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

In the Matter of:)	
)	
District of Columbia)	
Metropolitan Police Department)	PERB Case No. 20-A-05
)	
Petitioner)	
)	Opinion No. 1753
v.)	
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee)	
)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

On March 4, 2020, the District of Columbia 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). MPD seeks review of an arbitration award (Award) on the grounds that the Arbitrator exceeded his authority and the Award is contrary to law and public policy. The Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed a timely Opposition to the Request.

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

II. Arbitration Award

A. Background

The Grievant is a three-year veteran of MPD and suffered a serious motor vehicle accident requiring her to be placed on performance of duty sick leave (POD).¹ While on POD, on

¹ Award at 2-3.

February 15, 2015, the Grievant requested annual leave to attend to family issues. The Grievant later admitted that she made untruthful statements regarding her reason for requesting leave.² The Grievant returned to limited duty on February 23, 2015, as scheduled.³

On May 11, 2015, MPD issued a Notice of Proposed Adverse Action containing two charges: (1) “Willfully and knowingly making an untruthful statement of any kind in any verbal or written report pertaining to his/her duties....” and (2) “AWOL (Absent Without Leave)....”⁴

On September 15, 2015, an Adverse Action Panel (Panel) recommended that the Grievant be terminated.⁵ The Final Notice of Adverse Action found the Grievant guilty of both charges and recommended termination for Charge 1 and a 30-day suspension for Charge 2.⁶

The Grievant appealed the Panel’s decision to the Chief of Police, who denied the appeal.⁷ MPD terminated the Grievant, effective January 16, 2016.⁸ Thereafter, the parties proceeded to arbitration.

B. Arbitrator’s Findings

The parties submitted the following issues to the Arbitrator in their briefs: (1) Whether MPD violated the Grievant’s right to due process by prohibiting her from introducing evidence of mitigating circumstances and extenuations as required by law, as well as the Trial Board Handbook, and (2) whether termination is an appropriate penalty.⁹

On the first issue submitted to the Arbitrator, the Arbitrator found that MPD did not violate the Grievant’s right to due process. However, on the second issue, the Arbitrator found that termination was not an appropriate penalty. The Arbitrator concluded that the Panel’s analysis was unsupported by the record and lacked sufficient explanation of the twelve (12) factors articulated in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981) (*Douglas* factors).¹⁰ Specifically, the Arbitrator found that the Panel did not give appropriate consideration to the Grievant’s work record or to the extent of discipline imposed in comparable cases.¹¹ The Arbitrator stated that the penalty of termination was too severe and found that an appropriate reasonable penalty in this case was a 45-day suspension.¹² The Arbitrator ordered the Grievant reinstated and made whole, with back pay retroactive to the date the 45-day suspension would have been fully served.¹³

² Award at 4.

³ Award at 4.

⁴ Award at 4-5.

⁵ Award at 6.

⁶ Award at 6.

⁷ Award at 6.

⁸ Award at 6.

⁹ Award at 2.

¹⁰ Award at 13.

¹¹ Award at 24.

¹² Award at 25.

¹³ Award at 25.

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 unlawful means.¹⁴ MPD requests review on the grounds that the Arbitrator exceeded his contractual authority and acted contrary to law and public policy.

A. The Arbitrator did not exceed his authority.

MPD argues that the Arbitrator exceeded his contractual authority by relying heavily on material outside of the record. MPD states that the Grievant presented two cases of allegedly comparable discipline, each of which post-dated the Departmental hearing.¹⁵ According to MPD, Article 12, § 8 of the parties' collective bargaining agreement states that any further appeal shall be based solely on the record established at the Departmental hearing and the Arbitrator should not have considered the additional cases.¹⁶

The test the Board uses to determine whether an arbitrator has exceeded his jurisdiction and was without authority to render an award is "whether the Award draws its essence from the collective bargaining agreement."¹⁷ The Board's standard for determining whether an award "draws its essence" from a collective bargaining agreement is:

[1] Did the arbitrator act 'outside his authority' by resolving a dispute not committed to arbitration?; [2] Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?; [a]nd [3] [I]n resolving any legal or factual disputes in the case, was the arbitrator arguably construing or applying the contract? So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made 'serious,' 'improvident' or 'silly' errors in resolving the merits of the dispute.¹⁸

The Board finds no merit to MPD's argument that the Arbitrator exceeded his contractual authority. As stated above, Article 12, § 8 of the parties' collective bargaining agreement states

¹⁴ D.C. Official Code § 1-605.02(6).

¹⁵ Request at 7.

¹⁶ Request at 7-8.

¹⁷ *DCPS v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at 5, PERB Case No. 86-A-05 (1987).

¹⁸ *FOP/MPD Labor Comm. (on behalf of Bishop) v. MPD*, 63 D.C. Reg. 14073, Slip Op. No. 1593 at p. 12, PERB Case No. 15-A-03 (2016) (quoting *Michigan Family Res., Inc. v. Serv. Emp. Int'l Union, Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007)).

that “in cases where a Departmental hearing has been held, any further appeal shall be based solely on the record established in the Departmental hearing.”¹⁹ The Board has previously found that an arbitrator could reasonably conclude that Article 12 of the collective bargaining agreement concerns only MPD’s internal disciplinary proceedings and that by “further appeal” Article 12 is referring to an appeal of the Panel’s decision to the Chief of Police.²⁰ The Board has held that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly forbidden by the collective bargaining agreement.²¹ MPD fails to cite to any provisions of the collective bargaining agreement that expressly restrict the Arbitrator’s authority. Furthermore, the CMPA does not authorize the Board to overturn an award based on the weight attributed to evidence.²² Therefore, the Board does not find grounds to overturn the Award.

B. The Award is not contrary to law and public policy.

In its Request, MPD argues that the Award violates clearly defined public policy relying on 6-B DCMR § 873.11(m) which provides that any person who “knowingly made any false statement or falsified any document concerning any matter” is ineligible to serve as a police officer.²³ MPD asserts that, based on the DCMR, the Arbitrator’s decision to reinstate the Grievant is void as contrary to law and public policy.²⁴ In advancing this argument, MPD cites a decision by the Massachusetts Supreme Judicial Court vacating an arbitration award that reinstated an officer who made a false police report, on the grounds that the arbitration award was contrary to law and public policy.²⁵ As the Board recently held in another case involving the same parties, 6-B DCMR § 873.11(m) is applicable only to entry-level candidates for a police officer position, and the Massachusetts case is not binding on the Board.²⁶

The Board has held that a disagreement with an arbitrator’s choice of remedy does not render an award contrary to law and public policy.²⁷ MPD disagrees with the Arbitrator’s conclusions concerning the appropriate penalty to be imposed. This is not a sufficient basis for concluding the Award is contrary to law and public policy. For the aforementioned reasons, MPD’s request is denied.

¹⁹ Request at 6.

²⁰ *MPD v. FOP/MPD Labor Comm. (on behalf of Garcia)*, 63 D.C. Reg. 4573, Slip Op. No. 1561 at 7, PERB Case No. 14-A-09 (2016) (rejecting MPD’s argument that an arbitrator can only consider arguments presented at the disciplinary hearing). *See also MPD v. FOP/MPD Labor Comm. (on behalf of Tania Bell)*, 63 D.C. Reg. 12581, Slip Op. No. 1591 at 7, PERB Case No. 15-A-16 (2016).

²¹ *E.g., Univ. of D.C. v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. 1333 at 6, PERB Case No. 12-A-01 (2012); *MPD v. FOP/MPD Labor Comm.*, 59 D.C. Reg. 12709, Slip Op. 1327 at 4-5, PERB Case No. 06-A-05 (2012); *MPD and FOP/MPD Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633, PERB Case No. 00-A-04 (2000).

²² *AFSCME District Council 20, Local 2743 v. D.C. Dep’t of Consumer & Regulatory Affairs*, 38 D.C. Reg. 5076, Slip Op. No. 281 at 4 n.3, PERB Case No. 09-A-12 (1991).

²³ Request at 9.

²⁴ Request at 9.

²⁵ Request at 8-9. *City of Bos. v. Bos. Police Patrolmen’s Ass’n*, 443 Mass. 813, 824 N.E. 2d 855 (2005).

²⁶ *See MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1738 at 5, PERB Case No. 20-A-03 (February 20, 2020).

²⁷ *DCHA v. Bessie Newell*, 46 D.C. Reg. 10375, Slip Op. No. 600, PERB Case No. 99-A-08 (1990).

IV. Conclusion

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

ORDER

IT IS HEREBY ORDERED THAT:

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 unanimous vote of the Board Chairperson Douglas Warshof, Members Ann Hoffman, Barbara Somson, Mary Anne Gibbons, and Peter Winkler.

June 18, 2020

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 20-A-05, Opinion No. 1753 was sent by File and ServeXpress to the following parties on this the 2nd day of July, 2020.

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