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

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| In the Matter of: | |
| Fraternal Order of Police/Metropolitan Police Department Labor Committee | PERB Case No. 25-A-01 |
| Petitioner | Opinion No. 1911 |
| v. | |
| Metropolitan Police Department of the District of Columbia | |
| Respondent | |

## DECISION AND ORDER

### I. Statement of the Case

On November 15, 2024, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed an arbitration review request (Request), seeking review of an arbitration award (Remand Award) dated October 29, 2024, pursuant to the Comprehensive Merit Personnel Act (CMPA).[1] The Remand Award, issued at the direction of the District of Columbia Court of Appeals, overturned an earlier arbitration award (Initial Award) which reinstated a terminated officer (Grievant) to his position with the Metropolitan Police Department of the District of Columbia (MPD).[2] The Remand Award denied the grievance FOP filed on the Grievant's behalf and upheld MPD's decision to terminate him.[3] FOP requests that the Board reverse the Remand Award on the grounds that it is contrary to law and public policy.[4] MPD opposes the Request.

Upon consideration of the Arbitrator's conclusions, applicable law, and the record presented by the parties, the Board finds that the Remand Award is not contrary to law or public policy. Therefore, the Request is denied in its entirety.

[1] D.C. Official Code § 1-605.02(6).
[2] Remand Award at 4, 24.
[3] Remand Award at 24.
[4] Request at 7.

## II. Background

In the Remand Award, the Arbitrator made the following factual findings.[5] At the time of his termination, the Grievant had been employed as an MPD officer for approximately twenty (20) years.[6] The events leading to the Grievant's termination began on March 28, 2010, when he was arrested for soliciting prostitution from an undercover MPD officer.[7] At the time of his arrest, the Grievant was found to be driving with a suspended license, the result of a DUI charge he sustained the previous year.[8] After pleading not guilty to the solicitation, the Grievant was released.[9] The Grievant was not charged with operating a vehicle with a suspended license.[10] He participated in a remedial diversion program and on May 19, 2010, his criminal case was dismissed.[11] A few weeks later, the Office of the Attorney General for the District of Columbia initiated a traffic case against the Grievant with the D.C. Superior Court.[12]

At MPD's direction, the Internal Affairs Division (IAD) conducted an administrative investigation into the Grievant's conduct, collecting documentary evidence and interviewing the undercover officer whom the Grievant solicited, as well as the officer who arrested the Grievant.[13] IAD issued a Final Investigative Report (Report), sustaining the allegations of misconduct against the Grievant.[14] The Assistant Chief of Police concurred with IAD's findings.[15] On September 23, 2010, MPD served the Grievant with a Notice of Proposed Adverse Action (Notice), which included an analysis of the *Douglas*[16] factors, and charged the Grievant with solicitation of prostitution (Charge 1, Specification 1) and driving with a suspended license (Charge 2, Specification 1).[17]

The Grievant requested a Hearing, which the MPD Panel conducted on May 17, 2011.[18] At the Hearing, the Grievant admitted to both charges.[19] He testified that he suffered from an alcohol abuse problem and stated that he had been driving under the influence at the time of his arrest.[20] Regarding his suspended driver's license, the Grievant asserted that he had been operating

[5] The Initial Award and the Remand Award were issued by separate arbitrators, and each included the arbitrator's factual findings. Except where stated otherwise, the facts included herein are solely derived from the Remand Award.
[6] Remand Award at 6.
[7] Remand Award at 6.
[8] Remand Award at 6. After the Grievant was charged with a DUI, he was placed on non-contact duty status, which did not change until his termination. Remand Award at 19.
[9] Remand Award at 6.
[10] Remand Award at 7.
[11] Remand Award at 6.
[12] Remand Award at 8.
[13] Remand Award at 6-7.
[14] Remand Award at 7.
[15] Remand Award at 7.
[16] In *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981), the Merit Systems Protection Board (MSPB) established a list of twelve factors an agency must consider when determining an appropriate penalty to impose for employee misconduct.
[17] Remand Award at 7-8.
[18] Remand Award at 7-8.
[19] Remand Award at 7.
[20] Remand Award at 7-8.

under the mistaken belief that the suspension incurred from his previous DUI was no longer in effect.[21] The MPD Panel found the Grievant guilty of both charges, conducted a *Douglas* factors analysis, and recommended termination for Charge 1, Specification 1, and a thirty (30)-day suspension for Charge 2, Specification 1.[22] MPD subsequently issued a Final Notice of Adverse Action (Final Notice), declaring that the Grievant would be terminated, effective August 19, 2011.[23]

The Grievant appealed the termination decision to the Chief of Police, alleging that pursuant to precedent from the United States District Court for the District of Columbia (D.C. District Court), "the charges were premature due to his known alcoholism and treatment."[24] On July 26, 2011, the Chief of Police denied the appeal, noting that the Grievant had admitted to consuming alcohol after completing the remedial diversion program for his substance abuse issue.[25] The Chief of Police concluded that the MPD "Panel had completed an adequate analysis of the *Douglas* factors and that the testimony of Grievant's character witnesses was insufficient to mitigate the gravity of his conduct."[26] Thus, the Chief of Police determined, termination was the only appropriate penalty.[27]

FOP invoked arbitration on the Grievant's behalf.[28] The matter was assigned to an arbitrator, who issued an Initial Award on November 4, 2017.[29] The Initial Award dismissed Charge 1, Specification 1 as untimely under the "90-Day Rule,"[30] a statute requiring MPD to serve notices of adverse action within ninety (90) days of the date the Agency knew or should have known of an act or occurrence allegedly constituting cause for discipline.[31] The Initial Award sustained Charge 2, Specification 1 as timely,[32] upholding the thirty (30)-day suspension and ordering MPD to reinstate the Grievant with back pay.[33]

MPD filed an arbitration review request with the Board, which was denied in Opinion No. 1826.[34] MPD appealed the Board's decision to the D.C. Superior Court and was denied again.[35] MPD appealed the D.C. Superior Court's decision to the District of Columbia Court of Appeals (D.C. Court of Appeals), where the Initial Award was set aside as contrary to the Comprehensive Policing and Justice Reform Act of 2022 (Reform Act).[36] The Reform Act repealed the 90-Day

[21] Remand Award at 8.
[22] Remand Award at 8-9.
[23] Remand Award at 8.
[24] Remand Award at 8 (citing *Whitlock v. Donovan*, 589 F. Supp. 126, 133-134 (D.C. 1984)).
[25] Remand Award at 9.
[26] Remand Award at 9.
[27] Remand Award at 9.
[28] Remand Award at 9.
[29] Remand award at 9.
[30] D.C. Code Official Code § 5-1031(a-1) (repealed).
[31] Remand Award at 9.
[32] Remand Award at 9.
[33] Initial Award at 30; Remand Award at 2-3.
[34] *MPD v. FOP/MPD Labor Comm.*, 70 D.C. Reg. 132, Slip Op. No.1826, PERB Case No. 22-A-09 (2022).
[35] Remand Award at 3-4.
[36] Remand Award at 3 (citing D.C. Law 24-345).

Rule, retroactively lifting the deadline for MPD to serve notices of adverse action, effective April 21, 2023.[37] The D.C. Court of appeals remanded the case to the Board with instructions to vacate its decision and remand the matter to arbitration for further proceedings consistent with the court's findings.[38]

In Opinion No. 1847,[39] the Board vacated its prior decision and remanded the matter to arbitration.[40] A new Arbitrator was selected.[41] On October 29, 2024, the Arbitrator issued a Remand Award, upholding the Panel's decision to terminate the Grievant.[42] FOP now seeks review of the Remand Award.

## III. Arbitrator's Findings

On remand, the Arbitrator considered the following issues:

(1) Whether MPD's charges were premature due to the Grievant's known alcohol abuse issue?

(2) Whether the evidence presented by MPD was sufficient to support Charge 1, Specification 1 (Solicitation of prostitution)?

(3) Whether termination was the appropriate penalty?[43]

At Arbitration, MPD contended that, with respect to issue number one (1), the charges were not premature, as the "Grievant's alcoholism did not directly affect his work performance," and the Grievant had already served an unpaid twenty-five (25)-day suspension, with a recommendation for remedial counseling, in relation to his DUI arrest.[44] Regarding issue number two (2), MPD argued that the Grievant admitted to Charge 1, Specification 1 and thus, preponderant evidence supported a guilty finding for that charge.[45] Concerning issue number three (3), MPD asserted that termination was the appropriate penalty based on the thorough *Douglas* factors analysis which the Agency conducted prior to the Grievant's removal.[46]

[37] Remand Award at 3.
[38] Remand Award at 9-10.
[39] *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1847, PERB Case No. 18-A-05(R) (2023).
[40] Remand Award at 4.
[41] Remand Award at 4.
[42] Remand Award at 24.
[43] Remand Award at 5-6. The Arbitrator noted that the issues had originally included a preliminary issue "related to timeliness and the 90-day," which was "no longer relevant." Remand Award at 5. Thus, the Remand Award numbered the issues one (2), three (3), and four (4). Award at 5-6. In the interest of clarity, the Board has renumbered the issues herein.
[44] Remand Award at 10.
[45] Remand Award at 10.
[46] Remand Award at 10.

Before the Arbitrator, FOP argued that MPD was "on notice of [the] Grievant's alcoholism" and therefore, under *Whitlock v. Donovan*,[47] the Agency was required to accommodate the Grievant by giving him "a 'firm choice' between treatment or discipline."[48] FOP also argued that Charge 1, Specification 1 was not supported by substantial evidence, as the Grievant did not exchange money with the undercover officer he allegedly solicited; she was not dressed "provocatively" at the time; and she did not testify at his administrative hearing.[49] Additionally, FOP contended that MPD demonstrated a lack of objectivity by failing to properly consider several mitigating factors when conducting its *Douglas* factors analysis.[50] Lastly, FOP asserted that MPD prejudiced the Grievant and violated his due process rights by prematurely including a *Douglas* factors analysis in the Notice.[51]

In the Remand Award, the Arbitrator found that the firm choice requirement established in *Whitlock* was inapplicable to Charge 1, Specification 1, as the alleged solicitation occurred while the Grievant was off duty, and the Grievant's alcoholism did not interfere with his work performance.[52] Moreover, the Arbitrator found no evidence that the Grievant was terminated for his alcohol problem, nor that his solicitation of prostitution was caused by that issue.[53] The Arbitrator determined that MPD made reasonable accommodations to help the Grievant overcome his problem by requiring him to participate in a remedial program following his DUI.[54] Thus, the Arbitrator concluded that Charge 1, Specification 1 was not premature.[55]

The Arbitrator turned to the question of whether the evidence MPD presented was sufficient to support Charge 1, Specification 1.[56] The Arbitrator determined that because the Grievant admitted to the charged conduct and testified he knew that it was illegal, the alleged attire of the undercover officer and the lack of testimony from her were inconsequential.[57] The Arbitrator concluded that MPD had presented sufficient evidence to prove the Grievant's guilt and sustain that charge.[58]

Having found that the Grievant committed the charged conduct, the Arbitrator addressed the issue of whether termination was the appropriate penalty.[59] The Arbitrator reviewed the twelve *Douglas* factors, stating that the D.C. Court of Appeals adopted them and the reasoning behind

[47] 589 F. Supp. 126.
[48] Remand Award at 11.
[49] Remand Award at 11.
[50] Remand Award at 11. In *Douglas*, the MSPB held that "Agencies should give consideration to all factors involved when deciding what penalty is appropriate, including not only the gravity of the offense but such other matters as mitigating circumstances…." 5 M.S.P.B. at 332.
[51] Remand Award ay 12.
[52] Remand Award at 12.
[53] Remand Award at 13.
[54] Remand Award at 12-13.
[55] Remand Award at 13.
[56] Remand Award at 13-14.
[57] Remand Award at 14.
[58] Remand Award at 14.
[59] Remand Award at 14-24.

them in *Stokes v. District of Columbia*.[60] The Arbitrator noted that under the *Stokes* standard, "Review of an Agency imposed penalty is to assure that the Agency considered the relevant factors and acted reasonably."[61] Under that precedent, "Only if the Agency failed to weigh the relevant factors or the Agency's judgment clearly exceeded the limits of reasonableness, is it appropriate…to specify how the Agency's penalty should be amended."[62] The Arbitrator explained that pursuant to the *Stokes* decision, "a reviewing tribunal may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate."[63]

The Arbitrator noted that in FOP's view, the *Stokes* decision was inapplicable, as it was issued by an administrative law judge (ALJ), as opposed to an arbitrator.[64] However, finding that the Panel had sufficiently weighed the *Douglas* factors,[65] the Arbitrator concluded that, regardless of whether *Stokes* applied, the penalty which the Panel imposed was appropriate, as the Panel thoroughly considered the *Douglas* factors before rendering its decision.[66] The Arbitrator also found that the Grievant was afforded adequate time to respond the allegations against him, prior to arbitration.[67] The Arbitrator discussed each *Douglas* factor as it related to this case, and concurred with MPD's evaluations thereof, deeming those evaluations "not unreasonable."[68] The Arbitrator agreed with MPD that factors one (1) (nature and seriousness of the offense), two (2) (employee's job level and type of employment), five (5) (effect of offense on employee's ability to perform and supervisor's confidence in employee), nine (9) (employee's prior notice regarding rules), and ten (10) (potential for employee's rehabilitation) were aggravating.[69] The Arbitrator agreed with MPD that factor four (4) (past work record) was mitigating.[70] The Arbitrator was unpersuaded by FOP's assertions that factors eight (8) (notoriety of offense) and eleven (11) (mitigating circumstances) should have been considered mitigating.[71] For these reasons, the Arbitrator concluded that MPD's decision to terminate the Grievant must be upheld.[72]

FOP seeks review of the Remand Award.

## IV. 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 authority; (2) if the award on its face is contrary to law and public

[60] Remand Award at 15-17 (citing *Stokes v. District of Columbia*, 502 A.2d. 1006 (D.C. 1985)).
[61] Remand Award at 17 (citing *Stokes*, 502 A.2d. 1006).
[62] Remand Award at 17 (citing *Stokes*, 502 A.2d. 1006).
[63] Remand Award at 17 (citing *Stokes*, 502 A.2d. at 1011).
[64] Remand Award at 17.
[65] Remand Award at 17.
[66] Remand Award at 18-24.
[67] Remand Award at 24 (citing *William Harper v. District of Columbia Metropolitan Police Department*, FMCS No. 14-45942-A).
[68] Remand Award at 18-23.
[69] Remand Award at 18-19, 21-22.
[70] Remand Award at 19.
[71] Remand Award at 21-23.
[72] Remand Award at 23-24.

policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[73] FOP requests review on the grounds that the Award is contrary to law and public policy.[74]

**A. The Award is not contrary to law.**

FOP bears the burden of demonstrating that the Award itself violates established law or compels an explicit violation of "well defined public policy grounded in law and or legal precedent."[75] Furthermore, FOP has the burden to specify "applicable law and public policy that mandates that the Arbitrator arrive at a different result."[76] The D.C. Court of Appeals has reasoned, "Absent a clear violation of law[,] one evident on the face of the arbitrator's award, the [Board] lacks authority to substitute its judgment for the arbitrator's."[77]

In its Request, FOP argues that the Remand Award should be overturned, as it is contrary to forthcoming federal law which proposes to repeal the Reform Act and retroactively reinstate the 90-day rule.[78] FOP asserts that H.R. Bill No. 5798, which would restore the statute of limitations for disciplinary cases against MPD officers, was introduced in the United States House of Representatives on September 23, 2023.[79] FOP states that on February 6, 2024, the House of Representatives held a mark-up session regarding the bill and voted in favor of its implementation.[80] Thus, MPD contends, federal law is likely to imminently reinstate the 90-day rule as if it had never been repealed, rendering the Remand Award on its face contrary to law."[81]

FOP's argument is unpersuasive. Under D.C. Official Code § 1-605.02(6) the Board has authority to overturn an arbitration award where that award is, on its face, contrary to existent law.[82] This provision does not permit the Board to consider bills which may or may not be passed. If the Board were to adopt FOP's interpretation of § 1-605.02(6), the resulting standard would be convoluted, inconsistent, and unpredictable, requiring the Board to account for hypothetical, future laws. The Board declines to overturn the Remand Award based on the claim that it contravenes an unimplemented statutory provision.

FOP also argues that the Arbitrator's reliance on the retroactive repeal of the 90-day rule is contrary to existent law.[83] FOP asserts that under D.C. Court of Appeals precedent, "[w]hen the legislature makes clear that a new law is retroactive (i.e., applies to pending cases), an appellate court must apply that law on appeal, unless to do so would result in manifest injustice or engender

[73] D.C. Official Code § 1-605.02(6).
[74] Request at 2-4, 7-8, 14.
[75] *FEMS v. AFGE, Local 3721*, 51 D.C. Reg. 4158, Slip Op. No. 728, PERB Case No. 02-A-08 (2004).
[76] *MPD v. FOP/MPD Labor Comm*., 47 D.C. Reg. 717, Slip Op. No. 633 at 2, PERB Case No. 00-A-04 (2000).
[77] *Fraternal Order of Police/Dep't of Corr. Labor Comm. v. District of Columbia Pub. Emp. Relations Bd*., 973 A.2d 174, 177 (D.C.2009).
[78] Request at 7.
[79] Request at 7.
[80] Request at 7.
[81] Request at 7.
[82] *See* D.C. Official Code § 1-605.02(6).
[83] Request at 7-11.

substantial due process concerns."[84] Under this standard, "manifest injustice" is measured using three factors: "(1) the nature and identity of the parties; (2) the nature of their rights; and (3) the nature of the impact of the change in law upon those rights."[85] The D.C. Court of Appeals has established that manifest injustice may be demonstrated through one or more of these factors.[86]

FOP argues that here, all three (3) factors indicate that retroactive repeal of the 90-day rule creates manifest injustice.[87] Regarding the first factor, FOP asserts that although MPD is a public agency, this case arises from an arbitration decision rendered pursuant to the parties' CBA.[88] Thus, FOP contends, MPD is acting in a private capacity[89] and any arbitration awards issued in this matter constitute "private law,"[90] exclusively affecting "the individual rights of two private parties vis a vis one another."[91] Concerning the second factor, FOP argues that when the Initial Award was issued, it became part of the parties' binding contract and granted the Grievant a constitutional property right to his employment,[92] the deprivation of which would create manifest injustice.[93] FOP also contends that the 90-day rule is mandatory, rather than directory,[94] and asserts that the Grievant was "entitled to enforce the mandatory obligations of the 90-day rule through arbitration."[95] Lastly, regarding the third factor, FOP argues that the Initial Award affirmed the substantive obligations which the 90-day rule imposes on MPD, while the Remand Award disregarded those obligations, creating manifest injustice. [96]

FOP's contentions are unpersuasive. In a case previously before the Board, FOP presented the same arguments, asserting that retroactive application of the Reform Act would cause manifest injustice for a terminated MPD officer on whom disciplinary proceedings were imposed outside the timeframe set forth under the repealed 90-day rule.[97] In that matter, the Board rejected FOP's argument, noting the D.C. Court of Appeals has held that enforcing the Reform Act's retroactivity provision in cases like this does not create manifest injustice.[98] The Board reaches the same conclusion in the present case.

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[84] Request at 7-8 (citing *Menna v. Plymouth Rock Assurance Corp.*, 987 A.2d 458, 463 n. 15 (D.C. 2010) (citations omitted); *Scholtz P'ship v. D.C. Rental Accommodations Comm'n*, 427 A.2d 905, 914 (D.C. 1981)).
[85] Request at 8 (citing *Scholtz P'ship*, 472 A.2d at 914).
[86] *See id*. at 915-19
[87] Request at 7-11.
[88] Request at 8.
[89] Request at 8 (citing *Holzsager v. D.C. Alcoholic Beverage Control Bd.*, 979 A.2d 52, 59 (D.C. 2009)).
[90] Request at 8 (quoting *D.C. Metro. Police Dep't v. D.C. Public Employee Relations Bd.*, 901 A.2d 784, 789 (D.C. 2006)).
[91] Request at 8-9 (quoting *Scholtz P'ship*, 472 A.2d at 915).
[92] Request at 9 (citing *MPD*, 901 A.2d at 789; *Fonville v. District of Columbia*, 448 F.Supp.2d 21, 26 (D.D.C. 2006)).
[93] Request at 9 (quoting *Scholtz*, 427 A.2d at 917).
[94] Request at 9-10 (citing *D.C. Metro. Police Dep't v. D.C. Pub. Employee Relations Bd.*, 2021 CA 000425 P(MPA) at 9-10 (D.C. Super. Ct. Jan. 18, 2022); *D.C. Metro. Police Dep't v. D.C. Pub. Employee Relations Bd.*, 1993 WL 761156 at *2 (D.C. Super. Ct. Aug. 9, 1993); *Holzsager*, 979 A.2d at 60-61).
[95] Request at 10 (citing *Scholtz*, 427 A.2d at 917).
[96] Request at 10.-11
[97] *FOP/MPD Labor Comm. v. MPD*, 71 D.C. Reg. 10861, Slip Op. No. 1881 at 4-5, PERB Case No. 24-A-06 (2024).
[98] *Id*. (citing *D.C. Metro. Police Dep't v. D.C. Pub. Empl. Relations Bd.*, 301 A.3d 714, 720-723 (D.C. 2023)).

The Board finds that FOP has not demonstrated that the Award violates established law or shown that applicable law mandates a different result. For the reasons stated, the Board finds that the Award is not contrary to law.

**B. The Award is not contrary to public policy.**

Section 1-605.02(6) of the D.C. Official Code authorizes the Board to set aside an arbitration award if the award "on its face is contrary to law and public policy." The D.C. Court of Appeals has suggested that "the terms 'contrary to law' and contrary to 'public policy' overlap, because 'an award that is contrary to a specific law *ipso facto* may be said to be contrary to the public policy that the law embodies.'"[99] However, to overlap is not to obfuscate. The D.C. Court of Appeals has recognized that for the purposes of statutory interpretation, the words "and" and "or" may be substituted for one another where doing so is "necessary to give effect to any part of a statute."[100] To give effect to the public policy portion of D.C. Official Code § 1-605.02(6), with respect to the phrase "contrary to law and public policy," the Board interprets "and" to mean "*or*."

Nonetheless, the public policy exception is an "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's interpretation of a contract.[101] For the Board to overturn an award as on its face contrary to public policy, the "public policy alleged to be contravened 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."[102] "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of 'public policy.'"[103]

FOP argues that under the 90-day rule, the Remand Award is "on its face contrary to the well-defined and dominant public policy favoring expeditious imposition of discipline against employees."[104] FOP acknowledges that, as it applies to MPD officers, the 90-day rule has been repealed.[105] However, FOP remarks that the rule still applies to the discipline imposed on employees of the District of Columbia Fire and Emergency Medical Services Department (FEMS).[106] FOP argues that the continuing application of the 90-day rule to FEMS employees demonstrates the persistence of the dominant public policy underlying that rule.[107] This argument

[99] *MPD v. PERB*, No. 19-CV-1115, Mem. Op. & J. at 11 (D.C. Sept. 15, 2022) (quoting *Fraternal Ord. of Police/Dep't of Corr. Lab. Comm. v. D.C. Pub. Emp. Rels. Bd.*, 973 A.2d 174, 179 (D.C. 2009)).
[100] *Id*. (quoting 1A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 21.14 (7th ed. Nov. 2021 update)).
[101] *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6056, Slip Op. No. 1702 at 4, PERB Case No. 18-A-17 (2019) (citing *Am. Postal Workers Union v. USPS*, 789 F.2d 1, 8 (D.C. Cir. 1986), *accord MPD v. FOP/MPD Labor Comm. ex rel. Pair*, 61 D.C. Reg. 11609, Slip Op. No. 1487 at 8, PERB Case No. 09-A-05 (2014); *MPD v. FOP/MPD Labor Comm. ex rel. Johnson*, 59 D.C. Reg. 3959, Slip Op. No. 925 at 11-12, PERB Case No. 08-A-01 (2012)).
[102] *MPD v. PERB*, No. 19-CV-1115, Mem. Op. & J. at 10-11 (D.C. Sept. 15, 2022) (quoting *MPD v. PERB*, 901 A.2d 784, 789 (D.C. 2006)).
[103] *MPD*, Slip Op. No. 1702 at 4.
[104] Request at 11-12.
[105] Request at 5 (citing *D.C. Metro. Police Dep't v. D.C. Pub Employee Relations Bd.*, 301 A.3d 714, 718 (2023)).
[106] Request at 11-12 (citing *FEMS*, 986 A.2d at 425).
[107] Request at 12.

is unpersuasive. The Board has previously rejected FOP's public policy arguments against the untimely imposition of employee discipline where such arguments were grounded in the repealed 90-day Rule.[108] Regarding FOP's contentions related to FEMS, application of the 90-day rule to employees of a separate agency is inconsequential to the Board's determinations herein.

FOP also argues that the Remand Award is contrary to public policy because it encroaches on the Grievant's right to Due Process under the United States Constitution.[109] FOP contends that the Initial Award expressly preserved the Grievant's employment with MPD, creating a constitutional property right.[110] This claim is unpersuasive, as the D.C. Court of Appeals set aside the Initial Award as contrary to the Reform Act.[111]

FOP also asserts that the Remand Award is contrary to public policy because, even in the absence of the 90-day rule, the discipline imposed on the Grievant was untimely.[112] FOP contends that MPD failed to comply with D.C. Court of Appeals precedent which held that "a 45-day deadline to bring disciplinary charges 'remain[s] the goal,' to be honored 'in all but the most unusual circumstances.'"[113] FOP asserts that in this case, MPD failed to meet that goal, rendering the Remand Award contrary to public policy.[114] FOP's contention is unavailing because the 45-day deadline was overturned as "unduly restrictive."[115] It was replaced by the 90-day deadline, which has since been repealed for similar reasons.

Lastly, FOP contends that MPD violated "the well-defined and dominant public policy favoring expeditious handling and imposition of discipline" by failing to comply with the Initial Award during the pendency of its appeals, thereby placing the Grievant in a "disciplinary limbo."[116] FOP's contention is unpersuasive. The Board has authority to overturn an arbitration award on the grounds that the award *itself* violates public policy.[117] The allegations regarding MPD's noncompliance with an award during the pendency of appeal does not provide a basis for the Board to overturn an arbitration award on public policy grounds.

The Board finds that FOP has not demonstrated that the Remand Award compels an explicit violation of well-defined public policy grounded in law and or legal precedent, nor has it shown that applicable public policy mandates a different result. Therefore, the Board finds that the Award is not contrary to public policy.

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[108] *FOP/MPD Labor Comm.*, Slip Op. No. 1881 at 5.
[109] Request at 12 (citing *Henderson v. District of Columbia*, 493 A.2d 982, 996 (D.C. 1985).
[110] Request at 9 (citing *Fonville v. District of Columbia*, 448 F.Supp.2d 21, 26 (D.D.C. 2006)).
[111] Remand Award at 3.
[112] Request at 12-13.
[113] Request at 12 (quoting FEMS, 986 A.2d at 425).
[114] Request at 13.
[115] *FEMS*, 986 A.2d at 425.
[116] Request at 13-14.
[117] D.C. Official Code § 1-605.02(6).

## V. Conclusion

The Board rejects FOP's arguments and finds no cause to modify, set aside, or remand the Remand Award. Accordingly, FOP'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.
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 and Peter Winkler.

April 17, 2025
**Washington, D.C.**

## APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board 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 provides 30 days after a decision is issued to file an appeal.