

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. 18-A-05(R)
Petitioner	)	
	)	Opinion No. 1847
v.	)	
	)	
Fraternal Order of Police/ Metropolitan Police	)	
Department Labor Committee	)	
	)	
Respondent	)	
	)	

**DECISION AND ORDER ON REMAND**

**I. Statement of the Case**

This matter comes before the Board on remand from the Superior Court of the District of Columbia, pursuant to the judgment issued by the District of Columbia Court of Appeals in *Dist. of Columbia Metro. Police Dep't v. Dist. of Columbia Pub. Emp. Relations Bd.*, No. 19-CV-1161 (D.C. Sep. 7, 2023).<sup>1</sup> For the reasons stated herein, the Metropolitan Police Department's (MPD) arbitration review request is granted, and the case is remanded back to the Arbitrator for further proceedings consistent with the judgment of the Court of Appeals.

**II. Background**

On March 28, 2010, Officer Paul Lopez ("Grievant") was arrested for solicitation of prostitution. On September 23, 2010, MPD served the Grievant with a Notice of Proposed Adverse Action based on the arrest. After an Adverse Action Panel found the Grievant guilty of all charges, MPD issued a Final Notice of Adverse Action, informing the Grievant of his termination from the

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<sup>1</sup> *MPD v. Dist. of Columbia Pub. Employee Relations Board*, No. 2018 CA 006737-P(MPA) (D.C. Super. Ct. Sept. 7, 2023).

Department, effective August 19, 2011. The Fraternal Order of the Police (FOP) then invoked arbitration on behalf of the Grievant.

The Arbitrator found that MPD's Notice of Adverse Action was untimely brought, in violation of D.C. Code § 5-1031 ("the 90-day rule"), which required MPD to commence adverse actions within 90 business days of the time that MPD knew or should have known of the misconduct at issue. When the misconduct is the subject of a criminal investigation, the 90-day rule's tolling provision tolled the 90-day period "until the conclusion of the investigation." The Arbitrator interpreted this tolling provision to conclude that the investigation was completed when the criminal charge was issued, on March 29, 2010. Therefore, the Arbitrator dismissed the charge against the Grievant as untimely, and reversed the Grievant's termination.

MPD filed an Arbitration Review Request (Request) with the Board challenging the Arbitrator's decision to reverse the Grievant's termination as contrary to law and public policy. The Board denied MPD's Request.<sup>2</sup> MPD appealed the Board's decision to the Superior Court of the District of Columbia, which affirmed the Board's decision.<sup>3</sup> MPD then appealed the Superior Court's decision to the District of Columbia Court of Appeals.

The Court of Appeals noted that the Council of the District of Columbia ("Council") enacted the Comprehensive Policing and Justice Reform Amendment Act of 2022 ("Reform Act"),<sup>4</sup> some of the provisions of which repealed D.C. Code § 5-1031(a-1), as it applied to MPD officers.<sup>5</sup> The Court noted that the Council expressly stated that the repeal "shall apply retroactively to any matter pending, before any court or adjudicatory body, as of the effective date of this act."<sup>6</sup> The Reform Act came into effect on April 21, 2023, while this case was still pending appellate decision. The Court found that: (1) the Reform Act's retroactivity provision applies to this case; (2) applying the Reform Act does not create manifest injustice; (3) the Reform Act does not violate separation of powers principles; and (4) the Reform Act does not substantially impair the parties' agreement and does not violate the Contracts Clause.

The Court held that the award is on its face contrary to the Reform Act, and therefore must be set aside. The Court reversed the Superior Court's judgment and remanded the case back to the Board. On remand, the Court instructed the Board to vacate its decision, set aside the Arbitrator's Award, and remand the Award back to the Arbitrator for further proceedings consistent with its decision.

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<sup>2</sup> See *MPD*, Slip Op. No. 1678.

<sup>3</sup> *MPD v. Dist. of Columbia Pub. Employee Relations Board*, No. 2018 CA 006737-P(MPA) (D.C. Super. Ct. Oct. 29, 2019).

<sup>4</sup> D.C. Law 24-345, 70 D.C. Reg. 953 (Jan. 27, 2023).

<sup>5</sup> *Dist. of Columbia Metro. Police Dep't*, No. 19-CV-1161 at 2 (D.C. Sep. 7, 2023).

<sup>6</sup> *Id.* (quoting Reform Act §§ 117(a), 301(b)).

### **III. Discussion**

In light of the Reform Act's repeal of D.C. Code § 5-1031(a-1) and the Court of Appeals' decision, the Board vacates its prior decision in *MPD v. FOP/MPD Labor Committee (on behalf of Lopez)*,<sup>7</sup> on the basis that the Arbitrator's Award is contrary to law and public policy. The Board remands this case to the Arbitrator for an award in accordance with this decision and the judgement of the Court of Appeals.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The arbitration review request is granted;
2. Opinion No. 1678 is vacated;
3. This matter is remanded to the Arbitrator for further findings; and
4. 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, and Mary Anne Gibbons.

September 21, 2023

**Washington, D.C.**

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<sup>7</sup> *MPD v. FOP/MPD Labor Comm.*, 65 D.C. Reg.11111, Slip Op. No. 1678 at 4, PERB Case No. 18-A-05 (2018).

**APPEAL RIGHTS**

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration within fourteen (14) days, requesting the Board to 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 provide thirty (30) days after a Board decision is issued to file an appeal.