

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
District of Columbia)	
Metropolitan Police Department,)	
)	
Petitioner,)	
)	
and)	PERB Case No. 91-A-03
)	Opinion No. 288
)	
Fraternal Order of Police,)	
Metropolitan Police Department)	
Labor Committee (On behalf)	
of Robert V. Middleton),)	
)	
Respondent.)	

DECISION AND ORDER ^{1/}

On November 21, 1990, the District of Columbia Metropolitan Police Department (MPD) filed an Arbitration Review Request with the District of Columbia Public Employee Relations Board (Board). MPD requested that the Board review an arbitration award (Award) that decided a grievance filed by the Fraternal Order of Police, MPD Labor Committee (FOP) on behalf of Officer Robert V. Middleton, the Grievant. MPD alleged in its Request that the Arbitrator exceeded his authority and jurisdiction and the Award violated law and public policy. FOP filed an Opposition to Petitioner's Arbitration Review Request on December 6, 1990, arguing that no basis exists for the Board to exercise its jurisdiction in this case.

The grievance before the Arbitrator concerned the propriety of the proceedings underlying a proposed decision by MPD to terminate Grievant in response to charges of conduct unbecoming an officer and willfully making false statements. ^{2/} The stipulated issue before the Arbitrator relevant to this proceeding was as follows:

^{1/} Members Kohn and Danowitz did not participate in either the discussion or decision of this case.

^{2/} As noted by the Arbitrator, the facts and circumstances surrounding the Grievant's alleged infractions were not in issue but rather the subject of another arbitration proceeding addressing the merits of the charges. (Award at 2.)

"In accordance with Article 10, Section 1 [of the Labor Agreement], did management meet its obligation to union request on behalf of Grievant?"
(Award at 2.)

Article 10, Section 1, of the parties' collective bargaining agreement provides:

"The Department [(MPD)] shall make available to the Union upon its reasonable request any information, statistics and records relevant to negotiations or necessary for the proper enforcement of the terms of this agreement."

Pursuant to this provision, FOP made a request for certain information to prepare for the Grievant's hearing in accordance with Article 12 of the parties' collective bargaining agreement. MPD advised FOP that no records existed on the first item in its request and denied FOP's request with respect to the second item.^{3/}

The Arbitrator ruled that the second item in FOP's request was consistent with Article 10, Section 1 and that MPD had violated that provision by denying the information. (Award at 8.) The Arbitrator further held that MPD's interpretation of the first item in FOP's information request was too restrictive and therefore MPD had failed to comply with the provisions of Article 10, Section 1. ^{4/} As a remedy for the alleged violations, the

^{3/} The items requested in FOP's request were as follows:

- "1. Findings of Fact and Final Notices issued in each case during the past three years in which an officer was charged with misconduct similar to the allegations against Officer Middleton in Charge No. 1, Specifications Nos. 1 and 2.
2. Findings of Fact and Final Notices issued in each case during the past three years in which an officer was charged with violating General Order Series 1202, No. 1, Part I-B-6."
(emphasis added.)

^{4/} The Arbitrator found that although initially FOP was concerned only with MPD's denial of the information in item 2, during the course of the hearing MPD's interpretation of and thereby response to item 1 also became an issue.

Arbitrator ruled that the Grievant be reinstated and made whole for lost wages and benefits since his termination on July 27, 1990. The Award also provided that MPD could, however, pursue the original charges against the Grievant, if it made available to FOP the information as specified in the Award.

Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 1-605.2(6), the Board is authorized to, "[c]on- sider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy... ." The Board has reviewed the Arbitrator's conclu- sions, the pleadings of the parties and applicable law, and concludes for the reasons that follow that no statutory basis for our review exists on the grounds asserted and therefore we lack the authority to grant the requested Review.

MPD's first ground for review maintains that "the portion of the award directing reinstatement of the Grievant [with back pay and benefits] is contrary to the Supreme Court's holding in Carey v. Piphus, 435 U.S. 247 (1978)," and thereby is contrary to law and public policy. (Request at 4-5). However, MPD fails to state how Carey --a case brought under the Civil Rights Act of 1871 concerning the deprivation of constitutional due process rights -- applies to the matter before the Arbitrator brought pursuant to the terms of the parties' collective bargaining agreement concerning the deprivation of contractual rights. ^{5/}

(Footnote 4 Cont'd)

The Arbitrator ruled that the stipulated issue before him was sufficiently broad enough to encompass both items in the information request and therefore ruled on the first item as well. The Arbitrator found that MPD had interpreted "misconduct similar to" in item 1 of FOP's request as "misconduct identical to". (Award at 8.) Based upon this finding, the Arbitrator ruled that MPD's response that no information existed concerning item 1 of FOP's request also violated Article 10, Section 1.

^{5/} Carey v. Piphus, supra, concerned a suit for damages brought by elementary and secondary school students who claimed that the school board had suspended them from school without procedural due process. With respect to determining the appropriate relief, the Supreme Court observed that under the Civil Rights Act of 1871, "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question... ." Id. at 259.

Notwithstanding MPD's suggestion to the contrary, the Arbitrator's observation that "MPD's violations of Article 10, Section 1, deprived Officer Middleton of a form of 'due process'" did not change the nature of the matter and the agreed-upon issue before the Arbitrator. (Award at 10.)

Under the terms of their collective bargaining agreement, the parties have agreed that disputes concerning alleged violations of its provisions will be resolved through the grievance-arbitration proceedings. We have held that it is the arbitrator's decision regarding contractual disputes for which the parties have bargained. See, University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 36 DCR 3639, Slip Op. No. 220, PERB Case No. 88-A-03 (1989); University of the District of Columbia Faculty Association/NEA, 38 DCR 1580, Slip Op. No. 262, PERB Case No. 90-A-08 (1990); District of Columbia Metropolitan Police Department and Fraternal Order of Police/MPD Labor Committee, 36 DCR 3339, Slip Op. No. 218, PERB Case No. 89-A-01 (1989); District of Columbia Department of Finance and Revenue and American Federation of State, County and Municipal Employees, Council 20, Local 2776, 36 DCR 3334, Slip Op. No. 217, PERB Case No. 88-A-01 (1989); and University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 36 DCR 2472, Slip Op. No. 216, PERB Case No. 87-A-09 (1989).^{6/}

As previously stated, the issue before the Arbitrator was whether MPD conformed with its contractual obligation in its decision to terminate Grievant. Upon concluding that MPD had not so conformed, the Arbitrator had the authority, unless specifically limited by the parties' agreement (which we do not find to be the case here), to award reinstatement of the Grievant as part of restoring the status quo before the contractual violation. See, e.g., University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 38 DCR 1580, Slip Op. No. 262, PERB Case No. 90-A-08 (1990); District of Columbia Metropolitan Police Department and Fraternal Order of Police/MPD Labor Committee, 36 DCR 3339, Slip Op. No. 218, PERB Case No. 89-A-01 (1989); District of Columbia Department of Finance and Revenue and American Federation of State, County and Municipal Employees, Council 20, Local 2776, 36 DCR 3334, Slip Op. No. 217, PERB Case No. 88-A-01 (1989); and University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 36 DCR 2472, Slip Op. No. 216, PERB Case No. 87-A-09 (1989).^{6/}

^{6/} We find MPD's reliance on District of Columbia v. Gray, 452 A.2d 962 (1982) and District of Columbia v. Montgomery, 453 A.2d 808 (1982) to be equally inapplicable to the issue before the Arbitrator. Although both cases concerned discharges of District employees that did not conform with procedural requirements, neither case concerned procedures that were contractually required where claims of alleged violations were subject to a contractually-agreed upon method, i.e., grievance and arbitration, for resolution. Gray and Montgomery concerned judicial remedies addressing violations of procedures required by statute. Moreover, unlike the reinstatement orders, which were reversed by the Court of

Next MPD contends that by reinstating the Grievant the Arbitrator "exceeded his narrow grant of authority" to "hear and decide only one grievance or appeal in each case" pursuant to Article 19, Section E 5.1 of the parties' collective bargaining agreement. (Request at 8.) MPD contends that the Arbitrator's reinstatement of the Grievant improperly addresses the issue of whether he was discharged for just cause, an issue which the Arbitrator acknowledged was pending before another arbitrator. This contention is unfounded. MPD attempts to invoke Article 19 by merely insisting that an award of reinstatement addresses an issue not before the Arbitrator. However, MPD fails to state how Article 19 or any other contractual provision restricts the Arbitrator from awarding reinstatement of the Grievant to remedy the agreed-upon issue that was before him.

MPD next argues that the part of the Award calling for MPD to make available certain Disciplinary Review Division (DRD) records to the FOP for the Grievant's defense "would compel the Department to violate the law and public policy of the District of Columbia [, i.e., D.C. Code Section 1-632.1 and 3,] that personnel records may not be released when to do so would violate personal privacy." (Request at 10.) However, MPD does not state how nor do we find that D.C. Code 1-632.1 and 3 proscribes the disclosure of employee records which the District government, e.g., MPD, under the terms of the collective bargaining agreement to which its a party, is otherwise obligated to disclose. Moreover, D.C. Code Sec. 1-632.3 entitled "Disclosure of personnel information" provides:

"It is the policy of the District government to make personnel information in its possession or under its control available upon request to appropriate personnel and law-enforcement authorities, except if such disclosure would constitute an unwarranted invasion of personal privacy or is prohibited under law or rules and regulations issued pursuant thereto."

(Footnote 6 Cont'd)

Appeals in Gray and Montgomery, the Award herein did not foreclose MPD from reinstating the charges against the Grievant. (Award at 11.) Paramount to the D.C. Court of Appeals reversal of the lower court orders in those cases was the unconditional reinstatement of the employee which the Court believed improperly denied the employer the opportunity to renew proceedings against the employees in compliance with the proscribed statutory procedures. D.C. v. Gray, supra, 452 A.2d at 965 and D.C. v. Montgomery, supra, 453 A.2d at 808.

This is an affirmative policy concerning the availability of personnel information upon request that is consistent with law. MPD has cited nothing to support that the disclosure of DRD records, as stipulated by the Arbitrator, is on its face contrary to law and public policy. ^{7/}

Finally, MPD asserts that "[t]he [A]rbitrator conceded that he had exceeded his authority" by "addressing an issue which had not been grieved by the Union." (Request at 14.) Notwithstanding this contention, MPD acknowledges that while the Arbitrator observed that "it is not within an arbitrator's authority to expand a grievance," he found that "it [was] not necessary to do so here." We concur with the Arbitrator's observation that the stipulated issue before him did not confine his authority to decide only the second part of FOP's information request, since the stipulated issue before the Arbitrator encompassed the Union's request for information, on behalf of the Grievant, without limitation.

Accordingly, MPD has not shown a statutory basis for reviewing the Award, and therefore its request for Board review must be denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

October 9, 1991

^{7/} MPD raises a related argument that disclosure of the DRD records would also violate Article 16, Section 2 of the parties' collective bargaining agreement. However, Article 16 provides for the disclosure of employees' "Official Personnel folders" in accordance with District regulations. To the extent DRD records constitute "Official Personnel folders", MPD neither cites nor are we aware of any District regulation or law and public policy which proscribes the production of the DRD records in accordance with the provisions of the Arbitration Award.