

WHY ARBITRATION IS NOT THE PROBLEM

Officials looking to address policing issues often resort to the idea of gutting arbitration for police officers (and, by extension, other workers). This move is wrongheaded for a number of reasons.

First of all, when it comes to officer discipline, arbitration isn't the problem. It's what police leadership gives to arbitrators that causes the problem. CUAPB has spent many hours reviewing every arbitration ruling in the state that is public from the last several years. Only arbitrations that result in some discipline are public so we suspect that the problems are actually worse than what we can see. The problems that lead arbitrators to overturn discipline include:

1) Poor documentation. The chief accuses some officer of being late X number of days but there isn't good documentation of it so the arbitrator overturns the discipline.

2) Failure to engage in progressive discipline. That same officer is late every day. Instead of walking him through the steps of coaching, verbal advisement, written advisement, suspension, termination, supervisors fail to take action, then fire the officer after so many late days. Contracts require progressive discipline except for certain egregious acts that allow for immediate termination.

3) Failure to engage in consistent discipline. Everyone comes to work late but only one person is terminated for being late. If that employee can prove that they were singled out for a uniquely harsh discipline, it will be overturned. This is a concept known as past practices.

We saw this when St. Paul Chief Axtell attempted to fire Brett Palkowitsch, who kicked and stomped Frank Baker so hard he collapsed his lungs, nearly killing him. Baker was innocent of any crime and offered no resistance. Despite the resulting lawsuit costing \$2 million (2.5 years of St. Paul's risk pool funds), Axtell was unable to make the termination stick. The arbitrator overturned the termination because other incidents of similar conduct had not been disciplined in the past, including prior incidents by Palkowitsch himself. It wasn't Chief Axtell who had failed to discipline, it was the department, but Axtell was hamstrung because of past practices.

The solution to these issues is not to gut worker rights by curtailing arbitration but to employ a disciplinary reset mechanism. We describe it in some detail in our 44 recommendations document (at cuapb.org) and include the memo we shared with Chief Axtell. He adopted the mechanism and his disciplines are holding up.

It's easy to blame the police federation, their leadership, and their contract but that's too simplistic and doesn't offer real solutions. We need real solutions.



Information provided by **COMMUNITIES UNITED AGAINST POLICE BRUTALITY**. We meet every Saturday at 1:30 p.m. at 4200 Cedar Avenue in Minneapolis. For more information or for help with a police brutality incident, call our 24-hour hotline: **612-874-STOP** or see our website at www.CUAPB.org.