

II. Arbitration Award

A. Background

On August 19, 2019, MPD produced an incident summary sheet which found that an MPD officer (Grievant) was “potentially a target of a confidential criminal investigation,” including an allegation of “prejudicial conduct.”⁵ As a result, that same day, MPD placed the Grievant on non-contact duty status and revoked his police powers.⁶

On or about May 22, 2021, while still on non-contact duty status and without police powers, the Grievant witnessed gun shots “fired at another individual by unknown assailants” and took cover.⁷ Surveillance footage showed the Grievant “holding a silver weapon,” despite the Grievant’s lack of a license to carry a pistol in the District.⁸ “After MPD officers responded to the scene, the Grievant left without identifying himself as an officer. The incident resulted in a homicide.”⁹ On or about May 24, 2021, a Homicide Detective recognized the Grievant on surveillance footage.¹⁰ On or about June 4, 2021, MPD interviewed the Grievant regarding the homicide.¹¹ On or about June 24, 2021, unrelated to the homicide, the Grievant was federally indicted for bribery and making false statements.¹² On August 3, 2021, MPD created official Incident Summary (IS) numbers regarding the homicide.¹³ MPD initiated an adverse action process against the Grievant based on his conduct surrounding the homicide and investigation of the homicide.¹⁴ After an Adverse Action Panel found the Grievant guilty of all charges and unanimously recommended termination, MPD issued a Final Notice of Adverse Action on August 15, 2022.¹⁵ On August 30, 2022, the Grievant appealed the Notice to the Chief of Police, who denied the appeal on or about September 30, 2022.¹⁶ The Grievant’s employment with MPD was terminated.¹⁷

On October 20, 2022, the Union invoked arbitration.¹⁸ On January 8, 2024, the Arbitrator issued the Merits Award, which analyzed the Grievant’s lack of prior disciplinary issues under the

⁵ Merits Award at 7.

⁶ Merits Award at 7. The Merits Award defines non-contact duty status as: “member has been assigned to an MPD element with restricted contact with members of the public without police powers and no loss of salary.” Merits Award at 7. The revocation of police powers included revocation of the Grievant’s authority to carry a service weapon, make arrests, or perform any duty requiring the exercise of police powers. Merits Award at 7. However, the Grievant remained “subject to all MPD policies and procedures” while in non-contact duty status. Merits award at 7.

⁷ Merits Award at 7.

⁸ Merits Award at 7. Ultimately, the U.S. Attorney’s Office declined to prosecute the Grievant for possession of a firearm and informed MPD that the charge could not be established beyond a reasonable doubt. Merits Award at 8.

⁹ Merits Award at 7.

¹⁰ Merits Award at 7-8.

¹¹ Merits Award at 8.

¹² Merits Award at 8.

¹³ Merits Award at 8.

¹⁴ Merits Award at 8-9.

¹⁵ Merits Award at 9.

¹⁶ Merits Award at 9.

¹⁷ Merits Award at 9.

¹⁸ Merits Award at 9.

*Douglas*¹⁹ factors. The Arbitrator declined to consider the Grievant's federal indictment as an aggravating factor,²⁰ noting that "indictment...is not a conviction, and it is not appropriate...to make any negative inference as to the Grievant's ability to be rehabilitated or the appropriateness of alternative sanctions in light of the indictment."²¹ However, the Arbitrator included a footnote stating that "[a]ny intervening conviction *may*, of course, impact remedy."²²

The Merits Award ordered MPD to convert the Grievant's termination to a sixty (60) calendar day suspension without pay, reinstate the Grievant, and make him whole less the period of suspension.²³ The Arbitrator retained jurisdiction over the Merits Award "for the exclusive purpose of resolving any issue(s) pertaining to the order of remedy in this matter."²⁴ The Arbitrator noted that "[i]t is within the discretion of the Arbitrator to determine whether the issue(s) presented by the party or parties is within the jurisdiction of this provision pertaining to the retention of the Arbitrator's jurisdiction."²⁵

On January 11, 2024, a jury entered guilty verdicts against the Grievant for violations of 18 U.S.C. § 371, conspiracy, 18 U.S.C. § 201(b)(2)(C), and 18 U.S.C. § 1001, false statement.²⁶ On January 26, 2024, MPD emailed the Arbitrator a request that she reconsider the remedy in the Merits Award in light of the Grievant's conviction.²⁷ The same day, the Union replied objecting to any reopening or reconsideration of the Merits Award.²⁸ On January 29, 2026, the Arbitrator declined to reconsider the remedy, noting her consideration of MPD's request, the Union's opposition, and the doctrine of *functus officio*.²⁹ The same day, MPD filed an arbitration review request of the Merits Award (Merits Request).³⁰

On May 16, 2024, the Board—considering the Arbitrator's retention of jurisdiction regarding remedy and footnoted statement that conviction might impact remedy—granted the Merits Request and issued Opinion No. 1873, remanding the Merits Award to the Arbitrator for consideration of the remedy in light of the Grievant's subsequent conviction.³¹ On May 30, the Union filed its Motion for Reconsideration of Opinion No. 1873.³² On August 20, 2024, the Board

¹⁹ *Douglas v. Veterans Administration*, 5 MPR 280 (1981). In *Douglas*, 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.

²⁰ Merits Award at 28.

²¹ Merits Award at 28.

²² Merits Award at 28 (fn. 3) (emphasis added). The Arbitrator determined that "the large majority [of the *Douglas* factors] are mitigating and neutral," Merits Award at 28, and therefore "MPD's penalty of termination exceeds the tolerable limits of reasonableness." Merits Award at 28.

²³ Merits Award at 30.

²⁴ Merits Award at 30.

²⁵ Merits Award at 30.

²⁶ *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1873 at 9.

²⁷ 24-A-05 Motion for Reconsideration at 3 (citing Opposition Ex. 1, email exchange between the parties and the Arbitrator at 2).

²⁸ Opposition Ex. 1 at 1.

²⁹ Opposition Ex. 1 at 1.

³⁰ *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1873 at 1.

³¹ *Id.* at 9.

³² *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1882 at 1.

denied the Motion for Reconsideration and affirmed its decision to remand this matter to the Arbitrator.³³ On October 20, 2025, the Arbitrator issued the Remand Award to the parties, denying MPD's request for reevaluation of the Merits Award based on the Grievant's conviction.³⁴ On November 20, 2025, MPD filed the instant Request with PERB.

B. Arbitrator's Findings

The Arbitrator originally considered the following issues:

- (1) Whether the Department instituted adverse action against [the Grievant] in violation of D.C. Code § 5-1031 ("the 90-day rule")?
- (2) Whether there was sufficient evidence to sustain the charges against [the Grievant]?
- (3) Whether termination is an appropriate penalty?³⁵

The Arbitrator found in MPD's favor on the first and second issue.³⁶ However, the Arbitrator reviewed MPD's application of the *Douglas* factors to the disciplinary action proposed against the Grievant and found that termination was not an appropriate penalty.³⁷ The Arbitrator reduced the penalty to a sixty (60)-day suspension.³⁸

In the Remand Award, the Arbitrator found that while the Board specifically remanded the Merits Award back for "a finding on remedy," MPD's brief on remand "did not argue or assert that reinstatement was not possible in light of the conviction and/or incarceration of the Grievant or make any other argument implicating the remedial jurisdiction of the Arbitrator," but rather asserted that the "Arbitrator must change her analysis of the merits."³⁹ The Arbitrator noted that changing her analysis of the merits was "neither ethically permissible nor warranted. As conveyed to the parties in January, 2024, the Arbitrator is *functus officio* as to the merits."⁴⁰ The Arbitrator found the Union's argument that "MPD had already begun the process to discipline the Grievant for matters related to the Grievant's conviction prior to submission of the parties' briefs on remand" compelling.⁴¹ The Arbitrator concluded that the "adjudication of the subsequent, unrelated conviction [is] best handled through the processes already established and in which the parties were already engaged."⁴²

³³ *Id.* at 3.

³⁴ Remand Award at 10-11.

³⁵ Merits Award at 2.

³⁶ Merits Award at 29.

³⁷ Merits Award at 29.

³⁸ Merits Award at 30.

³⁹ Remand Award at 10.

⁴⁰ Remand Award at 10.

⁴¹ Remand Award at 10.

⁴² Award at 10-11.

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 their 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.⁴³ MPD requests review on the grounds that the Remand Award is contrary to law and public policy.⁴⁴

IV. The Remand Award is not contrary to law.

MPD bears the burden of demonstrating that the Remand Award itself violates established law or compels an explicit violation of “well defined public policy grounded in law and or legal precedent.”⁴⁵ Furthermore, MPD has the burden to specify “applicable law and public policy that mandates that the Arbitrator arrive at a different result.”⁴⁶ 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.”⁴⁷

MPD asserts that the Remand Award is contrary to law because: (1) the Arbitrator failed to properly apply *Stokes v. District of Columbia*;⁴⁸ (2) the Arbitrator failed to “conduct a full review of the penalty,” therefore contravening the Board’s remand order;⁴⁹ and (3) the Arbitrator misapplied the *Douglas* factors and instituted a “random penalty.”⁵⁰

These arguments are unavailing. As noted by the Union, the Board has repeatedly held that *Stokes* is not the correct standard to apply to an arbitrator’s review of agency decisions when the parties have agreed to submit the case to arbitration.⁵¹ The Board has previously affirmed an arbitrator’s decision reducing a police officer’s penalty from termination to suspension. The Superior Court has held that the Board reasonably found that an arbitrator was not bound by the

⁴³ D.C. Official Code § 1-605.02(6).

⁴⁴ Request at 3.

⁴⁵ *FEMS v. AFGE, Local 3721*, 51 D.C. Reg. 4158, Slip Op. No. 728, PERB Case No. 02-A-08 (2004).

⁴⁶ *MPD v. FOP/MPD Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at 2, PERB Case No. 00-A-04 (2000).

⁴⁷ *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). MPD attempts to reassert its arguments presented in its Merits Award review request. Request at 5, fn. 3. The Board will not consider or incorporate arguments from a past case decided over a year ago. The Board remanded the Merits Award to the Arbitrator for consideration of the *remedy only*. Arguments regarding the merits are untimely and irrelevant to the discussion of the Arbitrator’s determination regarding her jurisdiction to reevaluate the ordered remedy. *See, generally, MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1873; *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1882; Board Rule 538.1, which states: “A party to a grievance arbitration proceeding who is aggrieved by the arbitration award may file with the Board a request for review of the award no later than twenty-one (21) days after service of the award.”

⁴⁸ Request at 6 (citing *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985)).

⁴⁹ Request at 7 (citing *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1873; *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1882).

⁵⁰ Request at 7-8.

⁵¹ Opposition at 8 (citing *MPD v. FOP/MPD Labor Comm.*, 65 D.C. Reg. 7468, Slip Op. No. 1667 at 3, PERB Case No. 18-A-04 (2018)).

standards that apply to the Office of Employee Appeal’s review of agency decisions set forth in *Stokes*. As the Board has previously established, an arbitrator’s authority does not arise from *Stokes*, but from the parties’ contractual agreement to submit the case to arbitration.⁵²

The Board’s remand order in Opinion 1873 directed the Arbitrator to consider “the reinstatement remedy in light of the Grievant’s subsequent conviction.”⁵³ The Arbitrator provided a well-reasoned analysis of the parties’ briefs on remand and determined that: (1) MPD had made arguments requesting reevaluation of the merits only, on which the Arbitrator is *functus officio*; and (2) that the Grievant’s conviction in an unrelated matter—which is already the subject of a separate disciplinary proceeding—does not compel reevaluation of the order of reinstatement.⁵⁴ The Arbitrator thoroughly reviewed the *Douglas* factors in the Merits Award⁵⁵ and asserted well-reasoned determinations to support the conclusion that reevaluation of the remedy under the circumstances was inappropriate.⁵⁶ By agreeing to arbitrate, parties bargain for an arbitrator’s interpretation of the law, not the Board’s.⁵⁷ The Board may not modify or set aside an award as contrary to law in the absence of a clear violation on the face of the award.⁵⁸ The Board does not find such a clear violation in the Remand Award.

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

V. The Remand 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 public policy exception is an “extremely narrow” exception to the rule that reviewing bodies must defer to an arbitrator’s interpretation of a contract.⁵⁹ 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.”⁶⁰ “[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of ‘public

⁵² See *MPD v. FOP/MPD Labor Comm.*, 65 D.C. Reg. 7468, Slip Op. No. 1667 at 3, PERB Case No. 18-A-04 (2018) (affirming that while *Stokes* establishes the deferential standard by which the Office of Employee Appeals reviews penalties imposed on employees by District agencies, it is not the correct standard to apply to an arbitrator’s review of agency decisions when the parties have agreed to submit the case to arbitration).

⁵³ *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1873 at 9.

⁵⁴ Remand Award at 9-10.

⁵⁵ Merits Award at 23-28.

⁵⁶ Merits Award at 28-29.

⁵⁷ *MPD v. FOP/MPD Labor Comm.*, 70 D.C. Reg. 4123, Slip Op. No. 1833 at 9, PERB Case No. 18-A-04 (2023).

⁵⁸ *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1865 at 9, PERB Case No. 24-A-01 (2024)

⁵⁹ *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)).

⁶⁰ *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)).

policy.”⁶¹ The petitioning party has the burden to specify “applicable law and definite public policy that mandates that the Arbitrator arrive at a different result.”⁶² By agreeing to arbitrate, the parties bargain for an arbitrator’s interpretation of the law, not the Board’s.⁶³

MPD generally asserts that the Remand Award is contrary to public policy.⁶⁴ However, MPD does not specifically allege a violation of any well-defined and dominant public policy backed by legal precedent which would mandate a different result.⁶⁵ Rather, MPD asserts that the Remand Award violates a general policy “requiring police officers to preserve the peace, protect life, and uphold the law” by ordering the reinstatement of a convicted felon.⁶⁶ However, as noted by the Union, the Board has repeatedly rejected the argument that general tenets on “how police officers should conduct themselves”⁶⁷ provide sufficient grounds to overturn an award on public policy grounds.⁶⁸

Therefore, the Board finds that the Remand Award is not contrary to public policy.

VI. Conclusion

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

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is denied; and
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 Members Renee Bowser, Mary Anne Gibbons and Douglas Warshof.

February 19, 2026
Washington, D.C.

⁶¹ *MPD*, Slip Op. No. 1702 at 4.

⁶² *MPD v. FOP/MPD Labor Comm.*, 62 D.C. Reg. 9178, Slip Op. No. 1516 at 3, PERB Case No. 14-A-12 (2015).

⁶³ *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1833 at 5 (citing *Dist. Of Columbia Metro. Police Dep’t v. Dist. Of Columbia Pub. Employee Relations Bd.*, 282 A.3d 598 at 604 (D.C. 2022)).

⁶⁴ Request at 9-10.

⁶⁵ Request at 9-10.

⁶⁶ Request at 9.

⁶⁷ Opposition at 14.

⁶⁸ *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 873, Slip Op. No. 1688 at 4, PERB Case No. 18-A-14 (2019); *see also MPD v. FOP/MPD Labor Comm.*, 68 D.C. Reg. 5078, Slip Op. No. 1784 at 8, PERB Case No. 21-A-08 (2021); *MPD v. FOP/MPD Labor Comm.*, Slip Op. No. 1865 at 11.

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.