

Notice: This decision may be formally revised within thirty days of issuance before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

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In the Matter of:	)	
	)	
District of Columbia Metropolitan Police	)	
Department	)	
	)	PERB Case No. 24-A-11
Petitioner	)	
	)	Opinion No. 1892
v.	)	
	)	
Fraternal Order of Police/ Metropolitan Police	)	
Department Labor Committee	)	
	)	
Respondent	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On April 4, 2024, the District of Columbia Metropolitan Police Department (MPD) filed an arbitration review request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA), seeking review of an arbitration award (Award) dated March 18, 2024. The Award ordered MPD to reinstate a terminated police officer (Grievant). MPD challenges the Award on the basis that the Arbitrator exceeded his jurisdiction, and the Award is contrary to public policy. The Fraternal Order of Police/ Metropolitan Police Department Labor Committee (FOP) filed a brief in opposition to the Request (Opposition).

Upon consideration of the Award, applicable law, and the record presented by the parties, the Board remands the Award to the Arbitrator for clarification of his reasoning in support of the Award.

## II. Background

This matter involves two separate and unrelated disciplinary actions against the Grievant MPD police officer.

### A. DRD No. 700-22

On March 19, 2022, while the Grievant was off duty, he learned that his friend's vehicle had been stolen.<sup>1</sup> The Grievant immediately responded to his friend's location and attempted to help the friend recover his stolen vehicle using a cell phone tracking application.<sup>2</sup> While the Grievant and his friend tracked the stolen vehicle, the Grievant engaged in traffic violations.<sup>3</sup> On March 23, 2022, the Grievant's police powers were revoked, and he was issued a summons for reckless driving and misuse of temporary tags.<sup>4</sup> On August 25, 2022, the Grievant signed a Deferred Sentencing Agreement, pursuant to which the charge of loaning registration/misuse of temporary tags was dismissed.<sup>5</sup> The Grievant completed the terms of the Deferred Sentencing Agreement, and the District of Columbia entered a nolle prosequi for the Grievant's case on February 28, 2023, resulting in the dismissal of the case.<sup>6</sup> On September 20, 2022, MPD served the Grievant with a Notice of Proposed Adverse Action (NPAA) for the charges related to this incident.<sup>7</sup>

### B. DRD No. 706-22

On November 28, 2021, the Grievant was on duty and responding to a radio call to assist with a shooting.<sup>8</sup> While traveling to the shooting scene, the Grievant made a U-turn and allegedly made contact with a vehicle driven by a civilian.<sup>9</sup> Shortly after the Grievant's vehicle allegedly contacted the civilian's vehicle, the civilian exited his vehicle and flagged down the Grievant.<sup>10</sup> The civilian stated that the Grievant hit his vehicle, but the Grievant did not see any apparent damage after observing the two vehicles.<sup>11</sup> The civilian re-entered his vehicle and drove away from the scene.<sup>12</sup> Moments later, the Grievant arrived at the scene of the shooting to which he was originally called.<sup>13</sup> The civilian was also at the scene of the shooting, talking to different MPD

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<sup>1</sup> MPD Exhibit 1 at 23.

<sup>2</sup> MPD Exhibit 1 at 24.

<sup>3</sup> MPD Exhibit 1 at 24-26.

<sup>4</sup> MPD Exhibit 1 at 26.

<sup>5</sup> MPD Exhibit 1 at 27-28.

<sup>6</sup> MPD Exhibit 1 at 27-28.

<sup>7</sup> MPD Exhibit 1 at 3.

<sup>8</sup> MPD Exhibit 1 at 248.

<sup>9</sup> MPD Exhibit 1 at 249.

<sup>10</sup> MPD Exhibit 1 at 249.

<sup>11</sup> MPD Exhibit 1 at 249.

<sup>12</sup> MPD Exhibit 1 at 249.

<sup>13</sup> MPD Exhibit 1 at 249.

officers.<sup>14</sup> The Grievant approached the civilian, who again asserted that the Grievant had struck his vehicle.<sup>15</sup> The Grievant did not activate his Body Worn Camera (“BWC”) during his encounter with the civilian.<sup>16</sup> Approximately one week after the alleged accident, the civilian contacted MPD and reported the incident.<sup>17</sup> On September 23, 2022, MPD served the Grievant with a Notice of Proposed Adverse Action for the incident.<sup>18</sup>

The two disciplinary actions were consolidated and both presented at the same Adverse Action hearing. The Grievant was issued three (3) charges and fourteen (14) specifications for DRD No. 700-22.<sup>19</sup> The Adverse Action Panel found the Grievant guilty of all charges and specifications, and recommended termination as penalty for all but one of the charges and specifications.<sup>20</sup> The Grievant was issued five (5) charges and seven (7) specifications for DRD No. 706-22.<sup>21</sup> The Adverse Action Panel found the Grievant guilty on all but three of the charges and specifications.<sup>22</sup> The Adverse Action Panel recommended suspension without pay for the guilty charges.<sup>23</sup>

Following the Panel’s decision, MPD issued its Final Notice of Adverse Action against the Grievant, informing him that he would be terminated effective June 15, 2023.<sup>24</sup> The Grievant appealed the Panel’s findings to the Chief of Police, and the Chief of Police denied the appeal.<sup>25</sup> FOP then invoked arbitration on behalf of the Grievant.<sup>26</sup>

### **III. Arbitration Award**

The following issue was presented before the Arbitrator for decision:<sup>27</sup>

“Whether the Grievant was terminated for cause and, if so, what is the penalty?”

The Arbitrator found that MPD submitted a preponderance of evidence supporting the list of disciplines.<sup>28</sup> The Arbitrator determined that “[m]ost of this discipline was appropriate under

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<sup>14</sup> MPD Exhibit 1 at 249.

<sup>15</sup> MPD Exhibit 1 at 249.

<sup>16</sup> MPD Exhibit 1 at 249.

<sup>17</sup> MPD Exhibit 1 at 249.

<sup>18</sup> MPD Exhibit 1 at 21.

<sup>19</sup> MPD Exhibit 1 at 3-7.

<sup>20</sup> MPD Exhibit 6 at 50-57; 62.

<sup>21</sup> MPD Exhibit 1 at 13-15.

<sup>22</sup> MPD Exhibit 6 at 58-61.

<sup>23</sup> MPD Exhibit 6 at 62.

<sup>24</sup> MPD Exhibit 6 at 68; 76.

<sup>25</sup> MPD Exhibit 6 at 155; 158-163.

<sup>26</sup> MPD Exhibit 6 at 164.

<sup>27</sup> Award at 1.

<sup>28</sup> Award at 4.

the CBA. Although some previously rescinded.”<sup>29</sup> The Arbitrator held that he “finds no additional discipline warranted,” and ordered MPD to reinstate the Grievant by April 26, 2024.<sup>30</sup>

#### 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 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.<sup>31</sup> The Agency challenges the Award on the bases that the Arbitrator exceeded her jurisdiction, and the Award is contrary to public policy.

MPD argues that the Award’s discussion of penalties, and order of reinstatement, show that the Arbitrator imposed his “own brand of industrial justice” instead of determining whether MPD demonstrated sufficient “cause” to terminate Grievant as specified in the CBA.<sup>32</sup> MPD argues that the Arbitrator provided a five-sentence summary that evinces neither the Arbitrator’s familiarity with the case nor the conventions of an arbitration opinion.<sup>33</sup> MPD also argues that the Arbitrator’s decision to reverse Grievant’s termination is contrary to a dominant public policy requiring police officers to uphold the law.<sup>34</sup>

FOP argues that the Arbitrator did not act outside his authority, but instead resolved the exact issues that were specifically presented to him by the parties.<sup>35</sup> FOP contends that the Arbitrator resolved a disputed issue by issuing a reinstatement remedy, and the parties unquestionably received the Award that they bargained for and on the issues that they explicitly requested from the Arbitrator.<sup>36</sup>

In determining whether the arbitrator has exceeded his authority, the Board looks to whether the arbitrator’s award draws its essence from the collective bargaining agreement.<sup>37</sup> The relevant questions in this analysis are whether the arbitrator acted outside their 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.<sup>38</sup>

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<sup>29</sup> Award at 4.

<sup>30</sup> Award at 4.

<sup>31</sup> D.C. Official Code § 1-605.02(6).

<sup>32</sup> Request at 5.

<sup>33</sup> Request at 7.

<sup>34</sup> Request at 10.

<sup>35</sup> Opposition at 7.

<sup>36</sup> Opposition at 8.

<sup>37</sup> *DOC v. FOP/DOC Labor Comm.*, 59 D.C. Reg. 12702, Slip Op. No. 1326 at 5, PERB Case No. 10-A-14 (2012).

<sup>38</sup> *DCPS v. WTU*, 67 D.C. Reg. 4654, Slip Op. No. 1740 at 7, PERB Case No. 20-A-04 (2020) (citing to *Mich. Family Resources, Inc. v. Serv. Emp’ Int’l Union, Local 517M*, 475 F.3d 746, 753 (6<sup>th</sup> Cir. 2007)).

The Board can remand an award if clarification of an ambiguity is needed to determine whether the award is contrary to law and public policy or to determine whether the arbitrator exceeded his jurisdiction.<sup>39</sup> While the Arbitrator notes that MPD has met its burden of proof “supporting [its] list of disciplines” against the Grievant, he does not explain his reasoning for reversing MPD’s termination of the Grievant.<sup>40</sup> In particular, it is unclear how the arbitrator applied the parties’ CBA to the facts to reach his determination on penalty. Therefore, the Board remands the Award back to the Arbitrator for clarification of his reasoning in support of his order.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Award is remanded to the Arbitrator; 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 Chairperson Douglas Warshof and Members Mary Anne Gibbons, and Peter Winkler.

December 19, 2024

**Washington, D.C.**

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<sup>39</sup> *WASA v. AFGE, Local 631*, 66 D.C. Reg. 2861, Slip Op. No. 1699 at 7, PERB Case No. 18-A-15 (2019).

<sup>40</sup> Award at 4.

**APPEAL RIGHTS**

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.