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

In the Matter of:)	
)	
District of Columbia Metropolitan Police Department)	
)	
Petitioner)	PERB Case No. 22-A-01
)	
v.)	Opinion No. 1803
)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Statement of the Case

On October 13, 2021, the District of Columbia Metropolitan Police Department (MPD) filed an Arbitration Review Request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA)¹ seeking review of an arbitration award (Award) dated September 22, 2021. The Award sustained a grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) on behalf of an employee (Grievant). MPD seeks review of the Award on the grounds that the Arbitrator exceeded his authority.² FOP filed an Opposition, requesting the Board deny MPD's Request.

Upon consideration of the Arbitrator's conclusions, applicable law, and the record presented by the parties, the Board concludes that the Arbitrator did not exceed his authority. Therefore, the Board denies MPD's Request.

¹ D.C. Official Code § 1-605.02(6).

² Request at 2.

II. Arbitration Award

A. Background

The Arbitrator made the following factual findings. The Grievant began her position as an MPD officer in 2009.³ MPD terminated the Grievant effective October 22, 2018, as a result of charges stemming from the Grievant's alleged involvement with a used car dealership that the Grievant's ex-husband operated during their marriage.⁴

Relying on the record, the Arbitrator found that, in 2009, the Grievant's ex-husband asked to use her name to obtain financing for a used car dealership that he planned to establish.⁵ The Arbitrator found that the record was ambiguous as to whether the ex-husband ever obtained any loans in the Grievant's name but determined that he established the dealership in or about 2010.⁶

On or about March 31, 2016, the Maryland State Police obtained and executed a search warrant for the dealership property and the homes of individuals associated with the dealership.⁷ The search warrant was a result of multiple traffic stops where the drivers of vehicles had invalid temporary registration tags and/or invalid proof of insurance cards purchased from the dealership.⁸ According to a report (Report) by the Maryland State Police, they reviewed the Grievant's email account, but did not discover any evidence of illegal activity on her part or any evidence that she was aware of such activity.⁹ Though it was alleged that the Grievant was president of the dealership, the Arbitrator found the Report "revealed that the Grievant was not observed...at the business premises of [the dealership]"¹⁰ and the Maryland State Police did not find any evidence that she was even aware of the business's revenue or losses.¹¹

As for the dealership's bank account, the Arbitrator found that the Grievant was one of two individuals licensed to use the bank account.¹² However, the Arbitrator reviewed the checks and bank slips from the account and concluded that the checks she supposedly signed showed different spellings of her name, exhibited varying handwriting styles, included unexplained and illegible notations, and showed evidence that the proceeds went to third parties and not to the Grievant.¹³ The Arbitrator also reviewed the bank's video footage and found that multiple unauthorized signers affiliated with the dealership, including the Grievant's ex-husband, had transacted with the dealership bank account without the Grievant, in contravention of the bank's policy.¹⁴ The

³ Award at 5.

⁴ Award at 7-10.

⁵ Award at 5.

⁶ Award at 5.

⁷ Award at 7-8.

⁸ Award at 7.

⁹ Award at 8,15.

¹⁰ Award at 9.

¹¹ Award at 15.

¹² Award at 10-11.

¹³ Award at 13.

¹⁴ Award at 14.

Arbitrator noted that the Report did not contain any evidence that the Grievant ever relinquished her status as an authorized user on the bank account or removed her name from the dealership, though she asserted that she asked her ex-husband to remove her name in or about 2012, and had assumed that he honored her request.¹⁵

The events directly leading to the Grievant's disciplinary charges stemmed from her ex-husband's deportation proceedings. As a result of the Maryland State Police's investigation of the dealership, they uncovered that the Grievant's ex-husband had been residing in the U.S. illegally since 2006.¹⁶ He was arraigned in federal court in connection with the dealership's illegal business practices.¹⁷ In November 2017, an MPD Special Agent informed MPD that he had witnessed the Grievant appear, in plain clothes, at that arraignment, and state that she was "willing to take responsibility for [her ex-husband] as his third-party custodian, including having him live with her in [her] home."¹⁸ In early 2018, following the Special Agent's discovery of the Grievant's connection to her ex-husband's business, the Internal Affairs Division (IAD) began investigating her.¹⁹ In a February 2018 interview, the Grievant told IAD that she did not consider herself the owner of the dealership, had never signed any checks in association with it, and had assumed her ex-husband had honored her request to take the business out of her name although she had allowed him to put her name on the dealership paperwork.²⁰ She initially asserted that she had never received any compensation for her role in the business,²¹ but later clarified that she had periodically withdrawn small sums of money from the account via an ATM to cover bills and basic living expenses for her family in lieu of a formal, child support order.²²

On March 28, 2018, MPD served the Grievant with a Notice of Proposed Adverse Action, charging her with (1) willfully and knowingly making untrue statements in a report pertaining to her official duties as a police officer,²³ (2) failing to obey orders and directives issued by the Chief of Police, and (3) engaging in conduct "prejudicial to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and permanence of the force."²⁴ "The Grievant pled Not Guilty to Charge No. 1 (Untruthful Statements) and Charge No. 3 (Prejudicial Conduct), but pled 'Guilty with an explanation' to Charge No. 2 (Outside Employment)."²⁵

¹⁵ Award at 15.

¹⁶ Award at 6,

¹⁷ Award at 7.

¹⁸ Award at 19-20.

¹⁹ See Award at 2.

²⁰ Award at 16.

²¹ Award at 16.

²² Award at 19.

²³ Charge No. 1 comprised two Specifications, the first alleging that the Grievant falsely stated to the police interviewer that she did not receive any money from the dealership, the second alleging that the Grievant falsely stated during the course of the same interview that she did not sign any checks from the dealership's business account.

²⁴ Award at 3-4.

²⁵ Award at 4.

At the Grievant's request, there was an Adverse Action Hearing before a Panel on September 10, 2018.²⁶ The Panel sustained all charges and specifications, recommending the following penalties: Charge No. 1, Specification 1 (15-day suspension), Charge No. 1, Specification 2 (removal), Charge No. 2, Specification 1 (10-day suspension), and Charge No. 3, Specification 1 (removal).²⁷

MPD issued a Final Notice of Adverse Action to the Grievant, sustaining the recommended penalties and terminating her, effective October 22, 2018.²⁸ The Grievant appealed the decision to the Chief of Police, who denied her appeal on November 9, 2018.²⁹ On November 29, 2018, FOP invoked arbitration.³⁰

B. Arbitrator's Findings

The parties submitted the following issues to the Arbitrator: "whether the discharge of the Grievant...was for cause and if not, to determine the appropriate remedy."³¹ As an initial matter, the Arbitrator established that MPD had the burden of proving "by a preponderance of the credible record evidence that the discipline in question was appropriate and for cause."³²

The Arbitrator reviewed Charge No. 3, Specification No. 1, which asserted that "from 2014 through March 3, 2016 [the Grievant] w[as] the owner of a business...which produced fraudulent temporary vehicle tags, vehicle registrations, and fraudulent vehicle insurance policies for a fee."³³ After reviewing the evidence, the Arbitrator concluded that the Grievant was the dealership owner in name only.³⁴ He found no evidence that she was ever present at the business location or performed services for the dealership.³⁵ He determined that the record failed to show that the Grievant had knowledge of the dealership's illegal activities "or even any information that should reasonably have led her to investigate further."³⁶ Moreover, he concluded that the Grievant believed that "her ex-husband had removed her name from the business as requested in or about 2012."³⁷ The Arbitrator determined the only evidence connecting the Grievant to the ownership of the dealership was a screenshot of a listing from an online third-party database.³⁸

On Charge No. 3, Specification No. 1, the Arbitrator found that "the record in this case failed to establish that the Grievant ever enjoyed a legal right to any of the income or assets" from

²⁶ Award at 2.

²⁷ Award at 2.

²⁸ Award at 2.

²⁹ Award at 2.

³⁰ Award Exhibit 2 at 1042.

³¹ Award at 1.

³² Award at 33-34.

³³ Award at 4.

³⁴ Award at 34.

³⁵ Award at 35.

³⁶ Award at 35.

³⁷ Award at 35.

³⁸ Award at 9.

the dealership.³⁹ He determined that the only benefit she had received from the business was the occasional ATM withdrawal of a few hundred dollars to cover her family's bills.⁴⁰ Considering these facts, the Arbitrator concluded there was no evidence that the Grievant "failed to obey or properly observe any of the rules, regulations, and orders of the Department."⁴¹ Therefore, he determined that "Charge No. 3, Specification No. 1, [was un]substantiated and no discipline based upon this unproven Charge...[was] for cause."⁴²

Next, the Arbitrator considered Charge No. 1, Specification Nos. 1 and 2, "which assert[ed] that the Grievant willfully and knowingly made two untruthful statements in her IAD interview" relating to her "receiving money or signing checks from the [dealership] business account."⁴³ The Arbitrator found that the preponderance of the evidence "failed to establish that she was untruthful, much less that she was willfully and intentionally untruthful in her statements to IAD."⁴⁴ The Arbitrator concluded that the Grievant's statements that she did not receive monies or compensation from the business "must be understood in the context" of the interview as a whole.⁴⁵ He found that she told the IAD Investigator she never put in hours at the dealership or received payment in exchange for services and "never received any monies from the business," but, later in the interview, stated "that she received some monies from [her husband to cover] rent and food and that she also made some withdrawals from the [dealership] account directly for those purposes."⁴⁶ The Arbitrator found that MPD did not prove its allegation that the Grievant untruthfully denied having signed checks in connection with the dealership.⁴⁷ Further, the Arbitrator did not find any evidence that the signatures on the checks were the Grievant's or proof that she had written herself any checks or received the proceeds of any checks.⁴⁸ For these reasons, the Arbitrator determined that Charge No. 1, Specification Nos. 1 and 2 were unsubstantiated and no discipline based on these accusations was for cause.⁴⁹

The Arbitrator did not discuss or rule on Charge No. 2 (Outside Employment), as the Grievant did not appeal the discipline imposed for her "Guilty with an explanation" plea.⁵⁰ Therefore, the Arbitrator did not order that the Grievant's 10-day suspension be reversed.⁵¹

Based on his conclusions, the Arbitrator directed MPD "to reinstate the Grievant, forthwith, with full uninterrupted seniority and to make her whole in accordance with the Agreement and applicable law, rule, and regulation, including but not limited to the Back Pay Act."⁵² Additionally,

³⁹ Award at 35.

⁴⁰ Award at 37.

⁴¹ Award at 37.

⁴² Award at 37.

⁴³ Award at 37.

⁴⁴ Award at 38.

⁴⁵ Award at 38.

⁴⁶ Award at 39.

⁴⁷ Award at 39.

⁴⁸ Award at 39-40.

⁴⁹ Award at 40.

⁵⁰ Award at 40.

⁵¹ Award at 40.

⁵² Award at 40.

he directed that “in accordance with Article 19.E.5.7. of the [parties’] Agreement, the fees and expenses of the Arbitrator [should] be borne in full by the losing party, which in this case is the [Metropolitan Police] Department.”⁵³

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 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.⁵⁴ MPD requests review of the Award on the grounds that the Arbitrator exceeded his authority.

When determining whether an arbitrator exceeded his authority in rendering an award, the Board analyzes whether the award “draws its essence from the parties[’] collective bargaining agreement.”⁵⁵ The relevant questions in this analysis are whether the arbitrator acted outside his 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.⁵⁶ “[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.”⁵⁷

In its Request, MPD argues that the Board should reverse the Award and affirm MPD’s final decision because the Arbitrator “exceeded the jurisdiction granted to him by rendering a decision that made findings not pertinent to the issues presented for arbitration.”⁵⁸ The Request states, “Under Article 19, Section E(5)(4) of the parties’ CBA, the arbitrator is required to confine his decision solely to the precise issue submitted for arbitration.”⁵⁹ MPD alleges that those “non-pertinent findings led to his determination that Grievant was not guilty of Charge Nos. 1 and 3.”⁶⁰

A. The Board affirms the Arbitrator’s conclusion for Charge No. 1, Specification No. 1.

MPD argues that the Arbitrator exceeded his jurisdiction, because the “Arbitrator did not base his findings on the actual charges as listed by MPD in the record.”⁶¹ MPD contends that the

⁵³ Award at 41.

⁵⁴ D.C. Official Code § 1-605.02(6).

⁵⁵ *AFGE, Local 2725 v. DCHA.*, 61 D.C. Reg. 9062, Slip Op. 1480 at 5, PERB Case No. 14-A-01 (2014).

⁵⁶ *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).

⁵⁷ *FOP/DOC Labor Comm. v. DOC*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at 7, PERB Case No. 10-A-20 (2012) (citing *Mich. Family Resources, Inc. v. SEIU, Local 517M*, 475 F.3d 746, 753 (2007)).

⁵⁸ Request at 2,19.

⁵⁹ Request at 11.

⁶⁰ Request at 2.

⁶¹ Request at 12.

Arbitrator erred in his consideration of the record and determination that MPD did not meet its burden of proof regarding Charge No. 1, Specification No. 1.⁶² MPD asserts that Charge No. 1, Specification No. 1 “only require[d] that [the] Grievant was untruthful with IAD when she reported that she had not received any money from [the dealership], when in fact, by her own admission, [the] Grievant withdrew money from the [dealership] Business account.”⁶³ MPD contends that the Arbitrator exceeded his jurisdiction because Charge No. 1, Specification No. 1 “did not refer to a specific amount received by [the] Grievant; thus, the fact that it was a relatively modest sum of money...is irrelevant. [The] Grievant undeniably admitted she received money from the business – but only after she initially denied receiving any money from the business.”⁶⁴ In its Opposition, FOP addressed Charge No. 1, Specification No. 1, arguing that MPD interpreted the facts differently, which does not “establish that the Arbitrator exceeded his bargained-for jurisdiction in any way.”⁶⁵

The Board has found 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...”⁶⁶ Here, the parties expressly charged the Arbitrator with the task of reviewing whether the Grievant’s discharge was for cause.⁶⁷ The Arbitrator based his decision on the record and briefs provided by the parties and determined that the Panel’s decision was not supported by the evidence presented. In particular, MPD fails to acknowledge that the issue presented to the Arbitrator included a determination as to whether the Grievant “[w]illfully and knowingly ma[de] an untruthful statement.”⁶⁸ A determination of whether an act was committed willfully or knowingly is an evidentiary conclusion. Therefore, the Board finds that MPD’s argument is based on a disagreement with the Arbitrator’s evidentiary findings.

The Board has held that “disputes over credibility determinations” and “assessing what weight and significance such evidence should be afforded” is within the jurisdictional authority of the Arbitrator.⁶⁹ The Arbitrator made an evidentiary finding and the Board will not substitute its judgment for that of the Arbitrator.⁷⁰ Therefore, the Board finds that the Arbitrator did not exceed his jurisdiction in his determination regarding Charge No. 1, Specification No. 1.

⁶² Request at 11.

⁶³ Request at 13.

⁶⁴ Request at 13.

⁶⁵ Opposition at 11 (citing *AFGE, Local 872 v. D.C. Water*, 63 D.C. Reg. 11725, Slip Op. 1588 at 3, PERB Case No. 16-A-10 (2016)).

⁶⁶ *MPD v. NAGE Local R3-5 ex. rel. Burrell*, Slip Op. No. 785 at 4, PERB Op. No. 03-A-08 (2006) (citing *UDC v. UDCFA*, 39 DCR 9628, Slip Op. No. 320 at 2, PERB Case No. 92-A-04 (1992)).

⁶⁷ Request at 1.

⁶⁸ Award at 3, citing Charge 1.

⁶⁹ *MPD v. NAGE, Local R3-5 ex. rel. Burrell*, 59 D.C. Reg. 2983, Slip Op. No. 785 at 5, PERB Case No. 03-A-08 (2012) (citing *AFSCME, District Council 20 v. District of Columbia Gen. Hosp.*, 37 D.C. Reg. 6172, Slip Op. No. 253 at 2, PERB Case No. 90-A-04 (1990)).

⁷⁰ *MPD v. NAGE, Local R3-5 ex. rel. Burrell*, 59 D.C. Reg. 2983, Slip Op. No. 785 at 5, PERB Case No. 03-A-08 (2012).

B. The Board affirms the Arbitrator's conclusion for Charge No. 1, Specification No. 2.

MPD argues that the Arbitrator exceeded his jurisdiction “by asserting that...[C]harge [No. 1] and corresponding [S]pecification [No. 2] required the Grievant to have received large sums of money from the business.”⁷¹ MPD asserts that “all that was required [for Charge No. 1, Specification No. 2] was that MPD prove, by a preponderance of the evidence, that [the] Grievant wrote and signed several checks for cash made payable to herself from the [dealership] account.”⁷² MPD contends that it proved this specification by showing that the Grievant informed the IAD agent that she did not sign any checks from the dealership account “when in fact, [she] wrote and signed several checks for cash made payable to [her]self from the...account.”⁷³ In response, FOP argues again that MPD merely disagrees with the Arbitrator's factual findings,⁷⁴ asserting that the Arbitrator thoroughly examined the entirety of the record and found no evidence contradicting the Grievant's testimony.⁷⁵

MPD's contention “that [the] Grievant wrote and signed several checks for cash made payable to herself from the [dealership] account”⁷⁶ is a version of the facts with which the Arbitrator disagreed. Based on his examination of the checks and bank video footage in the record, the Arbitrator concluded that the Grievant was not the one who signed the checks in question, despite her name appearing on some of them.⁷⁷ The Board does not act as a finder of fact nor does it substitute its judgment for that of the arbitrator on credibility determinations and the weight attributed evidence.⁷⁸ Therefore, the Board finds that the Arbitrator did not exceed his jurisdiction when he made evidentiary findings for Charge No. 1, Specification 2.

C. The Board affirms the Arbitrator's conclusion for Charge No. 3, Specification No. 1.

MPD argues that “the Arbitrator exceeded his jurisdiction when he failed to determine whether there was substantial evidence in the record that supported Charge No. 3, Specification No. 1....”⁷⁹ Charge No. 3, Specification No. 1 alleges that “from 2014 through March 3, 2016 [the Grievant was] the owner of a business...which produced fraudulent temporary vehicle tags, vehicle registrations, and fraudulent vehicle insurance policies for a fee.”⁸⁰ In the Request, MPD

⁷¹ Request at 15.

⁷² Request at 15.

⁷³ Request at 14 (quoting Notice of Proposed Adverse Action at 1).

⁷⁴ Opposition at 11-12.

⁷⁵ Opposition at 12.

⁷⁶ Request at 15.

⁷⁷ Award at 23.

⁷⁸ *Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO 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, AFL-CIO v. DCRA*, 38 D.C. 5076, Slip Op. No. 281 at fn. 3, PERB Case No. 90-A-12 (1991)).

⁷⁹ Request at 18.

⁸⁰ Request at 17 (quoting Award at 34).

argues that even if, as the Arbitrator concluded, the Grievant had no knowledge of the dealership's illegal activities and did not enjoy any legal rights to the proceeds, she was still the business owner, as alleged.⁸¹ MPD contends that, by pleading guilty to Charge No. 2, Specification No. 1 (Outside Employment), the Grievant had already admitted ownership of the dealership.⁸² Furthermore, the Request states that the record contains no evidence that the Grievant was ever removed as the record owner of the business.⁸³ FOP argues that MPD failed to consider "the fact that the specification contemplated not just ownership, but also illegal activity that was being conducted by the business—activity in which [the Grievant] was never involved."⁸⁴

As stated, the Board does not act as a finder of fact nor does it substitute its judgment for that of the arbitrator on credibility determinations and the weight attributed to evidence.⁸⁵ The Board will not disrupt the Arbitrator's factual findings that the Grievant had no knowledge of the dealership's illegal activities, did not enjoy any legal rights to the proceeds, and did not act as or consider herself the owner of the dealership. The Award demonstrates that the Arbitrator was aware, when reaching his factual and evidentiary conclusions, that the Grievant pleaded "Guilty with an explanation" to Charge No. 2, Specification No. 1 (Outside Employment).⁸⁶

Contrary to MPD's assertions, the Arbitrator's findings were pertinent to the issues presented. He addressed the question of whether the Grievant was terminated for cause and based his Award on the record evidence and the parties' CBA. As previously stated, the Arbitrator's weight of evidence before him is within his jurisdiction. Therefore, the Board does not find that the Arbitrator exceeded his jurisdiction in his findings for Charge 3, Specification 1.

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.

⁸¹ Request at 18.

⁸² Request at 18.

⁸³ Request at 18.

⁸⁴ Opposition at 13.

⁸⁵ *Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO 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, AFL-CIO v. DCRA*, 38 D.C. 5076, Slip Op. No. 281 at fn. 3, PERB Case No. 90-A-12 (1991)).

⁸⁶ Award at 9-10, 18.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby 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.

December 16, 2021

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order - Opinion No. 1803 was served to the following parties via File & ServeXpress on this the 21st day of December 2021:

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