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

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| In the Matter of:   | ) |                       |
|   | ) |                       |
| Fraternal Order of Police/<br>Metropolitan Police Department<br>Labor Committee | ) |                       |
|   | ) | PERB Case No. 19-A-09 |
| Petitioner  | ) |                       |
|   | ) | Opinion No. 1725      |
| v.  | ) |                       |
|   | ) |                       |
| Metropolitan Police Department  | ) |                       |
|   | ) |                       |
| Respondent  | ) |                       |

**DECISION AND ORDER**

**I. Statement of the Case**

On August 14, 2018, the District of Columbia Metropolitan Police Department (MPD) filed an Arbitration Review Request of an arbitration award (Award) that sustained the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP).<sup>1</sup> The Arbitrator found that MPD failed to timely commence an adverse action against Officer Brian Glover (Grievant) within ninety (90) days of when MPD knew or should have known of the Grievant’s alleged misconduct, in violation of D.C. Official Code § 5-1031(a) (90-day rule). On March 21, 2019, the Board issued a Decision and Order (Opinion No. 1702) granting MPD’s Arbitration Review Request and remanded the case to the Arbitrator.<sup>2</sup> On May 27, 2019, the Arbitrator issued an award on remand (Remand Award) in compliance with the Board’s Order in Opinion No. 1702. On June 14, 2019, FOP filed this Arbitration Review Request (Request) and asserts that the Remand Award is, on its face, contrary to law and public policy.<sup>3</sup>

In accordance with D.C. Official Code § 1-605.02(6), the Board is permitted to modify, set aside, or remand an arbitration award in three narrow circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award, on its face, is contrary to law and

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<sup>1</sup> Request at 2.

<sup>2</sup> *MPD v. FOP/MPD*, 66 D.C. Reg. 6056, Slip Op. No. 1702, PERB Case No. 18-A-17 (2018).

<sup>3</sup> Request at 9.

public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.<sup>4</sup>

Having reviewed the Arbitrator's conclusions, the pleadings of the Parties and applicable law, the Board concludes that the Award is not, on its face, contrary to law and public policy. For the reasons stated herein, the Board denies FOP's request.

## II. Background and Arbitration's Award

As discussed in Opinion No. 1702, FOP invoked arbitration in this matter after MPD's Adverse Action Panel found the Grievant guilty of four charges of misconduct and recommended termination as the appropriate penalty.<sup>5</sup> The Arbitrator found that MPD violated D.C. Official Code § 5-103 (90-day rule). Based on this finding, the Arbitrator reversed the Grievant's termination, which resulted in MPD filing an arbitration review request of the award.<sup>6</sup>

In Opinion No. 1702, the Board found that the Arbitrator stopped the tolling for the 90-day rule prior to the conclusion of the criminal investigation. The Board concluded that the Arbitrator's interpretation conflicted with the statute, and that the award was contrary to law and public policy.<sup>7</sup> The Board set aside the Arbitrator's determination that MPD violated the 90-day rule, and stated, "The Board finds that the disciplinary action was timely."<sup>8</sup> The Board then remanded the award back to the Arbitrator for a decision on (1) whether the evidence presented by MPD was sufficient to support the charges, and (2) whether termination was the appropriate penalty for the alleged violations.<sup>9</sup>

On remand, the Arbitrator found, in accordance with Opinion No. 1702, that MPD timely served the Notice of Proposed Adverse Action.<sup>10</sup> The Arbitrator went on to find that the Adverse Action Panel did have substantial and sufficient evidence for a charge of guilty for one of the four charges against the Grievant. The Grievant also pled guilty to another charge. After a review of the *Douglas* factors, the Arbitrator found that a penalty of discharge was appropriate, warranted, and supported by substantial and sufficient facts.<sup>11</sup>

## III. Discussion

The Board concludes that FOP has not asserted grounds for finding that the Remand Award is contrary to law and public policy. In its Request, FOP argues that the Remand Award should be overturned, because the Arbitrator did not analyze whether the 90-day rule had been

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<sup>4</sup> D.C. Official Code § 1-605.02(6).

<sup>5</sup> *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6056, Slip Op. No. 1702 at 2, PERB Case No. 18-A-17 (2018).

<sup>6</sup> Award at 16.

<sup>7</sup> Award at 16.

<sup>8</sup> *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6056, Slip Op. No. 1702 at 6, PERB Case No. 18-A-17 (2018).

<sup>9</sup> *Id.*

<sup>10</sup> Remand Award at 11.

<sup>11</sup> Remand Award at 25.

violated and that MPD failed to meet its burden that a criminal investigation tolled the 90-day rule.<sup>12</sup>

MPD asserts that both of FOP's arguments are collaterally estopped, based on the Board's Decision and Order in Opinion No. 1702.<sup>13</sup> MPD argues that the Board made a finding that MPD timely proposed the adverse action and that the Board may not reconsider it now.<sup>14</sup>

The Board may not modify or set aside an award as contrary to law and public policy in the absence of a clear violation on the face of the award.<sup>15</sup> FOP has the burden to demonstrate that the Remand Award itself violates established law or compels an explicit violation of a "well-defined public policy grounded in law or legal precedent."<sup>16</sup> FOP has not cited any law or public policy that mandates that the Arbitrator arrive at a different result. Instead, FOP argues that the Arbitrator acted contrary to law and public policy by following the Board's Decision and Order in Opinion No. 1702.

The Board rejects FOP's argument. FOP failed to appeal the Board's finding that MPD timely initiated disciplinary action in Opinion No. 1702, when FOP did not seek reconsideration of the Board's Decision and Order or appeal the decision to Superior Court. The Board concludes that FOP waived its right to appeal the Board's finding in Opinion No. 1702, and cannot raise it before the Board in its arbitration review request.

#### **IV. Conclusion**

The Board finds no grounds to modify, set aside, or remand the Remand Award. Accordingly, FOP's Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

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<sup>12</sup> Request at 14.

<sup>13</sup> Opposition at 2.

<sup>14</sup> Opposition at 4.

<sup>15</sup> *FOP/Dep't of Corr. Labor Comm. v. PERB*, 973 A.2d 174, 177 (D.C. 2009).

<sup>16</sup> *APWU, AFL-CIO v. USPS*, 789 F.2d 1, 8 (D.C. Cir. 1986).

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairperson Charles Murphy and Board Members Ann Hoffman, Mary Anne Gibbons, and Douglas Warshof.

September 15, 2019

Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 19-A-09, Op. No. 1725 was sent by File and ServeXpress to the following parties on this the 18<sup>th</sup> day of September, 2019.

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