Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department,	
Petitioner	PERB Case No. 22-A-09
v.	Opinion No. 1826
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On September 21, 2022, the District of Columbia Metropolitan Police Department (MPD) filed an arbitration review request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA), seeking review of an arbitration award (Award) dated August 31, 2022. The Award dismissed all but two of MPD's charges and specifications against an officer (Grievant) on procedural grounds.[1] As a result, the Award reversed the Grievant's termination and mitigated the penalty to a 45-calendar day suspension.[2] MPD seeks review on the grounds that the Award is contrary to law and public policy.[3] The Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed an Opposition, asking the Board to deny MPD's request.

Upon consideration of the Arbitrator's conclusions, applicable law, and the record presented by the parties, the Request is denied for the reasons stated herein.

[1] Award at 31.
[2] Award at 44.
[3] Request at 2.

II. Arbitration Award

A. Background

The Arbitrator made the following factual findings. The Grievant joined MPD in October 2015.[4] On February 29, 2020, the Grievant attended an event in Maryland where he consumed alcohol.[5] The Grievant encountered a friend at the event.[6] Later in the evening, the Grievant agreed to transport this friend to a tow lot to retrieve the friend's vehicle.[7] The Grievant was carrying his personal firearm in his car, even though the Grievant's Maryland concealed carry permit for the firearm had expired.[8]

After transporting the friend to the tow lot, which was closed, the Grievant waited in his parked car as the friend climbed the tow lot fence to access his towed vehicle and attempted to breach the tow gate with the towed vehicle.[9] The Grievant then transported the friend to Walmart and then back to the tow lot, where the friend used tools he purchased at Walmart to break the lock on the tow lot gate and drive his towed vehicle out of the tow lot.[10] As the Grievant sought to leave the tow lot, he drove his car into a ditch.[11] The Grievant left his car in the vicinity of the tow lot, along with his personal firearm.[12]

On March 1, 2020, the Grievant found that his car was no longer near the tow lot and determined that the Fruitland Police Department had recovered the Grievant's car.[13] The Grievant went to the Fruitland Police Department to retrieve his car, whereupon he was placed under arrest.[14] Following his arrest, the Grievant provided a voluntary statement to the Fruitland Police, admitting that he had been aware that the tow lot had not been open and that his friend had been "messing with the [tow lot] gate."[15]

The Maryland State Attorney's Office for Wicomico County brought criminal charges on twelve counts[16] against the Grievant on March 2, 2020, and further issued the Grievant eleven

[4] Award at 4.
[5] Award at 4.
[6] Award at 4.
[7] Award at 4.
[8] Award at 6.
[9] Award at 5.
[10] Award at 5.
[11] Award at 5.
[12] Award at 5.
[13] Award at 6.
[14] Award at 6.
[15] Award at 6.
[16] Award at 7. The Grievant was charged with the following offenses: (1) Burglary 2nd Degree; (2) Conspiracy to Commit Burglary 2nd Degree; (3) Three counts of Burglary 4th Degree; (4) Three counts of Conspiracy to Commit Burglary 4th Degree; (5) Theft; (6) Conspiracy to Commit Theft; (7) Malicious Destruction of Property; (8) Conspiracy to Commit Malicious Destruction of Property; (9) Trespassing; (10) Conspiracy to Trespass; (11) Firearm Use in Commission of a Felony; and (12) Handgun Wearing or Carrying Under the Influence of Alcohol.

traffic citations[17] on March 3, 2020.[18] On March 5, 2020, the Fruitland Police Department completed its investigation and issued an Offense Report that indicated the "Case Closed by Arrest."[19] On April 29, 2020, the State Attorney's Office made an initial plea offer to the Grievant.[20] On July 15, 2020, the Grievant pleaded guilty to two charges.[21] The State Attorney's Office dismissed the remainder of the criminal charges and citations.[22]

On March 1, 2020, MPD became aware of the incidents that led to the Grievant's arrest and generated an internal investigation system (IS) tracking number regarding the Grievant's conduct.[23] In an interview with the MPD's Internal Affairs Division (IAD) on August 12, 2020, the Grievant claimed he had not seen his friend do anything at the tow lot, directly contradicting the earlier statement he gave to the Fruitland Police Department.[24] On November 20, 2020, IAD served the Grievant with a Notice of Proposed Adverse Action (NPAA), which contained six charges with a total of twelve specifications.[25] Based on these charges and specifications, MPD proposed termination of the Grievant from the police force as the appropriate penalty.[26]

An Adverse Action Panel (Panel) held a hearing on these charges on June 2, 2021, and subsequently found the Grievant guilty of all charges and specifications except Charge 5, Specification Nos. 1 and 3.[27] The Panel unanimously recommended the penalty of termination.[28] MPD subsequently issued a Final Notice of Adverse Action informing the Grievant of his termination effective July 29, 2021.[29] The Grievant appealed the decision to the Chief of Police, who denied the appeal.[30] FOP then invoked arbitration on behalf of the Grievant.[31]

---

[17] Award at 7-8. The Grievant was issued the following traffic citations: (a) Failure to Control Speed to Avoid Collision; (b) Display Expired Registration Plate; (c) Driving without Current Registration; (d) Negligent Driving; (e) Reckless Driving; (f) Failure to Stop before Entering Highway; (g) Failure to Return and Remain at Scene of Accident with Vehicle/Property Damage; (h) Failure to Immediately Return and Remain at Scene of Accident Involving Injury; (i) Driving While Impaired by Alcohol; (j) Driving Under the Influence of Alcohol; and (k) Failure to Display Headlights in Unfavorable Conditions.
[18] The Arbitrator noted the date of the traffic citations as "March 2, 2020" at Award 7, and "either March 2 or 3, 2020" at Award 33. Record at 000106 establishes that the traffic citations were issued on March 3, 2020.
[19] Award at 7.
[20] Award at 8.
[21] Award at 8. The Grievant pleaded guilty to (i) Handgun Wearing or Carrying Under the Influence of Alcohol; and (ii) Driving While Impaired by Alcohol.
[22] Award at 8.
[23] Award at 33.
[24] Award at 6; 8-9.
[25] Award at 9-11. Charge 1 alleged violation of General Order 120.21, Attachment A, Part A-7, and contained 4 specifications; Charge 2 alleged violation of General Order 120.21 Attachment A, Part A-6, and contained 1 specification; Charge 3 alleged violation of General Order 120.21, Attachment A, Part A-2, and contained 1 specification; Charge 4 alleged violation of General Order 120.21, Attachment A, #12, and contained 2 specifications; Charge 5 alleged violation of General Order 120.21, Attachment A, Part A-25, and contained 3 specifications; Charge 6 alleged violation of General Order 120.21, Attachment A, Part A-16, and contained 1 specification.
[26] Award at 14.
[27] Award at 15.
[28] Award at 15. The Panel recommended termination as a penalty for Charge 1, Specification Nos. 2 and 3 and Charge 4, Specification No. 1. For all other charges and specifications, the Panel instituted 15- or 30-day suspensions, with or without pay, or did not institute a penalty at all.
[29] Award at 15.
[30] Award at 15.
[31] Award at 15.

B. Arbitrator's Findings

Based on the Parties' respective briefings, the Arbitrator determined that the issues presented for decision in this case were the following:

1. Whether the Department imposed adverse action against [the Grievant] in violation of D.C. Code § 5-1031 ("the 90-day rule")?
2. Whether the Department violated [the Grievant's] Due Process rights?
3. Whether there was sufficient evidence to sustain the charges against [the Grievant]?
4. Whether termination is an appropriate penalty?

The Arbitrator sustained FOP's grievance, in part, and denied it, in part, for the reasons below.

1. The 90-Day Rule

On the first issue, the Arbitrator found that MPD failed to comply with the 90-day rule as to all the charges and specifications against the Grievant except for Charge 1, Specification No. 4 and Charge 2, Specification No. 1.[32] The Arbitrator discussed D.C. Official Code § 5-1031 ("the 90-day rule"), which requires MPD to commence an adverse action against its police officers within ninety (90) business days of the date MPD has "notice of the act or occurrence allegedly constituting cause."[33] The Arbitrator further noted that, when "the act or occurrence allegedly constituting cause is the subject of a criminal investigation," the 90-day period must be tolled "until the conclusion of the investigation."[34]

The Arbitrator found that the criminal investigation into the act or occurrence allegedly constituting cause for all but two of the charges against the Grievant had concluded by no later than April 29, 2020, when the State Attorney's Office issued an initial plea offer to the Grievant to resolve the criminal charges and traffic citations that constituted cause for MPD's adverse action.[35] Therefore, the Arbitrator found that MPD's commencement of disciplinary proceedings against the Grievant on November 20, 2020, was untimely for purposes of the 90-day rule as to all but two charges.[36]

The Arbitrator found that MPD complied with the 90-day rule for two of the charges.[37] Charge 1, Specification No. 4 alleged that the Grievant violated General Order 120.21, Attachment A, Part A-7,[38] when he pleaded guilty to carrying a handgun while intoxicated and to driving a vehicle while impaired by alcohol.[39] The Arbitrator found that this charge did not violate the 90-

[32] Award at 31, 33.
[33] Award at 32.
[34] Award at 33.
[35] Award at 34.
[36] Award at 35.
[37] Award at 35-36.
[38] General Order 120.21, Attachment A, Part A-7 states, in relevant part, that the conviction of an MPD officer of any criminal offense in which the member pleads guilty is a basis for disciplinary action.
[39] Award at 11-12.

day rule because the Grievant pleaded guilty to the charge on July 15, 2020, and MPD served Grievant with its NPAA fewer than 90 business days after this date.[40]

Charge 2, Specification No. 1 alleged that the Grievant violated General Order 120.21, Attachment A, Part A-6,[41] when he made an untruthful statement to IAD on August 12, 2020, in contradiction to the statement he gave the Fruitland Police Department, about observing his friend commit a criminal act.[42] The Arbitrator found that this charge did not violate the 90-day rule because the August 12, 2020 interview was within ninety business days of the November 20, 2020 date on which MPD served the Grievant with the NPAA.[43]

Based on these findings, the Arbitrator held that all the untimely charges and specifications against the Grievant must be dismissed based on MPD's violation of the 90-day rule, while the timely charges must be considered on their merits.[44]

2. Due Process

The Arbitrator considered FOP's contention that MPD violated Grievant's due process rights when it made an inquiry to the State Attorney's Office on whether that office intended to require Grievant's resignation from employment as a condition of a plea bargain. The Arbitrator determined that there was no basis to find that the Grievant was prejudiced by the inquiry or that the inquiry was violative of the Grievant's due process rights. As a result, the Arbitrator found that MPD did not violate the Grievant's due process rights.[45]

3. Merit of the Timely Charges Against Grievant

The Arbitrator sustained both timely charges against the Grievant. The Arbitrator found the Grievant guilty of Charge 1, Specification No. 4 because there was no dispute that the Grievant pleaded guilty to a criminal offense.[46] The Arbitrator also found the Grievant guilty of Charge 2, Specification No. 4 because he determined, based on the record, that the Grievant willfully and knowingly gave a false statement in his August 12, 2020 IAD interview.[47]

4. Appropriate Penalty

The Arbitrator determined that MPD's termination of the Grievant was not an appropriate penalty because most of the charges and specifications against the Grievant were dismissed due to MPD's violation of the 90-day rule.[48] As such, the Arbitrator reversed the Grievant's termination and mitigated the penalty to a 45-calendar day suspension.[49] The Arbitrator mitigated the

[40] Award at 36.
[41] General Order 120.21, Attachment A, Part A-6 states that an MPD officer's untruthful statement at a hearing is a basis for disciplinary action.
[42] Award at 12-13.
[43] Award at 36.
[44] Award at 39.
[45] Award at 39.
[46] Award at 39-40.
[47] Award at 42.
[48] Award at 43.
[49] Award at 43.

Grievant's penalty based on his application of the *Douglas* factors.[50] The Arbitrator further found the 45-calendar day suspension appropriate because it was the penalty the MPD Panel's Final Notice of Adverse Action recommended for the two sustained charges and specifications.[51]

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.[52] MPD requests review on the grounds that the Award is contrary to law and public policy.

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.[53] Further, MPD 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."[54] The violation must be so significant that law and public policy mandate a different result.[55]

A. The Award is not contrary to law.

MPD argues that the Award is contrary to law because the Arbitrator's finding that MPD violated the 90-day rule is based on an erroneous interpretation of the "conclusion of the investigation" under D.C. Official Code § 5-1031(b).[56] MPD disputes the Arbitrator's finding that the investigation concluded no later than April 29, 2020, the day the State Attorney's Office issued an initial plea offer to Grievant.[57] MPD asserts that the investigation did not conclude until July 15, 2020, the date of the disposition of the criminal case against the Grievant.[58]

In support, MPD relies upon *Jordan*, a D.C. Court of Appeals case that interpreted the statutory language of the 45-day rule, which preceded the 90-day rule. The court held that the "conclusion of a criminal investigation" must involve action taken by an entity with prosecutorial authority.[59] MPD argues that a criminal investigation does not end until the prosecuting entity has

---

[50] Award at 43-44; *See Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The Arbitrator noted that the Grievant has no cited prior guilty pleas or convictions and no cited prior instances of dishonesty; that the Grievant had only one instance of prior discipline on his record; that the Grievant's overall work record was positive; that other police officers employed by the Department who were convicted of off-duty alcohol-related offenses had received lengthy suspensions; that there was no evidence of any notoriety or publicity regarding the Grievant's guilty pleas; and that the record reflects evidence of the Grievant's remorse and his efforts to address his alcohol use. The Arbitrator further noted that the record did not show that MPD had removed other police officers for comparable offenses involving willfully and intentionally untruthful statements in violation of General Order 120.21.
[51] Award at 43.
[52] D.C. Official Code § 1-605.02(6).
[53] *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).
[54] *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).
[55] *Id.*
[56] Request at 16.
[57] Request at 16.
[58] Request at 16-17.
[59] *See District of Columbia v. D.C. Office of Employee Appeals*, 883 A.2d 124, 128 (D.C. 2005) ("*Jordan*").

brought the criminal case to conclusion according to *Jordan*.[60] Alternatively, MPD argues that accepting the Arbitrator's interpretation would result in overlapping disciplinary and criminal proceedings and create Fifth Amendment self-incriminating problems for employees.[61]

MPD also cites to the Oxford English Dictionary and ABA Investigation Standards to argue that the scope of the term "investigation" includes further action a prosecutorial authority may take after issuing an initial plea offer.[62] MPD further points to canons of statutory construction to argue that ambiguities in section 5-1031(b) should be construed in favor of permitting government action.[63]

Nothing in *Jordan*'s holding—that the conclusion of a criminal investigation involves action taken by an entity with prosecutorial authority—mandates that the Arbitrator's findings are contrary to law. The D.C. Superior Court has explicitly rejected MPD's argument, holding that the *Jordan* court "specifically did not decide what marked the conclusion of a criminal investigation."[64] Thus, MPD's inference from *Jordan* does not require that the Board find that the Award is contrary to law.

MPD's Fifth Amendment self-incrimination argument is also not persuasive. The D.C. Superior Court has held that a jurisdiction cannot use the threat of discharge to secure incriminatory evidence against an employee.[65] The D.C. Superior Court dismissed this argument as illusory, noting that any statement MPD could have sought from a grievant in an administrative hearing would be afforded protection from the grievant's criminal hearing.[66] The Board has also previously rejected this argument on the same basis.[67]

The Board has further held that section 5-1031(b) does not require a conclusion that an investigation continued after a criminal investigator filed initial charges.[68] The point at which an investigation ends is a question of fact that depends on the circumstances of a given case.[69] The burden was on MPD to prove that there was subsequent investigatory activity by the State Attorney's Office.[70] The Arbitrator did not find that MPD had met this burden of proof.

MPD argues that it provided evidence that there was an ongoing criminal investigation after the date the State Attorney's issued an initial plea offer by presenting the "undisputed evidence" that the Grievant's criminal case was pending in Wicomico County until its disposition

---

[60] Request at 17.
[61] Request at 21.
[62] Request at 19-20.
[63] Request at 23-24.
[64] *Metro. Police Dep't v. D.C. Pub. Employee Relations Bd.*, 2021 CA 001662 P (MPA) at 11 (May 11, 2022) (Ross, J.).
[65] *Id.* (citing *Garrity v. N.J.*, 385 U.S. 493, 500 (1967) (holding that "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office.")).
[66] *Id.*
[67] *See D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 68 D.C. Reg. 5072, Slip Op. No. 1783 at 4, PERB Case No. 21-A-06 (2021).
[68] *See D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 64 D.C. Reg. 10115, Slip Op. No. 1635 at 13, PERB Case No. 17-A-06 (2017) ("*Fowler*").
[69] *See Fowler*, Slip Op. No. 1635 at 13 (citing *Jordan*, 883 A.2d at 128).
[70] *See id.*

on July 15, 2020.[71] Notwithstanding, the Arbitrator did not find that MPD met its burden of proof that there was an ongoing criminal investigation.

MPD does not assert that it provided any other evidence of criminal investigation after the date the Arbitrator determined the investigation concluded. The Award and the record reflect that MPD did not provide such evidence. MPD argued before the Arbitrator that, even in the absence of direct evidence of a criminal investigation, the Arbitrator should find that the State Attorney's Office conducted some type of criminal investigation into the act or occurrence allegedly constituting cause against the Grievant, tolling the 90-day rule.[72] The Arbitrator rejected MPD's argument. The Board finds that MPD has not shown that the Arbitrator has misinterpreted the law, because the Arbitrator did not adopt MPD's argument. Therefore, MPD has not demonstrated that the Arbitrator's determination of when the investigation ended was premised upon a misinterpretation of section 5-1031(b) apparent on the face of the Award.

For these reasons, MPD has not met its burden to present applicable law that the Award violates on its face. Therefore, the Board finds that the Award is not contrary to law.

B. The Award is not contrary to public policy.

The Board's scope of review is particularly narrow concerning the public policy exception.[73] A petitioner must first identify a public policy that "must be well defined and dominant," and is to be ascertained "by reference to the laws and legal precedents and not from general considerations of supposed public interests."[74] Once a well-defined public policy is identified, the petitioner must demonstrate that the arbitration award "compels" the violation of this explicit, well defined public policy.[75] The D.C. Court of Appeals has noted that the issue is not whether the employee's misconduct violated public policy but rather whether enforcing the arbitral award would do so.[76]

MPD argues that the Arbitrator's reversal of the Grievant's termination is contrary to public policy requiring police officers to uphold the law.[77] MPD argues that requiring police officers to uphold the law is a dominant public policy supported by the value statements articulated at the outset of MPD's General Orders 201.26 and 201.36.[78] MPD also cites to General Order 201.26(V)(E)(1), which requires police officers to "observe, uphold and enforce all laws" in the performance of their duties.[79] MPD further relies on *City of Ansonia* and *City of Ironton*, Connecticut and Ohio state court cases, which overturned arbitral awards that reinstated police

[71] Request at 17.
[72] Award at 34.
[73] *FOP/Dep't of Corr. 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).
[74] *Id.* (quoting *American Postal Workers Union*, 789 F.2d at 8).
[75] *Id.*
[76] *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)).
[77] Request at 24.
[78] Request at 27-28 (citing MPD General Order 201.26 (I) & (II), Duties, Responsibilities and Conduct of Members of the Department (Effective Date April 5, 2011); MPD General Order 201.36 (II), Metropolitan Police Department Sworn Law Enforcement Officer Code of Ethics (Effective Date June 1, 2017)).
[79] Request at 27 (citing MPD General Order 201.26 (V)(E)(1), Citizen Police Relationships, Duties, Responsibilities and Conduct of Members of the Department (Effective Date April 5, 2011)).

officers on similar public policy grounds.[80] In its Opposition, FOP argues that MPD's public policy argument is far from a "well defined" public policy and cannot form anything other than "general considerations of supposed public interest" in how police officers should conduct themselves.[81]

The Board has previously held that value statements alone are an insufficient basis to establish well-defined public policy in the law.[82] MPD's reference to the value statements in General Orders 201.26 and 201.36 are thus insufficient to establish public policy. General Order 201.36's general value statement that police officers "maintain the highest standard of conduct" further does not specify upholding the law as a well-defined public policy. MPD General Order 201.26(V)(E)(1)'s directive that police officers uphold laws specifies that this responsibility is limited to the performance of their job duties.[83] MPD has not shown that this directive embodies a general public policy to uphold laws that extends to off duty police conduct.

MPD's articulated public policy is inapposite to the well-defined public policies identified in *City of Ansonia* and *City of Ironton* because the public policies in those cases were ascertained by reference to law and legal precedent. In *City of Ansonia*, the Superior Court of Connecticut found a dominant and well-defined public policy against sexual misconduct by reference to the state's criminal statutes, the employment statute governing workplace conduct, and corresponding federal law.[84] The court also found a dominant and well-defined public policy of good police conduct by reference to a state statute explicitly requiring good behavior for police officers, and provisions of the police department's duty manual, authorized by that statute, that specify requirements for good conduct.[85] Similarly, in *City of Ironton*, the Ohio Court of Appeals found a dominant and well-defined public policy of honesty in the performance of police duties by reference to state statute and legal precedent.[86] Unlike these cases, MPD has not identified any law or legal precedent supporting a well-defined, dominant public policy for police officers to uphold laws.

Even if MPD had identified a valid public policy requiring police officers to uphold laws, it has not demonstrated that the Award would violate this public policy. MPD argues that reinstating the Grievant would violate this public policy because the Grievant's misconduct "was egregious and completely contrary to the established standards by which all MPD members must abide."[87] MPD further relies on *City of Ironton* to argue that the Grievant's continued employment will "erode public trust and confidence in the Department."[88]

---

[80] *See City of Ansonia v. Earl Stanley*, 854 A.2d 101 (Conn. Super. Ct. 2004); *City of Ironton v. Beth Rist*, 2010 WL 4273235 (Ohio Ct. App. 2010).
[81] Opposition at 17-18.
[82] *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 68 D.C. Reg. 5078, Slip Op. No. 1784 at 8, PERB Case No. 21-A-08 (2021).
[83] MPD General Order 201.26 (V)(E)(1), Citizen Police Relationships, Duties, Responsibilities and Conduct of Members of the Department (Effective Date April 5, 2011).
[84] *City of Ansonia*, 854 A.2d at 110-111.
[85] *Id.* at 111-112.
[86] *City of Ironton*, 2010 WL 4273235 at *5.
[87] Request at 28.
[88] Request at 28 (quoting *City of Ironton*, 2010 WL 4273235 at *5). *City of Ironton* reversed the arbitral reinstatement of an Ohio police officer who falsified a police report because the award violated the public policy of honesty in performance of public official duties.

MPD's reliance on *City of Ironton* is unpersuasive. The D.C. Court of Appeals has noted that courts across the country have been divided in their consideration of whether arbitral awards reversing termination violate established public policy.[89] In *Dist. of Columbia Metro. Police Dept.*, the D.C. Court of Appeals upheld an arbitral award that reinstated a terminated police officer based on MPD's violation of a 55-day rule to bring forth charges pursuant to a collective bargaining agreement.[90] The D.C. Court of Appeals found that the arbitral award did not violate the public policy in ensuring the competence and honesty of police officers because MPD could not point to any laws or legal precedent that prevented the arbitral award.[91]

Similarly here, MPD has not established that any of its General Orders or the policies embodied within require termination as the appropriate penalty for violation of the two charges sustained against the Grievant.[92] Nor has MPD shown that the Award's 45-day suspension penalty would erode public trust and confidence in its Department. MPD's Adverse Action Panel recommended the 45-day suspension awarded by the Arbitrator in its Final Notice of Adverse Action.[93] MPD further does not refute the Arbitrator's finding that other police officers employed by MPD who were convicted of off-duty alcohol-related offenses in violation of General Order 120.21, Attachment A, Part A-7 had received lengthy suspensions, or that MPD has not removed other police officers for comparable offenses involving willfully and intentionally untruthful statements in violation of General Order 120.21, Attachment A, Part A-6.[94] For these reasons, MPD has not demonstrated that the Award violates a public policy requiring police officers to uphold laws.

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.

---

[89] *Dist. of Columbia Metro. Police Dep't.*, 282 A.3d at 606.
[90] *Dist. of Columbia Metro. Police Dept*, 901 A.2d 784.
[91] *Id*. at 790.
[92] *See* MPD General Order 201.26, Duties, Responsibilities and Conduct of Members of the Department (Effective Date April 5, 2011); MPD General Order 201.36 (II), Metropolitan Police Department Sworn Law Enforcement Officer Code of Ethics (Effective Date June 1, 2017).
[93] Award at 15-16; Record at 001124.
[94] *See* Request at 28; Award at 43.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is denied.

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 Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

December 15, 2022

Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration within fourteen (14) days, requesting the Board to reconsider its decision. Additionally, 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 provide thirty (30) days after a Board decision is issued to file an appeal.