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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹ ,)	OEA Matter No. 1601-0006-25
)	
v.)	Date of Issuance: June 20, 2025
)	
METROPOLITAN POLICE DEPARTMENT,)	
Agency)	MONICA DOHNJI, Esq.
)	Administrative Judge
Daniel McCartin, Esq., Employee Representative		
Kelsey Penna, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 16, 2025, 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 October 2, 2024. Employee was charged with (1) violation of General Order 120.21, Attachment “A,” Number 6: Engaging in conduct that constitutes a crime and (2) violation of General Order 201.09, Section II(A)(1) and Mayor’s Order 2023-131 Section III(D)(8), 12 and 14, and Section III(E). On October 16, 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 November 15, 2024.

This matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on November 15, 2024. Thereafter, the undersigned issued an Order on November 25, 2024, convening a Prehearing Conference for December 16, 2024.² Agency filed its Motion to Dismiss or in the alternative Motion for Summary Disposition on January 14, 2025.³ Employee filed his Opposition to Agency’s Motion to Dismiss or in the alternative Motion for Summary Disposition on January 23, 2025. The undersigned issued an Order on February 4, scheduling a

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

² Due to personal extenuating circumstances requiring the undersigned’s absence, on December 12, 2024, AJ Harris issued a Notice Regarding Temporary Abeyance of Proceedings to the parties until my return.

³ This Motion is hereby **DENIED**.

Status/Prehearing Conference for February 25, 2025. Thereafter, on February 11, 2025, Employee filed a Supplement in Support of [Employee's] Opposition to Agency's Motion to Dismiss or in the alternative Motion for Summary Disposition, wherein, he stated that he was acquitted of the criminal charges that formed the basis of the current indefinite suspension without pay. Employee also cited that four (4) days after his acquittal, he was returned to paid status.

During the February 25, 2025, Status/Prehearing Conference, the parties requested time to engage in negotiation discussions to resolve any pending issues. This request was granted. However, on March 24, 2025, the parties informed the undersigned that they were unable to reach a settlement agreement. Accordingly, on March 25, 2025, the undersigned issued a Post Status/Prehearing Conference Order, requiring the parties to submit written briefs addressing the pending issues. Both parties have submitted their respective briefs. 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 FACTS, ANALYSIS AND CONCLUSION

According to the record, Employee is a Police Officer with Agency. On August 29, 2024, a D.C. Superior Court judge issued an arrest warrant for Employee. Employee was charged with Simple Assault stemming from an incident that occurred between Employee and another officer on July 3, 2024. On July 9, 2024, 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 7: 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.

Specification # 1: On July 3, 2024, you approached the driver's side door of Officer [AL] Scout Car # [xxxx], reached inside the window, and grabbed Office [AL] by her vest. You pulled her close to your face and Officer [AL] pushed you away and yelled

⁴ Agency's Answer to the Petition at Tab 1 (November 15, 2024). Agency noted that Employee was being placed on Indefinite Suspension without Pay, pending resolution of the criminal and administrative charges against Employee.

“*Get off me!*” You again reached inside and grabbed Officer [AL] by her vest and pulled her close to your face and opened your mouth.⁵

Cause # 2: Violation of General Order 201.09, Section II (A)(1) and Mayor’s Order 2023-131 Section III(D)(8), 12 and 14, and Section III(E).

Specification # 1: On July 3, 2024, you approached the driver’s side door of Officer [AL] Scout Car # [xxxx], reached inside the window, and grabbed Office [AL] by her vest. You pulled her close to your face and Officer [AL] pushed you away and yelled “*Get off me!*” You again reached inside and grabbed Officer [AL] by her vest and pulled her close to your face and opened your mouth

On July 29, 2024, Employee, through his counsel filed an Appeal of Proposed Indefinite Suspension without Pay.⁶ Agency issued its Final Notice of Indefinite Suspension on August 13, 2024.⁷ Agency amended Cause #1 in the Final Notice of Indefinite Suspension to include:

Cause #1: Violation of General Order Series 120.21, Attachment “A,” Number 6: Engaging in conduct that constitutes a crime.⁸

On August 26, 2024, Employee, through his counsel filed an Appeal of Final Notice of Indefinite Suspension.⁹ Subsequently, on August 27, 2024, Agent Diane Brooks of Agency’s Internal Affairs Division (“IAD”) submitted an affidavit in support of Employee’s arrest for Simple Assault in violation of D.C. Code § 22-402. On August 29, 2024, a D.C. Superior Court Judge issued an arrest warrant for Employee. Employee was then served with a judicial summons to appear for his arraignment. On October 2, 2024, Agency filed a response to Employee’s August 26, 2024, Appeal of Final Notice of Indefinite Suspension.¹⁰ On October 2, 2024, Employee was arraigned at the D.C. Superior Court for One (1) Count of Simple Assault. On January 31, 2025, Employee was found not guilty for the Simple Assault charge by a D.C. Superior Court Judge. Agency returned Employee to a paid status on February 4, 2025, and

⁵ For privacy reasons, the other Officer’s initial will be used when referring to her. Also, “xxxx” will be used in place of the Officer’s assigned Scout Car number.

⁶ *Id.* at Tab 2.

⁷ *Id.* at Tab 3.

⁸ Agency’s Final Notice of Proposed Indefinite Suspension reflected a different cause of action for cause #1. The undersigned will rely on the causes of action as listed in the Final Notice of Proposed Indefinite Suspension in deciding this matter. Agency also stated in the Final Notice of Proposed Indefinite Suspension that Employee’s misconduct is defined as cause under Chapter 16, § 1605.4(a)(3) of the DPM as “Conduct that the employee should reasonably know is a violation of law and regulation.” However, throughout its submission to this Office, Agency’s analysis was based on Cause #1, as provided in the Notice of Proposed Indefinite Suspension without Pay. Additionally, the Final Notice of Indefinite Suspension also stated that Employee was suspended without pay pending resolution of the administrative charges against Employee. Yet, throughout its submission to this Office, Agency argued that Employee was placed on Indefinite Suspension Without Pay pending the resolution of the *criminal* matter.

⁹ *Id.* at Tab 4.

¹⁰ *Id.* at Tab 5. Agency argued in this response that while the DPM does not apply to sworn members, it reinforces the cause to take action in this matter and it is supported by Agency’s directive that it can take action against an employee who is “deemed to have been involved in the commission of any act which will constitute a crime whether or not a court record reflects a conviction.” Agency also asserted that this response “constitutes final agency action in this matter.”

began processing his full back pay to cover the period he was placed on Indefinite Suspension Without Pay.

*Analysis*¹¹

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 the following causes of action (1) violation of General Order Series 120.21, Attachment “A,” Number 6: Engaging in conduct that constitutes a crime; and (2) violation of General Order 201.09, Section II (A)(1) and Mayor’s Order 2023-131 Section III(D)(8), 12 and 14, and Section III(E). In support of these charges, Agency cited that: “on July 3, 2024, you approached the driver’s side door of Officer [AL] Scout Car # [xxxx], reached inside the window, and grabbed Office [AL] by her vest. You pulled her close to your face and Officer [AL] pushed you away and yelled “*Get off me!*” You again reached inside and grabbed Officer [AL] by her vest and pulled her close to your face and opened your mouth.”

Agency argued that it placed Employee on Indefinite Suspension Without Pay based on the information it had at the time. It noted that based on the charging document, Employee had been charged criminally for Simple Assault which carried a maximum penalty of 180 days imprisonment and/or \$1000 in fine. Agency asserted that in placing Employee on Indefinite Suspension without Pay, it considered Employee’s arrest warrant charging him with simple assault and the facts surrounding the incident. Agency cited that the current case is similar to *District of Columbia v. Green*.¹² Agency also cited that it placed Employee on Indefinite Suspension Without Pay in compliance with the procedural requirements of Article 15, Section 7 of the CBA between Agency and Employee’s Union. Agency asserted that it reasonably believed that Employee committed a crime that could result in imprisonment.¹³

Agency also argued 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.

¹¹ 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”).

¹² 687 A.2d 220 (D.C. 1996). Agency explained that pursuant to *Green*, an employee can be placed on indefinite suspension without pay if there exists “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.”

¹³ Agency’s Supplement in Support of its Motion to Dismiss, or in the alternative, Motion for Summary Disposition (April 17, 2025).

Agency claimed in its Sur-Reply that prior to proposing indefinite suspension without pay against Employee, its IAD conducted a criminal investigation against Employee and obtained a warrant for his arrest.¹⁴

Employee argued in his Appeal of Proposed Indefinite Suspension Without Pay dated July 29, 2024, that he was placed on Indefinite Suspension Without Pay although he had not been criminally indicted, convicted of any criminal charge, charged with any crime or arrested.¹⁵ Employee argued that Article 15, Section 7 of the CBA only allows for its members to be placed on indefinite suspension without pay during the resolution of a criminal indictment or after the member has been convicted of a criminal charges.¹⁶ Employee explains that Agency attempts to rely on facts that were unavailable when it proposed indefinite suspension to retroactively justify placing Employee on Indefinite Suspension Without Pay. Employee maintained that it is undisputable that he was neither criminally indicted nor convicted of any criminal charges at the time Agency placed him on Indefinite Suspension Without Pay. Employee also cited that Agency and Employee's Union contractually limited Agency's ability to place its members on Indefinite Suspension Without Pay as provided in Article 15, Section 7, of the CBA, therefore, Agency cannot rely on *Green*, which is over 25 years old to avoid its contractual obligations and expand the grounds upon which it can place members on Indefinite Suspension Without Pay.¹⁷

As it relates to the CBA arguments presented by the parties, 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."¹⁸ 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."¹⁹ 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.

Here, I agree with Employee's assertion that Agency is attempting to rely on facts that were unavailable when it proposed Indefinite Suspension Without Pay. Specifically, throughout Agency's submission to this Office, Agency claims that it relied on Employee's *arrest warrant charging him with simple assault, the facts surrounding the incident and the nature of the criminal charge* before placing Employee on Indefinite Suspension without Pay, yet, the record clearly reflects that Agency issued its Notice of Proposed Indefinite suspension Without Pay on

¹⁴ Agency's Sur-Reply to Employee's Reply in Further Support of Agency's Motion for Summary disposition (May 22, 2025).

¹⁵ See Agency's Answer to Petition for Appeal at Tab 2 (November 15, 2024).

¹⁶ Employee's Reply to Agency's Supplement in Support of Agency's Motion to Dismiss or in the alternative, Motion for Summary Disposition (May 8, 2025).

¹⁷ *Id.*

¹⁸ *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).

¹⁹ *Id.*

July 9, 2024, approximately two (2) months before Agency allegedly submitted an affidavit for an arrest warrant for Simply Assault on August 27, 2024, and Employee charged with a crime on August 29, 2024.²⁰ (Emphasis added).

Agency also claimed that prior to proposing Indefinite Suspension Without Pay against Employee, its IAD conducted a criminal investigation against Employee and obtained a warrant for his arrest. The undersigned finds that there is no evidence in the record to support Agency's assertion in this regard. The record shows that Employee was formally charged with a crime on August 29, 2024, which is approximately two (2) months *after* Agency issued the Notice of Proposed Indefinite Suspension Without Pay, and about two (2) weeks *after* Agency issued its Final Notice of Indefinite Suspension. Despite Agency's claim that Employee and Officer [AL] were interviewed by IAD Agent Brooks days after the incident, the fact remains that Agency Issued its Notice of Proposed Indefinite Suspension Without Pay to Employee prior to Agency submitting an affidavit for an arrest warrant for Employee for Simple Assault and commencement of any criminal charges against Employee.

Therefore, I conclude that Agency prematurely placed Employee on Indefinite Suspension Without Pay because Employee was not facing any criminal charges on July 9, 2024, when Agency issued the Notice of Proposed Indefinite Suspension Without Pay. Likewise, Employee was not facing criminal charges on August 13, 2024, when Agency issued its Final Notice of Indefinite Suspension. I further find that, because Employee was not facing any criminal charges on July 9, 2024, Agency's reliance on *Green*²¹ is misguided.

In addition, 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 officer 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, Agency did not place Employee on Indefinite Suspension Without Pay during the resolution of a criminal indictment, rather, it did so prior to commencing any criminal action against Employee.

Furthermore, I also find that General Order 120.21, Part II(C)2 is not applicable to the current matter because Employee was placed on Indefinite Suspension Without Pay, prior to being charged with a crime, arrested or indicted. There was no criminal charge against Employee

²⁰ Pursuant to the D.C. Superior Court case details submitted by Employee, the criminal matter against Employee commenced at the D.C. Superior Court on August 29, 2024, when Employee was charged with Simple Assault. See Supplement in Support of Employee's Opposition to Agency's Motion to Dismiss, or in the alternative, Motion for Summary Disposition, at Exhibit 1 (February 11, 2025).

²¹ I find that *Green* is distinguishable from the current matter because he was placed on indefinite suspension while there was pending criminal charge against him, and this is not the case in the instant matter. Employee was placed on indefinite suspension before Agency submitted an affidavit to the D.C. Superior Court for an arrest warrant for simple assault.

and he had not been arrested when the Notice of Proposed Indefinite Suspension Without Pay was issued. Employee was issued a Proposed Notice of Indefinite Suspension Without Pay six (6) days after the alleged incident. There's also no record of IAD Agent Brooks' investigative report from the alleged incident.

With regards to cause # 1, Agency noted in its Final Notice of Indefinite Suspension that Employee violated General Order Series 120.21, Attachment "A," Number 6: Engaging in conduct that constitutes a crime, which is defined in DPM §1605.4(a)(3) as conduct that the employee should reasonably know is a violation of law and regulation. Agency has not provided substantial evidence such as the investigation report from IAD to prove that Employee's interaction with Office [AL] on July 3, 2024, was a violation of law and regulation or that his conduct constituted a crime. As a result, I find that Agency did not have cause under General Order Series 120.21, Attachment "A," Number 6: Engaging in conduct that constitutes a crime or DPM Chapter 16 §1605.4(a)(3) to take adverse action against Employee.

For Cause #2, Agency charged Employee with violating General Order 201.09, Section II (A)(1) and Mayor's Order 2023-131 Section III(D)(8), 12 and 14, and Section III(E).

General Order 201.09, Section II (A)(1) provides that:

MPD is an equal opportunity employer. Pursuant to DC Official Code § 2-1402.11 (Prohibitions) and Mayor's Order 2023-131 (Updated District Government Sexual Harassment Policy, Guidance, and Procedures), MPD prohibits, and will not tolerate, any form of unlawful discrimination. Such conduct may result in disciplinary action as necessary, up to, and including, termination of employment. The following types of discrimination are prohibited by law, even if the conduct was not specifically intended to be offensive to anyone and/or the employee to whom it is directed is not personally offended." This section provides a list of unlawful discrimination to include: disparate treatment, harassment, sexual harassment, failure to provide reasonable accommodation, failure to offer DC family leave Act (FMLA), and retaliation.

However, in the current matter, I find that Agency did not provide sufficient evidence to support this cause of action, to include, but not limited to the investigation report of the alleged incident. Thus, I conclude that Agency has not met its burden of proof for this cause of action.

Mayor's Order 2023-131 Section III(D)(8), 12 and 14 provides that:

8. Unnecessary and inappropriate touching or physical contact, such as intentional and repeated brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massages, groping, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature.

12: Any unwanted repeated contact, including, but not limited to in-person, or telephonic, for romantic or sexual purposes.

14: Sexual assault, stalking, trapping someone such that they are not free to leave and a sexual encounter is expected or threatened, threats of bodily harm relating to sex or the refusal to have sex, or other crimes related to acts of sexual harassment.

Apart from Agency's assertion as stated in Cause #2 Specification #1, Agency has not provided any credible evidence in support of this charge. Agency asserted that an investigation was conducted into the July 3, 2024, incident days after the incident, however, Agency did not submit an investigation report with its findings to this Office. For these reasons I conclude that Agency has failed to provide credible evidence to meet its burden of proof with regard to Cause #1 and Cause #2, as outlined in the Final Notice of Indefinite Suspension.

Agency asserted that it relied on Article 15, Section 7 of the CBA to place Employee on Indefinite Suspension Without Pay. Even *assuming* that Agency had cause to discipline Employee, I still conclude that because Agency did not comply with Article 15, Section 7 of the CBA between Agency and Employee's Union, as well as General Order 120.21, Part II(C)2. Accordingly, Agency cannot rely on this CBA provision to place Employee on Indefinite Suspension Without Pay.

Grievance

Employee argued that he should have been allowed to work non-security related outside employment while he was on Indefinite suspension without pay. Agency contended that OEA has no jurisdiction over this matter. I agree. 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 that Employee may not press his claims elsewhere, but rather that OEA currently lacks jurisdiction to hear Employee's other claims.

Based on the above, I find that Agency prematurely placed Employee on Indefinite Suspension Without Pay, therefore, I conclude that Agency violated the relevant CBA Articles in this matter. Nonetheless, Employee has acknowledged that on February 4, 2025, four (4) days after he was acquitted for the criminal charge of simple assault, he was reinstated and returned to pay status.²² Employee's counsel also admitted that on February 7, 2025, he was notified by the D.C. Police Union Vice Chair, Ben Fetting, that he had been advised by Agency's Assistant Chief, Tasha Bryant, that Agency "was in the process of calculating and providing Officer [Employee] with full back pay."²³ Additionally, Agency asserted that after Employee's criminal matter was resolved, and Employee was found not guilty for Simple Assault, Agency removed Employee from Indefinite Suspension Without Pay and returned him to pay status on February 5, 2025, in compliance with Article 15, Section 7 of the Collective Bargaining Agreement ("CBA")

²² See Employee's Supplement in Support of Employee's Opposition to Agency's Motion to Dismiss or in the alternative, Motion for Summary Disposition (February 11, 2025)

²³ *Id.*

between Agency and Employee's Union.²⁴ Agency also noted that Employee was awarded backpay "from the date he was placed on Indefinite Suspension." Consequently, I find that Employee has already received all remedies that this Office could provide for him. He has been reinstated to paid status and provided with backpay from the date he was placed on Indefinite Suspension Without Pay, to when he was reinstated.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of placing Employee on Indefinite Suspension Without Pay is REVERSED and because Employee has already been made whole, no further award shall be deemed warranted at this time.²⁵

FOR THE OFFICE:

/s/ Monica N. Dohnji
MONICA DOHNJI, Esq.
Senior Administrative Judge

²⁴ CBA Article 15, Section 7: 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. *See*. Agency's Supplement in Support of its Motion to Dismiss, or in the alternative, Motion for Summary Disposition (April 17, 2025).

²⁵ In his Petition for Appeal, Employee requested interest on all backpay, however, he did not provide any authority in support of this assertion. Moreover, there is no precedent by the OEA Board that has adopted a finding that an award of interest shall be included in any backpay amount ordered as a result of a wrongful adverse action under D.C. Official Code § 1-606.01, et seq. This tribunal has previously denied requests for pre-judgment and post judgement interest on backpay sums. Accordingly, I conclude that Employee is not entitled to an award for interest on his backpay sum.