Government of the District of Columbia
Public Employee Relations Board

In the Matter of: District of Columbia Metropolitan Police Department, Petitioner, v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Joseph Camps), Respondent.	PERB Case No. 06-A-05 Opinion No. 1327

DECISION AND ORDER

I. Statement of the Case

In the above-captioned matter, the District of Columbia Metropolitan Police Department ("MPD" or "Agency") filed an Arbitration Review Request ("Request"), which rescinded the termination of Joseph Camps ("Grievant"), a bargaining unit member. Specifically, the Arbitrator found that MPD violated the fifty-five-day rule contained in the parties' collective bargaining agreement ("CBA").

MPD contends that the Arbitrator was without authority to grant the Award and that the Award is contrary to law and public policy. The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union") opposes the Request.

The issues before the Board are whether "the award on its face is contrary to law and public policy" and whether "the arbitrator was without or exceeded his or her jurisdiction. . . ." D.C. Code § 1-605.02(6) (2001).

II. Discussion

The Grievant was employed by MPD as a police officer in MPD's Public Safety and Communication Center. He was appointed to MPD on October 15, 1997. From calendar year 2000 through August 2004, the Grievant was on sick leave, leave without pay, or limited duty for various reasons. Following an off-duty automobile accident on October 1, 2003, the Grievant was placed on sick leave and then on leave without pay when his sick leave was exhausted. It appears that he returned to limited duty sometime in 2004.

On April 7, 2004, the Grievant received a Notice of Proposed Adverse Action. The Notice was based on six charges, all of which arose out of disputes between the Grievant and MPD concerning his alleged refusal to report for medical examinations or to provide medical records in response to requests from MPD personnel. The Notice advised the Grievant that he had twenty-one days to submit a response and a request for a departmental hearing, if desired. In addition, the Notice indicated that if a hearing was requested it would be held on June 15 and 16, 2004. On April 8, 2004, the Grievant responded to the Notice and requested a hearing.

On June 16, 2004, a hearing was held before a three-member Departmental Hearing Board. At the hearing, FOP requested that the matter be dismissed because MPD had failed to issue a decision on the Grievant's appeal within the fifty-five day period provided in Article 12, Section 6 of the parties' CBA. FOP's request was denied and the hearing proceeded. The three-member board recommended that four of the six charges against the Grievant be sustained and that the Grievant be terminated. On July 15, 2004, Assistant Chief Shannon Cockett adopted the findings of the Board and determined that the Grievant should be terminated effective August 21, 2004. The Grievant appealed the decision to the Chief of Police. The Chief of Police denied the appeal and FOP invoked arbitration pursuant to the parties' CBA. (Award at p. 1.)

At arbitration FOP asserted that MPD violated Article 12, Section 6 of the parties' CBA in that it did not issue its decision within 55 days of the date that the Grievant filed his request for a departmental hearing. Article 12, Section 6 of the parties' CBA provides in pertinent part that an employee "shall be given a written decision and the reasons therefore [*sic*] no later than . . . 55 days after the date the employee is notified in writing of the charges or the date the employee elects to have a departmental hearing." (Award at pp. 2-3.) FOP argued that MPD's violation of Article 12, Section 6 of the parties' CBA required that the case against the Grievant be dismissed. (Award at p. 5.)

MPD countered that the fifty-five-day rule was not violated "because the fifty-five days begins to run on the date that the hearing requested by the Grievant commences." (Award at p. 5.) In addition, MPD argued that even if there were a violation of the fifty-five-day rule, the arbitrator lacked authority to reinstate the Grievant. Also, MPD claimed that if a violation of the fifty-five-day rule occurred, it constituted harmless error and that, consistent with a District of Columbia Superior Court ruling, the termination should be sustained. (Award at p. 7.) In support of its position, MPD cited Judge Abrecht's decision in *Metropolitan Police Department v. District of Columbia Public Employee Relations Board*, 01-MPA-19 (September 10, 2002).

In an Award issued on February 2, 2006, Arbitrator Stephen Alpern rejected MPD's argument by noting the following:

> The Agreement states that the employee must be given a written decision "no later than fifty-five (55) days after . . . the date the employee elects to have a departmental hearing." . . . Clearly, the intent of the language was to guarantee that once charges are preferred against an employee, they will be resolved expeditiously. However, under the MPD's interpretation, the employee could elect a hearing, but the MPD could schedule the hearing (and the fifty-five day period) to begin many months later. Although in this case a hearing date was set forth in the letter of proposed adverse action, the employee did not "elect" that date; MPD set it. In fact, there does not appear to be any limitation on the setting of a hearing date, and the Employer has so argued in prior cases. Thus, if the fifty-five day period did not begin to run until the time of the hearing, the MPD could keep the employee in limbo after charges were issued by refusing to schedule a hearing, thus rendering the fifty-five day Rule totally ineffective. Further, the MPD's interpretation would, in effect, rewrite the Agreement to read, ". . . shall be given a written decision no later than fifty-five days after the date of the hearing elected by the employee," rather than "no later than fifty-five (55) days after the date the employee elects to have a department hearing."

(Award at p. 6.) In addition, the Arbitrator rejected MPD's arguments that the Arbitrator lacked the authority to rescind the termination and that the violation was harmless error.

In light of these findings, the Arbitrator found that MPD violated Article 12, Section 6 of the parties' CBA by failing to issue the final decision to terminate the Grievant within fifty-five days of the Grievant's request for a trial board hearing. Therefore, Arbitrator Alpern ordered that the Grievant should be reinstated with full back pay and benefits and without any loss of seniority. (Award at p. 12.)

MPD takes issue with the Award. Specifically, MPD argues that: (1) the Arbitrator was without authority to grant the Award and (2) the Award is contrary to law and public policy. (Request at p. 2.)

In arguing that the Arbitrator was without authority to grant the award, MPD asserts that the Arbitrator was presented with two decisions of the District of Columbia Superior Court regarding a remedy for violations of the CBA's fifteen-day rule and fifty-five day rule. In both instances the cases were before the superior court on review of arbitration decisions that reversed the discipline imposed by MPD due to missed contractual time limits. In *Metropolitan Police Department v. D.C. Public Employee Relations Board*, 01-MPA-19 (Sept. 10, 2002), Judge Abrecht reversed the decision of the arbitrator. In the other case, *Metropolitan Police*

Department v. D.C. Public Employee Relations Board, 01-MPA-18 (Sept. 17, 2002), Judge Kravitz upheld the decision of the arbitrator. MPD argues that in the present case, "the Arbitrator was guided by Judge Kravitz's decision and, therefore, concluded that he had the authority to fashion a remedy for the failure of [MPD] to comply with the 55-day rule. . ." (Request at p. 4.) MPD "submits . . . that the decision of Judge Abrecht should have been followed and not that of Judge Kravitz." (Request at p. 7.)

In addition, MPD contends that "[t]he failure to comply with the fifty-five day period was harmless in that [the] Grievant was not denied any due process protections. Moreover, the Grievant was not prejudiced by the delay because during the period she remained in a pay status." (Request at p. 7.)

MPD notes that it should not be ignored that the Grievant was found guilty of committing serious acts of misconduct, and that determination has not been contested or otherwise challenged. (Request at p. 7.) Also, MPD claims that if the Grievant "is reinstated the nature of her misdeeds makes it unlikely that she would be returned to a full-duty status." (Request at p. 7.) Finally, MPD asserts that a remedy of reinstatement returns to MPD an individual unsuitable to serve as a police officer. Clearly such a remedy would violate public policy. (See Request at p. 7.)

MPD's ground for review involves only a disagreement with the Arbitrator's interpretation of Article 12, Section 6 of the parties' CBA. MPD merely requests that we adopt its interpretation and remedy for its violation of the above-referenced provision of the parties' CBA. The Board has held 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 and conclusions on which the decision is based." *MPD v. FOP/MPD Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000). Moreover, the Board will not substitute its own interpretation or that of the Agency for that of the duly-designated arbitrator. *Id.*

MPD suggests that the plain language of Article 12, Section 6 of the CBA does not impose a penalty for noncompliance with the fifty-five-day rule. Therefore, by imposing a penalty where none was expressly stated or intended, MPD asserts that the Arbitrator added to and modified the parties' CBA. (Request at pp. 5-6.)

In cases involving the same parties, we have previously considered the question of whether an arbitrator exceeds his authority when he rescinds a Grievant's termination for MPD's violation of Article 12, Section 6 of the parties' CBA. In those cases we rejected the same argument being made in the instant case and held that the Arbitrator was within his authority to rescind a grievant's termination to remedy MPD's violation of the fifty-five-day rule. *MPD and FOP/MPD Labor Comm. (on behalf of Jav Hang)*, Slip Op. No 861, PERB Case No. 06-A-02 (2007); *MPD and FOP/MPD Labor Comm. (on behalf of Miguel Montanez)*, Slip Op. No. 814, PERB Case No. 05-A-03 (2006). In addition, we have found that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties'

collective bargaining agreement. *MPD v. FOP/MPD Labor Comm.*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992).

In the present case, MPD does not cite any provision of the parties' CBA that limits the Arbitrator's equitable power. Therefore, once the Arbitrator concluded that MPD violated Article 12, Section 6 of the parties' CBA, he had the authority to determine the appropriate remedy. Contrary to MPD's contention, Arbitrator Alpern did not add to or subtract from the parties' CBA but merely used his equitable power to formulate the remedy, which in this case was rescinding the Grievant's termination. Thus, Arbitrator Alpern acted within his authority.

As a second basis for review, MPD claims that the Award is on its face contrary to law and public policy. (Request at p. 2.) The petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *MPD and FOP/MPD Labor Committee*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). *See also D.C. Pub. Schs. and Am. Fed'n of State. County and Mun. Employees. Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). Far from specifying applicable law and definite public policy mandating a different result, MPD's Request does not even refer to any laws or policies.

In view of the above, we find no merit to either of MPD's arguments. In addition, we find that the Arbitrator's conclusions are based on a thorough analysis and cannot be said to be contrary to law or public policy or in excess of his authority under the parties' collective bargaining agreement.

Therefore, no statutory basis exists for setting aside the Award.

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.

August 27, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 06-A-05 is being transmitted via U.S. Mail to the following parties on this the 27th day of August, 2012.

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