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

In the Matter of:)	
)	
Metropolitan Police Department)	
)	
Petitioner)	PERB Case No. 19-A-01
)	
v.)	Opinion No. 1698
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Introduction

On October 18, 2018, the Metropolitan Police Department (“MPD”) filed this Arbitration Review Request (“Request”) pursuant to the Comprehensive Merit Personnel Act (“CMPA”), D.C. Official Code § 1-605.02(6), seeking review of an Arbitrator’s Decision and Award (“Award”) dated September 28, 2018. The Award sustained, in part, the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Union”) on behalf of Gregory Gullede (“Grievant”). The Award ordered that the Grievant’s termination be reversed and reduced to a 60-day suspension without pay and that he be reinstated and made whole for his losses. MPD asserts that the Arbitrator exceeded his jurisdiction.

In accordance with section 1-605.02(6) of the D.C. Official Code, the Board is permitted to modify or set aside an 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.¹ Having reviewed the Arbitrator’s conclusions, the pleadings of the parties, and

¹ D.C. Official Code § 1-605.02(6).

applicable law, the Board concludes that the Arbitrator did not exceed his jurisdiction. Therefore, the Board denies the Request.

II. Statement of the Case

The Grievant was a police officer hired by MPD in July 2001.² As the result of two separate off-duty incidents involving a former partner on March 22, 2012, and June 20, 2012, respectively, MPD issued two Notices of Proposed Adverse Action (“Notice”).³ The first Notice regarding the March 22, 2012 incident was served on July 30, 2012, and the second Notice regarding the June 20, 2012 incident was served on October 19, 2012.⁴ The Grievant requested an Adverse Action Hearing in both matters, and the matters were consolidated and heard before an Adverse Action Panel (“Panel”) on January 23, 2013.⁵ For both incidents, the Panel reviewed the same charges. Charge No. 1 provided, in pertinent part, that the Grievant was “deemed to have been involved in the commission of [an] act which would constitute a crime. . . .”⁶ Charge No. 2 stated, in pertinent part, that the Grievant was engaged in “[c]onduct unbecoming an officer including acts detrimental to good discipline . . . or violations of any law . . . of the District of Columbia.”⁷

The Panel issued an initial Findings of Fact and Conclusions of Law, finding the Grievant not guilty of Charge No. 1 relating to the incident on March 22, 2012, but guilty of Charge No. 2 as well as both Charge No. 1 and 2 relating to the June 20, 2012 incident.⁸ The Panel recommended termination of the Grievant.⁹ The Union appealed the Panel’s decision on the Grievant’s behalf to the Chief of Police, who then remanded the decision to the Panel.¹⁰ The Panel issued a second Findings of Fact and Conclusions of Law, sustaining all charges and recommending termination.¹¹ The Grievant unsuccessfully appealed to the Chief of Police and the parties proceeded to arbitration.¹²

III. Arbitration Award

At arbitration, the parties submitted the following issues to the Arbitrator: (1) Whether the evidence presented by MPD is sufficient to support Charge No. 1 and Charge No. 2 against the Grievant for an incident involving his former partner on March 22, 2012; (2) Whether the

² Award at 3.

³ Award at 3-6.

⁴ Award at 6.

⁵ Award at 6.

⁶ Request, Exhibit 2 at 2.

⁷ Request, Exhibit 2 at 2.

⁸ Award at 6.

⁹ Award at 6.

¹⁰ Award at 6.

¹¹ Award at 6.

¹² Award at 6.

evidence presented by MPD is sufficient to support Charge No. 1 and Charge No. 2 against the Grievant for an incident involving his former partner on June 20, 2012; and (3) Whether termination is an appropriate remedy.¹³

In an Award issued on September 28, 2018, the Arbitrator found that the evidence submitted by MPD was insufficient to support Charges No. 1 and No. 2 against the Grievant for the incident on March 20, 2012, and Charge No. 1 for the incident on June 20, 2012.¹⁴ However, the Arbitrator found that the evidence was sufficient to support Charge No. 2 for the incident on June 20, 2012.¹⁵ The Arbitrator determined that Charge No. 1 of the March 20, 2012 incident and Charge No. 1 of the June 20, 2012 incident were not proven “because the aforesaid are based entirely upon allegations which are not evidence.”¹⁶ Thus, the Arbitrator found that there was no basis for the Panel’s recommendation of termination.¹⁷ The Arbitrator determined that, in reaching a decision on Charge No. 2 of the March 20, 2012 incident, the Panel failed to provide any analysis to support its finding that the Grievant’s conduct violated District law.¹⁸ However, the Arbitrator found that the evidence presented by MPD was sufficient to support Charge No. 2 against the Grievant for the incident on June 20, 2012.¹⁹ Accordingly, the Arbitrator sustained Charge No. 2.

In addressing the third issue of whether termination was the appropriate penalty, the Arbitrator reviewed the Panel’s application of the 12-factor test in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981) (“*Douglas Factors*”).²⁰ The Arbitrator opined that many of the Panel’s findings “constitute nothing more than a cut and paste job in copying the [Notice] as characterized by the Union.”²¹ Additionally, the Arbitrator stated that there was no indication that the Panel weighed the evidence relating to each factor.²² The Arbitrator added, “[e]ssentially, the Panel’s failure to consider all of the evidence within the record demonstrates that the decision is arbitrary and capricious.”²³ Therefore, the Arbitrator determined that termination was not an appropriate remedy.²⁴

Given that only Charge No. 2 of the June 20, 2012 incident was sustained, and based on the Arbitrator’s review of the Panel’s analysis of the *Douglas Factors*, the Arbitrator determined

¹³ Award at 2.

¹⁴ Award at 8.

¹⁵ Award at 8.

¹⁶ Award at 8.

¹⁷ Award at 12.

¹⁸ Award at 12.

¹⁹ Award at 13.

²⁰ Award at 15-26.

²¹ Award at 17.

²² Award at 17.

²³ Award at 26.

²⁴ Award at 26.

that the appropriate remedy was a 60-day suspension.²⁵ The Arbitrator directed MPD to reinstate the Grievant to his former position with back pay effective May 3, 2013.²⁶

On October 18, 2018, MPD filed the present Request, seeking review of the Arbitrator's Award. On November 9, 2018, the Union submitted Opposition to Arbitration Review Request.

IV. Discussion

MPD contends that the Board should overturn the Arbitrator's decision because the Arbitrator "did not base his findings on the actual charges listed by MPD in the record."²⁷ Essentially, MPD argues that the Arbitrator indicated that, in order for him to sustain the charges against the Grievant, MPD must have found that the Grievant was charged with a crime. Rather, MPD contends, the charges do not require a finding of guilt and the record evidence supports the charges. As to Charge No. 1, MPD notes that the Arbitrator stated that there were no facts in the record to support the commission of a crime, and that "[s]imply being arrested or charged with a crime is not enough evidence or proof of anything."²⁸ As to Charge No. 2, MPD notes that the Arbitrator found that the charge was not supported by the evidence.²⁹ Similarly, MPD contends that, in weighing the *Douglas* Factors, the Arbitrator stated that the criminal charges and arrest warrant were not evidence of guilt and noted the charges were dismissed by the Court.³⁰ MPD asserts, "the Arbitrator arrived at his own rendition of the charges and viewed the record based on his misreading of the actual charges."³¹ Accordingly, MPD claims that the Award should be reversed.³²

An arbitrator derives his or her jurisdiction from the consent of the parties, as expressed through their collective bargaining agreement.³³ To determine if an arbitrator has exceeded his or her jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement."³⁴ The Board looks to whether the arbitrator resolves a dispute not committed to arbitration, commits fraud, has a conflict of interest, or is arguably construing or applying the contract.³⁵

²⁵ Award at 28.

²⁶ Award at 28. The Grievant was only entitled to back day retroactive the date that the 60 working day suspension would have been fully served.

²⁷ Request at 10.

²⁸ Request at 10-12.

²⁹ Request at 12.

³⁰ Request at 14.

³¹ Request at 14.

³² Request at 14.

³³ *Washington Teachers' Union, Local No. 6, Am. Fed'n of Teachers v. D.C. Pub. Sch.*, 77 A.3d 441, 446 (D.C. 2013).

³⁴ *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Jacobs)*, 60 D.C. Reg. 3060, Slip Op. 1366 at 5-6, PERB Case No. 12-A-04 (2013).

³⁵ See *id.* at 6 (quoting *Michigan Family Res., Inc. v. Serv. Emp. Int'l Union, Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007)).

In this case, Article 12, Section 8 of the parties' collective bargaining agreement states, in pertinent part, that an employee may appeal to arbitration and when doing so, the arbitrator has the authority to review the evidentiary ruling of the Panel.³⁶ Moreover, the Arbitrator evaluated each of the three issues that the parties presented at the arbitration hearing.³⁷ After evaluating whether the evidence supported the charges, the Arbitrator determined that the Panel did not meet its burden of proof to sustain Charges No. 1 and No. 2 relating to the March 22, 2012 incident and Charge No. 1 relating to the June 20, 2012 incident. Accordingly, MPD cannot show that the Arbitrator exceeded his jurisdiction in resolving the issues in this matter because the Arbitrator was explicitly authorized to do so by the parties' collective bargaining agreement.

MPD asserts that the Arbitrator reviewed the record based on his interpretation of the charges, which differs from MPD's interpretation of the charges. However, the Board consistently has held that by agreeing to submit the resolution of a grievance to arbitration, it is the Arbitrator's interpretation, not the Board's, which the parties have bargained for.³⁸ "[T]he parties agree to be bound by the Arbitrator's interpretation of the parties' collective bargaining agreement . . . as well as his evidentiary findings and conclusions"³⁹ The Board has stated that "resolution of disputes over credibility determinations and assessing what weight and significance such evidence should be afforded is within the jurisdictional authority of the arbitrator."⁴⁰ The Board has specifically held that it "will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator."⁴¹ Accordingly, MPD's disagreement with the Arbitrator's findings and conclusions does not constitute grounds for the Boards' review. Therefore, there is no basis upon which to modify or set aside the Award.

V. Conclusion

The Board rejects MPD's arguments and finds no cause to set aside or modify the Arbitrator's Award. Accordingly, MPD's request is denied and the matter is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

³⁶ Request, Exhibit 3 at 13.

³⁷ Award at 2.

³⁸ See *Univ. of D.C. v. Univ. of D.C. Faculty Ass'n*, 39 D.C. Reg. 9628, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Dep't of Corrs. v. Int'l Bhd. Of Teamsters, Local Union No. 246*, 34 D.C. Reg. 3616, Slip Op. No. 157 at 3, PERB Case No. 87-A-02 (1987).

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By the unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

January 17, 2019

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 19-A-01, Op. No. 1698 was sent by File and ServeXpress to the following parties on this the 22nd day of January, 2019.

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