Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Housing Authority Petitioner	PERB Case No. 24-A-17 Opinion No. 1912
v.	
American Federation of Government Employees, Local 2725 Respondent	

DECISION AND ORDER

I. Statement of the Case

On September 25, 2024, the District of Columbia Housing Authority (DCHA) filed an arbitration review request (Request), seeking review of an arbitration award (Award) dated September 4, 2024, pursuant to the Comprehensive Merit Personnel Act (CMPA).[1] The Award ordered DCHA to reinstate a Lead Relocation Coordinator (Grievant) who was terminated for fraud, falsification of records, destruction of DCHA property, and ethical violations, among other offenses.[2] The Award further directed DCHA to grant the Grievant backpay and attorney fees.[3]

In its Request, DCHA asks the Board to reverse the Award on the grounds that the Arbitrator exceeded her authority, the Award is contrary to law and public policy, and the Arbitrator misapplied the parties' Collective Bargaining Agreement (CBA).[4] The American Federation of Government Employees, Local 2725 (AFGE) filed an Opposition, including a request for reasonable costs and attorney fees incurred from litigating this matter.[5]

Upon consideration of the Arbitrator's conclusions, applicable law, and the record presented by the parties, the Board finds that the Arbitrator did not exceed her authority, and the

[1] D.C. Official Code § 1-605.02(6).
[2] Award at 2-3, 21.
[3] Award at 21.
[4] Request at 3-4.
[5] Opposition at 16.

Award is not contrary to public policy. Concerning DCHA's argument that the Arbitrator misapplied the CBA, such claims do not provide a basis for overturning an arbitration award. However, solely with respect to the Arbitrator's determination that DCHA violated the Grievant's constitutional right to substantive Due Process, the Board finds that the Award is contrary to law.

Therefore, the Request is granted in part and denied in part.

II. Background

The Arbitrator made the following factual findings. On March 31, 2014, the Grievant began her employment as a Lead Relocation Coordinator for DCHA, within the Housing Choice Voucher Program (HCVP).[6] "Her duties included providing relocation assistance to eligible families and/or individuals."[7] The Grievant also led DCHA's Rise at Temple Courts Project (Rise),[8] an affordable housing development in northwest D.C.[9] Prior to the events which resulted in her termination, the Grievant did not have any disciplinary history.[10]

The Grievant's job duties included creating and maintaining a spreadsheet which listed approved applicants for the HCVP.[11] Among the individuals approved for Rise apartments were two of the Grievant's friends, whom she frequently visited in their new accommodations.[12] When DCHA learned of these approvals, it concluded that neither friend was qualified for the program and found they had inexplicably managed to skip over 40,000 other applicants, completing the approval process in only two weeks.[13] DCHA became suspicious that the Grievant had engaged in housing voucher fraud.[14] As a result, in or around January of 2023, the DCHA Office of Audit and Compliance (OAC) conducted a three (3)-week investigation into the Grievant's conduct.[15] During the investigation, OAC collected evidence and interviewed employees of the management company, as well as the Grievant's colleagues.[16]

The investigation culminated in an Audit Report which found that the Grievant had committed the following offenses: (1) fraudulently securing appointment or falsifying official records where property funds were misused (not for personal gain); (2) fraudulently securing appointment or falsifying official records where property funds were misused; (3) failing to

[6] Award at 2.
[7] Initial Award at 2.
[8] Initial Award at 2.
[9] *Mayor Bowser and DC Housing Authority Leaders Cut the Ribbon on Long-Awaited Northwest One*, DC.gov (March 31, 2025, 2:31 p.m.), https://dc.gov/release/mayor-bowser-and-dc-housing-authority-leaders-cut-ribbon-long-awaited-northwest-one.
[10] Award at 20.
[11] Award at 6-7.
[12] Award at 6-8. These visits were so frequent that the management company which owned the Rise relayed to DCHA its suspicion that the Grievant was living in one of the subsidized units without approval. Award at 7. However, the Arbitrator did not find an evidentiary basis for that claim.
[13] Award at 7.
[14] Award at 7.
[15] Award at 2.
[16] Award at 7.

satisfactorily and efficiently perform major duties of the Lead Relocation Coordinator position; (4) dishonestly misusing funds or property acquired through the Lead Relocation Coordinator position (whether or not for personal gain); (5) misusing, mutilating, or destroying DCHA property, public records, or funds, or using government property, facilities or labor for nonofficial business; (6) misusing, mutilating, or destroying DCHA property, public records, or funds, or concealing, misusing, removing, mutilating, altering, or destroying government property, public records, or funds; and (7) violating the DCHA Standards of Ethical Conduct, including but not limited to those set forth in the CBA.[17]

The Deciding Official, Senior Vice President of the HCVP, adopted the OAC Audit Report.[18] On January 30, 2023, DCHA issued the Grievant a Notice of Disciplinary Action, including a Removal Letter which stated that she would be terminated from her position, based on the seven (7) reasons listed in the OAC Audit Report.[19] In sum, DCHA found that "the Grievant abused her position, misused governmental funds and property, gave her friends preferential treatment, committed apparent voucher fraud, engaged in apparent conflicts of interest, and committed ethical violations, indicating that she could not be trusted."[20]

On March 29, 2023, AFGE submitted a Step 3 grievance on the Grievant's behalf.[21] This grievance was sent to DCHA's then Employee Relations Manager, who resigned on April 7, 2023.[22] The DCHA Executive Director was delegated as his proxy, but did not meet with the Grievant or issue a decision on the Step 3 grievance.[23] The matter was referred to an Arbitrator through the Federal Mediation and Conciliation Services.[24] DCHA filed a Motion to Dismiss (Motion), asserting that the matter was inarbitrable because AFGE never received an unsatisfactory Step 3 decision, as required under the CBA.[25] On January 5, 2024, the Arbitrator issued an initial arbitration award (Initial Award), denying the Motion on the basis that DCHA was responsible for the lack of resolution concerning the Step 3 grievance.[26] An arbitration hearing was held on January 24, 25, 29, and February 5, 2024.[27] On September 4, 2024, the Arbitrator issued another arbitration award (Award).[28]

[17] Award at 2-3.
[18] Award at 3.
[19] Award at 2-3.
[20] Award at 8.
[21] Award at 3.
[22] Award at 3.
[23] Award at 3.
[24] Initial Award at 3.
[25] Initial Award at 4; Award at 3.
[26] Initial Award at 8; Award at 3.
[27] Award at 3.
[28] Award at 21.

III. Arbitrator's Findings

At arbitration, each party submitted its own list of issues for consideration.[29] DCHA submitted the following issues to the Arbitrator:

> Whether or not DCHA has cause for removal? If so,
>
> (1) Is there a nexus between the misconduct and the ability of the employee and the Agency to perform?
>
> (2) Did the Agency have just cause based on the CBA's Table of Penalties?[30]

AFGE submitted the following issues to the Arbitrator:

> (1) Did the Agency violate the Grievant's Right to Due Process when it did not respond to or otherwise consider her Step 3 grievance before terminating her?
>
> (2) Did the agency violate the Grievant's Right to Due Process when it failed to specify in its Removal Letter which causes brought against her related to the specific findings made in the Audit Report?
>
> (3) Did the Agency violate Article (C)(1)(e)(8) of the Agreement when it introduced evidence at the Arbitration that was not provided to [the Grievant] along with her disciplinary action?
>
> (4) Did the Agency prove by clear and convincing evidence that the Grievant committed "Apparent Voucher Fraud"?
>
> (5) Did the Agency prove by a preponderance of the evidence that the Grievant committed the misconduct alleged in the Audit Report's Other Findings?
>
> (6) Did the Agency's penalty exceed the bounds of Reasonableness?[31]

The Arbitrator reviewed Articles 9 and 10, as well as Appendix A of the CBA. The Arbitrator also reviewed Chapter 14, Section 7136 of the District of Columbia Municipal Regulations (DCMR). In relevant part, those provisions read as follows:

[29] Award at 3-4.
[30] Award at 3.
[31] Initial Award at 2; Award at 3-4.

Article 9 Grievance Procedure
Section D-Procedural Steps
3. (Step 3)
   a. If the grievance remains unsettled, the Union, with or without the employee, shall submit it to the Executive Director within ten (10) work days following receipt of the Step 2 response.
   b. Within fifteen (15) work days following receipt of the Step 3 grievance, the Executive Director or his/her designee shall meet with the aggrieved employee's representative to attempt to resolve the grievance.
   c. The Executive Director shall respond in writing to the employee and his/her representative within seven (7) work days following the Step 3 meeting. If the employee is not being represented by the Union, the Executive Director must send a copy of the Step 3 response to the Union within ten (10) work days of the Step 3 meeting.
4. (Step 4)
   a. The Union may appeal an unresolved grievance to Arbitration after receipt of an unsatisfactory Step 3 Decision.[32]
   b. Within fifteen (15) work days following receipt of the Step 3 grievance, the Executive Director or his/her designee shall meet with the aggrieved employee's representative to attempt to resolve the grievance.[33]

Article 10 Discipline
Section C-Principles of Discipline
1. Administration
   e. The Table of Appropriate Penalties provides a range of penalties appropriate for an offense. The DCHA shall not be restricted absolutely by the range of penalties as provided. An infraction or offence which is not listed may be the basis for a disciplinary action if it is shown to be an instance of one or more of the causes listed in the Table of Appropriate Penalties, subject to the following:
      8. The material upon which a disciplinary action is based, and which is relied upon to support the action, including witness statements, [documents], and reports of investigations or extracts there-from, shall be assembled and given to the employee and the employee's representative, along with the disciplinary action. Material which [cannot] be disclosed to the employee, the employee's representative, or the employee's designated [physician] shall not be used to support the disciplinary action. The disciplinary action shall inform the employee of his or her right to file a grievance in accordance with the provisions of Article 9 of this Agreement. A copy of the disciplinary

[32] Initial Award at 3; Award at 4-5.
[33] Award at 13.

action and all supporting documents shall be provided to the Union on or before the date that it is provided to the employee.[34]

APPENDIX A: TABLE OF APPROPRIATE PENALTIES

PENALTIES			
OFFENSE OR INFRACTION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
1. Fraud is securing appointment or falsification of official records:			
c. Other falsification of material facts by omission, or by making a false entry, in official documents or records where property or funds are misused, but not for personal gain.	Suspension for 14 to 28 days	Suspension for 28 days or Removal	Removal
d. Other falsification of material facts by omission, or by making a false entry in official documents or records where property or funds removal are not missed.	Suspension for 7 to 14 days	Suspension for 28 days or removal	Removal
3. Inefficiency:			
a. Negligent or careless work performance	Reprimand to suspension for 14 days	Suspension for 14 to 28 days	Removal
h. Failure to satisfactorily perform one or more major duties	Reprimand to suspension for 14 days	Removal	Removal

[34] Award at 5.

of his or her position.			
6. Dishonesty:			
d. Misuse, whether or not for personal gain, of government, funds or property which come into the employee's possession by reason of his or her official position.	Suspension for 14 days to Removal	Removal	Removal
14. Misuse, mutilation, or destruction of district property, public records, or funds:			
c. Use of, or authorizing use of, government property, facilities, or labor for other than official business.	Suspension for 14 to 28 days	Removal	Removal
d. Concealment, misuse, removal, mutilation, alteration, or destruction of government property, public records, or funds.	Suspension for 14 to 28 days	Removal	Removal
18. Misuse of official position or unlawful coercion of an employee for personal gain or benefit:			
c. Any use of one's official position for personal gain, including gain for family, prohibited by the conflict of interest provisions *D.C. Official*	Removal	Removal	Removal[35]

[35] Award at 5-6.

Code, Title I, Chapter 6 (2001).			

D.C. Municipal Regulations
Title 14. HOUSING
DISTRICT OF COLUMBIA HOUSING AUTHORITY (DCHA)
PERSONNEL POLICY AND PROCEDURE MANUAL

7136.9 Employees are not permitted to accept any gratuities, favors, gifts or special considerations, regardless of their value, from tenants, contractors, vendors or any others doing business with the Authority.

7136.11 Except with reasonable justification, or in the performance of assigned duties or in an emergency, employees are not permitted to enter public housing apartments during working hours.[36]

The Arbitrator established that DCHA had the burden of demonstrating, by a preponderance of the evidence, that the Grievant committed the alleged conduct and caused the Agency to lose subsidy funds by processing her friends' housing voucher applications for the Rise.[37] The Arbitrator noted that to prevail on its claims, DCHA must show a vital nexus between the Grievant's conduct and inefficiency of the Agency's service.[38]

At arbitration, DCHA argued that the Grievant's actions demonstrated she was untrustworthy and unfit to remain in her position.[39] DCHA contended that her actions violated DCHA's Ethical Standards Policy, Section A.7; Appendix A, Sections 6(d) (Dishonesty) and Section 14(c) of the CBA (Mis-authorization of Government Property); and 14 DCMR § 7136.3.[40] Before the Arbitrator, DCHA presented evidence in support of its position, including key fob records, videos, a Resident Interest Tracker list, and the Grievant's spreadsheet of approved HCVP applicants.[41] DCHA argued that this evidence demonstrated the Grievant's conflict of interest and showed that she had abused a key fob, improperly used a tenant's address for personal purposes, approved ineligible vouchers, falsified records, failed to complete inspections, misused government funds, and impermissibly granted preferential treatment to her friends.[42] DCHA asserted that the Grievant's friends were ineligible for the subsidized housing they received

[36] Award at 6.
[37] Award at 21.
[38] Award at 21.
[39] Award at 6-7.
[40] Award at 8. The Arbitrator did not explicitly review 14 DCMR § 7136.3. That provision reads: "There is an actual conflict of interest whenever a private interest (financial or non-financial) might cause an employee to perform official duties in a way other than if the employee did not have the private interest. There is an appearance of a conflict of interest whenever a reasonable person might suspect that the private interest would affect the employee's performance of duties."
[41] Award at 7.
[42] Award at 7-8.

because they were not District residents, they were not listed on the Resident Interest Tracker list, and they lacked the requisite leasing history.[43]

DCHA further contended that a nexus existed between the Grievant's misconduct and inefficient Agency service.[44] DCHA noted that the Agency's "crucial function is to provide homes to people in need who qualify for public subsidies," and argued that the Grievant had intentionally granted subsidized housing to unqualified individuals, thereby eroding public trust in DCHA and providing inefficient Agency service.[45] Thus, DCHA asserted, there was just cause for the Grievant's termination and the Arbitrator should deny the grievance.[46]

At arbitration, AFGE contended that DCHA had committed harmful error, deprived the Grievant of Due Process, and violated Article 9, Section D(3)(a) and (b) (Grievance Procedure) of the CBA by failing to consider or respond to her Step 3 grievance and by terminating her based solely on the OAC Audit Report.[47] Additionally, AFGE argued that DCHA violated Due Process and Article 10(C)(1)(e)(8) (Discipline) of the CBA by failing to provide the Grievant with all the evidence used to support her termination, including the version history for the approved applicant spreadsheet.[48] AFGE contended that the version history would show who made entries to the spreadsheet and when.[49]

Additionally, AFGE asserted that the Grievant was not responsible for her friends' housing approval because even if she entered their names in the approved applicant spreadsheet, checks and balances would have prevented her from unilaterally granting them housing vouchers for the Rise.[50] Specifically, AFGE argued that the Relocation Team determines whether applicants are program-compliant; the Eligibility Continued Occupancy Division (ECOD) assesses whether applicants are income-compliant; and the Quality Assurance Team certifies this information, all without the Grievant's involvement.[51]

Lastly, AFGE contended that the Grievant's frequent visitations to her friends' apartments did not constitute misconduct or demonstrate a conflict of interest, as neither DCHA nor the Rise management company have placed limits on the number or frequency of visitors each resident is permitted to receive.[52] AFGE further stated that 14 DCMR § 7136.11 does not apply to the Rise, as the building is privately owned.[53] Thus, AFGE argued, the Grievant was not prohibited from visiting the Rise during working hours.[54]

[43] Award at 8.
[44] Award at 9.
[45] Award at 9.
[46] Award at 9.
[47] Award at 9-10.
[48] Award at 10-11.
[49] Award at 11.
[50] Award at 10-11.
[51] Award at 11.
[52] Award at 11.
[53] Award at 12.
[54] Award at 12.

Regarding relief, AFGE requested that the Arbitrator order DCHA to "reverse the Agency's decision to remove the Grievant from service and, in lieu of reinstatement, award front pay."[55] AFGE also requested that the Arbitrator award back pay, with interest, and "reasonable attorney fees directly associated with the appeal of the Agency's removal action."[56]

The Arbitrator found that DCHA violated Article 9, Section D(3)(a) and (b), as well as Section (D)(4)(a) and (b) (Grievance Procedure) of the CBA by failing to consider or respond to the Step 3 grievance or the Preliminary Statement submitted therewith.[57] The Arbitrator observed that although the Employee Relations Manager received that grievance prior to his resignation, he failed to respond to it and the Director never assumed responsibility as his proxy.[58]

The Arbitrator further found that the Removal Letter violated Article 10(C)(1)(e)(8) (Discipline) of the CBA, as it was solely based on the OAC Audit Report, which assessed application documentation, video footage, and other exhibits that were never shared with the Grievant.[59] The Arbitrator concluded that by failing to provide the Grievant with these exhibits, DCHA substantively prejudiced the Grievant and hindered her ability to defend herself.[60] In particular, the Arbitrator noted the importance of the spreadsheet version history, never proffered by DCHA, which could have provided key insight into the extent of the Grievant's involvement with her friends' housing approval.[61]

The Arbitrator determined that DCHA's actions constituted harmful error and violated Appendix A, Section 10(c) of the CBA (Mis-authorization of Government Property),[62] as well as the Grievant's right to procedural Due Process under the CBA[63] and her right to substantive Due Process under the Due Process Clause of the United States Constitution.[64]

The Arbitrator also determined, based on witness testimony, that at least four (4) independent levels of approval were required for an applicant to be granted residency at the Rise.[65] The Arbitrator observed that each approval level was completed by a separate department, and the Grievant, as a member of the Relocation Team, was only involved with one (1) level of that process.[66] The Arbitrator found that the Grievant's role in the approval process was limited to determining whether applicants were program-compliant with no history or problems or violations, noting that she was not involved in income-eligibility determinations or certification of applicant

[55] Award at 12.
[56] Award at 12.
[57] Award at 3, 12-13.
[58] Award at 12-13.
[59] Award at 14-15.
[60] Award at 13-15.
[61] Award at 18.
[62] Award at 15-16.
[63] Award at 13-14 (citing *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976); *Hodges v. U.S. Postal Service*, 18 MSPR 591 (2013); *Alford v. Department of Defense*, 118 MSPR 556 (2012)).
[64] Award at 14 (citing *Cleveland Board of Education v. Louderville*, 470 U.S. 532, 544 (1985); *Stone v. Federal Deposit Insurance Corporation*, 179 F.3d 1368, 1377 (Fed. Cir. 1999)).
[65] Award at 14.
[66] Award at 16.

information.[67] The Arbitrator observed that despite acting as a notary for DCHA, the Grievant's duties in that capacity were limited to confirming applicants' identities and did not include evaluating the authenticity of applications.[68] Additionally, the Arbitrator determined that although the Grievant designed the spreadsheet which listed applicants for residency, that factor alone did not support the allegation of fraud, as the Grievant did not approve housing vouchers.[69] The Arbitrator concluded that it would have been impossible for the Grievant to single-handedly commit fraud within the established system of checks and balances.[70]

Additionally, the Arbitrator determined that the Rise is a privately owned property which the owner chose to rent out through the HCVP.[71] The Arbitrator found that because the Rise is not government property, it could not be categorized as public housing under the Code of Federal Regulations and thus, there was no merit to the claim that the Grievant violated 14 DCMR § 7136.11 by visiting her friends during working hours.[72] The Arbitrator further concluded that due to the private ownership of the Rise, the Grievant could not justifiably be charged with the misuse of governmental funds or property.[73] The Arbitrator noted that the management company gave the Grievant a key fob for the purpose of conducting tours at the Rise, thereby granting her discretionary authority to enter the rental units.[74] The Arbitrator also concluded that 14 DCMR § 7136.9 was not applicable to this case, as the evidence did not demonstrate that the Grievant accepted favors, gifts, or other benefits from housing applicants or residents of the Rise.[75]

In analyzing the appropriateness of the Grievant's termination, the Arbitrator discussed one of the *Douglas*[76] factors, namely "the nature and seriousness of the charges in relationship with the Grievant's duties and responsibilities with the totality of those charges against her in addition to her disciplinary record."[77] The Arbitrator found that this incident constituted the Grievant's first and only instance of discipline within the ten (10) years she occupied her position as a DCHA Relocation Coordinator.[78] This observation bolstered the Arbitrator's conclusion that termination was unwarranted.[79]

The Arbitrator determined that because DCHA had failed to provide preponderant evidence of a "direct and predictable" conflict between the Grievant's job duties and her social interactions, DCHA had not met its burden to show a vital nexus between the Grievant's conduct and

[67] Award at 16.
[68] Award at 19.
[69] Award at 16, 19.
[70] Award at 17.
[71] Award at 18.
[72] Award at 18 (citing 24 CFR § 9982(B); 24 CFR § 9984(B)).
[73] Award at 18.
[74] Award at 18.
[75] Award at 19-20.
[76] 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.
[77] Award at 20.
[78] Award at 20.
[79] Award at 20.

inefficiency of DCHA's service.[80] For these reasons, the Arbitrator concluded that DCHA's decision to remove the Grievant must be reversed, and the Arbitrator ordered DCHA to reinstate the grievant with back pay and pay her attorney fees associated with this matter.[81]

DCHA seeks review of the 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 policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[82] DCHA requests review on the grounds that the Arbitrator exceeded her authority, and the Award is contrary to law and public policy.[83]

A. The Arbitrator did not exceed her authority.

When determining whether an arbitrator exceeded her authority in rendering an award, the Board analyzes whether the award "draws its essence from the parties[']collective bargaining agreement."[84] The relevant questions in this analysis are whether the arbitrator acted outside her 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.[85] "[S]o long as the arbitrator does not offend any of these requirements, the request for [Board] intervention should be resisted even though the arbitrator made serious, improvident, or silly errors in resolving the merits of the dispute."[86]

In its Request, DCHA argues that the matter of Due Process was not submitted to the Arbitrator and therefore, the Arbitrator exceeded her jurisdiction when she held that the Agency violated the Grievant's right to procedural Due Process under the CBA and her right to substantive Due Process under the Due Process Clause of the Constitution.[87] DCHA contends that the Arbitrator was solely tasked with determining whether the Grievant's termination was consistent with the Table of Penalties and whether there was a nexus between the Grievant's misconduct and the Agency's ability to fulfill its mission.[88] Pursuant to Article (9)(E)(11) (Arbitration) of the

[80] Award at 18-21.
[81] Award at 20-21. Although the relief awarded was different from that requested by AFGE, the Union did not appeal the Arbitrator's choice of relief. Arbitrators are afforded flexibility in fashioning an appropriate remedy. *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960).
[82] D.C. Official Code § 1-605.02(6).
[83] Request at 3.
[84] *AFGE, Local 2725 v. DCHA.*, 61 D.C. Reg. 9062, Slip Op. 1480 at 5, PERB Case No. 14-A-01 (2014).
[85] *Mich. Family Resources, Inc. v. SEIU, 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 *DCFMS v. AFGE, Local 3721*, 59 D.C. Reg. 9757, Slip Op. 1258 at 4, PERB Case No. 10-A-09 (2012).
[86] *FOP/DOC Labor Comm.*, Slip Op. No. 1271 at 7 (citing *Mich. Family Resources, Inc.*, 475 F.3d at 753).
[87] Request at 3.
[88] Request at 8.

CBA, "The arbitrator shall confine his/her award to the issue(s) presented."[89] The Agency did not present any Due Process issues to the Arbitrator. However, AFGE presented the following Due Process issues: "(1) Did the Agency violate the Grievant's Right to Due Process when it did not respond to or otherwise consider her Step 3 grievance before terminating her?" and "(2) Did the Agency violate the Grievant's Right to Due Process when it failed to specify in its Removal Letter which causes brought against her related to the specific findings made in the Audit Report?"[90]

The Board has held that by agreeing to submit a matter to arbitration, the parties also consent to be bound by the Arbitrator's decision, including her interpretation of the parties' collective bargaining agreement.[91] Mere disagreement with an arbitrator's interpretation of a provision in the parties' collective bargaining agreement does not demonstrate that an arbitrator has exceeded her jurisdiction.[92] Here, the parties committed their dispute to arbitration, and the Arbitrator fulfilled her role by construing the CBA in resolving the parties' legal and factual disputes.[93] The Arbitrator chose to consider the questions of Due Process posed by AFGE, thereby implicitly construing Article (9)(E)(11) to cover even unilaterally presented issues. The Board finds that DCHA merely disagrees with the Arbitrator's interpretation of Article (9)(E)(11).

Therefore, the Board concludes that the Arbitrator did not exceed her jurisdiction.

B. The Award is contrary to law, solely with respect to the Arbitrator's finding that DCHA violated the Grievant's right to substantive Due Process under the United States Constitution.

DCHA 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.[94] Furthermore, DCHA has the burden to specify applicable law and public policy that mandates that the Arbitrator arrive at a different result.[95] 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."[96]

DCHA argues that even if the subject of Due Process was arbitrable, the Arbitrator's findings regarding violations of procedural and substantive Due Process must be overturned as contrary to law.[97]

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[89] CBA at 21.
[90] Initial Award at 2; Award at 3-4.
[91] *UDC Faculty Ass'n /NEA and UDC*, 39 D.C. Reg. 9628, Slip Op. No. 320 at 2, PERB Case No. 92-A-04 (1992).
[92] *Teamsters Local Union No. 1714 and DOC*, 41 D.C. Reg. 1753, Slip Op. No. 304 at 3-4, PERB Case No.: 91-A-06 (quoting *UDC and the UDC Faculty Ass'n /NEA*, 38 D.C. Reg. 5024, Slip Op. No. 276 at 5, PERB Case No.: 91-A-02 (1991)).
[93] *See Mich. Family Resources, Inc*., 475 F.3d at 753, quoted in *FOP/DOC Labor Comm.*, Slip Op. 1271 at 7, and *DCFMS*, Slip Op. 1258 at 4.
[94] *FOP/PSD Labor Comm. v. DGS*, 70 D.C. Reg. 781, Slip Op. No. 1853 at 15, PERB Case No. 23-A-07 (2023).
[95] *MPD v. FOP/MPD Labor Comm*., 47 D.C. Reg. 717, Slip Op. No. 633 at 2, PERB Case No. 00-A-04 (2000).
[96] *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).
[97] Request at 8-11.

Regarding the Arbitrator's finding of a procedural Due Process violation under the CBA, DCHA asserts that the Agency complied with the arbitration procedures set forth in Article 10(C)(1)(e)(8) (Discipline) by providing the Grievant with all evidence used to support her termination, and by allowing her to confront that evidence at arbitration.[98] DCHA also argues that the Agency complied with Article 9 (Grievance Procedure), as its inadvertent failure to respond to the Step 3 grievance was solely attributable to AFGE mistakenly serving the Step 3 grievance on a former DCHA employee.[99] DCHA contends that the Award is contrary to the District of Columbia District Court's holding in *Kelley v. District of Columbia*,[100] which established that arbitration is sufficient to ensure that a terminated public employee has received procedural and substantive Due Process under the Due Process Clause of the United Sates Constitution.[101]

The Board is unpersuaded by these arguments. AFGE expressly charged the Arbitrator with the task of determining whether DCHA violated Article 10(C)(1)(e)(8) by introducing evidence at arbitration which was not provided to the Grievant with her Notice.[102] AFGE also expressly charged the Arbitrator with the task of determining whether DCHA violated Article 9, by failing to respond to or consider her Step 3 grievance before termination.[103] The Board has established that, by submitting a matter to arbitration, the parties also agree to be bound by the Arbitrator's decision, which necessarily includes the Arbitrator's evidentiary findings and conclusions.[104] Objections over the weight of the evidence and an arbitrator's logical inferences therefrom do not provide a statutory basis for review,[105] and PERB does not have authority to disturb an arbitrator's credibility determinations.[106] Additionally, interpretation of the CBA falls exclusively within the Arbitrator's domain.[107] Here, the Arbitrator evaluated the evidence, interpreted the CBA, and found that the Agency deprived the Grievant of her contractual right to procedural Due Process.[108] The Agency's citation to *Kelley* is inapplicable, as that case solely discusses the rights to procedural and substantive Due Process established under the Constitution, as opposed to the rights established in collective bargaining agreements.[109] Accordingly, the Board declines to overturn the Arbitrator's finding that DCHA committed a procedural Due Process violation under the CBA.

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[98] Request at 8-9.
[99] Request at 6-7, 10-11.
[100] 893 F. Supp. 2d 115 (D.D.C. 2012))
[101] Request at 9 (citing *Kelley v. District of Columbia*, 893 F. Supp. 2d 115, 124 (D.D.C. 2012)). In addition to precedent from the Supreme Court, the D.C. District Court, the District of Columbia Court of Appeals (D.C. Court of Appeals), and the Superior Court of the District of Columbia (D.C. Superior Court), the Request includes citations to caselaw from federal courts in other jurisdictions. Request at 9. That precedent is not binding on the Board.
[102] Initial Award at 2; Award at 4.
[103] Initial Award at 2; Award at 4.
[104] *MPD v. NAGE Local R3-5*, 59 D.C. Reg. 2983 Slip Op. No. 785 at 4, PERB Op. No. 03-A-08 (2012) (citing *UDC*, Slip Op. No. 320 at 2.
[105] *AFSCME District Council 20, AFL-CIO and D.C. Gen. Hosp.*, 37 D.C. Reg. 6172, Slip Op. No. 253, PERB Case No.: 90-A-04 (1990).
[106] *See DPW and AFGE, Local 872*, 37 D.C. Reg. 6175, Slip Op. No, 254 at 3, PERB Case No. 90-A-06 (1990); *See also UDC and UDC Faculty Ass'n*, 37 D.C. Reg. 5666, Slip Op. No. 248, PERB Case No.: 90-A-02 (1990).
[107] *UDC Faculty Ass'n /NEA*, Slip Op. No. 320 at 2.
[108] Award at 14-15.
[109] *Kelley*, 893 F. Supp. 2d 115.

The Board turns to DCHA's second contention, that the Award is contrary to law insofar as it holds that the Agency violated the Grievant's right to substantive Due Process under the United States Constitution.[110] The Due Process Clause of the Constitution protects individuals from government actions that deprive them of life, liberty, or property without following proper legal procedures.[111] In *Kelley v. District of Columbia*, two terminated Metropolitan Police Department officers alleged that by subjecting them to "sham hearings…with pre-determined adverse results," their employer deprived them of the right to Due Process and equal protection under the Constitution.[112] The District Court found that the officers had failed to prove a procedural Due Process violation, as there was no fundamental right to government employment.[113] The court further noted that because the officers' grievances were heard by an arbitrator, they had not sufficiently alleged deprivation of a meaningful opportunity to be heard, which was a requirement for a successful substantive Due Process claim under the Constitution.[114]

The Arbitrator based her finding of a constitutional substantive Due Process violation on the Supreme Court's decision in *Cleveland Board of Education v. Louderville*,[115] as well as the Federal Circuit Court's decision in *Stone v. Federal Deposit Insurance Corporation*.[116] In *Cleveland Board of Education*, a terminated school security guard alleged that he was deprived of his constitutional right to Due Process when he was terminated without the opportunity to respond to his employer's decision, in contravention of an Ohio statute.[117] As the District Court noted in *Kelley*, there is no fundamental right to government employment.[118] However, in *Cleveland*, the Supreme Court determined that an Ohio statute created a property right in the security guard's employment and, therefore, he had a constitutional right to Due Process in his disciplinary proceedings.[119] The Court explained that "[t]he essential requirements of due process…are notice and an opportunity to respond," establishing that "[t]he opportunity to present reasons, either in person or in writing, why [a] proposed action should not be taken is a fundamental due process requirement."[120] Therefore, the *Cleveland* Court overturned the lower court's decision to dismiss the matter for failure to state a claim.[121] Similarly, in *Stone*, the Federal Circuit Court determined that under state statute, a terminated bank examiner in Colorado had a property right in his employment and therefore, had a constitutional right to Due Process in his disciplinary proceedings.[122]

The Board finds that the Grievant was afforded a meaningful opportunity to respond to the Notice through the arbitration process. AFGE's Opposition does not present any arguments to

[110] Request at 9 (citing *Kelley*, 893 F. Supp. 2d 115.
[111] U.S. Const. amend. XIV, § 1.
[112] *Kelley*, 893 F. Supp. 2d at 123.
[113] *Kelley*, 893 F. Supp. 2d 115.
[114] *Id*. at 124.
[115] 470 US 532, 544 (1985).
[116] 179 F 3d 1368, 1377 (Fed. Cir. 1999).
[117] *Cleveland Board of Education*, 470 US at 532 (citing Ohio Rev.Code Ann. § 124.11 (1984)).
[118] *Kelley*, 893 F. Supp. 2d at 123.
[119] *Cleveland Board of Education*, 470 US at 538.
[120] *Id*. at 546 (citing Friendly, "Some Kind of Hearing," 123 U.Pa.L.Rev. 1267, 1281 (1975)).
[121] *Id*. at 547.
[122] *Stone*, 179 F 3d at 1375 (citing 5 U.S.C. § 7513(a) (1994); 5 U.S.C. § 4303 (1994))

support the Arbitrator's finding of a constitutional Due Process violation. Therefore, the Board concludes that the Arbitrator's finding of a substantive Due Process violation under the Constitution is contrary to law and must be set aside.

Apart from its Due Process-related arguments, DCHA asserts that the Arbitrator committed clear error by failing to explain or support the conclusion that the checks and balances of the application approval process were followed with respect to the applications submitted by the Grievant's friends.[123] Specifically, DCHA alleges that the Arbitrator ignored documentary evidence, as well as testimony from the Grievant and other DCHA employees, which showed that the Grievant circumvented these processes to independently notarize and approve her friends' applications for residency at the Rise.[124] DCHA acknowledges that it never provided the version history for the applicant spreadsheet, but argues that this omission was due to the Grievant locking the spreadsheet shortly before the OAC investigation began.[125] However, DCHA asserts that testimonial evidence showed the Grievant, as the creator of the spreadsheet, was the sole party able to access or edit it.[126] These contentions are unpersuasive. The Arbitrator exercised her role as the weigher of evidence and concluded that the applications submitted by the Grievant's friends were subject to the appropriate checks and balances.[127] The Board has established that an arbitrator is not required to explain the rationale behind her determinations.[128]

Additionally, DCHA argues that the Arbitrator fundamentally misapplied the law when she found that the privately owned status of the Rise precluded charging the Grievant with misusing government funds.[129] DCHA contends that the Arbitrator's conclusion regarding the Grievant's authority to enter the Rise units was contrary to the Agency's Personnel Policy and 14 DCMR § 7136.11, which prohibits employees from entering public housing apartments without reasonable justification.[130] DCHA draws a distinction between the privately owned physical structure of the Rise, and the government funded subsidies afforded to its residents.[131] DCHA contends that these subsidies are funded through HCVP and thus, "improper administration of those funds, including their disbursement to ineligible individuals, constitutes a misuse of public resources."[132] Where, as here, the parties have specifically bargained for the arbitrator's interpretation of their collective bargaining agreement, the parties have implicitly bargained for the arbitrator's interpretation of the applicable law and regulations.[133] In this case, those applicable regulations include 14 DCMR § 7136.11. The Board is unpersuaded by the personnel policy argument, as conflicts with agency personnel policy do not constitute justification for overturning an arbitration award.[134]

[123] Request at 12.
[124] Request at 12-13, 15-17.
[125] Request at 13.
[126] Request at 14-15.
[127] Award at 17.
[128] *NAGE, Local R3-07 v. Off. Of Unified Commc'ns*, 65 D.C. Reg. 10091, Slip Op. No. 1673 at 7-8, PERB Case No. 18-A-07 (2018).
[129] Request at 14.
[130] Request at 15.
[131] Request at 14-15.
[132] Request at 14-15.
[133] *See MPD v. PERB*, 901 A.2d 784, 789 (D.C. 2006).
[134] *See* D.C. Official Code § 1-605.02(6).

DCHA also argues that the Arbitrator erred in dismissing the conflict-of-interest charge and alleges that the Award overlooked the Grievant's misuse of public funds to benefit her personal relationships.[135] Specifically, DCHA contends that the Award contradicts the prohibition, established in 14 DCMR § 7136.9, against employees accepting gratuities, favors, gift, or special considerations of any kind in connection with their work for DCHA.[136] DCHA alleges that the Grievant personally intervened to show favoritism toward her friends and personally benefitted from this intervention by gaining access to her friends' Rise apartments.[137]

The Arbitrator made the factual finding that the Grievant did not receive personal benefits in connection with her work for DCHA.[138] Thus, the Arbitrator concluded that 14 DCMR § 7136.9 did not apply.[139] It is not the Board's role to rewrite the factual findings underpinning this determination or usurp the Arbitrator's role as the finder of fact.[140] Further, by committing this matter to arbitration, the parties implicitly bargained for the Arbitrator's interpretation of 14 DCMR § 7136.9, as a regulation applicable to this case.[141]

DCHA asserts that in finding that termination was unwarranted, the Arbitrator failed to consider or apply eleven of the twelve *Douglas* factors which the Merit Systems Protection Board (MSPB) has established as the test for evaluating the appropriateness of employee discipline.[142] DCHA contends that the only *Douglas* factor considered was the Grievant's disciplinary history.[143] DCHA argues that the Arbitrator overlooked evidence of dishonesty, fraud, and misuse of government resources, which independently justify termination, under the CBA.[144]

DCHA's contention is unavailing. The Board has established that an arbitrator is not required to analyze an employee's discipline using all the *Douglas* factors.[145] Further, the Board has held that an arbitrator's failure to analyze all relevant *Douglas* factors does not violate law and public policy.[146] Under Board precedent, the *Douglas* factors are applied on an ad hoc basis and the factors will be reviewed and applied in different manners based on the information presented

[135] Request at 17-18.
[136] Request at 17-18.
[137] Request at 18.
[138] Award at 19-20.
[139] Award at 19-20.
[140] *Teamsters Local Union No. 1714 a v. DOC*, 41 D.C. Reg. 1510, Slip Op. No. 296 at fn. 6, PERB Case No. 87-A-11 (1994) (citing *AFSCME, District Council 20, Local 2743 v. DCRA*, 38 D.C. 5076, Slip Op. No. 281 at fn. 3, PERB Case No. 90-A-12 (1991)).
[141] *See MPD*, 901 A.2d at 789.
[142] Request at 18 (citing *Douglas*, 5 M.S.P.B. 313).
[143] Request at 18-19.
[144] Request at 19.
[145] *FOP/DOC Labor Comm.v. DOC*, 59 D.C. Reg.10952, Slip Op. No. 1324 at 1,4, 6-7, PERB Case No. 10-A16 (2012).
[146] *Id*.

to the arbitrator.[147] The Board does not have authority to substitute its judgment for the arbitrator's analysis of the evidence or application of the *Douglas* factors.[148]

Lastly, DCHA contends that the Arbitrator's decision to reinstate the grievant directly conflicts with statutes designed to protect the integrity of public funds.[149] The Agency asserts that the Award violates D.C. Official Code § 4-218.01, which prohibits fraudulent actions to obtain public benefits.[150] The Agency also asserts that the Award violates D.C. Official Code § 22-2405, which imposes criminal liability for making false statements.[151] The Arbitrator, as the finder of fact, determined that there was insufficient evidence to show that the Grievant's actions were fraudulent, that she received public benefits, or that she deliberately made false statements.[152] Therefore, the Board concludes that DCHA's allegations are unsupported.

The Board finds that the Award is contrary to law, insofar as it found that DCHA violated the Due Process clause of the United States Constitution. DCHA has not demonstrated that any of the Arbitrator's other findings violate established law, nor has it shown that applicable law mandates a different result.

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." 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.'"[153] 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."[154] 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*."

[147] *MPD v. FOP/MPD Labor Comm.*, 63 D.C. Reg. 2093, Slip Op. No. 1509 at 8, PERB Case No. 12-A-04(R) (2016).
[148] *See MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6747, Slip Op. No. 1707 at 7, PERB Case No. 19-A-03 (2019). The Board notes that the Arbitrator was not required to consider the *Douglas* factors, as she did not find the Grievant guilty of the misconduct alleged. *See e.g.*, *MPD v. FOP/MPD Labor Comm.*, 63 D.C. Reg. 12581, Slip Op. No. 1591 at 3-4, 10, PERB Case No. 15-A-16 (2016) (upholding an award wherein the arbitrator found that substantial evidence supported the charges against a police officer and considered the *Douglas* factors before determining that suspension was the appropriate penalty for the officer's proven misconduct).
[149] Request at 19.
[150] Request at 19.
[151] Request at 19.
[152] Award at 17-21.
[153] *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)).
[154] *Id*. (quoting 1A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 21.14 (7th ed. Nov. 2021 update)).

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.[155] 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."[156] "[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.'"[157]

In its Request, DCHA argues that the Award should be set aside because it "violates established public policy and statutory protections against fraud and misuse of government resources."[158] DCHA contends that the Grievant's personal relationships compromised her ability to perform her duties, thereby violating the statutorily based public policy against individuals engaging in fraud to obtain public benefits or funds.[159] This contention is unconvincing, as it relies on a fundamental misinterpretation of the Board's standard of review. DCHA's argument assumes, incorrectly, that the Board's role is to assess whether an employee's conduct violated public policy. However, when deciding whether to overturn an award on the basis of public policy, the Board considers whether the award *itself* contravenes public policy.[160]

DCHA also argues that the Arbitrator's decision to reinstate the grievant directly conflicts with public policy designed to safeguard and protect the integrity of the District government's limited public funds.[161] The Board is unpersuaded. The Arbitrator weighed the evidence presented and did not find a vital nexus between the Grievant's actions and a loss of public funds. The Board declines to disturb the Arbitrator's evidentiary evaluations or factual determinations.

Lastly, DCHA contends that reinstating the Grievant rewards her misconduct and sends the message that other District employees may commit serious violations without facing repercussions.[162] DCHA further argues that allowing the Grievant to continue her employment with the Agency "erodes public trust in DCHA's ability to manage public resources responsibly and undermines the deterrent effect of laws governing the misuse of public funds."[163] DCHA asserts that the Arbitrator's decision harms the Agency's "ability to enforce accountability and maintain the integrity of its housing programs."[164] This contention is unpersuasive, as it relies on

[155] *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)).
[156] *MPD*, No. 19-CV-1115, Mem. Op. & J. at 10-11 (quoting *MPD*, 901 A.2d at 789).
[157] *MPD*, Slip Op. No. 1702 at 4.
[158] Request at 4.
[159] Request at 17-18 (citing 14 DCMR § 7136.9).
[160] *See* D.C. Official Code § 1-605.02(6).
[161] Request at 19.
[162] Request at 19-20.
[163] Request at 20.
[164] Request at 20.

general considerations of supposed public interest, as opposed to public policy which is well defined, dominant, and ascertainable by reference to law or legal precedent.[165]

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

V. Conclusion

The Board finds that the Arbitrator did not exceed her authority, and the Award is not contrary to public policy. The Board finds that the Award is contrary to law, solely with respect to the finding of a constitutional substantive Due Process violation, and that finding is set aside. Accordingly, DCHA's request is granted in part and denied in part.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is granted in part and denied in part.
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.

[165] *MPD*, No. 19-CV-1115, Mem. Op. & J. at 10-11 (quoting *MPD*, 901 A.2d at 789).

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.