁴⁴ The Arbitrator further noted that the argued minimal cost of providing this individual Grievant with the enhanced leave benefit compared to MPD's overall budget was irrelevant or determinative to whether the Act had become effective for District government employees.⁴⁵

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."⁴⁶ In the *Post* case, the Washington Post (newspaper) filed several Freedom of Information Act⁴⁷ (FOIA) requests with MPD, seeking copies of an officer's disciplinary records.⁴⁸ 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.⁴⁹ 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 a FOIA requests for disciplinary records on the basis that they constituted an unwarranted invasion of personal privacy.⁵⁰ The newspaper further contended that even if the CPJRAA did not

⁴⁰ Award at 16-17.

⁴¹ Award at 22-23.

⁴² Award at 22-23.

⁴³ Award at 23-24. The Arbitrator previously found that FOP had failed to timely introduce its leave bank argument, but noted that the argument was unavailing regardless. Award at 23-24.

⁴⁴ Award at 12-13.

⁴⁵ Award at 22.

⁴⁶ Request 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)).

⁴⁷ D.C. Official Code DC Code § 2-534.

⁴⁸ *W.P. Company, LLC d/b/a/ The Washington Post*, Case No. 2023-CAB-000951 at 1-2.

⁴⁹ *See id.* at 2, 4-6, 8, 10.

⁵⁰ *Id.* at 7.

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.⁵¹

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.⁵² Finding that this condition had not been met, the court concluded that the CPJRAA did not apply.⁵³ Nevertheless, the court determined that MPD must produce the requested records.⁵⁴ 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.⁵⁵ There, 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.⁵⁶

Like the court in the *Post* case, the Arbitrator in this matter relied on the existing statute, as opposed to the unfunded one. 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 Code § 1204a(b) which would extend District employees' PFML to twelve (12) weeks was never included in a budget.⁵⁷ 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.⁵⁸ Accordingly, the Arbitrator declined to award the relief FOP requested.⁵⁹

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.⁶⁰ FOP requests review on the grounds that the Award is contrary to public policy.⁶¹

⁵¹ *Id.* at 6-7.

⁵² *Id.* at 7.

⁵³ *Id.*

⁵⁴ *W.P. Company, LLC d/b/a/ The Washington Post*, Case No. 2023-CAB-000951 at 12-14.

⁵⁵ *Id.* at 8-14.

⁵⁶ *W.P. Company, LLC d/b/a/ The Washington Post*, Case No. 2023-CAB-000951 at 8-14.

⁵⁷ Award at 21-22.

⁵⁸ *See* Award at 21-24.

⁵⁹ Award at 24.

⁶⁰ D.C. Official Code § 1-605.02(6).

⁶¹ Request at 3, 8-16.

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.⁶² 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.⁶³ 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.”⁶⁴ “[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.’”⁶⁵ 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.⁶⁶ To prevail on its claim, the petitioner has the burden to specify applicable public policy that mandates that the Arbitrator arrive at a different result.⁶⁷ Disagreement with an arbitrator’s decision does not render an award contrary to public policy.⁶⁸

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.⁶⁹ 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.”⁷⁰ 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.⁷¹ 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.⁷²

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

⁶² *MPD v. PERB*, No. 19-CV-1115, Mem. Op. & J. at 10-11 (D.C. Sept. 15, 2022).

⁶³ *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)).

⁶⁴ *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)).

⁶⁵ *MPD*, Slip Op. No. 1702 at 4.

⁶⁶ *FOP/PSD Labor Comm. v. DGS.*, 70 D.C. Reg. 781, Slip Op. No. 1853 at 15, PERB Case No. 23-A-07 (2023).

⁶⁷ *MPD v. FOP/MPD Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at 2, PERB Case No. 00-A-04 (2000).

⁶⁸ *FOP/MPD Labor Comm. v. MPD*, 47 D.C. Reg. 5315, Slip Op. No. 626 at 2, PERB Case No. 00-A-02 (2003)

⁶⁹ Request at 9.

⁷⁰ Request at 9-10.

⁷¹ Request at 10-11.

⁷² Request at 11.

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.’”⁷³ FOP asserts that evidence-based studies demonstrate the value of expanded PFML benefits as a method of improving employee retention and minimizing inequality.⁷⁴ FOP also asserts that the District’s history of providing its employees with PFML,⁷⁵ as well as the existence of the leave bank,⁷⁶ demonstrate the statutory basis for FOP’s position.⁷⁷ 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.⁷⁸ Thus, FOP argues, the public policy at issue concerns more than a supposed public interest.⁷⁹ The Board is unpersuaded. FOP merely describes the benefits of PFML, in 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.⁸⁰ 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.⁸¹ 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.”⁸² 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.

⁷³ Request at 12 (citing D.C. Official Code § 1-601.02(a)(7)).

⁷⁴ Request at 12-13.

⁷⁵ 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)).

⁷⁶ Request at 13 (citing D.C. Official Code § 1-612.05).

⁷⁷ Request at 13.

⁷⁸ Request at 13 (citing *AFGE Local 631 v. WASA*, Slip Op. No. 1866 at 4, PERB Case No. 24-U-09 (2024)).

⁷⁹ Request at 12-13.

⁸⁰ Request at 13-14.

⁸¹ 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)).

⁸² *W.P. Company, LLC d/b/a/ The Washington Post*, Case No. 2023-CAB-000951 at 12.

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.⁸³

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request 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.

February 26, 2025
Washington, D.C.

⁸³ This decision was issued contemporaneously with Opinion No. 1907 in PERB Case No. 24-A-13 and Opinion No. 1906 in PERB Case No. 24-A-15. The arbitration review requests in those matters presented the same issues and were denied on the same grounds.

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.