Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
METROPOLITAN POLICE DEPARTMENT	
Petitioner ,	PERB Case No. 10-A-11
v.	Opinion No. 1210
FRATERNAL ORDER OF POLICE/ METROPOLITAN POLICE DEPARTMENT LABOR COMMITTEE	Motion for Reconsideration
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The Metropolitan Police Department ("MPD" or "Petitioner") filed a Motion for Reconsideration of The Decision and Order which PERB issued on August 31, 2011. The Petitioner seeks reconsideration of the Order because of alleged new evidence which was discovered after the hearing, which MPD believes warrants reconsideration of the original decision. On October 14, 2011, Respondent filed an Opposition to the Petitioner's Motion for Reconsideration of the Decision and Order. This opposition was considered by PERB.

II. Discussion

In the motion to reconsider, Petitioner states the following as procedural background:

> "On August 4, 2002, Officer Eric Melby (Melby") was involved in an automobile accident while on duty. The MPD investigated the accident and determined that Melby committed several instances of

misconduct. The MPD commenced adverse action proceedings against Melby which concluded in his termination.

Thereafter, the Union sought arbitration on behalf of Melby. The parties, in accordance with their collective bargaining agreement selected M. David Vaughn as arbitrator. Arbitrator Vaughn issued an Opinion and Award ("Award") on November 29, 2009 sustaining the grievance and ordered Melby returned to his former position. Petitioner appealed the Award to the Board. On August 31, 2011, the Board issued a Decision denying the appeal." *[Citations omitted]*

(Motion at p. 2).

Petitioner makes the following claims as to reconsideration:

"The matter involves a dispute regarding which of two Collective Bargaining Agreements ("CBA") controlled the calculation of time within which the MPD was required to issue a final decision on the adverse action…

It is undisputed that two CBAs were in effect during the pendency of the disciplinary action. CBA 03 was in effect when the MPD served Melby with the Proposed Notice. Later the Union ratified CBA08 while the disciplinary action was pending but before the passage of 55-days under CBA03. CBA08 changed the method by which the days are counted for purposes of the 55-day Rule. Under the terms of CBA03, the MPD violated the 55 day rule, whereas under the terms of CBA08, the MPD did not violate the 55-day rule…

…[T]he Union has argued conflicting positions whether calculation of time pursuant to CBA08 applied immediately after the union ratified CBA08. The Union has asserted these conflicting positions in two separate arbitrations."…

In the Melby arbitration proceeding, the Union argued that that [*sic*] the change in the agreed upon method of counting days from calendar days to business days did not apply to matters that were pending when the Union ratified CBA08 on January 29, 2009. However, on September 29, 2010, in the *Arbitration between Fraternal Order of Police/MPD Labor Committee and Government of the District of Columbia,* Group Grievance MP05G-62/63 (Homer LaRue, Arbitrator) (hereinafter "Group Grievance"), the Union advanced a different position… In sum, when it served the Union's interest, the Union argued in the Melby

> arbitration proceeding that the change in the method of calculating days did not apply to pending matters."

(Motion at pgs. 2, 3, 4).

Petitioners claim that the new evidence is testimony provided by Officer Kristopher K. Bauman in a separate arbitration which occurred after our decision. (Motion, at p. 4). What petitioner's motion ultimately claims is that the Union should not be allowed to argue two opposing positions that resulted to arbitration awards on the principle of collateral estoppel. Petitioner cites *New Hampshire v. Maine,* 532 U.S. 742 (2001) to support this notion. Nonetheless, petitioner has overlooked the fact that the doctrine of collateral estoppel does not apply to a non-judicial, contract-created arbitration. Parties are free to argue opposing positions in different arbitrations, and there are no regulations which restrict them from doing so. Furthermore, each arbitration stands on its own, and an arbitrator's decision does not bind another arbitrator to that decision. In bargaining for an arbitrator to make findings of fact and to interpret the Agreement, the parties chose a forum that is not bound by precedent. PERB has taken maintained this position in the past:

> Arbitration decisions do not create binding precedent even when based on the same collective bargaining agreement. See, e.g., Hotel Ass'n of Washington, D.C., Inc. v. Hotel & Restaurant Employees Union, Local 25, [295 U.S. App. D.C. 285, 286-88,] 963 F.2d 388, [389-]391 (D.C. Cir. 1992."

(Br. For PERB at 30 n. 8, *D.C. Met. Pol. Dept. v. D.C. P.E.R.B.*, No. 05-CV-675. (D.C. 2006)).

For the aforementioned reasons, we find that there is no basis in law or policy to grant a reconsideration of our August 31, 2011 decision.

ORDER

IT IS HEREBY ORDERED THAT:

1. The motion filed by MPD ("MPD" or "Petitioners") is dismissed without prejudice.

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.

November 4, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-A-11 was transmitted via Fax and U.S. Mail to the following parties on this the 4th day of November 2011.

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