

Labor & Employment Law Daily Wrap Up, LABOR—ARBITRATION—Officer entitled to see video before giving statement to investigator, (Aug 23, 2023)

By WK Editorial Staff

The police department received a complaint from an individual about an incident that apparently occurred in a hotel.

An arbitrator sustained the grievance of a police officer with the City of Akron who contended that the employer violated the collective bargaining agreement when it refused to allow him to see a hotel video of an incident before he was required by the investigator to file a statement about it. The CBA requires that body camera video and “similar recordings” be disclosed at the time of the investigative interview and the arbitrator concluded that “similar recordings” encompassed the hotel video. The arbitrator ruled that the officer had a due process right to see the hotel video before he gave his statement, and the employer had no inherent management right to decide whether to give the video to the officer before his statement. The request was reasonable, the arbitrator explained, and the better interpretation of the CBA was that it required that the video be produced before the statement ([The City of Akron, Ohio and Fraternal Order of Police, Lodge #7](#), Mitchell B. Goldberg, Arbitrator. Selected by the parties. Issued April 3, 2023.).

Video requested, denied. The police department received a complaint from an individual about an incident that apparently occurred in a hotel. A police sergeant was ordered by his superior to attend a meeting to answer questions about the complaint and to issue a statement. The sergeant and his union rep learned that a hotel video existed of the incident. They requested a copy of the video, which they wanted to review before answering questions and giving the statement. The employer denied the request. The sergeant then filed a grievance, contending that the refusal to allow him to see the hotel video before the meeting violated his rights under the collective bargaining agreement.

“Similar recordings.” The CBA included a provision stating that no officer could be required to give a statement “if there is body camera video and/or in-car video (IVA), or similar recordings until the officer and the officer’s representative are afforded the opportunity to view the video(s) first.” The employer denied the sergeant’s request because the video was not from a body camera or an IVA. The sergeant, however, contended that the hotel video constituted “similar recordings.”

The arbitrator acknowledged that the term “similar recordings” was somewhat ambiguous. He began by attempting to define the word “similar.” He concluded that it meant “much the same” without the requirement that it be “exactly the same.” The employer argued that the officer was not harmed by the denial of the right to see the hotel video and that a fair process existed for him to review the video later in conjunction with a full-scale evidentiary pre-disciplinary hearing (which he was allowed to do). The arbitrator noted, however, that the statement-giving phase of the investigation could be important to whether the pre-disciplinary hearing was even necessary. His due process rights demanded that he be given the right to receive an explanation of the employer’s evidence before he provided a statement, which must also occur before any disciplinary decision was reached.

Had right to see video. As a result, the arbitrator ruled that the sergeant’s due process rights included the right to see the hotel video before he provided a statement. Viewing the video could protect him from unintentional mistakes or a failure to remember a particular fact. As it turned out, the sergeant was not harmed because the video evidence did not contradict anything in his statement. Nevertheless, he had a right under the CBA to see that video. The employer had no inherent management right to decide whether to give the video to the officer before his statement. The request was reasonable, and the better interpretation of the CBA was that it required that the video be produced before the statement. The grievance, therefore, was sustained. The employer violated the CBA when it refused his request until after his statement was given. The ruling, which came too late to apply to this officer, would have to be applied prospectively.

Attorneys: Ashley M. Manfull and Rebecca M. Advent for the City of Akron, Ohio. Susannah Muskovitz, and Thomas M. Steffas, Attorneys, for the Fraternal Order of Police, Lodge #7.

Companies: The City of Akron, Ohio; Fraternal Order of Police, Lodge #7

Cases: Labor Arbitration PublicEmployees Procedure IndividualRights UnfairLaborPractices UnionsMembers