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**PUBLIC EMPLOYMENT - WASHINGTON**

## Seattle Police Department v. Seattle Police Officers' Guild

**Court of Appeals of Washington, Division 1 - April 5, 2021 - P.3d - 2021 WL 1247946**

City applied for a writ directing arbitration panel to transmit records and files to the Superior Court to determine whether to vacate panel's decision to reinstate former city officer who was terminated by city for violating police department's use-of-force policies.

The Superior Court granted city's motion to vacate. Police guild appealed.

The Court of Appeals held that:

- Public policy against use of excessive force in policing was explicit;
- Policy was dominant;
- Policy was well defined;
- Panel considered mitigating factors that were not properly considered as mitigating in light of policy;
- Award was so lenient as to violate policy; and
- Policy barred reinstatement.

Public policy against use of excessive force in policing was explicit, as required to vacate, as violative of public policy, arbitration panel's decision to reinstate former city officer who was terminated by city for violating police department's use-of-force policies; right to be free from excessive force had source in Bill of Rights and was enforceable against states via Fourteenth Amendment, Fourth Amendment provided explicit textual source of constitutional protection against physically intrusive governmental conduct, and Fourth Amendment, not more generalized notion of substantive due process, was guide for analyzing excessive force claims.

Public policy against use of excessive force in policing was dominant, as required to vacate, as violative of public policy, arbitration panel's decision to reinstate former city officer who was terminated by city for violating police department's use-of-force policies; right to be free from excessive force was enshrined in the U.S. Constitution, which Washington's constitution recognized as the supreme law of the land, § 1983 was enacted to create a broad remedy for violations of federally protected civil rights, and congress, through enactment of statute prohibiting pattern or practice of right deprivations, provided remedy for violations of federal civil rights, specifically for violations that were systematically perpetrated by local police departments.

Public policy against use of excessive force in policing was well defined, as required to vacate, as violative of public policy, arbitration panel's decision to reinstate former city officer who was terminated by city for violating police department's use-of-force policies; statute imposed affirmative duty on municipal employers to sufficiently discipline officers who violated use-of-force policies, and consent decree between city and United States confirmed that effective accountability mechanisms, including ones that sufficiently disciplined officers who violated the very policies designed to ensure constitutional policing, were a cornerstone of municipal employers' duty to not engage in patterns or practices of use of excessive force.

In determining to reinstate former city officer who was terminated by city for violating police department's use-of-force policies, arbitration panel considered mitigating factors that were not properly considered as mitigating in light of public policy against use of excessive force; panel considered as mitigating factors that officer acted "perhaps reflexively" after being kicked, that officer's patience was being tried, and that he sincerely believed that he did nothing wrong, even though officer punched suspect while she was handcuffed, intoxicated, and officers and police dog were at scene, officer responded to circumstance not unique for officers, and consideration of subjective belief telegraphed that policy violations were condoned if officer was passionate.

Arbitration panel's award reinstating former city officer who was terminated by city for violating police department's use-of-force policies was so lenient as to violate public policy against use of excessive force; despite officer's adequate training and clarity and specificity of policies, he punched woman who, although angry and resistant, was not large and was handcuffed and intoxicated, although officer described suspect as amazingly strong, officer himself was relatively large and physically strong, woman was only person arrested, and there were two additional officers and police dog at scene.

Public policy against use of excessive force in policing barred reinstatement of former city officer who was terminated by city for violating police department's use-of-force policies, as required to vacate arbitration panel's award reinstating officer; reinstatement would have sent message that it was not that serious when an officer, who had time to execute other options, violated clear and specific policy on which he was adequately trained by using excessive force on handcuffed subject "perhaps reflexively" because "patience was being tried," causing serious injury, and insisting he did nothing wrong, and remanding to panel to reinstate officer subject to some other penalty would have thwarted city's ability to ensure that no pattern or practice of using excessive force existed.

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