



CITY OF  
**PORTLAND, OREGON**  
OFFICE OF THE CITY ATTORNEY

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INTEROFFICE MEMORANDUM

TO: Mayor Sam Adams  
FROM: James H. Van Dyke  
City Attorney  
SUBJECT: Frashour Arbitration

After research and consultation with outside counsel, I have concluded the City has sufficient legal grounds to challenge the reinstatement of Officer Frashour. If the City refuses to reinstate the officer, I anticipate the Portland Police Association will file an unfair labor practice complaint against the City with the Employment Relations Board.

My conclusion is based on ORS 243.706(1), which provides, in part:

“As a condition of enforceability, any arbitration award that orders the reinstatement of a public employee or otherwise relieves the public employee of responsibility for misconduct shall comply with public policy requirements as clearly defined in statutes or judicial decisions including but not limited to policies respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or deadly force and serious criminal misconduct, related to work. \* \* \*.”

This portion of the statute was adopted by the Oregon Legislature to limit the discretion of arbitrators and broaden review of arbitrators’ decisions by the Employment Relations Board. This is the type of case the statute was intended to address. Therefore, the City may seek a determination that the award is not enforceable.

JVD/ks