

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 formal 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. 01-A-02
)
Petitioner,) Opinion No. 680
)
)
) Motion for Reconsideration
)
and)
FRATERNAL ORDER OF POLICE/)
METROPOLITAN POLICE DEPARTMENT)
LABOR COMMITTEE, (on behalf of)
Grievant, Terrence Shepherd))
Respondent.)
)

This matter involves a Motion for Reconsideration filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) on behalf of Grievant Terence Shepherd¹. FOP is requesting that the Board vacate its Decision and Order issued on November 30, 2001. (Slip Opinion No. 669). In Slip Opinion No. 669², the Board found, *inter alia*, that the

¹MPD terminated the Grievant, a police officer, for negligently firing his weapon and killing a civilian. (Request at p.3).

²The facts and issues presented by this case are set forth in Slip Op. No. 669. However, the facts and main issues are as follows:

On November 27, 2000, the District of Columbia Metropolitan Police Department (MPD) filed an Arbitration Review Request (Request). MPD was seeking review of an arbitration award (Award) which rescinded the termination imposed on a bargaining unit employee.

Decision and Order
PERB Case No. 01-A-02
Page 2

Arbitrator exceeded his authority by reversing Officer Shepherd's termination and reinstating him as a civilian employee at the Metropolitan Police Department (MPD) once he served a 180-day suspension.³ Specifically, the Board opined that the portion of the Award which assigned Officer Shepherd to a civilian position, failed to derive its essence from the parties' collective bargaining agreement. See, MPD and FOP/MPD Labor Committee, 49 DCR 810, Slip Op. No. 669 at p.4-5, PERB Case No. 01-A-02 (2001). See also, D.C. Public Schools v. AFSCME, District Council 20, 34 DCR 3610, Slip Op. No. 156 at p. 5, PERB Case No. 86-A-05 (1987) (where the Board found that the Arbitrator's decision failed to derive its essence from the agreement). As a result, the Board granted MPD's Arbitration Review Request and set aside the Arbitration Award in its entirety.⁴

MPD contended that the: (1) Award was contrary to law and public policy; and (2) Arbitrator was without authority to grant the Award. (Request at p. 2). FOP opposed the Request. The issue before the Board was whether "the award on its face [was] contrary to law and public policy" or whether "the Arbitrator was without or exceeded his or her jurisdiction..." D.C. Code §1-605.02(6) (2001).

³The Arbitrator did not provide an explanation for why he did not order the Grievant to serve his suspension and then return to his original position as a police officer. As a result, the Board stated that the only reasonable conclusion that could be drawn from the Arbitrator's decision to place Officer Shepherd in a civilian position (after he served his 180-day suspension), was that the Arbitrator determined that the Grievant was unfit to continue serving as a police officer. See, MPD and FOP/MPD Labor Committee, 49 DCR 810, Slip Op. No. 669 at p.6, PERB Case No. 01-A-02 (2001).

⁴In resolving the other issues raised by the Petitioner's Arbitration Review Request, the Board rejected MPD's public policy argument (that the Award violates public policy because it rewards a disciplined officer with a new position). In making this determination, the Board found that MPD failed to cite any specific public policy or law that was violated by the Arbitrator's Award.

In response to the Petitioner's arguments that the Arbitrator exceeded his authority, the Board made the following findings. The Board concluded that the Arbitrator did not exceed his authority by reducing a termination to a suspension. See, MPD v FOP/MPD Labor Committee, 49 DCR 810, Slip Op. No. 669 at p.6, PERB Case No. 01-A-02 (2001). In reaching this conclusion, the Board relied on its precedent which held that an Arbitrator does not exceed his authority by reducing a penalty, particularly where the collective bargaining agreement (CBA) does not restrict the Arbitrator's exercise of equitable powers in fashioning a remedy. See, MPD v. FOP/MPD Labor Committee, 36 DCR 3339, Slip Op. No. 218, PERB Case No. 89-A-01 (1989).

Metropolitan Police Department v Fraternal Order of Police (on behalf of Grievant Terence Shepherd/MPD Labor Committee, 49 DCR 810, Slip Op. No. 669 at p.6, PERB Case No. 01-A-02 (2001).

FOP's Motion for Reconsideration (Motion) asserts that notwithstanding the Board's finding that the Arbitrator lacked the authority to place Officer Shepherd in a civilian position, the Board erred by failing to order that Officer Shepherd be reinstated as a police officer after serving a 180-day suspension (Motion at p. 2). FOP reasons that this is the proper result since the Board concluded that "the arbitrator did not exceed his authority by reducing the Grievant's termination to a suspension." (Motion at p. 2).

In its Response to FOP's Motion for Reconsideration (Response), MPD cites Board Rule 538.4⁵ in support of its argument that the Board's Decision in Slip Opinion No. 669 should stand. Specifically, MPD argues that pursuant to Rule 538.4, the Board may, *inter alia*, "set aside [an] award in whole or in part." (Response at p. 2)." "Thus, the Board had the authority to set aside that portion of the arbitration award that reversed the termination and reinstated the employee to a civilian position." (Response at p.2). In addition, MPD contends that FOP is now seeking to have the Board consider the issue of whether Officer Shepherd is fit to be a police officer. However, MPD asserts that the issue is waived because FOP did not previously raise it.

After reviewing the present Motion, we believe that FOP's argument amounts to nothing more than a disagreement with the Board's determination. Moreover, FOP fails to cite any legal authority to support its position. Instead, FOP is seeking to have the Board adopt its interpretation of D.C. Code §1-605.02 (6) (2001). In view of the above, we find that D.C. Code §1-605.02 (6) and Board Rule 538.4 make it clear that the Board may set aside an Arbitration Award *in whole or in part* where it finds that an Arbitrator has exceeded his authority.

Consistent with the above discussion, we believe that our decision to set aside the Award in its entirety is consistent with our authority pursuant to the D.C. Code and Board Rules. Therefore,

However, the Board found that the Arbitrator exceeded his authority by placing the Grievant into a civilian position. The Board explained that "the Award assigning the Grievant to a civilian position conflicts with the express terms of the agreement because it impacts a class of workers and current positions that are not covered by the parties' agreement." Id. at 5. .

⁵Board Rule 538 which references D.C. Code§ 1-605.2 (6), outlines the Board's authority with respect to reviewing Arbitration Review Requests. It provides in pertinent part that the Board may: "sustain, set aside or remand an award in whole or in part" if it finds that the Arbitrator has exceeded his jurisdiction or authority." D.C. Code §1-605.2(6) is codified at 1-605.02(6) in the 2001 edition of the D.C. Code.

Decision and Order
PERB Case No. 01-A-02
Page 4

we find that FOP's arguments on this issue lacks merit.

In view of the above, the Board finds that FOP has not presented evidence which supports reversal of Slip Opinion No. 669. Therefore, we deny FOP's Motion for Reconsideration.

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's Motion for Consideration 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.

June 11, 2002

CERTIFICATE OF SERVICE

This is to certify that the attached Motion for Reconsideration in PERB Case No. 01-A-02 was transmitted via Fax and/or U.S. Mail to the following parties on this 11th day of June 2002.

Harold M. Vaught, Esq.
1320 G Street, S.E.
Washington, D.C. 20003

FAX & U.S. MAIL

Frank McDougald, Jr., Esq.
Assistant Corporation Counsel
Section Chief
441 4th Street, N.W.
Suite 1060-N
Washington, D.C. 20001

FAX & U.S. MAIL

Courtesy Copies:

Robert Rigsby, Esq.
Corporation Counsel
441 4th Street, N.W.
Suite 1060-N
Washington, D.C. 20001

U.S. Mail

Gerald Neill, Jr.
Chairman
FOP/MPD Labor Committee
1524 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

U.S. Mail

Mr. Marvin E. Johnson
Arbitrator
1221 Smith Village Road
Silver Spring, MD 20904

U.S. Mail

Sheryl V. Harrington
Sheryl Harrington
Secretary