

STATUTORY LANGUAGE CLARIFIES THE MEANING OF “FINAL DISPOSITION”

In May 2010, Governor Pawlenty signed into law S.F. No. 863, which includes various amendments to the Minnesota Government Data Practices Act. One amendment that is of particular interest to LELS members deals with the “final disposition” of disciplinary matters.

The Data Practices Act identifies certain government data as public, meaning that the data must be made available upon request from a newspaper or any other members of the public. Section 13.43, subdivision 2 of the Minnesota Statutes itemizes the types of personnel data that are public, including “the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis for the action.” The same subdivision provides that “[i]n the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement.” In practice, this means that when an LELS member is disciplined for allegedly violating department policy, information about the nature of and reasons for the discipline does not become public until the members has exhausted his or her grievance rights, up to and including arbitration. That information also becomes public if, after being notified of the disciplinary action, the member fails to initiate a grievance within the time provided in the labor agreement (typically between 10 and 21 days).

A question that has frequently been asked about this provision of the Data Practices Act is: what happens when an arbitrator reverses a disciplinary action? In other words, if an arbitrator determines that there was no just cause to justify a reprimand, suspension, demotion or discharge and orders that the discipline be removed from the officer’s file, does that amount to a “final disposition” making the underlying charges and investigation public data?

In the past, the plain language of the Data Practices Act has been ambiguous on this issue. However, under S.F. No. 863, the statute has now been amended to provide that “a disciplinary action does not become public data if an arbitrator sustains a grievance and reverses all aspects of any disciplinary action.” The statute is now explicit that, if discipline is reversed through arbitration, there has been no final disposition, even though at that point there has been a “conclusion of the arbitration proceedings.” Under those circumstances, the underlying charges, investigation records and other related data remain private and may be disclosed to the public only with the officer’s permission or following a court order.

It is important to remember that this amendment applies only when an arbitrator reverses “all aspects” of the disciplinary action. Frequently, disciplinary grievances are sustained only in part, such as when a suspension is reduced to a reprimand. In such cases, it is safe to assume that the arbitration decision will be deemed to be a “final disposition,” and that all information pertaining to the discipline will be considered public data, although some records may be subject to redaction.

Any questions about this Data Practices Act amendment and its implications for LELS members

should be directed to me or our staff attorney, Brooke Bass.

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