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

_____)	
In the Matter of:)	
)	
Metropolitan Police Department)	
)	PERB Case No. 18-A-14
Petitioner)	
)	Opinion No. 1688
v.)	
)	
Fraternal Order of Police/ Metropolitan)	
Police Department Labor Committee)	
)	
Respondent)	
_____)	

DECISION AND ORDER

I. Introduction

On July 31, 2018, the District of Columbia Metropolitan Police Department (“MPD”) filed this Arbitration Review Request pursuant to the Comprehensive Merit Personnel Act (“CMPA”), section 1-605.02(6) of the D.C. Official Code. MPD seeks review of an arbitration award (“Award”) issued on July 6, 2018, granting the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) on behalf of the Grievant. The Award rescinded the Grievant’s termination. MPD seeks review of the Award claiming it is contrary to law and public policy.

Pursuant to the CMPA, the Board is permitted to modify, set aside, or remand a grievance arbitration award only if: (1) the arbitrator was without or exceeded his or her jurisdiction; (2) the award on its face is contrary to law and public policy; or (3) the award was procured by fraud, collusion, or other similar unlawful means.¹ Upon consideration of the Arbitrator’s conclusions, applicable law, and record presented by the parties, for the reasons stated herein, the request is denied.

¹ D.C. Official Code § 1-605.02(6).

II. Statement of the Case

On February 14, 2012, the Grievant was arrested and charged with assault and false imprisonment related to a domestic dispute with his wife.² On June 4, 2012, the District Court of Maryland for Anne Arundel County found the Grievant not guilty of the criminal charges.³

MPD's internal affairs division investigated the incident and on June 20, 2012, issued to the Grievant a Notice of Proposed Adverse Action for the following:

Charge 1: Committing an act that constitutes criminal conduct (an arrest)

Charge 2: Violation of general orders (under influence of alcohol while off duty)

Charge 3: Conduct unbecoming an officer (alleged assault)⁴

The Grievant contested Charge 1 and Charge 3 but admitted to Charge 2. An adverse action hearing was held on August 24, 2012.⁵ The adverse action panel ("Panel") found the Grievant guilty, recommended termination for Charge 1 and Charge 3, and recommended a 10-day suspension for Charge 2. The Grievant's appeal to the Chief of Police was denied, and the FOP made a demand for arbitration.⁶

III. Arbitration

The Arbitrator addressed two issues:

1. Whether the evidence presented by MPD was sufficient to support the alleged charges; and
2. Whether termination was the appropriate penalty.⁷

MPD argued that substantial evidence existed in the record to support Charges 1 and 3.⁸ Also, MPD claimed that the Panel properly considered the *Douglas* Factors⁹ and found them overwhelmingly aggravating in support of termination.

² Award at 3.

³ Award at 4.

⁴ Award at 4.

⁵ Award at 5.

⁶ Award at 5.

⁷ Award at 2.

⁸ Award at 5.

⁹ *Douglas v. Veteran's Administration* 5 M.S.P.B. 280 (1981) provides a list of 12 factors as guidance to determine the appropriateness of discipline for public sector employees. At issue here is factor number six which provides for consideration of "consistency of the penalty with those imposed upon other employees for the same or similar offenses."

FOP asserted that the evidence was insufficient to support Charge 1 and 3. FOP argued that the *Douglas* Factors were mitigating and submitted previous arbitration decisions that contemplated similar facts but resulted in less severe punishments.¹⁰

The Arbitrator found that MPD presented sufficient evidence to reach a reasonable conclusion that the Grievant was guilty of Charge 1 and Charge 3, however the Arbitrator determined that termination was not an appropriate disciplinary action.¹¹ The Arbitrator found that the Panel failed to demonstrate that the penalty was consistent with prior disciplinary decisions and ordered the Grievant suspended for 40 days and then reinstated.¹²

IV. Discussion

MPD argues that the Arbitrator's decision is contrary to law and public policy. MPD seeks the Board's review to determine whether the Arbitrator properly analyzed *Douglas* consistent with law and if reinstatement was consistent with public policy.

A. The Arbitrator's decision is consistent with the law.

MPD argues that the Arbitrator's decision is contrary to law because the Award only discusses *Douglas* Factor six in overturning the Panel's decision to terminate the Grievant's employment.¹³ MPD relies on *Stokes v. District of Columbia*¹⁴ in arguing that the Arbitrator was required to defer to the Panel in weighing of the evidence.¹⁵

As we have ruled in numerous cases, *Stokes* is applicable to cases brought before the Office of Employee Appeals; it is not applicable to the grievance-arbitration process.¹⁶ The grievance-arbitration process is a product of the parties' collective bargaining agreement.¹⁷ By submitting a dispute to arbitration "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations as well as the evidentiary findings and conclusions on which the decision is based."¹⁸ Here, the Arbitrator made a decision on the precise issue that the parties submitted to him. He determined that termination was not the appropriate penalty based on the evidence before him and the Board will not substitute its judgment for that of the duly designated arbitrator.¹⁹

¹⁰ Award at 9.

¹¹ Award at 12.

¹² Award at 12.

¹³ Request at 8.

¹⁴ 502 A. 2d 1006, 1011 (1985).

¹⁵ Request at 8.

¹⁶ E.g., *MPD v. NAGE Local R-35 (on behalf of Burrell)*, 59 D.C. Reg. 2983, Slip Op. 785 at 4-5, PERB Case No. 03-A-08 (2012); *MPD v. FOP/MPD Labor Committee (on behalf of Hector)*, 54 D.C. Reg. 3154, Slip Op. 872 at 6-7, PERB Case No. 07-A-02 (2007).

¹⁷ *Id.*

¹⁸ *MPD v. FOP/MPD Labor Committee (on behalf of Melby)*, 59 D.C. Reg. 6730, Slip Op. 1125 at 15, PERB Case No. 10-A-11 (2012).

¹⁹ *MPD v. FOP/MPD Labor Committee (on behalf of Mendoza)*, 64 D.C. Reg. 10152, Slip Op. 1639 at 4, PERB Case No. 16-A-12 (2017); *FOP/MPD Labor Committee (on behalf of Haselden) v. MPD*, 59 D.C. Reg. 353, Slip Op. 882 at 6, PERB Case No. 06-A-13 (2012); *MPD v. FOP/MPD Labor Committee (on behalf of Resper)*, 59 D.C. Reg. 3579, Slip Op. 887 at 5, PERB Case No. 6-A-21 (2012); *Dep't of Corrections v. IBT Local 246 (on behalf of Edwards)*, 34 D.C. Reg. 3616, Slip Op. 157 at 3, PERB Case No. 87-A-02 (1987).

Moreover, arbitrators may overturn a termination decision based on their assessment of the *Douglas* Factors. We have previously upheld an arbitrator's finding that MPD did not properly analyze the *Douglas* Factors in its decision to terminate, reasoning that the arbitrator effectively determined that there was insufficient "cause" to support termination as the appropriate remedy.²⁰ In this case, the Arbitrator found that the Panel did not properly analyze a *Douglas* Factor when it completely failed to demonstrate "like punishment for like offenses."²¹ We find the Arbitrator's decision consistent with the law.

B. The Arbitrator's decision is consistent with public policy

Finally, MPD argues that the Award is contrary to the public policy requiring police officers to preserve the peace, protect life, and uphold the law. The Board's scope of review, particularly concerning the public policy exception, is extremely narrow.²² The Board has adopted the D.C. Circuit Court's holding that a violation of public policy "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 interest."²³ The court went on to explain that the "exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy."²⁴ The Board has previously rejected MPD's argument that the public policy to preserve peace, protect life, and uphold the law is sufficiently specific to serve as a basis for overturning an arbitration award.²⁵

Here, MPD has failed to show the violation of an explicit, well-defined public policy grounded in law or legal precedent. In the absence of a clear violation of law and public policy apparent on the face of the Award, the Board may not modify, set aside, or remand the Award as contrary to law and public policy.²⁶ Therefore, MPD's request must be denied.

V. Conclusion

The Board rejects MPD's arguments and finds no cause to modify, set aside, or remand the Arbitrator's Award. Accordingly, MPD's request is denied and the matter is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

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

²⁰ *MPD v. FOP/MPD Labor Committee (on behalf of Kennie)*, 61 D.C. Reg. 12364, Slip Op. 1493 at 5, PERB Case No. 14-A-06 (2014).

²¹ Award at 12.

²² *American Postal Workers v. US Postal Serv.*, 789 F.2d 1 (D.C. Cir. 1986).

²³ *FOP/Dep't of Corr. Labor Comm. v. D.C. Dep't of Corr.*, 59 D.C. Reg. 9798, Slip Op. 1271 at p. 2, PERB Case No. 10-A-20 (2012) (citing *W.R. Grace & Co. v. Local Union 759, International Union of Rubber, Cork, Linoleum & Plastic Workers of America*, 461 U.S. 757, 766(1983)).

²⁴ *American Postal Workers v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986).

²⁵ *MPD v. FOP/MPD Labor Committee*, 65 D.C. Reg. 7468, Slip Op.1667 at 4, PERB Case No. 18-A-04 (2018).

²⁶ *Id.* at 5.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

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

Washington, D.C.

November 15, 2018

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-14, Op. No. 1688 was sent by File and ServeXpress to the following parties on this the 28th day of November, 2018.

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