

FEDERAL CIRCUIT RULES CAPITOL POLICE MUST ABIDE BY ARBITRATORS' DECISIONS ON TERMINATIONS AND REINSTATE WRONGFULLY TERMINATED OFFICER

On January 25, 2019, the U.S. Court of Appeals for the Federal Circuit rejected the United States Capitol Police's attempt to avoid reinstating a wrongfully terminated U.S. Capitol Police officer. The Court of Appeals ordered the Department to comply with the arbitrator's decision, which includes reinstatement of the terminated officer, backpay, interest, attorneys' fees and costs as well as other damages. In *United States Capitol Police v. Office of Compliance*, the Court relied heavily on a previous decision against the Department from last November and ruled that arbitrators have the authority to review terminations of U.S. Capitol Police officers under the Collective Bargaining Agreement with the FOP/U.S. Capitol Police Labor Committee.

The FOP/U.S. Capitol Police Labor Committee filed a grievance regarding the officer's recommended termination on December 12, 2012, which the Department denied. The Department terminated the officer effective June 26, 2013. The parties jointly selected an arbitrator and a two-day hearing was conducted. On May 13, 2014, Arbitrator Daniel Gallagher issued his decision, concluding that termination was an inappropriately excessive penalty and mitigated the penalty to a thirty-day suspension. Arbitrator Gallagher ordered that the officer "be returned to service to his prior position as a U.S. Capitol Police Officer" and "be made whole for lost wages and benefits, less other payroll related earnings from the time of his termination to the present." The Department appealed this decision to the then-Office of Compliance (now, Office of Congressional Workplace Rights) Board of Directors, and on December 12, 2014 the Board upheld the Arbitrator's decision.

In an apparent fit of sour grapes, the Department abruptly announced that it would not reinstate the officer or otherwise comply with the Arbitrator's Award. On June 17, 2015, the Arbitrator issued a second award, ordering the United States Capitol Police to (1) immediately return the officer to service as a U.S. Capitol Police officer, (2) pay the officer backpay totaling \$340,487.70, including interest, and (3) pay the Labor Committee's attorneys' fees and expenses of \$273,906.68 within thirty (30) days.

The Department ignored this award as well, and refused to comply with the Arbitrator's ruling. The FOP/U.S. Capitol Police Labor Committee filed an Unfair Labor Practice (ULP) seeking to force the Department to comply with the Arbitrator's award. That ULP was upheld by a hearing officer and the Department filed yet another appeal with the Board, which was rejected on September 25, 2017. The Department then filed an appeal to the U.S. Court of Appeals for the Federal Circuit challenging the OOC Board's award ordering the Department to comply with Arbitrator Gallagher's decision. The Court of Appeal's decision rejects all of the Department's arguments and finds that arbitrators have the authority to review terminations of U.S. Capitol Police officers.

“The Court carefully considered and rejected each of the Department’s arguments,” said David Ricksecker, of Woodley & McGillivray LLP, who represented the Labor Committee. He added, “[t]he Court’s decision that the Department was required to comply with the Arbitrator’s decision over this issue was unanimous, which shows how meritless their position was. It is well past time that this officer be put back on the job.”

“This decision is a big victory not only for our members, but especially the officer who was wrongly terminated,” Labor Committee Chairman Gus Papathanasiou stated, “this dedicated officer has been off the force for over five and a half years while the Department pursued these meritless appeals. It’s appalling that rather than follow the parties Collective Bargaining Agreement and abide by the Arbitrator’s decision to reinstate this officer, the Department threw a legal tantrum when it didn’t get its way.” He added, “I am disappointed that the Department wasted countless hours and taxpayer dollars asserting these baseless claims and appeals over the last five and half years, but I am particularly disgusted that this Officer has been off the force, forced to find other work while the Department simply ignored the Arbitrator’s 2014 award ordering him back on the job as a U.S. Capitol Police officer. I can tell you this much, I look forward to seeing this officer back in uniform and back on the job as soon as possible.”

The decision is *United States Capitol Police v. Office of Compliance*, Case No. 2018-1201 and 2018-1395 and can be found at: <http://www.caafc.uscourts.gov/sites/default/files/opinions-orders/18-1201.Opinion.1-25-2019.pdf>