

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
The District of Columbia)	
Metropolitan Police Department,)	PERB Case No. 84-A-04
)	Opinion No. 84
Petitioner,)	
)	
and)	
)	
The Fraternal Order of Police,)	
Metropolitan Police Department)	
Labor Committee (On behalf of)	
Detective Norman A. Hill).)	
)	
Respondent.)	

DECISION AND ORDER

On March 15, 1984, the Metropolitan Police Department (MPD) filed an "Arbitration Review Request" with the Board seeking review of an arbitration award issued on February 22, 1984. In that Award, the Arbitrator sustained a grievance filed by the Fraternal Order of Police (FOP) on behalf of Detective Norman A. Hill. The basis for the appeal is MPD's contention that the Arbitrator exceeded his jurisdiction and authority by substituting a lesser form of discipline even though he found that Detective Hill violated MPD rules.

On March 23, 1984, FOP filed an "Opposition to Acceptance of Arbitration Review Request" contending that MPD's request is merely an attempt to re-litigate issues previously considered and ruled on by the Arbitrator and requesting that the Board dismiss this matter.

Arbitration followed FOP's grievance over Detective Hill's suspension without pay for 15 days for conduct unbecoming a police officer. MPD found that Detective Hill, while on duty, verbally threatened to kill a female trainee as he held his service revolver in his hand. The Arbitrator ruled that, while Detective Hill's actions constituted misconduct within the meaning of MPD regulations, the circumstances and context surrounding the incident and the role played by MPD mitigate against imposition of a 15 day suspension. The Arbitrator found that MPD, in creating an undercover operation to investigate Detective Hill's alleged misappropriation of money seized in a narcotics case, created an extremely stressful situation which may have had a bearing on his misconduct. Accordingly, the Arbitrator reduced the suspension to a letter of reprimand and awarded backpay.

MPD contends that the Arbitrator incorrectly overruled its motion to dismiss for lack of jurisdiction when it became known that Detective Hill had filed a civil suit against MPD in the Superior Court of the District of Columbia. FOP contends that, since MPD's motion to dismiss was based on an interpretation of a provision in the negotiated Agreement, it is unreasonable to conclude that the Arbitrator exceeded his authority in ruling on the motion.

Section 502(f) of the Comprehensive Merit Personnel Act (CMPA) (codified as District of Columbia Code Section 1-605.2(6)) authorizes the Board to consider appeals from arbitration awards pursuant to a grievance procedure only if it is determined that "the arbitrator was without, or exceeded his or her jurisdiction; the award on its face is contrary to law or public policy; or was procured by fraud, collusion or other similar and unlawful means."

In reviewing the Arbitrator's Award and Decision, the Board finds that on its face, it is neither contrary to law or public policy nor does it appear that the Arbitrator exceeded the jurisdiction granted. Disputes are, by the terms of the Agreement, grievable through a grievance mechanism which provides for arbitration as its final step. Article 20 of the Agreement specifically provides that:

"The purpose of this grievance procedure is to establish effective machinery for the fair, expeditious and orderly adjustment of grievances. Only an allegation that there has been a violation, misapplication, or misinterpretation of the terms of this Agreement shall constitute a grievance under the provisions of this grievance procedure."

Since, by its own terms, the Agreement provides for arbitration of disputes involving alleged misapplications of law resulting in unfair personnel actions, there appears to be no basis for MPD's claim that the award is contrary to law and public policy.

With respect to MPD's motion to dismiss for lack of jurisdiction, the Arbitrator thoroughly considered MPD's arguments and found that Detective Hill did not forfeit his right, under the Agreement, to process his grievance even though he filed a civil suit seeking monetary damages. MPD's contentions in its "Arbitration Review Request" are essentially a restatement of arguments previously made and ruled on by the Arbitrator.

With respect to MPD's contention that the Arbitrator exceeded his authority when he reduced the 15 day suspension to a letter of reprimand, the Board finds that the Agreement does not restrict the Arbitrator's exercise of equitable powers. The Agreement contains no table of penalties. The Award takes into consideration the context in which the incident occurred and the absence of a contractual limitation on penalties in arriving at the appropriate remedial award.

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The Board finds, further, that the Arbitrator's interpretation of the Agreement is based upon a thorough and detailed analysis. There is insufficient evidence to conclude that his analysis and conclusions are erroneous, contrary to law and public policy or beyond the scope of the authority granted.

ORDER

It is ordered that:

The request for review of the arbitration award is hereby denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
July 17, 1984