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DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD
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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Metropolitan Police Department of the District of Columbia	PERB Case No. 24-A-08
Petitioner	Opinion No. 1872
v.	
Fraternal Order of Police/Metropolitan Police Department Labor Committee	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On April 2, 2024, the District of Columbia Metropolitan Police Department (MPD) filed an amended Arbitration Review Request (Request), seeking review of an arbitration award (Award) dated March 5, 2024, pursuant to the Comprehensive Merit Personnel Act (CMPA).[1] The Award ordered MPD to reinstate a terminated officer (Grievant) with backpay, and impose a five-day suspension instead.[2] MPD requests that the Board reverse the Award on the grounds that the Arbitrator exceeded his authority and the Award is contrary to law and public policy.[3] The Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed an Opposition to MPD's 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 his authority and the Award is not contrary to law or public policy. Therefore, the Request is denied in its entirety.

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[1] The amended Arbitration Review Request cured several minor deficiencies present in the initial Arbitration Review Request, which was filed on March 26, 2024.
[2] Award at 9.
[3] Request at 3, 9-17.

II. Arbitration Award

A. Background

In 2021, following a ten-year involuntary separation from employment, the Grievant was reinstated to his former position as an MPD officer.[4] As part of the reinstatement process, MPD ran a routine background check on the Grievant.[5] During the background check, MPD discovered that the Grievant did not possess a valid driver's license.[6] Between September 23, 2021, and August 3, 2022, MPD and the Grievant corresponded regarding the Grievant's progress toward obtaining a new driver's license.[7] The Grievant never obtained a new license.[8] Thus, although he was reinstated on October 25, 2021, the Grievant could not drive a police cruiser.[9] MPD assigned the Grievant to the Police Academy, where he was responsible for answering phones.[10] The Grievant used public transportation to commute to work.[11] MPD did not give him a patrol district or any police powers.[12] He was not issued a badge, a uniform, or a service weapon.[13]

On December 6, 2022, MPD issued a Notice of Proposed Adverse Action (NPAA), setting forth two charges against the Grievant, each with one specification.[14] Charge No. 1 alleged that the Grievant violated General Order Series 120.21 by "fail[ing] to obey orders or directives issued by the Chief of Police."[15] Charge No. 1, Specification No. 1 asserted that the Grievant violated General Order 301.01(A)(1)(a), which requires "all officers who operate a departmental vehicle to have a valid operator's permit or license."[16] Charge No. 2 alleged that the Grievant violated General Order Series 120.21 by engaging in conduct prejudicial to the reputation and good order of the police force.[17] Charge No. 2, Specification No. 1 asserted that

[4] The Grievant was initially terminated in 2011 based on charges unrelated to the instant case. Award at 2. The Grievant was homeless from 2011 to 2021. Award at 3. When the Grievant's driver's license expired in 2011 or 2012, he lacked the permanent address necessary to renew it. Award at 3. In 2018, FOP invoked arbitration on the Grievant's behalf. Award at 2. The record does not explain why FOP waited seven years to invoke arbitration. In 2019, an arbitration award was issued, directing MPD to reinstate the Grievant with backpay and reduce his penalty to a 45-day suspension. Award at 2. MPD appealed that award to the D.C. Superior Court. Award at 3. The court affirmed the Grievant's reinstatement in 2020. Award at 2.
[5] Award at 3.
[6] Award at 3.
[7] Award at 3.
[8] Award at 4.
[9] Award at 3-4.
[10] Award at 4-5.
[11] Award at 4.
[12] Award at 3.
[13] Award at 3.
[14] Award at 4.
[15] Award at 4.
[16] Award at 4. Charge No. 1, Specification No. 1 also asserted that the Grievant had violated General Order 201.26, Part V(B)(3), which requires MPD officers to maintain a valid driver's license and immediately alert their commanding officials regarding any change in the status of that license. Request at 7. The Arbitrator did not discuss that aspect of the charge.
[17] Award at 4.

the Grievant failed to provide a valid driver's license, despite notice of the requirement, thereby displaying conduct "prejudicial to the principles, reputation, and interests of the Department."[18]

On June 1, 2023, a Panel of senior MPD officers convened for an Adverse Action Hearing (AAH) regarding the charges against the Grievant.[19] At the AAH, the Grievant testified that he had tried to acquire a Maryland driver's license but was unsuccessful "because of two hitherto unknown parking tickets on his record dating back to 2011."[20] The Grievant also testified that he had twice attempted to obtain a District of Columbia driver's license but was denied due to missing three points on the written test and incurring a seatbelt infraction while "the vehicle was stopped at the end of the road test."[21] Additionally, the Grievant testified that his daytime tour of duty at MPD had hindered his ability to obtain a driver's license, as he was unable to visit the Department of Motor Vehicles (DMV) during its hours of operation.[22] The Panel issued a report measuring the Grievant's conduct against the *Douglas*[23] factors.[24] In a unanimous decision, the Panel found that the Grievant should be terminated, as his actions resulted in violations of various MPD rules, procedures, and regulations.[25]

On July 7, 2023, MPD issued the Grievant a Final Notice of Adverse Action (FNAA).[26] The FNAA relied on the Panel's determinations, finding that a preponderance of the evidence supported the charges against the Grievant.[27] The Grievant appealed the FNAA to the Chief of Police on July 24, 2023, but his appeal was denied on August 11, 2023.[28] FOP invoked arbitration on August 23, 2023.[29]

B. Arbitrator's Findings

The Arbitrator considered the following issues:

(1) Whether the [G]rievant…was removed for cause?

(2) I[f] not, what shall be the remedy?[30]

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[18] Award at 4.
[19] Award at 4.
[20] Award at 4.
[21] Award at 4.
[22] Award at 4.
[23] In *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981), the Merit Systems Protection Board established a list of twelve factors an agency must consider when determining an appropriate penalty to impose for employee misconduct.
[24] Award at 4.
[25] Award at 4.
[26] Award at 5.
[27] Award at 5.
[28] Award at 5.
[29] Award at 5.
[30] Award at 2.

The Arbitrator reviewed Article 12 of the Collective Bargaining Agreement (CBA), titled "Discipline." Section 1(b) of Article 12 provides:

> Discipline shall be imposed for cause, as provided in the D.C. Official Code Section 1-616.[31]

The Arbitrator addressed Charge No. 1, Specification No. 1, which asserted that the Grievant violated General Order 301.01(A)(1)(a) by failing to possess a valid driver's license.[32] The Arbitrator determined that the Grievant did not violate General Order 301.01(A)(1)(a) because that provision only requires officers to hold a valid driver's license "when operating a vehicle," and the Grievant was not operating a vehicle.[33] Thus, the Arbitrator found that Charge No. 1, Specification No. 1 should be dismissed.[34]

The Arbitrator considered Charge No. 2, Specification No. 1, which alleged that the Grievant violated General Order Series 120.21 by engaging in conduct which was not specifically set forth in that provision but which was prejudicial to MPD's reputation and good order.[35] The Arbitrator concluded that Charge No. 2, Specification No. 1 was broad enough to encompass the Grievant's failure to obtain a valid driver's license after his reinstatement.[36] However, the Arbitrator emphasized that the issue was not whether the Grievant violated a general order, but whether the Grievant was removed for cause.[37]

The Arbitrator observed that disparate treatment is the most important element to consider when assessing whether discipline has been imposed for cause.[38] Disparate treatment occurs where an employee is disciplined more harshly than others who have engaged in the same conduct.[39] In the case at hand, the Arbitrator found that while the Grievant was terminated for failing to possess a valid driver's license, all officers previously found guilty of that offense were merely fined or suspended.[40] Thus, the Arbitrator concluded that the Grievant was subject to disparate treatment.[41]

The Arbitrator also compared the Grievant's termination with the penalties that the Table of Penalties Guide (Table) prescribes for failure to maintain a driver's license.[42] The Arbitrator used a revised Table which became effective November 27, 2022, because "all relevant actions

[31] Award at 2.
[32] Award at 5.
[33] Award at 5.
[34] Award at 5.
[35] Award at 5.
[36] Award at 5.
[37] Award at 5.
[38] Award at 5.
[39] *See* Award at 6.
[40] Award at 6. The Arbitrator further noted that unlike the Grievant, the other officers disciplined for failing to maintain a license were likely driving MPD vehicles. Award at 6.
[41] Award at 7-8.
[42] Award at 7.

in this case occurred *after* that effective date."[43] The Arbitrator found that the revised Table classified failure to maintain a driver's license as a Tier 2 offense, which has a mitigated penalty of a one-day suspension; a presumptive penalty[44] of a one to five-day suspension; and an aggravated penalty ranging from a five-day suspension to "[a]nything less than termination."[45] Thus, the Arbitrator determined that the Grievant incurred a disparate penalty.[46]

The Arbitrator found it unnecessary to conduct a full analysis of the *Douglas* factors, concluding that the disparate treatment and disparate penalty the Grievant experienced were "so overwhelming as to render all other adverse factors irrelevant."[47] The Arbitrator held that the existence of disparate treatment necessarily implies the absence of cause.[48] Thus, the Arbitrator concluded that the Grievant was terminated without cause, in violation of Article 12, Section 1(b) of the CBA.[49] The Arbitrator determined that the Grievant's penalty must be reduced.[50]

At arbitration, MPD asserted that pursuant to *Stokes v. District of Columbia*,[51] the Arbitrator must defer to the Panel's decisions regarding discipline.[52] The Arbitrator rejected MPD's assertion, finding that Board precedent[53] granted him authority to interpret the CBA, including the rule that discipline may only be imposed for cause.[54] MPD argued that the Arbitrator lacked discretion to reduce the Grievant's penalty.[55] However, the Arbitrator concluded he had "considerable discretion to reduce the penalty imposed."[56] MPD contended that the Grievant "might not be suitable for a position as a police officer" but the Arbitrator disagreed, observing that the Grievant's ability to survive a decade of homelessness displayed the resilience required of a police officer.[57] MPD argued that the Grievant was unable to contribute to MPD's mission, due to his lack of valid driver's license.[58] The Arbitrator

[43] Award at 7 (emphasis in original).
[44] The Arbitrator explained that a presumptive penalty is more than a mitigated penalty and less than an aggravated penalty. Award at 7.
[45] Award at 7.
[46] Award at 7-8.
[47] Award at 7-8.
[48] Award at 5.
[49] Award at 8.
[50] Award at 7-8.
[51] 502 A.2d 1006 (D.C. Cir. 1985). The Board has repeatedly held that the principle of *Stokes* is inapplicable to the grievance-arbitration process, as the grievance-arbitration process is a product of the parties' collective bargaining agreement. *E.g.*, *MPD v. FOP/MPD Labor Comm.*, 68 D.C. Reg. 4485, Slip Op. No.1780 at 6, PERB Case No. 21-A-04 (2021); *MPD v. NAGE Local R-35 (on behalf of Burrell)*, 59 D.C. Reg. 2983, Slip Op. No. 785 at 4-5, PERB Case No. 03-A-08 (2012); *MPD v. FOP/ MPD Labor Committee (on behalf of Hector)*, 54 D.C. Reg. 3154, Slip Op. No. 872 at 6-7, PERB Case No. 07-A-02 (2007).
[52] Award at 7.
[53] The Board has consistently held that arbitrators have authority to interpret collective bargaining agreements. *E.g.*, *D.C. Dep't of Youth Rehab. Services*, 62 D.C. Reg. 5913, Slip Op. No. 1513 at 6, PERB Case No. 15-A-02 (2015) ("The Board further defers to the Arbitrator's interpretations of the parties' collective bargaining agreement").
[54] Award at 7.
[55] Award at 7.
[56] Award at 7.
[57] Award at 8.
[58] Award at 8.

disagreed, finding that the Grievant performed crucial administrative tasks, even without a valid driver's license.[59]

The Arbitrator directed MPD to reinstate the Grievant with backpay and place him on administrative duty or bike patrol, until such time as he obtains a valid driver's license and can be placed in his former patrol officer position.[60] The Arbitrator directed MPD to impose a five-day suspension as a reduced penalty for the Grievant's failure to obtain a valid driver's license.[61] Additionally, the Arbitrator ordered MPD to expunge the Grievant's record and pay his attorney fees, in accordance with Article 19(E), Section 5(7) of the CBA.[62] MPD seeks review of the Award.

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.[63] MPD requests review on the grounds that the Arbitrator exceeded his authority and the award is contrary to law and public policy.[64]

A. The Arbitrator did not exceed his authority.

When determining whether an arbitrator exceeded his authority in rendering an award, the Board analyzes whether the award "draws its essence from the parties['] collective bargaining agreement."[65] The relevant questions in this analysis are whether the arbitrator acted outside his 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.[66]

MPD does not dispute that the instant matter was committed to arbitration, pursuant to the parties' CBA. Thus, the issue is whether the Arbitrator was arguably construing or applying the CBA in resolving legal and factual disputes. MPD asserts that the Arbitrator exceeded his jurisdiction by considering the revised Table of Penalties Guide, which MPD argues post-dated

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[59] Award at 8.
[60] Award at 9.
[61] Award at 9.
[62] Award at 9.
[63] D.C. Official Code § 1-605.02(6).
[64] Request at 3, 9-10.
[65] *AFGE Local 2725 v. D.C. Housing Auth.*, 61 D.C. Reg. 9062, Slip Op. 1480 at 5, PERB Case No. 14-A-01 (2014).
[66] *Mich. Family Resources, Inc. v. Serv. Emp' Int'l Union, Local 517M*, 475 F.3d 746, 753 (2007), quoted in *FOP/DOC Labor Comm. v. DOC*, 59 D.C. Reg. 9798, Slip Op. 1271 at 7, PERB Case No. 10-A-20 (2012), and *D.C. Fire & Emergency Med. Servs. v. AFGE Local 3721*, 59 D.C. Reg. 9757, Slip Op. 1258 at 4, PERB Case No. 10-A-09 (2012).

the Grievant's charged misconduct.[67] MPD does not allege that the Arbitrator failed to construe or apply the CBA. The Board finds that the Arbitrator construed and applied the CBA throughout the Award.[68] Therefore, MPD's argument provides no basis for overturning the Award.

For the reasons stated, the Board finds that the Arbitrator did not exceed his authority.

B. The Award is not contrary to law.

MPD 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."[69] Furthermore, MPD has the burden to specify "applicable law and public policy that mandates that the Arbitrator arrive at a different result."[70] 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."[71]

MPD argues that the Award is contrary to law because it is inconsistent with *Brown-Carson*, a case in which the D.C. Court of Appeals established that "[a]n agency's interpretation of its own regulations or of the statute which it administers is generally entitled to great deference" from reviewing adjudicatory bodies.[72] General Order 301.01(A)(1)(a) mandates that "each member shall have in his/her possession, when operating a departmental vehicle, a valid operator's permit or license…."[73] The Arbitrator found that the licensure requirement only applies to police officers who operate departmental vehicles,[74] but MPD argues that it applies to all MPD officers, and asserts that *Brown-Carson* requires the Board to defer to MPD's interpretation.[75]

MPD's Request does not capture the entirely of the Court's holding in *Brown-Carson*. In its decision, the court established that there is an exception to the principle that reviewing adjudicatory bodies should defer to agency interpretations.[76] The court held that "when it appears that the agency…did not conduct 'any analysis of the language, structure, or purpose of the statutory provision,' '[i]t would be incongruous to accord substantial weight to [the] agency's interpretation.'"[77] The court in *Brown-Carson* cited the U.S. Supreme Court's holding in

[67] Request at 10.
[68] Award at 2, 5, 7-8.
[69] *FEMS v. AFGE, Local 3721*, 51 D.C. Reg. 4158, Slip Op. No. 728, PERB Case No. 02-A-08 (2004).
[70] *MPD v. FOP/MPD Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at 2, PERB Case No. 00-A-04 (2000).
[71] *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).
[72] Request at 10 (quoting *Brown-Carson v. D.C. Dep't of Emp. Servs.*, 159 A.3d 303, 307 (D.C. 2017)).
[73] General Order 301.01(A)(1)(a).
[74] Request at 10.
[75] Request at 10.
[76] *Brown-Carson*, 159 A.3d at 307.
[77] *Id.* (quoting *Proctor v. District of Columbia Dep't of Emp't Servs.*, 737 A.2d 534, 538 (D.C. 1999)).

Chevron that deference is only owed to the agency's interpretation where the statutory language is ambiguous; and the agency's interpretation is reasonable.[78]

In the instant case, the Arbitrator's interpretation of General Order 301.01(A)(1)(a) is consistent with the unambiguous clause, "when operating a department vehicle." Neither party disputes that the Grievant does not operate police vehicles in his current capacity. By contrast, MPD's interpretation of General Order 301.01(A)(1)(a) is unsupported by analysis and contradicts the plain language of that provision. Thus, pursuant to the standard established in *Brown-Carlson*, the Board is not obligated to defer to MPD's interpretation. Additionally, MPD's interpretation is unreasonable and therefore, is not owed deference under the *Chevron* standard.[79]

MPD also argues that the Award is contrary to law because it does not address the portion of Charge No. 1 which found that the Grievant violated General Order 201.26, Part V(B)(3).[80] That provision states that MPD officers must maintain a valid driver's license and establishes that "Members who are authorized to use MPD vehicles shall notify their Commanding Official, through the chain of command, immediately, but no later then [*sic*] the next scheduled tour of duty of any change in the status of their driver's license, including suspension or revocation."

Although the Arbitrator did not explicitly discuss General Order 201.26, Part V(B)(3), he acknowledged that MPD officers have previously been disciplined for failing to possess a valid driver's license.[81] Analysis of those prior disciplinary instances informed the Arbitrator's finding that the Grievant's termination constituted disparate treatment.[82] The fact that the Award did not directly cite General Order 201.26, Part V(B)(3) does not mean that the Arbitrator did not consider it. Moreover, the Board has established that an arbitration decision is not unenforceable merely because the arbitrator does not explain certain bases for that decision.[83]

For the reasons stated, the Board finds that the Award is not contrary to law.

C. 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." However, the

[78] *Id*. at n. 12 (citing *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 2779, 81 L. Ed. 2d 694 (1984)).
[79] MPD also briefly asserts the Award is contrary to 6-B DCMR § 873.2(b), which states that "[t]o be considered as a candidate for the position of Police Officer, an applicant shall…[p]ossess a valid driver's license." Request at 10-11. MPD's argument that 6-B DCMR § 873.2(b) applies to the Grievant's situation contravenes the plain language of the provision. The Grievant is not an applicant or candidate for the position of Police Officer. Thus, under *Brown-Carson* and *Chevron*, no deference is owed to MPD's interpretation of 6-B DCMR § 873.2(b).
[80] Request at 11.
[81] Award at 6.
[82] Award at 6.
[83] *FOP.MPD Labor Comm. and MPD*, 59 D.C. Reg. 11329, Slip Op. No. 1295 at 9, PERB Case No. 09-A-11 (2012).

D.C. Court of Appeals has held that the word "and" should be read as "or" in this statutory context.[84] As a result, the Board has adopted the court's interpretation.

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.[85] 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."[86] "[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.'"[87]

The Board will not overturn an arbitral award that reverses termination unless the award violates established public policy which is embodied in explicit law precluding the employee's reinstatement.[88] In the absence of such explicit law, determining whether an arbitral award violates public policy is a fact-specific inquiry.[89] The Board may look to several factors to determine whether an arbitral award violates public policy, including whether there is a longstanding practice of requiring the termination of similarly situated employees, the severity of the employee misconduct, the potential for employee rehabilitation, the employee's prior history of misconduct, the likelihood of repeat offense, the employee's amenability to discipline, whether an arbitral award reinstating an employee is conditioned on other forms of discipline, and other fact-specific mitigating factors.[90]

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[84] *MPD v. PERB*, No. 19-CV-1115, Mem. Op. & J. at 10-11 (D.C. Sept. 15, 2022).

[85] *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)).

[86] *Dist. of Columbia Metro. Police Dept. v. Dist. of Columbia Pub. Employee Relations Bd.*, No. 19-CV-1115, Mem. Op. & J. at 10-11 (D.C. Sept. 15, 2022) (quoting *Dist. of Columbia Metro. Police Dept. v. Dist. of Columbia Pub. Employee Relations Bd.*, 901 A.2d 784, 789 (D.C. 2006)).

[87] *MPD*, Slip Op. No. 1702 at 4.

[88] *MPD v. FOP/MPD Labor Comm.*, 70 D.C. Reg. 4123, Slip Op. No. 1833 at 8, PERB Case No. 18-A-04 (2023) (citing *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 58 (2000); *Dist. of Columbia Metro. Police Dept.*, 901 A.2d at 790; and *Fraternal Order of Police/Dept. of Corr. Labor Comm.*, 973 A.2d at 177).

[89] *See Stroehmann Bakeries, Inc. v. Local 776, Int'l Broth. of Teamsters*, 969 F.2d 1436, 1443 (3d Cir. 1992) (holding that violation of public policy is a fact-specific inquiry that depends on the severity of the misconduct, the degree of the employee's penitence after the misconduct and the employee's prior history of misconduct); *City of Highland Park v. Teamster Local Union No. 714*, 828 N.E.2d 311 (App. Ct. 2d Dist. 2005) (holding that while the reinstatement of an employee may violate public policy without transgressing positive law, "absent an explicit legal prohibition against the reinstatement, there must be some well-defined and dominant policy, not merely a value judgment or notion of the public interest, that implicitly forbids the employee's reinstatement").

[90] *See City of Aurora v. Association of Professional Police Officers*, 124 N.E.3d 558, 573 (Ill. App. Ct. 2d Dist. 2019) (finding persuasive the arbitrator's finding that a terminated officer was amenable to discipline, and the fact that the arbitrator fashioned an award that considered both seriousness of the officer's acts and mitigating circumstances, such as the officer's work history); *see also Washington County Police Officers' Ass'n v. Washington County*, 335 Or. 198, 63 P.3d 1167 (2003); *City of Minneapolis v. Police Officers' Federation*, 566 N.W.2d 83 (Minn. App. 1997).

MPD argues that the Award violates a dominant public policy requiring MPD to maintain a police force capable of performing its full range of duties without endangering public safety.[91] MPD asserts that pursuant to the D.C. Court of Appeals' holding in *Adgerson*, the full range of an MPD officer's duties includes "availab[ility] to be called into uniformed patrol duty at all times…."[92] Therefore, MPD argues, reinstating the Grievant without a license would leave him unable to exercise his full police powers, thereby damaging MPD's reputation and credibility.[93]

The D.C. Court of Appeals' decision in *Adgerson* does not establish a well-defined or dominant public policy to support the Grievant's termination. In *Adgerson*, the court considered whether the Police and Firefighters' Retirement and Relief Board (PFRRB) "reasonably interpreted [a] provision relating to involuntary disability retirement as requiring that an officer be able to perform the full range of duties safely and without an unacceptable risk to [the] officer and the public."[94] The court narrowly determined that PFRRB was permitted to consider whether an officer's permanent physical disability posed a safety risk which justified his involuntary retirement.[95] Unlike the officer in *Adgerson*, the Grievant can safely perform his full range of current duties, and need only acquire an additional qualification to safely drive a departmental vehicle. As MPD states in its Request, "there are no cases that deal directly with the public policy exception being applied in the context of an individual's qualifications to be a Police Officer."[96]

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

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.

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[91] Request at 13.
[92] Request at 15 (citing *Adgerson v. Police & Firefighters' Ret. and Relief Bd.*, 73 A.3d 985, 996 (D.C. 2013)).
[93] Request at 16.
[94] *Adgerson*, 73 A.3d at 985.
[95] *Adgerson*, 73 A.3d 985 (citing D.C. Code Ann. §§ 5-701, 5-709, and 5-710).
[96] Request at 14.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is denied.
2. Pursuant to Board Rule 559, 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.

May 16, 2024
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.