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**Government of the District of Columbia  
Public Employee Relations Board**

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In the Matter of:	)	
	)	
District of Columbia Fire and EMS	)	
	)	PERB Case No. 24-A-16
Petitioner	)	
	)	Opinion No. 1893
v.	)	
	)	
International Association of Fire Fighters,	)	
Local #36	)	
	)	
Respondent	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On August 22, 2024, the District of Columbia Fire and Emergency Medical Services Department (Agency) filed an arbitration review request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA), seeking review of an arbitration award (Award) dated August 1, 2024. The Award ordered the Agency remove a civilian Single-Role Provider from the EMS Lieutenant position in compliance with a 2020 Memorandum of Agreement. The Agency challenges the Award on the bases that the Arbitrator exceeded her jurisdiction, and the Award is contrary to law and public policy. The International Association of Fire Fighters, Local 36 (Union) filed a brief in opposition to the Request.

Upon consideration of the Arbitrator’s conclusions, applicable law, and the record presented by the parties, the Board concludes that the Arbitrator did not exceed her jurisdiction, and the Award is not contrary to law and public policy. Therefore, the Board denies the Agency’s Request.

## II. Arbitration Award

### A. Background

Employees of the District of Columbia Fire and Emergency Medical Services Department are represented by one of two different labor unions for collective bargaining purposes.<sup>1</sup> The American Federation of Government Employees (AFGE, Local 3721) represents employees who are certified only to provide emergency medical services.<sup>2</sup> They are referred to as single-role or paramedics.<sup>3</sup> In contrast, Local 36 represents the Department's sworn employees from the ranks of firefighters, sergeants, lieutenants, and captains.<sup>4</sup> Local 36 members are referred to as dual-role providers, because they are capable of performing both the fire suppression duties as well as emergency medical care.<sup>5</sup>

In 2009, the Agency and Union entered into a memorandum of agreement (2009 MOA) creating a new EMS Battalion Supervisor position and defining the promotional process for that position.<sup>6</sup> The job duties primarily included training battalion members in emergency medical services as well as supervising Department personnel in non-fire and fire emergencies.<sup>7</sup> However, under the 2009 MOA, both sworn dual-role firefighters/paramedics (Sworn Providers) and civilian single-role paramedics (Civilian Providers) with five years of experience were eligible to compete for the EMS Battalion Supervisor position.<sup>8</sup>

In February 2020, the parties drafted and signed a new memorandum of agreement (2020 MOA).<sup>9</sup> The 2009 MOA expired in April 2020, on the effective date of the 2020 MOA.<sup>10</sup> The relevant provisions of the 2020 MOA read as follows:

#### **Memorandum of Agreement (MOA)**

#### **Effective: April 2020**

**(2)** The Department shall no longer promote individuals to the position of EMS Battalion Supervisor. Any individual currently in the position of EMS Battalion Supervisor who remains in that position shall continue to be paid as a Class 7A or, if the individual holds

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<sup>1</sup> Award at 3.

<sup>2</sup> Award at 3.

<sup>3</sup> Award at 3.

<sup>4</sup> Award at 3.

<sup>5</sup> Award at 3.

<sup>6</sup> Award at 3; Request at 3 (citing Request Ex. 3).

<sup>7</sup> Award at 3.

<sup>8</sup> Award at 3-4.

<sup>9</sup> Award at 5-7; Request at 4.

<sup>10</sup> Award at 5; Opposition at 5 (citing Joint Ex. 3).

the paramedic certification, at Class 7B, as described on the Fire Service Salary Schedule for so long as he or she remains in that position. Vacancies created when a current EMS Battalion Supervisor leaves that position shall be filled from the then-current promotion list as a Lieutenant or Captain. It is expected that when transition is fully completed, each Battalion shall be staffed with one (1) Captain position and three (3) Lieutenant positions (instead of four EMS Battalion Supervisors).

(6) When a vacancy arises to be filled off an existing promotional list, the highest scoring member shall be selected, regardless of whether the individual tested as a civilian single-role provider or as a dual-hazard sworn member. Civilian single-role providers selected for a promotion to EMS Sergeant, EMS Lieutenant, or EMS Captain will not have fire suppression responsibilities, provided that this shall not cause the civilian single-role provider to be passed upon for promotion.

(7) Civilian single-role providers promoted from Sergeant to Lieutenant shall receive all-hazards training.

A Civilian Provider joined the Agency in 2014.<sup>11</sup> On April 30, 2022, the Civilian Provider, then an EMS Sergeant, took the promotional examination.<sup>12</sup> The written exam scores were released June 3, 2022.<sup>13</sup> The promotion list was published on September 26, 2022.<sup>14</sup> Thereafter, the Agency promoted the Civilian Provider into an EMS Lieutenant position, effective October 23, 2022.<sup>15</sup>

On November 17, 2022, the Union filed a grievance.<sup>16</sup> On December 6, 2022, the Department denied this grievance as being unarbitrable based on untimeliness and as against management's rights.<sup>17</sup> The Union submitted the grievance to arbitration on January 11, 2023.<sup>18</sup>

## **B. Arbitrator's Findings**

The Arbitrator determined that the issues for decision were:<sup>19</sup>

- (1) Is the grievance untimely or not arbitrable under the parties' Collective Bargaining Agreement (CBA)?
- (2) If the grievance is timely or arbitrable, did the Agency violate the 2020 MOA?

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<sup>11</sup> Award at 4.

<sup>12</sup> Award at 4.

<sup>13</sup> Award at 4.

<sup>14</sup> Award at 4.

<sup>15</sup> Award at 4.

<sup>16</sup> Award at 4.

<sup>17</sup> Award at 4.

<sup>18</sup> Award at 4.

<sup>19</sup> Award at 5.

(3) If so, what is the appropriate remedy?

The Arbitrator noted that the central controversy of the grievance concerns the applicability of the 2020 MOA.<sup>20</sup> The Arbitrator sustained the grievance and ordered the Agency to remove the Civilian Provider from the EMS Battalion Supervisor position, in compliance with the 2020 MOA, for the reasons below.<sup>21</sup>

### **1. Timeliness and Arbitrability of Grievance**

The Agency argued before the Arbitrator that the grievance was not arbitrable due to untimeliness.<sup>22</sup> The Agency argued that the grievance was not filed within the thirty (30) days required by Article 9, Section D of the CBA after the publication of the promotional registry.<sup>23</sup>

The Union asserted before the Arbitrator that the untimeliness argument was waived because this issue was not raised during the grievance process.<sup>24</sup> The Union further asserted that the grievance was timely filed within thirty (30) days as set forth in the CBA.<sup>25</sup> The Union contended that the violation of the applicable event occurred on October 23, 2022, when the Civilian Single-Role Provider was placed into an EMS Battalion Supervisor position.<sup>26</sup> The Union argued that the grievance was filed on November 11, 2022, twenty-five (25) days later, in compliance with Article 9, Section D of the CBA.<sup>27</sup>

The Agency further argued that the grievance was not arbitrable.<sup>28</sup> The Agency argued that the management's rights clause, established by the "Office of Personnel Management Handbook of Occupational Groups and Families," states that only the District of Columbia Department of Human Resources (DCHR) can create, modify, and establish new jobs, not the Arbitrator.<sup>29</sup> The Agency argued that arbitration decisions do not fall within any of the exceptions in DPM 207.2.<sup>30</sup> The Agency further argued that this is not within the Arbitrator's authority because the CBA itself does not grant such powers.<sup>31</sup> The Agency asserted that the Arbitrator does not have the power to rescind a promotion, demote, or create a new position for transfer because such a grant of power is absent from Article 20 or Article 32 of the CBA.<sup>32</sup> The Agency asserted that such enumerated rights are exclusively those of management alone and thus non-negotiable.<sup>33</sup> Finally, the Agency

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<sup>20</sup> Award at 5.

<sup>21</sup> Award at 1-2; 20.

<sup>22</sup> Award at 7.

<sup>23</sup> Award at 12.

<sup>24</sup> Award at 9.

<sup>25</sup> Award at 10.

<sup>26</sup> Award at 10.

<sup>27</sup> Award at 10.

<sup>28</sup> Award at 7-8.

<sup>29</sup> Award at 7 (citing to DPM 206.2).

<sup>30</sup> Award at 7.

<sup>31</sup> Award at 7.

<sup>32</sup> Award at 8.

<sup>33</sup> Award at 8.

argued that the grievance is not a violation of the CBA or Agency rule, but instead pertains only to the 2020 MOA, which the Agency contends is outside the definition of a grievance.<sup>34</sup>

Regarding arbitrability, the Union argued that the Agency committed a violation that falls under the rubric of Article 9, Section A of the CBA.<sup>35</sup> The Union further noted that the 2020 MOA is incorporated by reference under Article 53, Section B of the CBA.<sup>36</sup> As such, the Union argued that it is applicable to the parties and must be followed.<sup>37</sup>

The Arbitrator held that the grievance was timely.<sup>38</sup> The Arbitrator noted that the record reveals that the placement of the Civilian Provider occurred on October 22, 2022.<sup>39</sup> The Arbitrator held that the placement, and not the publication of the promotional registry, was the triggering event at issue.<sup>40</sup> The Arbitrator found that the grievance was filed on November 17, 2022, less than thirty (30) days after the event at issue, as set forth in the CBA.<sup>41</sup> Therefore, the Arbitrator determined that the Union complied with the CBA and its timeliness requirement.<sup>42</sup>

The Arbitrator further held that the grievance was arbitrable.<sup>43</sup> The Arbitrator found that the Agency waived its right to challenge arbitrability by failing to raise the issue during the grievance process and presenting the issue for the first time at the arbitration hearing itself.<sup>44</sup> The Arbitrator further noted that PERB has held that promotional processes and procedures are negotiable and do not violate management's right to promote under the CMPA.<sup>45</sup> Finally, the Arbitrator found that the 2020 MOA was incorporated by reference through Article 53(B) of the CBA.<sup>46</sup> For these reasons, the Arbitrator found the Grievance to be arbitrable.<sup>47</sup>

## **2. Violation of 2020 MOA**

The Union argued before the Arbitrator that the 2020 MOA requires that the Agency stop promoting employees to the position of "EMS Battalion Supervisor," and instead fill vacant EMS Battalion Supervisor positions with only sworn, dual-role firefighters/emergency services providers with the rank of lieutenant or captain and who are certified paramedics for at least five (5) years.<sup>48</sup> The Union argued that under paragraph 2 and paragraph 6 of the 2020 MOA, when a

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<sup>34</sup> Award at 8.

<sup>35</sup> Award at 10.

<sup>36</sup> Award at 10.

<sup>37</sup> Award at 10.

<sup>38</sup> Award at 12.

<sup>39</sup> Award at 12.

<sup>40</sup> Award at 12.

<sup>41</sup> Award at 12.

<sup>42</sup> Award at 12.

<sup>43</sup> Award at 13.

<sup>44</sup> Award at 11.

<sup>45</sup> Award at 12.

<sup>46</sup> Award at 13.

<sup>47</sup> Award at 13.

<sup>48</sup> Award at 9.

vacancy for an EMS Battalion Supervisor arose and a civilian single-role provider wanted to fill that vacancy, one would have been tested for the EMS Lieutenant or EMS Captain and was next on the promotion list, and only the next dual-role provider would be promoted to that vacancy of the EMS Battalion Supervisor position.<sup>49</sup>

The Union argued that the Civilian Provider was placed in an EMS Battalion Supervisor vacancy, without being required to become a Sworn Provider and attain supervisory experience, in violation of the 2020 MOA.<sup>50</sup> The Union asserted that this action constituted prohibited preferential treatment and adversely impacted its bargaining members as well as members on the lieutenant and sergeant registries, whose promotions were delayed by the Agency's promotion of the Civilian Provider.<sup>51</sup>

The Agency asserted that it did not violate the 2020 MOA.<sup>52</sup> The Agency argued that the 2020 MOA did not limit the promotional pathways for civilians in paragraph 2 or paragraph 6.<sup>53</sup> Instead, the Agency argued that the same promotional pathways were identical for both the Sworn Providers and Civilian Providers.<sup>54</sup> The Agency asserted that this singular pathway was the very purpose of the 2020 MOA—to create a single, unified promotional process.<sup>55</sup> Therefore, the Agency requested that the Arbitrator dismiss the grievance in full.<sup>56</sup>

The Arbitrator held that the Agency violated the 2020 MOA by allowing a Civilian Provider to fill the vacancy of EMS Battalion Supervisor.<sup>57</sup> The Arbitrator found that, under Paragraph 2 of the 2020 MOA, the list of officers from which the EMS Battalion Supervisor vacancy would be filled is restricted to Sworn Providers, as opposed to Civilian Providers who perform administrative, non-operational roles.<sup>58</sup> The Arbitrator also found noteworthy the reference in paragraph 6 of the 2020 MOA to the placement of Civilian Providers into an administrative position as opposed to one filling an operational role of an EMS Battalion Supervisor vacancy.<sup>59</sup> The Arbitrator also found the testimony of the Union president, who served as the Chief Negotiator of the 2020 MOA to be persuasive.<sup>60</sup> Based on a review of the record, the Arbitrator found that

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<sup>49</sup> Award at 10.

<sup>50</sup> Award at 9.

<sup>51</sup> Award at 9.

<sup>52</sup> Award at 8.

<sup>53</sup> Award at 8.

<sup>54</sup> Award at 8.

<sup>55</sup> Award at 8.

<sup>56</sup> Award at 9.

<sup>57</sup> Award at 18.

<sup>58</sup> Award at 13-14.

<sup>59</sup> Award at 14.

<sup>60</sup> Award at 14.

the Agency violated the 2020 MOA,<sup>61</sup> and that the Agency improperly placed the Civilian Provider in an EMS Battalion Supervisor vacancy.<sup>62</sup>

### **3. Remedy**

The Arbitrator ordered the Agency to remove the Civilian Provider from the EMS Battalion Supervisor position.<sup>63</sup> The Arbitrator noted that this remedy is to be distinguished from rescinding the Civilian Provider's promotion or demoting her.<sup>64</sup> The Arbitrator also noted that it was within the Arbitrator's equitable powers to order compliance with the 2020 MOA promotional process by requiring that the EMS Battalion Supervisor vacancies be filled by only Sworn Providers.<sup>65</sup>

The Arbitrator further noted that there should be an earnest effort to put the parties back to the positions they would have, had the Agency not violated the 2020 MOA.<sup>66</sup> Therefore, the Arbitrator ordered the Agency to adjust the promotional dates, as well as provide back pay to, each affected employee whose promotion was delayed due to the Agency's violation.<sup>67</sup>

### **III. Discussion**

Section 1-605.02(6) of the D.C. Official Code permits the Board to modify, set aside, or remand a grievance arbitration award in only three narrow circumstances: (1) if an arbitrator was without, or exceeded, his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.<sup>68</sup> The Agency challenges the Award on the bases that the Arbitrator exceeded her jurisdiction, and the Award is contrary to law and public policy.

#### **A. The Arbitrator Did Not Exceed her Jurisdiction**

The Agency argues in the Request that the Award goes beyond interpreting the 2020 MOA, and instead deletes its material terms and writes new contradictory terms in their place.<sup>69</sup> The Agency first asserts that the Arbitrator "reversed the new command structure articulated in the 2020 MOA and reinstated the expired position it replaced" by ordering the Agency to "fill EMS Battalion Supervisor vacancies" with only Sworn Providers, not Civilian Providers.<sup>70</sup> The Agency next argues that the Award revokes the authorization in the 2020 MOA enabling Civilian Providers to compete for the EMS Lieutenant and EMS Captain positions.<sup>71</sup> The Agency also argues that

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<sup>61</sup> Award at 18.

<sup>62</sup> Award at 19.

<sup>63</sup> Award at 19.

<sup>64</sup> Award at 19.

<sup>65</sup> Award at 19.

<sup>66</sup> Award at 19.

<sup>67</sup> Award at 19.

<sup>68</sup> D.C. Official Code § 1-605.02(6).

<sup>69</sup> Request at 15.

<sup>70</sup> Request at 15.

<sup>71</sup> Request at 15-16.

the Arbitrator “has rewritten a material term of the [2020] MOA” by foreclosing as an option the specific promotional pathway for Civilian Providers.<sup>72</sup>

Finally, the Agency cites to *MPD v. FOP/MPD Labor Committee*, a 2001 PERB case wherein the Board adopted the 6<sup>th</sup> Circuit’s standard for an arbitrator exceeding their authority, articulated in *Cement Division, National Gypsum Co. v. United Steelworkers of America (Cement Division standard)*,<sup>73</sup> and held that assigning a grievant to a civilian position conflicted with the express terms of the parties’ CBA because it impacted a class of workers and current positions that are not covered by the parties’ CBA.<sup>74</sup> The Agency argues that, like the grievant in *MPD v. FOP/MPD Labor Committee*, the Civilian Provider in this case has been “demoted by an arbitrator to a civilian position.”<sup>75</sup> The Agency claims that there is no authority from any part of the 2020 MOA or the parties’ CBA allowing the Arbitrator to attempt to place the Civilian Provider into a civilian position, and under the 6th Circuit’s *Cement Division* standard, which was adopted by the Board, the Arbitrator’s Award cannot stand.<sup>76</sup>

An arbitrator does not exceed her jurisdiction if the award draws its essence from the contract and if the arbitrator is arguably construing the contract.<sup>77</sup> The relevant questions in this analysis are whether the arbitrator acted outside of her authority by resolving a dispute not committed to arbitration, and whether the arbitrator was arguably construing or applying the contract in resolving legal and factual disputes.<sup>78</sup>

The Arbitrator neither reinstated an expired position, nor deleted and rewrote material terms of the 2020 MOA, as the Agency asserts. Instead, in interpreting the 2020 MOA, the Arbitrator distinguished between promotional eligibility for Civilian Providers and Sworn Providers, and ordered the Agency to remove the Civilian Provider from a role reserved for Sworn Providers under the 2020 MOA.

As the Arbitrator notes in the Award, Article 53(B) of the parties’ CBA incorporates by reference the 2020 MOA.<sup>79</sup> The grievance is arbitrable under Article 9 of the parties’ CBA.<sup>80</sup> A party’s disagreement with an arbitrator’s interpretation of a provision in the parties’ collective bargaining agreement does not establish that the arbitrator exceeded her jurisdiction.<sup>81</sup> The

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<sup>72</sup> Request at 16.

<sup>73</sup> *Cement Divisions, Nat. Gypsum Co. v. United Steelworkers of America, AFL-CIO-CLC, Local 135*, 793 F.2d 759 (6<sup>th</sup> Cir. 1986).

<sup>74</sup> Request at 11 (citing *MPD v. FOP/MPD Labor Comm.*, 49 D.C. Reg. 810, Slip Op. No. 669 at 4, PERB Case No. 01-A-02 (2001)).

<sup>75</sup> Request at 13.

<sup>76</sup> Request at 13.

<sup>77</sup> *DOC v. FOP/DOC Labor Comm.*, 59 D.C. Reg. 12702, Slip Op. No. 1326 at 5, PERB Case No. 10-A-14 (2012).

<sup>78</sup> *DCPS v. WTU*, 67 D.C. Reg. 4654, Slip Op. No. 1740 at 7, PERB Case No. 20-A-04 (2020) (citing to *Mich. Family Resources, Inc. v. Serv. Emp’ Int’l Union, Local 517M*, 475 F.3d 746, 753 (6<sup>th</sup> Cir. 2007)).

<sup>79</sup> Award at 13.

<sup>80</sup> Request Ex. 8 at 7-10.

<sup>81</sup> See *D.C. Dept. Pub. Works v. AFSCME Local 2091*, Slip Op. 194 at 3, PERB Case No. 87-A-08 (1988).



Agency's arguments that the Arbitrator revoked authorization or rewrote terms of the 2020 MOA are alternative contractual interpretations that amount to mere disagreement with the Arbitrator's interpretation.

Finally, the Agency's reliance on *MPD v. FOP/MPD Labor Committee* to argue that the Arbitrator exceeded her jurisdiction by ordering the Civilian Provider's placement into a civilian role is unfounded.<sup>82</sup> *Cement Division, National Gypsum Co.* has since been overturned by the 6<sup>th</sup> Circuit,<sup>83</sup> and the Board no longer uses the *Cement Division* standard to determine whether an arbitrator exceeds their jurisdiction.<sup>84</sup> The Arbitrator further did not order placement to a civilian position, despite the Agency's assertion.<sup>85</sup> Instead, the Arbitrator ordered the Civilian Provider's removal from a position reserved for Sworn Providers based on her interpretation of the 2020 MOA, while noting that the Agency has the discretion to place the Civilian Provider in any administrative promotional position, such as EMS Lieutenant.<sup>86</sup>

An arbitrator does not exceed her authority by exercising her equitable powers to promote, demote or remove a grievant as part of a make whole remedy, if such is the result of an application of the agency's own policies and CBA as interpreted by the Arbitrator.<sup>87</sup> By submitting a matter to arbitration, the parties agree to be bound by the arbitrator's decision which necessarily includes the arbitrator's interpretation of the contract and related rules and/or regulations as well as his evidentiary findings and conclusions upon which the decision is based.<sup>88</sup> The Award draws its essence from the 2020 MOA and the parties' CBA, which the Arbitrator construed to resolve the dispute at issue in this grievance.

For these reasons, the Board finds that the Arbitrator did not exceed her jurisdiction.

## **B. The Award is Not on its Face Contrary to Law or Public Policy**

The Agency alternatively argues that the Award is contrary to law and public policy.<sup>89</sup> The Agency first argues that the Award violates the District's management rights under D.C. Code § 1-617.08.<sup>90</sup> The Agency asserts that management possesses the exclusive authority "to hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees for cause."<sup>91</sup> The Agency

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<sup>82</sup> See *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 669 at 4-5.

<sup>83</sup> See *Mich. Family Resources, Inc.*, 475 F.3d 746 at 753 (overruling *Cement Divisions, Nat. Gypsum Co.*, 793 F.2d 759).

<sup>84</sup> *DOC v. FOP/DOC Labor Comm.*, 59 D.C. Reg. 12702, Slip Op. No. 1326 at 4-5, PERB Op. No. 10-A-14 (2012).

<sup>85</sup> Award at 20.

<sup>86</sup> Award at 20.

<sup>87</sup> See *DOC v. FOP/DOC Labor Comm.*, 66 D.C. Reg. 443, Slip Op. No. 1715 at 3-4, PERB Case No. 19-A-05 (2019).

<sup>88</sup> See *MPD v. FOP/DOC Labor Comm.*, 67 D.C. Reg. 9258, Slip Op. No. 1731 at 6, PERB Case No. 20-A-01 (2019); *MPD v. FOP/DOC Labor Comm.*, 60 D.C. Reg. 552, Slip Op. No. 1341 at 4, PERB Case No. 11-A-10 (2013).

<sup>89</sup> Request at 6.

<sup>90</sup> Request at 6.

<sup>91</sup> Request at 6 (citing to DC Code § 1-617.08(a)(2)).

argues that the “decision to demote [the Civilian Provider], create a new administrative position, and demand the Agency shift her to a civilian role contradicts District law.”<sup>92</sup>

The Agency next argues that the Award contracts District regulations.<sup>93</sup> The Agency asserts that “District regulations mandate that ‘all positions shall be classified using the Office of Personnel Management Handbook of Occupational Groups and Families’ and only DC Department of Human Resources (DCHR) can create, modify, and establish new jobs—not an arbitrator.”<sup>94</sup> The Agency also contends that arbitration decisions do not fall into any of the exceptions listed in the District Personnel Manual (DPM).<sup>95</sup> The Agency asserts that under the DPM, employees cannot be demoted without cause.<sup>96</sup> The Agency argues that an “arbitrator does not have the authority to do DCHR’s job and demand a new opening be created for someone.”<sup>97</sup>

The Agency also argues that the Award is contrary to the United States Constitution because it violates the Civilian Provider’s right to procedural due process.<sup>98</sup> The Agency asserts that, as a Career Service District employee, the Civilian Provider has the constitutional right to procedural due process that must be given prior to removing her from her position.<sup>99</sup> The Agency claims that “[the Civilian Provider] was deprived of her property interest—the Career Service position—at the whim of the arbitrator.”<sup>100</sup>

Finally, the Agency argues that the Award “contravenes public aim.”<sup>101</sup> The Agency states that a 2007 Taskforce on Emergency Services made a recommendation for “the Department to ‘transition to a fully integrated, all hazards agency.’”<sup>102</sup> The Agency asserts that, in response, the 2020 MOA “states specifically the Department ‘intends to create a single, unified promotional process that allows single-role civilians and dual-hazard sworn members to compete for Department promotions.’”<sup>103</sup> The Agency argues that the Award violates a public policy to create a unified workforce, as articulated in the Taskforce Recommendation and the 2020 MOA, because the Award maintains a divided workforce to the detriment of District residents and visitors.<sup>104</sup>

To set aside an award as contrary to law, the asserting party bears the burden to present applicable law that mandates that the arbitrator arrive at a different result.<sup>105</sup> The asserting party

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<sup>92</sup> Request at 6.

<sup>93</sup> Request at 9.

<sup>94</sup> Request at 9 (citing to DPM 206.2).

<sup>95</sup> Request at 9 (citing to DPM 207.2).

<sup>96</sup> Request at 10; 12 (citing to DPM Chapter 16).

<sup>97</sup> Request at 12.

<sup>98</sup> Request at 14.

<sup>99</sup> Request at 14.

<sup>100</sup> Request at 14.

<sup>101</sup> Request at 7.

<sup>102</sup> Request at 7-8.

<sup>103</sup> Request at 8 (citing to Request Ex. 4 at 1).

<sup>104</sup> Request at 8-9.

<sup>105</sup> *MPD and FOP/Metro. Police Dep’t Labor Committee*, 47 D.C. Reg. 717, Slip Op. No. 633 at 3, PERB Case No. 00-A-04 (2000).

has the burden to demonstrate that the award itself violates established law or compels an explicit violation of “well defined public policy grounded in law and or legal precedent.”<sup>106</sup> The violation must be so significant that law and public policy mandate a different result.<sup>107</sup>

The Award did not demote, assign, or create a new position for the Civilian Provider, despite the Agency’s assertions.<sup>108</sup> The Board has further held that promotional processes and procedures do not violate management’s right under D.C. Code § 1-617.08.<sup>109</sup> The Award is grounded in the Agency’s own promotional policies and procedures and enforces the parties’ 2020 MOA and CBA based on the facts established in this case.<sup>110</sup> Therefore, the Award is not contrary to D.C. Code § 1-617.08. Similarly, because the Award interprets and draws its essence from the 2020 MOA and the CBA, the Award’s enforcement of negotiated promotional procedures does not violate District regulations.

The Award further does not violate any constitutional right to procedural due process. The Arbitrator found that the Civilian Provider was improperly placed in a Sworn Provider position and ordered her removal from that position. The Arbitrator’s finding was a contractual interpretation of the parties’ 2020 MOA and CBA, well within the Arbitrator’s equitable powers. The Civilian Provider was improperly placed into the Sworn provider position and therefore did not have a property right, the violation of which would implicate due process.

Finally, the Award does not violate public policy. The Board’s scope of review is particularly narrow concerning the public policy exception.<sup>111</sup> A petitioner must demonstrate that the arbitration award “compels” the violation of a “well defined and dominant” public policy that is ascertained “by reference to the laws and legal precedents and not from general considerations of supposed public interests.”<sup>112</sup> The issue is not whether the employee’s misconduct violated public policy but rather whether enforcing the arbitral award would do so.<sup>113</sup>

The Agency has not shown that the Award’s remedy compels the violation of the Agency’s articulated policy “to create a single, unified promotional process that allows single-role civilians and dual-hazard sworn members to compete for Department promotions.” The Award’s remedy does not foreclose promoted Civilian Providers from undergoing all-hazards training, thereby

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<sup>106</sup> *MPD v. FOP/Metro. Police Dep’t Labor Committee*, 66 D.C. Reg. 6056, Slip Op. No. 1702 at 4, PERB Case No. 18-A-17 (2019).

<sup>107</sup> *Id.*

<sup>108</sup> Award at 20.

<sup>109</sup> See *FEMS and AFGE, Local 3721*, 54 D.C. Reg. 3167, Slip Op. 874 at 20, PERB Case No. 06-N-01 (2007); *IAFF, Local 36 v. FEMS*, 60 D.C. Reg. 17359, Slip Op. No. 1445, PERB Case No. 13-N-04 (2013).

<sup>110</sup> See *MPD v. FOP/MPD Lab. Comm.*, 59 D.C. Reg. 3012, Slip Op. No. 791 at 6, PERB Case No. 04-A-09 (2005); *DOC v. FOP/DOC Lab. Comm.*, 66 D.C. Reg. 443, Slip Op. No. 1715, at 3-4, PERB Case No. 19-A-05 (2019).

<sup>111</sup> *FOP/DOC Labor Comm. v. D.C. Dep’t of Corr.*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 2, PERB Case No. 10-A-20 (2012).

<sup>112</sup> *Id.* (quoting *American Postal Workers Union*, 789 F.2d at 8).

<sup>113</sup> *Dist. of Columbia Metro. Police Dep’t*, 282 A.3d at 606 (citing *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 62-63 (2000)).

effectuating a unified promotional process.<sup>114</sup> The Agency has not shown that enforcing the Award's remedy would violate such a public policy.

For these reasons, the Board finds that the Award is not contrary to law or public policy.

#### **IV. Conclusion**

The Board rejects the Agency's arguments and finds no cause to modify, set aside, or remand the Award. Accordingly, the Agency's Request is denied, and this matter is dismissed in its entirety.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Arbitration Review Request is denied; and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By vote of Board Chairperson Douglas Warshof and Members Mary Anne Gibbons, and Peter Winkler.

December 19, 2024

**Washington, D.C.**

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<sup>114</sup> Request Ex. 4 at 2.

### **APPEAL RIGHTS**

A final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.