Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department	
Petitioner,	PERB Case No. 12-A-07
and	Opinion No. 1390
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Charles Sims)	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On July 18, 2012, the District of Columbia Metropolitan Police Department ("MPD" or "Agency") filed an Arbitration Review Request ("Request") of an Arbitration Award ("Award") by Arbitrator Robert T. Simmelkjaer ("Arbitrator"). MPD concurrently filed a "Motion for an Extension of Time to Submit a Statement of the Reasons for Appealing the Opinion and Award of the Arbitrator." The Executive Director sent MPD a deficiency notice and provided MPD with ten (10) days to cure deficiencies in its Request. MPD timely filed a "Brief in Support of the Arbitration Review Request" ("Request Brief"), in which MPD cured the deficiencies contained in its original Request. The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union") filed an Opposition to MPD's Arbitration Review Request ("Opposition").

MPD seeks review of the Award, which overturned the termination of the Charles Sims ("Grievant"). In its Request, MPD asserts that the Award is contrary to law and public policy and that the Arbitrator exceeded his jurisdiction. (Request at 2).

II. The Award

The Grievant was a ten-year veteran of MPD, when the events that led to the arbitration occurred. (Award at 8). On March 23, 2004, the Grievant and his cousin, Maurice White ("Officer White"), celebrated Officer White's graduation from the police academy with two female acquaintances, Melissa Martin and Crystal Nickens. *Id.* The four went to a Washington, D.C., nightclub. *Id.* Outside of the nightclub, a confrontation occurred, involving two unidentifiable male individuals. *Id.* Subsequently, a bouncer escorted the Grievant to his car. *Id.* The four proceeded to a local pizzeria. *Id.* A fight occurred at the pizzeria, involving Rosina Memolo, Ms. Martin, Ms. Nickens, Omar Irving, and Officer White receiving lacerations and/or stab wounds. *Id.* It was uncontested that, on May 5, 2005, MPD requested the United States Attorney's Office's ("USAO") to review the Grievant's actions arising from the March 23, 2004, incident for possible prosecution. (Award at 22). On June 16, 2005, USAO informed MPD of its decision not to prosecute the Grievant. (Award at 25).

On October 21, 2005, the Grievant was served with a Notice of Proposed Adverse Action ("NPAA"). (Award at 2). The NPAA proposed the Grievant's removal for 3 charges: (1) Neglect of Duty, (2) Willful Failure to Report a Criminal Violation, and (3) Conduct Unbecoming of an Officer. *Id.* On January 10, 2006, an Adverse Action Panel hearing was held. (Award at 4). The Grievant pled not guilty to the charges. *Id.* The Adverse Action Panel recommended the Grievant's termination. *Id.* On February 22, 2006, Officer Sims received a Final Notice of Adverse Action. (Award at 5). After reviewing the record, former Assistant Chief Shannon Cockett concurred with the Adverse Action Panel's finding of guilt and ordered the Grievant's removal. *Id.* On March 8, 2006, the Grievant appealed the Final Notice to former Chief of Police Charles H. Ramsey, who denied the Grievant's appeal. *Id.*

On April 18, 2006, the Union, on behalf of the Grievant, filed a demand for arbitration. *Id.* Pursuant to the Parties' collective bargaining agreement ("CBA"), the Arbitrator conducted a "record only review." *Id.* The Agency and the Union both submitted briefs to the Arbitrator. *Id.* In addition, the Union submitted a reply brief. *Id.*

The issues presented to the Arbitrator were:

1) Whether the [Metropolitan Police] Department violated the 90-day Rule as set forth under D.C. Code § 5-1031.
2) Whether the evidence presented by the [Metropolitan Police] Department was sufficient to support the alleged charges.
3) Whether termination is an appropriate penalty.

(Award at 7). The Arbitrator determined that the standard of review was: "whether the Agency's factual findings were supported by substantial evidence." (Award at 8).

FOP asserted that MPD had exceeded the 90-Day Rule under D.C. Code § 5-1031, barring MPD from imposing discipline on the Grievant. (Award at 10). In support of its argument, FOP argued that the ruling in *Finch v. District of Columbia*, 894 A.2d 419 (D.C. 2006), supported application of D.C. Code § 5-1031 to MPD's disciplinary action. (Award at

10). FOP contended that MPD waited 265 business days after the effective date of the statute (September 30, 2004) to serve the Grievant with the Notice of Proposed Adverse Action, which it argued was excessive, because MPD had known of the incident since March 23, 2004. (Award at 12). Based on the record, the Union asserted that MPD "could have completed and finalized its investigation concerning this matter as early as April 2005." (Award at 13). FOP argued that, even allowing a tolling period for the time that the Grievant's case was under USAO's review, MPD still allowed 227 business days to elapse prior to serving the Grievant with the Notice of Proposed Adverse Action. *Id.*

FOP contended that "[a]t the time of the incident, the MPD had procedures in place to ensure investigations were complete(d) within ninety calendar days." (Award at 14). Additionally, FOP argued that MPD violated General Order PER 120.23: "all investigations shall be complete at least ninety (90) calendar days after receiving the complaint, criminal declination, or conclusion of a criminal proceeding." *Id.* The Union disputed MPD's contention that the initiation of discipline was tolled until the USAO served its letter on MPD stating that it would not prosecute the Grievant. *Id.* The Union argued that there was no evidence in the record that a criminal investigation was conducted by MPD's Internal Affairs Division or by USAO, prior to May 5, 2005. (Award at 15). Further, the Union argued that MPD's proposed discipline against the Grievant by an additional one hundred (100) business days (excepting the days of prosecutorial review by USAO) to an initial ninety (90) day period exceeded the reasonable grace period provided in *Finch* to MPD to adjust to the new statute of limitations found in D.C. Code § 5-1031. (Award at 17).

MPD maintained that from March 23, 2004, until June 20, 2005, the Grievant was under a criminal investigation, which tolled the 90-Day Rule. (Award at 18). MPD argued that it did not exceed the 90-Day Rule, because only eighty-six (86) business days had elapsed after the USAO declined prosecuting the Grievant. *Id.* MPD compared the 90-Day Rule to repealed D.C. Code § 1-617.1(b-1) ("45-Day Rule") for establishing when a criminal investigation ends. (Award at 19). MPD relied upon *District of Columbia v. District of Columbia Office of Employee Appeals*, 883 A.2d 124 (D.C. 2005), which states: "the 'conclusion of a criminal investigation' must involve action taken by an entity with prosecutorial authority-that is, the authority to review evidence, and to either charge an individual with commission of a criminal offense, or decide that charges should not be filed." (Award at 20). MPD argued that the criminal investigation of the Grievant clearly concluded on June 20, 2005, and that the 90-Day Rule was tolled until that day, making the Grievant's proposed discipline timely. *Id.*

The Arbitrator found:

> Considering the evidence in its entirety, the Arbitrator is persuaded that the MPD violated the 90-day rule, D.C. Code 5-1031, when it did not timely institute an adverse action against Officer Charles Sims within 90 business days of March 23, 2004, excluding the 30 business day time period when Officer Sims was the subject of a criminal investigation by the Office of the United States Attorney for the District of Columbia.

Id. The Arbitrator stated, "It is undisputed that the 90-day rule requires the MPD to commence

an adverse action against an employee within ninety (90) business days 'after the date that the [MPD] knew or should have known of the act or occurrence allegedly constituting cause.'" *Id.* The Arbitrator acknowledged that D.C. Code § 5-1031 states, "[i]f the act or occurrence allegedly constituting cause is the subject of a criminal investigation by the Metropolitan Police Department, the Office of the Unites States Attorney for the District of Columbia," the 90-day period may be tolled. (Award at 21). The Arbitrator, however, stated:

> Whereas the MPD has argued that "the Employee's conduct was the subject of a criminal investigation beginning on March 23, 2004, the day the stabbing occurred, and that the criminal investigation concluded on June 20, 2005, when the Department learned that USAO would not prosecute," the Arbitrator is not persuaded that Officer Sims was the subject of a criminal investigation either by MPD or USAO during this entire period.

Id. The Arbitrator observed that "the record evidence indicates that Officer Sims was not personally the subject of the criminal investigation commenced by MPD but rather an investigation began regarding the 'subjects and/or perpetrators' involved in the stabbing incident against Ms. Memolo." *Id.* The Arbitrator considered the Report of Investigation from MPD's Office of Internal Affairs, prepared by Agent Diana Rodriguez, which confirmed that AUSA Wade "expressed her desire to present Officer Sims as a witness instead of a target." (Award at 21-22). The Arbitrator noted that the Grievant was subpoenaed for a witness conference on October 19, 2004, to prepare for his testimony before the Grand Jury on October 28, 2004. (Award at 22).

MPD argued that the incident underlying the Grievant's misconduct need not be under "active review" by either MPD or USAO to toll the 90-Day Rule. *Id.* The Arbitrator rejected MPD's argument, because the Arbitrator found "no record evidence to support the assertion that Officer Sims was the subject of a criminal investigation before May 5, 2005." *Id.* Further, the Arbitrator observed:

> [a]lthough the MPD alludes to the Office of Internal Affairs report where it states, 'As a result of the ongoing criminal investigation...Officer Sims was placed on non-contact duty status pending further investigation...' the record evidence indicates that Officer Sims was not the subject or target of a criminal investigation during this period.

Id.

Additionally, MPD argued that FOP had waived the right to arbitrate, because MPD was unaware of the issues to be arbitrated until it received the Grievant's arbitration brief. (Award at 27-28). MPD argued that FOP's appeal of the Grievant's termination to the Chief of Police was vague and did not identify any issue with specificity. (Award at 27). MPD argued that this violated Article 19, E.5 of the Parties' CBA. *Id.* FOP argued that its challenge of the law (90-Day Rule), evidence, and penalty determination all appeared in the FOP's Appeal to the Chief of Police. (Award at 29). After consideration of the Parties' arguments and consideration of the contract, the Arbitrator found that MPD had adequate notice of the issues. (Award at 33). In addition, the Arbitrator ruled that the 90-Day Rule was a jurisdictional question that could be

raised *de novo*. *Id.*

The Arbitrator ruled that the 90-Day Rule was properly arbitrable, and that MPD was untimely in proposing discipline against the Grievant, violating D.C. Code § 5-1031. (Award at 32-33). The Arbitrator did not rule on the sufficiency of evidence or the merits of the case. (Award at 34).

As a remedy, the Arbitrator ordered that the disciplinary matter be dismissed against the Grievant. *Id.* Further, the Arbitrator set aside MPD's penalty recommendation and ordered the Grievant be reinstated to his former position with full back pay and lost job benefits. *Id.* In addition, the Arbitrator ordered that the Grievant's personnel file be expunged to reflect rescission of the Grievant's termination. *Id.* The Arbitrator retained jurisdiction to address any issues with the remedy portion of the Award and to consider the Union's application for attorney's fees. *Id.*

III. Discussion

The CMPA authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (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. D.C. Code § 1-605.02(6) (2001 ed.).

MPD argues: (1) the Award is contrary to law and public policy, and (2) the Arbitrator was without authority to grant the Award. (Request at 2, Request Brief at 7). FOP argues that the Award is not contrary to law or public policy on its face, and that MPD merely disagrees with the Arbitrator's findings and conclusions. (Opposition at 4).

A. Law and public policy

MPD argues that the Award is contrary to law and public policy, because the Arbitrator concluded that MPD violated D.C. Code § 5-1031. (Request Brief at 10-11).

MPD argues that the record demonstrated that "Grievant was under criminal investigation by the [Metropolitan Police] Department and the USAO." (Request Brief at 8). In addition, MPD argues that "[n]owhere in the statute [D.C. Code § 5-1031] or any court decisions is there any suggestion that a matter has to be under 'active' review by either the [Metropolitan Police] Department or USAO." (Request Brief at 8). MPD argues that "[a]ll of the facts in the record support the conclusion that the [Metropolitan Police] Department did not violate the 90-Day Rule." (Request Brief at 9).

The statute at issue, D.C. Code § 5-1031, provides as follows:

> (a) Except as provided in subsection (b) of this section, no corrective or adverse action against any sworn member or civilian employee of the Fire and Emergency Medical Services Department or the Metropolitan Police Department shall be commenced more than 90 days, not including

> Saturdays, Sundays, or legal holidays, after the date that the Fire and Emergency medical Services Department or the Metropolitan Police Department knew or should have known of the act or occurrence allegedly constituting cause.
> (b) If the act or occurrence allegedly constituting cause is the subject of a criminal investigation by the Metropolitan Police Department, the Office of the Unites States Attorney for the District of Columbia, or the Office of Corporation Counsel, or an investigation by the Office of Police Complaints, the 90-day period for commencing a corrective or adverse action under subsection (a) of this section shall be tolled until the conclusion of the investigation.

D.C Code § 5-1031, also known as the 90-Day Rule, became effective on September 30, 2004. The effective date of the statute was after the incident leading to the disciplinary charges against the Grievant, but prior to the MPD's Notice of proposed removal.

MPD argues that the Union's reliance on *Finch v. District of Columbia*, 894 A.2d 419 (D.C. 2006), is misplaced, because subsection (b) of D.C. Code § 5-1031 is controlling. (Request Brief 7-8). *Finch* states that prior to the passage of D.C. Code § 5-1031 there was no limit on the time in which MPD could impose disciplinary actions. 894 A.2d 419, 420. Therefore, D.C. Code § 5-1031 was passed and the 90-Day Rule was instituted. *Id. Finch* held that the District of Columbia would be afforded a reasonable period of time after the effective date of D.C. Code § 5-1031 in which to impose discipline, even if it knew (or should have known) of actions for more than ninety (90) days, but was within a reasonable period of time after the passage of D.C. Code § 5-1031. *Id* at 422. The Court stated that a reasonable grace period would be ninety days after the passage of the 90-Day Rule to institute discipline against employees whose potential infractions it had known for more than ninety days: "We similarly conclude that a grace period of at least ninety days would be reasonable in this situation. Because MPD commenced disciplinary action well within that period, discipline could not be precluded by the newly-enacted statute of limitations." *Id.* FOP argues that *Finch* is controlling for the Award, and that the Arbitrator concluded that MPD had violated D.C. Code § 5-1031. (Opposition at 6).

MPD argues that the Arbitrator's application of D.C. Code § 5-1031(b) improperly tolled the 90-Day Rule for only thirty (30) days while under the USAO's review. (Request Brief at 9). MPD claims that 90-Day Rule was tolled from the time of the incident on March 23, 2004, until the USAO declined to prosecute the Grievant. *Id.* MPD argues, "[t]here is no bright line establishing when a criminal investigation ends." *Id.* As a persuasive argument, MPD relies upon *District of Columbia v. District of Columbia Office of Employee Appeals*, 883 A.2d 124 (D.C. 2005) ("*OEA*"), for determining when a criminal investigation concluded and when discipline could be timely commenced. (Request Brief at 9). In *OEA*, the District of Columbia Court of Appeals ("DCCA") ruled on the statutory language of "conclusion of a criminal investigation" for the now repealed D.C. Code § 1-617.1(b-1). 883 A.2d at 127-128. The 45-Day Rule under D.C. Code § 1-617.1 required discipline be proposed within forty-five (45) business days after an agency knew or should have known of the act or occurrence giving rise to discipline. *Id.* at 127. The 45-Day Rule was tolled until the "conclusion of a criminal

investigation." *Id.* The DCCA found that OEA and the Superior Court erred in concluding the criminal investigation at issue had ended upon the release of an Inspector General's Report, because the prosecuting authority (Attorney General) had not yet made a decision on whether or not to prosecute. *Id.* at 128. Further, in a footnote, the DCCA stated, "Although a prolonged period of inactivity by the United States Attorney may signify the end of an investigation, we disagree with the OEA and the trial court that the criminal investigation concluded in this case merely because the record is void of evidence that any further action was taken between May 22 [release of the Inspector General's Report] and July 18 [the date on which an arrest warrant was issued for the employee]." *Id.* at 128, footnote 5. MPD asserts that *OEA* is dispositive of the language "conclusion of a criminal investigation" in D.C. Code § 5-1031(b). (Request Brief at 9).

MPD, however, previously presented this argument to the Arbitrator, who rejected it. (Award at 20). The Arbitrator reconciled *Finch* and *OEA*, because *Finch* did not address a tolling issue for criminal investigations. (Award at 24). Further, the Arbitrator rejected MPD's argument that *OEA*:

> stands for the proposition that the 90-day rule can be 'reset' following the decision of the USAO on June 16, 2005[,] not to prosecute when the MPD, following the occurrence allegedly constituting cause on March 23, 2004, delayed its internal investigation with respect to Officer Sims until a request for prosecutorial review was made to USAO on May 5, 2005 and failed to issue its Notice of Proposed Adverse Action until October 21, 2005.

(Award at 25). The Arbitrator found that the record evidence established that the Grievant was a subject of a criminal investigation only during the time the Grievant's case was presented to the USAO in 2005. *Id.* Consequently, the Arbitrator limited the tolling of the 90-Day Rule to those thirty (30) days. *Id.*

It appears that MPD does not dispute the applicability of the 90-Day Rule, however, MPD argues:

> The record demonstrates that Grievant's conduct was the subject of a criminal investigation beginning on March 23, 2004, the day the stabbing occurred, and that the criminal investigation concluded on June 20, 2005, when the Department learned that USAO would not prosecute Grievant for events related to the stabbing. The Department commenced the adverse action 86 business days later when it served Grievant with the Proposed Notice on October 21, 2005. Therefore, the Department did not violate the 90-Day Rule.

(Request Brief at 8) (citations omitted). MPD's argues the time period in which the Arbitrator tolled the 90-Day Rule was improper, and asserts that the Award on its face contrary to law and public policy. (Request at 2, Request Brief at 7).

FOP argues that MPD actually disputes the Arbitrator's factual-finding of the length of time of the criminal investigation. (Opposition at 7). MPD argues that the Grievant was the subject of a criminal investigation, beginning on March 23, 2004. (Request Brief at 8). The Arbitrator found that there was "no record evidence to support the assertion that Officer Sims was the subject of a criminal investigation before May 5, 2005." (Award at 22). Based on the record before him, the Arbitrator found that there was only evidence that a criminal investigation was conducted for thirty (30) days while the USAO reviewed the Grievant's case from May 5, 2005, until June 16, 2005. (Award at 25). Pursuant to D.C. Code § 5-1031(b), the Arbitrator found that only thirty days were tolled. (Award at 27). Further, the Arbitrator stated, "the Arbitrator can find no interpretation of the 90-day rule or case law that warrants such an expansive construction." *Id.* Consequently, the Arbitrator found that MPD failed to timely serve the Grievant with its Notice of Proposed Adverse Action. *Id.*

The Board has long held that by agreeing to submit the settlement of a grievance to arbitration, it is the Arbitrator's interpretation, not the Board's, for which the parties have bargained. *See University of the District of Columbia and University of the District of Columbia Faculty Association*, 39 D.C. Reg. 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992). In addition, the Board has found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based." *District of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *District of Columbia Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. No. 738 PERB Case No. 02-A-07 (2004). The "Board will not substitute its own interpretation or that of the Agency for that of the duly designated arbitrator." *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 D.C. Reg. 3616, Slip Op. No. 157, PERB Case No. 87-A-02 (1987).

The Board's review of an arbitration award on the basis of public policy is an "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's ruling. "[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." *Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 59 D.C. Reg. 3959, Slip Op. No. 925. PERB Case No. 08-A-01 (2012) (quoting *American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F. 2d 1, 8 (D.C. Cir. 1986)). A petitioner must demonstrate that an arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law and or legal precedent. *See United Paperworks Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). Moreover, the violation must be so significant that the law or public policy "mandates that the Arbitrator arrive at a different result." *Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 D.C. Reg. 717, Slip Op. No. 633, PERB Case No. 00-A-04 (2000). Further, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *Id. See, e.g., D.C. Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, Slip Op. No. 1015, PERB Case No. 09-A-06 (2010).

In the present case, the Board finds that MPD's Request is merely a dispute of the Arbitrator's evidentiary findings and conclusions. MPD's reliance on *OEA* is not persuasive, as the DCCA's decision governed a different statute than the one at issue. Furthermore, *OEA* only discusses when a criminal investigation can be said to have concluded. 883 A.2d 124, 128 (D.C. 2005). Conversely, MPD's Request appears to dispute the Arbitrator's findings that there was no evidence of a criminal investigation *prior* to May 5, 2005. (Request Brief at 8). MPD's argument is based on when the criminal investigation *began*, not when it *concluded*, as *OEA* discusses. MPD's Request constitutes only a disagreement with the Arbitrator's evidentiary findings of the length of the criminal investigation of the Grievant. "The Board will not second guess credibility determinations, nor will it overturn an arbitrator's findings on the basis of a disagreement with the arbitrator's determination." *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 59 D.C. Reg. 9798, Slip Op. No. 1271, PERB Case No. 10-A-20 (2012). *See also Metro. Police Dep't and Fraternal Order of Police/Metro, Police Dep't Labor Comm.*, 31 D.C. Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A0-05 (1984); *FOP/DOC Labor Comm. v. Dep't of Corrections*, 52 D.C. Reg. 2496, Slip Op. No. 722, PERB Case Nos. 01-U-21, 01-U-28, 01-U-32 (2005).

MPD submitted itself to arbitration and to the Arbitrator's interpretation of the contract and relevant laws, as well as the Arbitrator's factual findings. MPD has not asserted any law or public policy that would require the Arbitrator to have arrived at a different result. Therefore, the Board denies MPD's Arbitration Review Request on the basis that the Award is contrary to law and public policy.

B. Arbitrator's grant of authority

MPD argues that the Arbitrator was without authority to grant the Award. (Request at 2, Request Brief at 7). The Board has used the following test to determine whether an Arbitrator has exceeded his jurisdiction and was without authority to render an award: "whether the Award draws its essence from the collective bargaining agreement." *Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (on Behalf of Kenneth Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012) (quoting *D.C. Public Schools v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156, PERB Case No. 86-A-05 (1987)). The U.S. Court of Appeals for the Sixth Circuit in *Michigan Family Resources, Inc. v. Service Employees International Union Local 517M*, has explained what it means for an award to "draw its essence" from a collective bargaining agreement by stating the following standard:

> [1] Did the arbitrator act 'outside his authority' by resolving a dispute not committed to arbitration?; [2] Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?"; "[a]nd [3] [I]n resolving any legal or factual disputes in the case, was the arbitrator arguably construing or applying the contract"? So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made "serious," "improvident" or "silly" errors in resolving the merits of the dispute.

475 F.3d 746, 753 (6th Cir. 2007). *See Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (on Behalf of Kenneth Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012).

MPD has asserted no facts or legal argument to support its assertion that the Arbitrator was without authority to issue the Award. The Board finds nothing in the record to suggest that fraud, a conflict of interest, or dishonesty affected the Arbitrator's decision or the arbitral process. Additionally, there is nothing in the Award to show that "the arbitrator's decision on the merits was so untethered from the agreement that it casts doubt on whether he was engaged in interpretation, as opposed to the implementation of his 'own brand of industrial justice.'" *Michigan Family Resources*, 475 F.3d at 754. No one disputes that the collective bargaining agreement committed this grievance to arbitration. Furthermore, the Arbitrator was mutually selected by the Parties to resolve the dispute, he was presented with the issue of whether MPD violate D.C. Code § 5-1031, and both Parties had an opportunity to argue the issue. (Award at 7). Based on the record and relevant law, the Arbitrator found that MPD violated the 90-Day Rule, D.C. Code § 5-1031, which was clearly well within his granted jurisdiction to do. *See Michigan Family Resources*, 475 F.3d at 754. Hence, the Board rejects the argument that the Arbitrator exceeded his authority.

IV. Conclusion

The Board finds that the Award is not on its face contrary to law or public policy, nor did the Arbitrator exceed his jurisdiction. Therefore, MPD's Arbitration Review Request is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Metropolitan Police Department's Arbitration Review Request is denied.
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.

May 28, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order for PERB Case No. 12-A-07 was transmitted to the following parties via LexisNexis File & Serve on this the 29th day of May, 2013.

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