Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department,	
Petitioner	PERB Case No. 18-A-04(R)
v.	Opinion No. 1833
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	
Respondent	

DECISION AND ORDER ON REMAND

I. Statement of the Case

This matter comes before the Board on remand from the Superior Court of the District of Columbia, pursuant to the mandate and judgment issued by the District of Columbia Court of Appeals vacating the Superior Court's judgment and remanding to the Superior Court to remand the decision of the Board in *MPD v. FOP/MPD Labor Comm. ex rel. Thomas* (*Thomas*).[1]

In *Thomas*, MPD filed an Arbitration Review Request, asking the Board to overturn an arbitration award (Award) that reversed an MPD officer's termination on the grounds that the Award was contrary to law and public policy.[2] The Board upheld the Award and denied MPD's Request.[3] MPD appealed the case to the Superior Court of the District of Columbia, which affirmed the Board's decision.[4] MPD appealed the Superior Court's decision to the District of Columbia Court of Appeals. The Court of Appeals held that the Board should address on remand some of MPD's unaddressed arguments that the Award is contrary to law, and further adequately explain the Board's decision not to set aside the Award as against public policy. As a result, this case is before the Board for a decision consistent with the judgment of the Court of Appeals.

[1] 65 D.C. Reg.7468, Slip Op. No. 1667, PERB Case No. 18-A-04 (2018).
[2] *Id*.
[3] *Id*.
[4] *MPD v. District of Columbia Public Employee Relations Board*, No. 2018 CA 004340 P(MPA) (D.C. Super. Ct. Oct. 23, 2019).

For the reasons stated herein, MPD's Request for Review is denied.

II. Background

A. Arbitrator's Factual Findings

The case arose when an MPD officer (Grievant) shot an unarmed civilian while off-duty in Maryland.[5] The Grievant asserts that he saw a civilian near his vehicle outside his Maryland residence on the morning of the incident, after which he armed himself and went outside to confront the civilian.[6] The Grievant alleges that he identified himself as a police officer to the civilian and warned the civilian to leave.[7] The civilian offered differing testimony that the Grievant did not identify himself as a police officer.[8] The civilian asserts that he had consumed a substantial amount of alcohol and was trying to urinate near a car when the Grievant confronted him and pulled out a gun.[9] It is undisputed that the Grievant shot the civilian twice, and that the civilian required hospitalization and surgeries.[10]

MPD subsequently served the Grievant with a Notice of Proposed Adverse Action, charging the Grievant on two counts for his conduct arising from this incident.[11] Following an Adverse Action Panel (Panel) hearing at which the Grievant was found guilty of both charges, MPD served the Grievant with a Final Notice of Adverse Action informing the Grievant of his termination pursuant to the Panel's recommendations.[12] The Fraternal Order of the Police (FOP) then invoked arbitration on behalf of the Grievant.[13]

The Arbitrator found that there was sufficient evidence to support MPD's charges against the Grievant.[14] However, the Arbitrator found that termination was not an appropriate penalty for these charges because he determined that the Panel, in its application of the *Douglas* factors,[15] did not reach a conclusion "within tolerable limits of reasonableness."[16] As a result, the Arbitrator reversed the Grievant's termination and mitigated his penalty to a 45-day suspension.[17]

The Arbitrator considered three disciplinary cases that were provided as part of the arbitration record to determine the appropriate penalty.[18] In all three cases, the penalty of

---

[5] Award at 1.
[6] Award at 1.
[7] Award at 1.
[8] Award at 2.
[9] Award at 2.
[10] Award at 1-2.
[11] Award at 2-3.
[12] Award at 3-4.
[13] Award at 4.
[14] Award at 6.
[15] *See Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981) (setting forth a list of twelve factors to weigh when assessing the appropriateness of penalty for public sector employees).
[16] Award at 9. The Arbitrator particularly found that the Panel did not reach reasonable conclusions in its consideration of *Douglas* factors 6, 10 and 12. The Arbitrator erroneously refers to *Douglas* factors 6 as *Douglas* factor 7 throughout the Award.
[17] Award at 9-10.
[18] Award at 8.

termination was reduced to a suspension, including one case that involved an officer who was terminated for shooting and killing a civilian (*Ford*).[19] In reducing the Grievant's penalty, the Arbitrator noted that he was ordering the same 45-day suspension penalty as that of the *Ford* case "in as close to similar misconduct as is in evidence."[20]

B. Procedural History

MPD filed an Arbitration Review Request (Request) with the Board challenging the Arbitrator's decision to reverse the Grievant's termination as contrary to law and public policy.[21] The Board denied MPD's Request, finding MPD's assertions to be "mere disagreement with the Arbitrator's interpretation" instead of clear violations of law and public policy evident on the face of the Award.[22] MPD appealed the Board's decision to the Superior Court of the District of Columbia.[23] The Superior Court affirmed the Board's decision, finding that the Board properly upheld the Award based on the evidence in the record.[24]

MPD appealed the Superior Court's decision to the District of Columbia Court of Appeals. The Court of Appeals noted that MPD argued before the Board that the Award was contrary to law for three reasons.[25] The Court of Appeals determined that the Board sufficiently addressed one of MPD's three arguments that the Award was contrary to law, but failed to specifically address the other two.[26] The Court of Appeals further determined that the Board did not adequately explain its decision not to set aside the Award as against public policy.[27] The Court of Appeals held that the Board should on remand (i) address MPD's prior unaddressed specific arguments that the Award is contrary to law; and (ii) provide explanation for the Board's decision that the Award did not violate public policy.[28] For these reasons, the Court of Appeals vacated the Superior Court's judgment and remanded the case to the Superior Court to remand to the Board for a decision

[19] Award at 8-9.
[20] Award at 10. In the *Ford* case, MPD itself reduced its proposed termination to a 45-day suspension. In the other two cases, MPD's decisions to terminate the police officers were rescinded by arbitrators.
[21] Request at 2; 7-8.
[22] *Thomas*, Slip Op. No. 1667 at 4.
[23] *MPD v. Dist. of Columbia Pub. Employee Relations Board*, No. 2018 CA 004340 P(MPA) (D.C. Super. Ct. Oct. 23, 2019).
[24] *Id.* at 12.
[25] *Dist. of Columbia Metro. Police Dep't v. Dist. of Columbia Pub. Employee Relations Bd.*, 282 A.3d 598, 604-05 (D.C. 2022).
[26] *Id.* at 13, 15. The case was not remanded back to the Arbitrator with respect to the issues addressed in this remand decision because MPD's arguments did not necessitate further clarification or findings of fact by the Arbitrator. The Court of Appeals noted in its consideration of MPD's first argument, regarding the Arbitrator's authority to impose his own award notwithstanding the reasonableness of MPD's selected sanction, that that it was unclear "whether the arbitrator understood himself to be exercising general authority to modify the sanction selected by MPD or instead understood himself to be conducting the more limited review authorized under *Douglas*." Because this argument was rejected by the Board and the Court of Appeals, it was also unnecessary to remand the case back to the Arbitrator for clarification on this point.
[27] *Id*. at 18.
[28] *Id.* at 15, 18.

consistent with its judgment.[29] The Superior Court subsequently issued an order remanding the case back to the Board.[30]

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.[31] MPD requests review on the grounds that the Award is contrary to law and public policy.[32]

A. The Award is not contrary to law.

MPD's Request makes three arguments on which basis the Award should be overturned as contrary to law—(i) the Arbitrator improperly reversed MPD's penalty without finding that either MPD failed to weigh the relevant factors or that MPD's judgment clearly exceeded the limits of reasonableness;[33] (ii) the Arbitrator erroneously imposed a 45-day suspension penalty based on a dissimilar case;[34] and (iii) the Arbitrator improperly inferred, in his application of the *Douglas* factors, that MPD had a burden of proof to show that the Panel's penalty of termination was consistent with the penalty imposed against other officers for similar misconduct.[35]

The Board sufficiently addressed MPD's argument that the Arbitrator's reversal of MPD's penalty was contrary to law.[36] The Court of Appeals has held that the Board's ruling on this issue was reasonable.[37] As such, this issue will not be addressed further on remand. Pursuant to the Court of Appeals judgment, the Board will address the other two arguments MPD makes that the Award is contrary to law.

To set aside an award as contrary to law, the moving party bears the burden to present applicable law that mandates that the arbitrator arrive at a different result.[38] Absent a clear violation of law—one evident on the face of an arbitrator's award—the Board lacks authority to substitute its judgment for an arbitrator's simply because the Board might reach a different

---

[29] *Id.* at 18.
[30] *MPD v. Dist. of Columbia Pub. Employee Relations Board*, No. 2018 CA 004340 P(MPA) (D.C. Super. Ct. Oct. 7, 2022).
[31] D.C. Official Code § 1-605.02(6).
[32] Request at 2.
[33] Request at 11-12.
[34] Request at 12-13.
[35] Request at 10.
[36] MPD argued that "the arbitrator could amend the penalty *only if* he found that MPD failed to 'weigh the relevant factors' or that MPD's judgment 'clearly exceeded the limits of reasonableness.'" Request at 11 (citing *Douglas*, 5 M.S.P.B. at 333; *Stokes v. District of Columbia*, 502 A.2d 1006, 1010-11 (D.C. 1985)). The Board rejected MPD's interpretation of arbitral authority and noted that *Stokes* is not the correct standard to apply to an arbitrator's review of agency decisions.
[37] *Dist. of Columbia Metro. Police Dep't*, 282 A.3d at 605.
[38] *MPD and FOP/Metro. Police Dep't Labor Committee*, 47 D.C. Reg. 717, Slip Op. 633 at 3, PERB Case No. 00-A-04 (2000).

conclusion as to a legal issue decided by the arbitrator.[39] By agreeing to arbitrate, the parties bargain for an arbitrator's interpretation of the law, not that of the Board.[40]

i. MPD has not shown that the Arbitrator's Determination of Penalty on the basis of the *Ford* Case violates applicable law.

In the Request, MPD argues that the Award is contrary to law because the Arbitrator erroneously imposed a 45-day suspension based on a matter that is distinguishable from the present case. MPD refers to the Arbitrator's discussion of the penalty in *Ford*, in reducing the Grievant's penalty to a suspension, as "the same as Officer Ford received [i]n as close to similar misconduct as in evidence."[41] MPD contends that *Ford* is dissimilar from the present case because the grievant in *Ford* "discharged his service weapon in self-defense only after a man swung at him, kicked toward him, and finally lunged forward at him," while, in this case, "neither the MPD nor the arbitrator found that Grievant was acting in self-defense when he shot [the civilian]."[42] MPD argues that it was improper for the Arbitrator to impose the same 45-day penalty that was imposed in *Ford* because "the facts of the present case are easily distinguishable from that of the case involving Officer Ford."[43]

By submitting a matter to arbitration, the parties agree to be bound by the arbitrator's decision which necessarily includes the arbitrator's interpretation of the contract and related rules and/or regulations as well as his evidentiary findings and conclusions upon which the decision is based.[44] The arbitrator has discretion over the weight and significance of evidence.[45] A dispute over the exercise of that discretion does not state a statutory basis for modifying or setting aside the award.[46] It is not enough for the party to raise supposed deficiencies in the arbitrator's legal reasoning.[47] To set aside an award as contrary to law, the party bears the burden to present applicable law that mandates that the arbitrator arrive at a different result.[48]

MPD does not present any applicable law violated by the Arbitrator's consideration of the penalty in *Ford* when determining the Grievant's penalty. The essence of MPD's argument is its disagreement with the Arbitrator's interpretation of *Ford*, upon which the Arbitrator based his findings and conclusion. MPD merely requests that the Board adopt its interpretation and chosen penalty over that of the Arbitrator's. Therefore, the Board finds that MPD has not demonstrated that the Arbitrator's determination of penalty or reasoning was premised upon a misinterpretation of law apparent on the face of the Award.

---

[39] *Dist. of Columbia Metro. Police Dep't*, 282 A.3d at 604; *Fraternal Order of Police/Dept. of Corr. Labor Comm. v. Dist. of Columbia Pub. Employee Relations Bd.*, 973 A.2d 174, 177 (D.C. 2009) (quoting *Dist. of Columbia Metro. Police Dept. v. Dist. of Columbia Pub. Employee Relations Bd.*, 901 A.2d 784, 789 (D.C. 2006)).
[40] *Dist. of Columbia Metro. Police Dep't*, 282 A.3d at 604 (quoting *Dist. of Columbia Metro. Police Dep't*, 901 A.2d at 789).
[41] Request at 12 (quoting Award at 10).
[42] Request at 12.
[43] Request at 12-13.
[44] *See MPD v. FOP/DOC Labor Comm.*, 67 D.C. Reg. 9258, Slip Op. No. 1731 at 6, PERB Case No. 20-A-01 (2019); *MPD v. FOP/DOC Labor Comm.*, 60 D.C. Reg. 552, Slip Op. No. 1341 at 4, PERB Case No. 11-A-10 (2013).
[45] *MPD v. FOP/DOC Labor Comm.*, 61 D.C. Reg. 12839, Slip Op. No. 1494 at 4, PERB Case No. 13-A-06 (2014).
[46] *Id.*
[47] *FOP/DOC Labor Comm.*, Slip Op. No. 1221 at 4.
[48] *MPD and FOP/MPD Labor Committee*, Slip Op. 633 at 3.

ii. MPD has not shown that the Arbitrator's *Douglas* factor analysis improperly placed a burden of proof on MPD in violation of applicable law.

MPD also argues that the Award is contrary to law because the Arbitrator improperly inferred, in his application of the *Douglas* factors, that MPD had a burden of proof to show that the Panel's penalty of termination was consistent with the penalty imposed against other officers for similar misconduct.[49] MPD asserts that the Panel considered *Douglas* factor 6[50] and concluded that the penalty of termination was consistent with the penalty imposed against other officers for similar misconduct.[51] MPD argues that it was not required to provide any additional analysis or proof and the Arbitrator's inference to the contrary is not in accordance with the law.[52]

The Board must defer to an arbitrator's rational interpretation of external law when the arbitrator is construing the parties' contract.[53] An arbitrator's review of MPD's *Douglas* factor analysis constitutes an exercise of his equitable powers arising out of the parties' collective bargaining agreement.[54]

Here, in his assessment of the Panel's *Douglas* factor analysis, the Arbitrator found that the Panel did not reach a conclusion on *Douglas* factor 6 that was within "tolerable limits of reasonableness."[55] The Arbitrator determined the Panel cited no other disciplinary decisions in reaching its conclusion that the penalty of termination is "…consistent with the penalty given to employees for like or similar conduct."[56] The Arbitrator found that the Panel considered the *Douglas* factors but noted that, "consideration without proof, when proof is required or when the facts are in conflict with the conclusion is not in compliance with all of the *Douglas* factors that are 'pertinent.'"[57]

MPD alleges that the Arbitrator "improperly inferred" that MPD had a burden of proof to show that the Panel's penalty of termination was consistent with the penalty imposed against other members for similar misconduct. Based on the evidence presented before him, the Arbitrator had jurisdiction to determine that the Panel misapplied the *Douglas* factors and that the penalty of discharge was improper. The record does not reflect that the Arbitrator imposed an additional burden of proof on MPD outside of exercising his equitable powers to review the Panel's application of the *Douglas* factors. Therefore, the Board finds that MPD has not met its burden to show that the Arbitrator's review of the Panel's *Douglas* factor analysis was premised upon a misinterpretation of law apparent on the face of the Award.

---

[49] Request at 10.
[50] *See Douglas*, 5 M.S.P.B. at 305 ("Court decisions and OPM and Civil Service Commission issuances have recognized a number of factors that are relevant for consideration in determining the appropriateness of a penalty. Without purporting to be exhaustive, those generally recognized as relevant include the following…(6) consistency of the penalty with those imposed upon other employees for the same or similar offense…"). The Award erroneously refers to this factor as *Douglas* factor 7.
[51] Request at 10.
[52] Request at 10.
[53] *See DOC v. FOP/DOC Labor Comm.*, 59 D.C. Reg.12702, Slip Op. No. 1326 at 5-6, PERB Case No. 10-A-14 (2012); *FOP/DOC Labor Comm.*, Slip Op. No. 1221 at 4).
[54] *See MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6734, Slip Op. No. 1705 at 4, PERB Case No. 19-A-02 (2019); *MPD v. FOP/MPD Labor Comm.*, 67 D.C. Reg. 9579, Slip Op. No. 1754 at 6, PERB Case No. 20-A-06 (2020).
[55] Award at 9.
[56] Award at 9.
[57] Award at 9.

For the reasons stated above, MPD has not met its burden to present applicable violations of law in support of its arguments. Therefore, the Board finds that the Award is not contrary to law.

B. The Award is not contrary to public policy.

In the Request, MPD argues that the Arbitrator's reversal of the Grievant's termination is contrary to a dominant public policy requiring police officers to "preserve the peace, protect life, and uphold the law."[58] The Court of Appeals characterized MPD's articulated public policy as "a public policy against the criminal use of deadly force by the police."[59] The Court of Appeals noted that the dispute is over whether reinstating the Grievant would violate that public policy.[60]

MPD argues that allowing the Grievant to continue working as a police officer would be "directly at odds" with public policy because "Grievant's misconduct in this case was egregious and completely contrary to the established standards by which all MPD members must abide."[61] MPD asserts that the Grievant used his service weapon to shoot the civilian, causing serious injuries.[62] MPD argues that the Grievant's conduct "actually constitutes a crime" in violation of Maryland law.[63] MPD further notes that the Panel and the Arbitrator both found the Grievant guilty of engaging in "conduct that creates a substantial risk of death or serious physical injury to another."[64]

MPD cites to *City of Ansonia*[65] and *City of Ironton*,[66] Connecticut and Ohio state court cases that reversed arbitral awards reinstating police officers terminated for sexual misconduct and falsifying records, respectively, on public policy grounds.[67] MPD relies on these cases to further argue that the Grievant's continued employment with the MPD "will only serve to erode public trust and confidence in the Department."[68]

In its Opposition to MPD's Request, FOP argues that MPD cannot show the reinstatement Award would violate a specific and well-defined public policy that mandates the Grievant's termination.[69] FOP challenges MPD's characterization of the Grievant as having committed a

---

[58] Request at 13. In support of its identified public policy, MPD cites to D.C. Mun. Regs. tit. 6-A, § 207 (1978) ("Use of Firearms and Other Weapons"); MPD General Orders 201.26 (V)(C)(1) (Conduct Toward the Public, Duties, Responsibilities and Conduct of Members of the Department (Effective Date April 5, 2011)) and 201.26 (V)(E)(1) (Citizen Police Relationships, Duties, Responsibilities and Conduct of Members of the Department (Effective Date April 5, 2011)); and the value statements articulated at the outset of MPD General Orders 201.26 and 201.36.
[59] *Dist. of Columbia Metro. Police Dep't*, 282 A.3d at 606.
[60] *Id.*
[61] Request at 13, 17.
[62] Request at 17.
[63] Request at 17.
[64] Request at 17.
[65] *City of Ansonia v. Earl Stanley*, 854 A.2d 101 (Conn. Super. Ct. 2004) (reversing the arbitral reinstatement of a police officer accused of sexual misconduct because the Court found that the police officer's continued employment violated a clearly defined public policy requiring good conduct by police officers).
[66] *City of Ironton v. Beth Rist*, 2010 WL 4273235 (Ohio Ct. App. 2010) (reversing the arbitral reinstatement of a police officer who falsified a police report because the Court found that the award violated the public policy of honesty in performance of public official duties).
[67] Request at 14-15.
[68] Request at 17 (quoting *City of Ironton*, 2010 WL 4273235 at *5).
[69] Opposition at 19.

crime, asserting that the Grievant "was never arrested or charged for the incident, and in fact the State Attorney's Office in Maryland specifically reviewed the matter and declined to prosecute [the Grievant] for any crime."[70] FOP argues that if MPD's identified public policy mandated the Grievant's termination, "then Officer Ford should have also been terminated for killing another person under similar circumstances."[71] FOP further asserts that *City of Ansonia* and *City of Ironton* are distinguishable from the present case.[72]

The Board's scope of review is particularly narrow concerning the public policy exception.[73] A petitioner must demonstrate that the arbitration award "compels" the violation of a "well defined and dominant" public policy that is ascertained "by reference to the laws and legal precedents and not from general considerations of supposed public interests."[74] The issue is not whether the employee's misconduct violated public policy but rather whether enforcing the arbitral award would do so.[75] The D.C. Court of Appeals has noted that courts across the country have been divided in their consideration of whether arbitral awards reversing termination violate established public policy.[76]

An arbitral award reversing termination will violate established public policy that is embodied in explicit law precluding the employee's reinstatement.[77] In the absence of such explicit law, determining whether an arbitral award violates public policy is a fact-specific inquiry.[78] The Board may look to several factors to determine whether an arbitral award violates

---

[70] Opposition at 19.
[71] Opposition at 19.
[72] Opposition at 21-23. FOP argues that the Connecticut Supreme Court has since repudiated the standard applied in *City of Ansonia* as an "incorrect statement of the law in the context of consensual arbitrations." Opposition at 21 (citing *HH East Parcel, LLC v. Handy & Harman, Inc.*, 947 A.2d 916, 925 (Conn. 2008)). FOP further argues that subsequent decisions by the Ohio Court of Appeals have narrowed the application of the holding in *City of Ironton* to police conduct involving deliberate untruthfulness by falsification of police reports. Opposition at 22.
[73] *FOP/DOC Labor Comm. v. D.C. Dep't of Corr.*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 2, PERB Case No. 10-A-20 (2012).
[74] *Id.* (quoting *American Postal Workers Union*, 789 F.2d at 8).
[75] *Dist. of Columbia Metro. Police Dep't*, 282 A.3d at 606 (citing *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 62-63 (2000)).
[76] *Dist. of Columbia Metro. Police Dep't.*, 282 A.3d at 606 ("*Compare, e.g.*, *City of Seattle, Seattle Police Dep't v. Seattle Police Officers' Guild*, 484 P.3d 485, 489-507 (Wash. Ct. App. 2021) (upholding trial-court order setting aside arbitral award as against public policy, where arbitrator reinstated officer who used excessive force by punching handcuffed suspect in face, breaking suspect's orbital bone), *and City of Des Plaines v. Metro. Alliance of Police, Chapter No. 240*, 30 N.E.3d 598, 600-610 (Ill. App. Ct. 2015) (upholding in part trial-court order setting aside arbitral award as against public policy, where arbitrator reinstated officer who used excessive force against arrestees; case remanded for arbitrator to further consider appropriate sanction), *with, e.g.*, *Town of South Windsor v. S. Windsor Police Union Loc. 1480*, 770 A.2d 14, 16-30 (Conn. 2001) (reversing order setting aside arbitral award as contrary to public policy, where arbitrator reinstated officer who pointed gun at young men playing basketball without permission at gymnasium)").
[77] *See E. Associated Coal Corp.*, 531 U.S. at 58; *Dist. of Columbia Metro. Police Dept*, 901 A.2d at790; *see also Fraternal Order of Police/Dept. of Corr. Labor Comm.*, 973 A.2d at 177.
[78] *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").

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.[79]

MPD has not demonstrated that the Award compels the violation of public policy. Neither MPD's cited regulation[80] nor its Department's General Orders[81] support a public policy that precludes the Grievant's reinstatement. Nor has MPD provided support for its assertion that the Award's 45-day suspension penalty would erode public trust and confidence in MPD.

MPD's argument that the reinstatement Award violates public policy is based wholly on the severity of the Grievant's conduct. MPD does not assert that it has removed other police officers for similar offenses. As FOP notes, MPD reinstated the terminated officer in *Ford*, a case in which the Arbitrator found the officer's misconduct similar to that of the Grievant.[82] The Arbitrator further noted that there was a good chance of the Grievant's rehabilitation in this case.[83] Finally, the Arbitrator's reversal of the Grievant's termination was conditioned upon the imposition of a 45-day suspension.[84] Based on the facts of the case, the Board finds that MPD has not demonstrated that the reinstatement Award is 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.

---

[79] *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).
[80] D.C. Mun. Regs. tit. 6-A, § 207.
[81] MPD General Orders 201.26, 201.36.
[82] Opposition at 19; Award at 10.
[83] Award at 9.
[84] Award at 10.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is denied.

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, Mary Anne Gibbons, and Peter Winkler.

March 16, 2023

Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration within fourteen (14) days, requesting the Board to 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 provide thirty (30) days after a Board decision is issued to file an appeal.