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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹ ,	)	OEA Matter No. 1601-0035-24
	)	
v.	)	Date of Issuance: September 5, 2025
	)	
METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	MONICA DOHNJI, Esq.
	)	Administrative Judge
Daniel McCartin, Esq., Employee Representative		
Jacob Thole, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On March 5, 2024, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the Metropolitan Police Department’s (“MPD” or “Agency”) decision to place him on Indefinite Suspension Without Pay from his position as a Police Officer, effective February 7, 2024. Employee was charged with (1) violation of General Order 120.21, Attachment “A,” Number 6.² On March 5, 2024, OEA issued a Request for Agency’s Answer to Employee’s Petition for Appeal. Agency submitted its Answer to Employee’s Petition for Appeal on March 11, 2024.

This matter was initially assigned to Administrative Judge (“AJ”) Lois Hochhauser. On March 21, 2024, AJ Hochhauser issued an Order granting Agency’s request to file a Motion for Summary Disposition by April 12, 2024. This Order also provided Employee with the opportunity to submit a response to Agency’s Motion for Summary Disposition by May 2, 2024. Agency filed its Motion to Dismiss or in the Alternative, Motion for Summary Disposition on April 11, 2024. Employee filed his Opposition to Agency’s Motion to Dismiss or in the Alternative, Motion for Summary Disposition on April 17, 2024. Thereafter, AJ Hochhauser issued an Order on April 22,

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or of any offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of *nolo contendere*, or is deemed to have been involved in the commission of any act which would constitute a crime whether or not a court record reflects a conviction.

2025, scheduling a Prehearing Conference and oral arguments on Agency's Motion for May 16, 2025. Employee filed a Consent Motion to Continue Prehearing Conference.³

The matter was reassigned to the undersigned on June 11, 2025, following AJ Hochhauser's departure from OEA. Upon review of the record, I have decided that no other submissions are required. Additionally, because I determined that this matter can be decided based on the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

OEA has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Agency's action of placing Employee on Indefinite Suspension Without Pay was done in accordance with all applicable laws, rules, or regulations.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

According to the record, Employee is a Police Officer with Agency. On November 23, 2023, Employee was arrested in Virginia for felony eluding and misdemeanor possession of a radar detector. While Employee's criminal charges were pending, on November 24, 2023, Agency issued Employee a Proposed Notice of Indefinite Suspension without pay for:⁴

Cause #1: Violation of General Order Series 120.21, Number 21, Attachment "A," Number 6: Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or of any offense in which the member either pleads guilty or a conviction following a plea of nolo contendere, or is deemed to have been involved in the commission of any act which would constitute a crime whether or not the court record reflects a conviction. This misconduct is further defined as cause in the District Personnel Manual, Chapter 16, § 1605.4 (a) (3)(4) and 1617.4.

Specification # 1: On November 23, 2023, while in the Commonwealth of Virginia you were arrested and charged with disregarding signal by law-enforcement officer to stop; eluding police. After having received a visible or audible signal from a law enforcement officer to stop to stop, drive a motor vehicle in willful and wanton disregard for such signal so as to interfere with or endanger the operation of law enforcement vehicle or endanger a person. The speed of the accused exceeded the maximum allowed by twenty miles per hour, in violation of Code of Virginia § 46.2-817.

³ This Motion is now MOOT.

⁴ Agency's Answer to the Petition at Tab 1 (March 11, 2024).

On December 15, 2023, Employee, through his counsel, filed an Appeal of Proposed Indefinite Suspension without Pay.⁵ Agency issued its Final Notice of Suspension Without Pay on January 3, 2024.⁶ Employee appealed the Final Notice of Suspension Without Pay to the Chief of Police on January 17, 2024.⁷ Subsequently, on February 7, 2024, the Chief of Police filed a response to Employee's January 17, 2024, appeal, upholding the Final Notice of Indefinite Suspension.⁸ Employee was indicted by a grand jury on February 12, 2024, and an arrest warrant was issued against Employee on the same day, in the Circuit Court of the City of Virginia.⁹ Employee turned himself in for processing on February 20, 2024.¹⁰

Agency's Position

Agency argued that it had cause to believe that Employee committed a crime that could result in imprisonment, based on Employee's arrest warrant, arraignment and supporting evidence that was considered prior to Employee being placed on Indefinite Suspension without pay.¹¹ Citing to *District of Columbia v. Green*,¹² Agency explains that the D.C. Court of Appeals established "reasonable cause" for an officer's indefinite suspension "based on his arrest pursuant to a warrant, together with consideration by the police officials of the investigative documents underlying the warrant." Agency explains that similar to *Green*, in the current matter, it considered Employee's arrest warrant charging him with felony eluding and misdemeanor possession of a radar detector. Additionally, Agency asserts that like in *Green*, the fact that the Employee in the current matter was arrested pursuant to a warrant and was subsequently arraigned by a Virginia Magistrate judge, reflected a finding by a "neutral and detached judicial officer" that there was probable cause to believe Employee has committed the crimes.¹³

Agency argues that it considered Employee's written response, the seriousness of Employee's charged crimes, the supporting evidence and the obvious bearing Employee's criminal conduct had on his fitness to remain in pay status as a police officer, prior to proposing Employee's suspension. Agency avers that given the nature of Employee's charged crimes, which were a matter of public record and the position of public trust Employee held as a sworn police officer, Agency decided that allowing Employee to stay in pay status would both impede Agency's ability to carry out its mission and tarnish Agency's reputation. Thus, its action of placing Employee on Indefinite Suspension without pay was reasonable.¹⁴

Furthermore, Agency asserts that given the holding in *Green*, Employee's claims that Agency lacked the authority to place Employee on Indefinite Suspension without pay pursuant to Article 15, Section 7 of the CBA between Agency and Employee's Union because it refers to "the resolution of the criminal indictment" is misplaced. Agency explains that the D.C. Court of Appeals in *Green*, rejected this very argument, holding that an indictment is not necessary to justify an indefinite

⁵ *Id.* at Tab 2.

⁶ *Id.* at Tab 3.

⁷ *Id.* at Tab 4.

⁸ *Id.* at Tab 5.

⁹ Agency's Motion to Dismiss or in the Alternative, Motion for Summary Disposition at Exhibit 8 (April 11, 2024).

¹⁰ *Id.*

¹¹ Agency's Motion to Dismiss, *supra*.

¹² 687 A.2d 220 (D.C. 1996).

¹³ Agency's Motion to Dismiss, *supra*.

¹⁴ *Id.*

suspension.¹⁵ Agency maintains that although a sworn officer's indictment is clearly sufficient evidence to support an indefinite suspension, it is not the only evidence that establishes reasonable cause for indefinite suspension. Agency further notes that between the time period that the Chief of police denied Employee's appeal and when Employee filed a Petition for Appeal with OEA, Employee was indicted by an Alexandria General District Court grand jury, thereby, nullifying Employee's argument.¹⁶

Agency also cites that its action of placing Employee on indefinite suspension complied the indefinite suspension factors approved by the Merit Systems Protection Board ("MSPB") which provides that the federal agencies "must prove that 1) there is reasonable cause to believe the employee committed a crime punishable by imprisonment pending the outcome of the criminal proceeding or any subsequent agency action following the conclusion of the criminal process; 2) the suspension has an ascertainable end; 3) there is a nexus between the basis for the suspension and the efficiency of the service; and 4) the penalty is reasonable."¹⁷

Agency also argues that Employee's Indefinite Suspension Without Pay was permitted under General Order 120.21, Part II(C)2 which provides that:

In cases where the alleged misconduct threatens the integrity of department operations, the department may use an enforced leave/suspension pending removal action. Such action may be taken following arrest or indictment, where the member's conduct compromises the department's public safety mission.

Agency maintains that Employee's actions seriously threatened the integrity of MPD's operations as well as compromise MPD's public safety mission. Agency contends that Employee drove in excess of 100 miles per hour ("mph") in a separate jurisdiction from MPD, attempted to flee a Virginia State Trooper who had engaged his emergency lights and sirens, completely disregarded two (2) separate red lights, and eventually caused a car accident, that sent a civilian and another MPD officer to the hospital. Agency notes Employee's blatant disregard for Virginia's laws and the wellbeing of civilians bring into immense question Employee's continued ability to uphold his oath to protect the people of the District of Columbia. Agency cites that Employee's actions were subject to news stories both locally and nationally, bringing disregard to Agency's reputation nationwide.¹⁸

Agency further argues that Employee's argument that he should have been placed on enforced leave pursuant to 6-B District of Columbia Municipal Regulation ("DCMR") §1600 so that he could exhaust his leave balance prior to being placed on non-pay status is misplaced because DCMR does not apply to sworn police officer. Specifically, Agency cites to 6-B DCMR § 1600.2(g) which states that "the provisions of this chapter apply to all District government employee *except the following: ... (g) Sworn members of the Metropolitan Police Department.*"¹⁹

Agency also asserts that OEA lacks jurisdiction over Employee's request to be allowed to work non-security related outside employment during the indefinite suspension period. Agency cites that it properly denied this request pursuant to MPD General Order 201.17 (Outside Employment),

¹⁵ Citing *D.C. Metropolitan Police Department v. Broadus*, 560 A.2d 501 (D.C.1989).

¹⁶ Agency's Motion to Dismiss, *supra*.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

Part V.F.10 which provides that “Members in a non-full duty status shall be barred from outside employment.”²⁰

Employee’s Position

Employee argues that Agency’s action of placing him on indefinite suspension was arbitrary and capricious, unsupported by facts and evidence. Employee asserts that the indefinite suspension was not in compliance with the laws or regulations and was not permitted under the DPM and MPD General Orders. He cited that Agency violated his due process rights, his constitutional rights, and the Collective Bargaining Agreement (“CBA”) between Agency and the police union. Employee notes that Agency’s action exceeded the limits of reasonableness and was taken without cause.²¹

Employee contends that Agency’s Motion to Dismiss is “wholly inappropriate and improperly relies upon documents that are not part of the record in this matter and that were not available to the MPD when it imposed a suspension without pay on [Employee].”²² Employee explains that Agency’s Exhibit 1 contains a “‘Confidential’ Virginia State Police Investigation Report, which is dated ... ‘1/30/2024.’” Employee states that Agency proposed the current adverse action against him on November 24, 2024, prior to the availability of the Investigation Report, therefore, the report was not available or referenced as a basis for the indefinite suspension. Employee further notes that Agency’s Exhibit 8, a Virginia bench warrant dated February 12, 2024, was issued after Agency had imposed the indefinite suspension without pay against him. Employee avers that Agency improperly presented these documents to OEA to make it appear that Agency had evidence to support its indefinite suspension charge and to “backfill the record with documents and facts that it was not aware of when it made its personnel decision.” Employee highlights that these documents are entirely irrelevant and should be stricken entirely from the record.²³

Employee states that Agency conceded that the DPM does not provide Agency with cause to suspend Employee without pay and that the DPM section it relied upon to suspend Employee without pay does not apply to sworn police officers. Employee avers that this concession by Agency is sufficient to reverse Agency’s indefinite suspension without pay against Employee and therefore, Agency’s Motion for Summary Disposition should be denied. Employee cites that even if the DPM was applicable to sworn police officers, DPM §1617.4 would only permit Agency to place Employee on enforced leave and not indefinite suspension without pay. Employee asserts that because Employee was a union member, the CBA controlled over any conflicting DPM section. Employee explains that Article 15, Section 7 of the CBA prohibits Agency from placing officers on Indefinite Suspension without pay in the absence of a pending criminal indictment or a criminal conviction, neither of which were present when Agency placed Employee on indefinite suspension without pay.²⁴

Additionally, Employee contends that Agency did not have reasonable cause to place him on indefinite suspension without pay. Employee reiterates that pursuant to Article 15, Section 7, of the CBA, he could only be placed on indefinite suspension without pay following a criminal indictment

²⁰ *Id.* at Exhibit 16.

²¹ Employee’s Petition for Appeal (March 5, 2024).

²² Employee’s Opposition to Agency’s Motion to Dismiss or in the Alternative, Motion for Summary Disposition (April 17, 2024).

²³ *Id.*

²⁴ *Id.*

or criminal conviction. Employee argues that he had not been criminally indicted or criminally convicted when Agency placed him on indefinite suspension without pay. He cites that the specification for the charge against him noted that he was placed on indefinite suspension without pay because he was arrested. Employee maintains that “nowhere in the CBA does MPD have the authority to Indefinitely suspend an officer without pay simply for being arrested, particularly where the only charge at issue involves alleged violation of the Virginia traffic code.”²⁵ Additionally, Employee notes that according to the Investigation Report from Virginia State Police, which Agency presented for the first time in its Motion, Employee stated that “he did not see, nor hear [the Virginia officer’s] emergency equipment.”²⁶ Employee argues that “this presents a material factual dispute regarding the incident and whether it warrants a suspension without pay.”

Employee also asserts that if Agency’s Exhibit 8, (which is evidence that Employee was indicted on February 12, 2024) is accepted, therefore, there is evidence in the record that Agency violated Article 15, Section 7, of the CBA. Employee explains that Article 15, Section 7, requires Agency to return Employee to pay status or issue notification of the charges and propose action within thirty (30) business days from when the indictment was resolved or dropped. Employee asserts that his indictment was “resolved on February 12, 2024, through the decision to issue a bench warrant for his arrest. The thirtieth business day after February 12, 2024, was March 26, 2024. Thus, more than thirty business days have passed since February 12, 2024, yet the MPD still has not returned [Employee] to a paid status or issue him a notification of the disciplinary charges to be brought against him, which is a direct violation of CBA Article 15, Section 7.” Employee avers that at a minimum, Agency “must be ordered to return [Employee] to a paid status effective March 26, 2024, as required by the parties’ CBA.”²⁷

Employee argues that the D.C. Court of Appeals’ decision in *Green* does not support suspending Employee without pay. Employee cites that “Significantly, in *Green*, unlike in this matter, Officer Green was “indicted in the Circuit Court of Prince George’s County on six counts including assault with the intent to rape and assault and battery.... Officer Green was thereafter found guilty of assault and battery and fourth-degree sexual offenses. Thus, the suspension without pay of Officer Green, who was criminally indicted and was thereafter criminally convicted of the criminal charges, comported with CBA Article 15, Section 7.” Employee further states that at the time he was placed on indefinite suspension without pay, he had only been arrested for violating the Virginia Traffic Codes. And relying on the reasoning in *Green* “on the continuum of involvement in the criminal justice system, [Employee] had only been arrested. Under these circumstances, an issue of fact certainly exists as to whether the MPD has sufficient cause to suspend [Employee] without pay and the MPD’s Motion should be denied.”²⁸

In addition, Employee states that Agency never raised General Order 120.21, Part II(C)2 in its Proposed Suspension or Final Notice of Suspension, nor did it contend that Employee’s conduct threatened the integrity of MPD’s operations. Employee cites that he raised the issue of the applicability of General Order 120.21, Part II(C)2 in his appeal of the Final Notice to the Chief of Police, noting that Agency was precluded from suspending him without pay pursuant to General Order 120.21, Part II(C)2 but it was never addressed. Employee asserts that the MPD cannot now rely on General Order 120.21, Part II(C)2 “to obtain summary disposition in this matter after failing

²⁵ *Id.*

²⁶ *Id.* Citing to Agency’s Motion to Dismiss, *supra*, at Exhibit 1, at 2-3.

²⁷ Employee’s Opposition to Agency’s Motion, *supra*.

²⁸ *Id.*

to reference it in the Proposed Suspension or Final Notice of Suspension or after failing to even respond to [Employee's] arguments regarding the same.”²⁹

Employee contends that Agency violated his due process rights by failing to actually consider his appeal of the Proposed Suspension. He explains that he made numerous legal arguments highlighting that the indefinite suspension without pay was unlawful, and inconsistent with the department's treatment of other members subject to disciplinary investigation, but Agency failed to address the substance of Employee's arguments.³⁰

Employee asserts that OEA has jurisdiction over his request to work non-security outside employment while he was suspended without pay. Employee cites that pursuant to OEA Rule 604.1(d), OEA has jurisdiction over suspensions for ten (10) or more days. He notes that his indefinite suspension exceeded ten (10) days, as such, OEA had jurisdiction over his request to work non-security outside employment while he was suspended without pay. Employee maintains that Agency's decision to deny his request to work non-security outside employment while at the same time placing him on indefinite suspension without pay is a violation of his constitutionally protected due process rights.³¹

*Analysis*³²

Pursuant to OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Agency placed Employee on Indefinite Suspension Without Pay for violation of General Order Series 120.21, Attachment “A,” Number 6: Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or of any offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of *nolo contendere*, or is deemed to have been involved in the commission of any act which would constitute a crime whether or not a court record reflects a conviction. In support of this charge, Agency cited that: “on November 23, 2023, while in the Commonwealth of Virginia you were arrested and charged with disregarding signal by law-enforcement officer to stop; eluding police. After having received a visible or audible signal from a law enforcement officer to stop, drive a motor vehicle in willful and wanton disregard for such signal so as to interfere with or endanger the operation of law enforcement vehicle or endanger a person. The speed of the accused exceeded the maximum allowed by twenty miles per hour, in violation of Code of Virginia § 46.2-817.”

Indefinite Suspension

Employee was placed on indefinite suspension without pay pursuant to Agency's January 3, 2024, Final Notice of Suspension Without Pay which was upheld by the Chief of Police's letter dated February 7, 2024. This follows an initial proposed suspension dated December 15, 2023. The parties

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) (“The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence”).

concede in this matter that the DPM Chapter 16 does not apply here because Employee is a sworn officer. As such the undersigned adopts the parties' position as it relates to the DPM.

Employee was served with a Proposed Notice of indefinite suspension without pay on December 15, 2023. Therein, Employee was charged with violation of MPD General Order Series 120.21, Number 21, Attachment "A", Number 6 which states:

"Violation of General Order Series 120.21, Number 21, Attachment "A," Number 6: Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or any offense which the member either pleads guilty receives a verdict of guilty or a conviction following a plea of nolo contendere, or is deemed to have been involved in the commission of any act which would constitute a crime whether or not a court record reflects a conviction.

Here, Agency claims that it relied on *Employee's arrest warrant, arraignment and supporting evidence that was considered prior to Employee being placed on Indefinite Suspension without pay*. Citing to *District of Columbia v. Green*,³³ Agency explains that the D.C. Court of Appeals established "reasonable cause" for an officer's indefinite suspension "based on his *arrest pursuant to a warrant, together with consideration by the police officials of the investigative documents underlying the warrant.*" (Emphasis added). Agency explains that similar to *Green*, in the current matter, it considered Employee's *arrest warrant charging him with felony eluding and misdemeanor possession of a radar detector*. Additionally, Agency asserts that like in *Green*, the fact that the *Employee in the current matter was arrested pursuant to a warrant and was subsequently arraigned by a Virginia Magistrate judge, reflected a finding by a "neutral and detached judicial officer" that there was probable cause to believe Employee has committed the crimes.* (Emphasis added). I find that the record does not corroborate this assertion.

The letter from the Chief of police upholding Agency's decision to place Employee on Indefinite Suspension without pay was issued on February 7, 2024. *Employee was indicted by a grand jury on February 12, 2024, and an arrest warrant was issued against Employee on the same day, in the Circuit Court of the City of Virginia.* (Emphasis added). Thus, I find that Agency could not have relied on the arrest warrant which was issued five (5) days after the Chief of Police upheld Agency's Final Notice. (Emphasis added). Additionally, Agency attempts to argue that the current matter is similar to *Green* because like in *Green*, here, Agency considered Employee's arrest warrant in making its decision to place Employee on suspension without pay. I disagree. Unlike in *Green*, where MPD issued its Notice of Proposed and Final Decision to Green, after a Maryland Court issued a warrant for Green's arrest, and he turned himself into the police, here, Agency issued the Notice of proposed and Final Decision to the current Employee on February 7, 2024, which is before the Virginia Court indicted and issued an arrest warrant against Employee. (Emphasis added).

Agency maintains that like in *Green*, it considered Employee's arraignment and supporting evidence prior to placing Employee on Indefinite Suspension without pay. I again find that the record does not support this assertion. Pursuant to the record, the only supporting evidence Agency had when Agency proposed placing Employee on Indefinite suspension without pay and when Agency issued its final Agency decision, which was upheld by the Chief of Police was the alleged facts and circumstances surrounding Employee's involvement in a traffic violation that resulted in an accident

³³ 687 A.2d 220 (D.C. 1996).

in Virginia. Agency did not include any supporting document it relied on to its Notice of Proposed, its Final Decision or the Chief of Police's response to Employee's appeal. Further, the police report Agency included in its Motion to Dismiss filed with OEA on April 11, 2024, highlights that the investigation by the Virginia Police started on November 30, 2023, days after Agency issued its Notice of Proposed Action. Also, based on the date stamp on the report, it appears Agency only got access to the investigation report on January 30, 2024, after it had issued its Final Notice of Suspension Without Pay on January 3, 2024. Moreover, The Chief of Police did not reference this report in their February 7, 2024, response to Employee's appeal. Consequently, I find that unlike in *Green* where MPD relied on supporting documentation of the incident from Maryland prior to placing Green on indefinite suspension without pay, Agency in the current matter failed to provide any supporting evidence it relied on prior to placing Employee on Indefinite Suspension without pay.

Agency further asserts that the fact that Employee was arrested pursuant to a warrant and was subsequently arraigned by a Virginia Magistrate judge, reflected a finding by a "neutral and detached judicial officer" that there was probable cause to believe Employee has committed the crimes. Citing in part from *Brown v. Department of Justice*,³⁴ the D.C. Court of Appeals in *Green* opined that "certainly, at some point along the continuum of an employee's involvement in the criminal justice system, evidence of that involvement alone gives rise to reasonable cause to believe the employee has committed a crime. At one end of the continuum, *conviction of a crime* would most certainly constitute cause for suspension for a failure of good behavior, even where the agency lacked any actual evidence of the alleged criminal acts.... At the other end of the continuum, *mere questioning or investigation by police officers into the alleged criminal acts of an employee would seem to constitute insufficient evidence* "of a failure of good behavior" to support a suspension."³⁵ (Emphasis added). The D.C. Court of Appeals in *Green* opined that "[h]ad Green been suspended as a result of "mere questioning or investigation by police officers into the alleged criminal acts," cause probably would not have been established. But Green had been arrested for the crimes *based upon a warrant issued by a neutral and detached judicial officer, who found probable cause to believe he had committed the crimes.*" (Emphasis added). Unlike in *Green*, here, Employee's initial arrest on November 23, 2023, was not based upon a warrant issued by a neutral and detached judicial officer. Therefore, I find that Employee's arrest immediately after the accident falls on the continuum of *mere questioning or investigation by police officers into the alleged criminal acts of an employee and constitute insufficient evidence to support a suspension because it was not based upon a warrant issued by a neutral and detached judicial officer.* (Emphasis added). As previously noted, an arrest warrant was issued against Employee by a Virginia Magistrate on February 12, 2024, days after Agency issued its Final Decision on February 7, 2024. Thus, it can be reasonably assumed that Agency did not rely on this February 12, 2024, warrant or Employee's subsequent arraignment in its February 7, 2024, decision to place Employee on indefinite suspension without pay.

Nonetheless, General Order Series 120.21, Number 21, Attachment "A," Number 6 further provides that a violation is also considered when a member "is deemed to have been involved in the commission of any act which would constitute a crime whether or not a court record reflects a conviction." I find that Employee's initial arrest in Virginia after the November 2023, accident and Employee being charged thereafter with felony eluding and misdemeanor possession of a radar detector, meets this prong of "deemed to be involved in the commission of any act which would constitute a crime..." Further, that provision specifically cites that this violation occurs "whether or not a court record reflects a conviction." Accordingly, I conclude that at the time of the proposed

³⁴ 230 U.S.App. D.C. 188, 193, 715 F.2d 662, 667 (1983).

³⁵ Citing to *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)

indefinite suspension, the initial arrest in November 2023, was sufficient evidence for Agency to find violation of G.O. Series 120.21, Number 21, Attachment “A,” Number 6.

Additionally, Agency cites that Employee’s Indefinite Suspension Without Pay was permitted under General Order 120.21, Part II(C)2 which provides that:

In cases where the alleged misconduct threatens the integrity of department operations, the department may use an enforced leave/suspension pending removal action. Such action may be taken following arrest or indictment, where the member’s conduct compromises the department’s public safety mission.

Agency asserts in its Motion to Dismiss that Employee’s actions seriously threatened the integrity of MPD’s operations as well as compromised MPD’s public safety mission. Agency contends that Employee drove in excess of 100 miles per hour (“mph”) in a separate jurisdiction from MPD, attempted to flee a Virginia State Trooper who had engaged his emergency lights and sirens, completely disregarded two (2) separate red lights, and eventually caused a car accident, that sent a civilian and another MPD officer to the hospital. According to Agency, Employee’s blatant disregard for Virginia’s laws and the wellbeing of civilians brings into immense question Employee’s continued ability to uphold his oath to protect the people of the District of Columbia. Agency cites that Employee’s actions were subject to news stories not just in the local area, but nationally, bringing disregard to Agency’s reputation nationwide. Employee on the other hand argues that Agency never raised G.O. 120.21, Part II(C)2 in its Proposed Suspension or Final Notice of Suspension, nor did it contend that Employee’s conduct threatened the integrity of MPD’s operations. Employee asserts that the MPD cannot now rely on General Order 120.21, Part II(C)2 “to obtain summary disposition in this matter after failing to reference it in the Proposed Suspension or Final Notice of Suspension or after failing to even respond to [Employee’s] arguments regarding the same.” However, Employee does not dispute Agency’s assertion that his conduct seriously threatened the integrity of MPD’s operations as well as compromise MPD’s public safety mission. Instead, Employee avers that he has completed formal driving courses following the accident in Virginia to rectify any shortcomings with his driving. Employee explains that “it cannot be said that a member who engages in such proactive and positive steps in response to an objectively-minor incident somehow “threatens the integrity of department’s operations.” While the Notice of Proposed and Final Decision do not reference G.O. 120.21, Part II(C)2, it appears that Employee was aware of its potential applicability in this matter, evinced by the fact that he raised this issue in his appeal of the Final Notice to the Chief of Police. Therefore, I find that this constitutes harmless error as Employee was not prejudiced by Agency’s failure to reference G.O. 120.21, Part II(C)2 in its notices. Moreover, Employee does not dispute that he was arrested and charged on November 23, 2023, for traffic related violations. As such, I further find that Agency had cause to either place Employee on enforced leave/suspension pending removal action pursuant to G.O. 120.21, Part II(C)2.

Collective Bargaining Agreement (“CBA”)

Employee asserts that Article 15, Section 7 of the CBA prohibits Agency from placing officers on Indefinite Suspension without pay in the absence of a pending criminal indictment or a criminal conviction, neither of which were present when Agency placed Employee on indefinite suspension without pay.

Typically, OEA does not review matters that are under the guidance of a Collective Bargaining Agreement. However, the District of Columbia Court of Appeals held in *Brown v. Watts*, 933 A.2d 529 (April 15, 2010), that this Office is not “jurisdictionally barred from considering claims that at termination violated the express terms of an applicable collective bargaining agreement.”³⁶ The Court went on to explain that the “Comprehensive Merit Personnel Act (“CMPA”) gives this Office broad authority to decide and hear cases involving adverse actions that result in removal, including matters covered under subchapter [D.C. Code § 1-616] that also fall within the coverage of a negotiated grievance procedure.”³⁷ In this case, Employee was a member of a Union when he was placed on Indefinite Suspension Without Pay and governed by Agency’s CBA with the Union. Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA between Employee’s Union and Agency, as it relates to this adverse action. Therefore, the undersigned’s analysis will proceed within the context of the CBA and G.O. for which Employee’s adverse action was based on.

Article 15, Section 7 of the CBA between Agency and Employee’s Union provides that:

If an Employer *suspends* an officer without pay *during the resolution of a criminal indictment* and the criminal indictment is dropped, or in anyway resolved, then the Employer agrees to return the office to a pay status or issue notification of the charges and propose action within thirty business days of the date the indictment was either dropped or resolved. (Emphasis added).

In this matter, because I have found that Employee was not suspended during the resolution of a *criminal indictment* and that *Green* is inapplicable to the current matter, I conclude that Article 15, Section 7 of the CBA is not applicable in the current matter. (Emphasis added). I also find that because Article 15, Section 7 of the CBA is not applicable to the current matter, I will not address Employee’s assertion that Agency failed to either return him to pay status or issue a notification of disciplinary charges to be brought against him within 30 business days from when his indictment was resolved on February 12, 2024, through the decision to issue a bench warrant for his arrest.

Outside employment

Agency avers that this Office does not have jurisdiction over Employee’s request to be allowed to work non-security related positions while suspended. Employee on the other hand argues that this Office has jurisdiction over his request to work non-security outside employment while he was suspended without pay pursuant to OEA Rule 604.1(d). General Order 201.17 (Outside Employment), Part V.F.10 provides that “Members in a non-full duty status shall be barred from outside employment.” Employee was in a non-full duty status when he was placed on indefinite suspension without pay. Therefore, Agency was within its rights to deny Employee’s request to work outside employment during that period. Moreover, while Employee’s suspension lasted more than ten (10) days, complaints of this nature are grievances, and do not fall within the purview of OEA’s scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee’s other ancillary arguments are best characterized as grievances and outside of OEA’s jurisdiction to adjudicate. That is not to say

³⁶ *Shands v. District of Columbia Public Schools*, OEA Matter No. 1601-0239-12 (May 7, 2014); See also *Robbins v. District of Columbia Public Schools*, OEA Matter No. 1601-0213-11 (June 6, 2014).

³⁷ *Id.*

that Employee may not press his claims elsewhere, but rather that OEA currently lacks jurisdiction to hear Employee's other claims.

Due Process violation

Employee contends that Agency violated his due process rights by failing to actually consider his appeal of the Proposed Suspension. He explains that he made numerous legal arguments highlighting that the indefinite suspension without pay was unlawful, and inconsistent with the department's treatment of other members subject to disciplinary investigation, but Agency failed to address the substance of Employee's arguments. Given the totality of the record, I find that Agency considered all the relevant arguments prior to placing Employee on indefinite suspension without pay. Consequently, I conclude that Agency did not violate Employee's due process rights.

Whether the penalty of indefinite suspension without pay is appropriate

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).³⁸ Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.³⁹ Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."⁴⁰ Additionally, pursuant to General Order 120.21, Part II(C)2, Agency can place an Employee on suspension pending removal, following an *arrest* or indictment where the member's conduct compromises the department's public safety mission. (Emphasis

³⁸ See also. *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

³⁹ *Love* also provided the following:

[OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (Citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

⁴⁰ *Id.* See also. *Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

added). Based on the aforementioned, the undersigned finds that Agency acted in accordance with all applicable laws, rules and regulations, that its charge was based on substantial evidence and that there was no harmful procedural error. Accordingly, the undersigned concludes that Agency's action should be upheld.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of placing Employee on Indefinite Suspension Without Pay is **UPHELD** and Agency's Motion to Dismiss, or in the Alternative, Motion for Summary Disposition is **GRANTED**.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*

MONICA DOHNJI, Esq.
Senior Administrative Judge