No. 99728-4

SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SEATTLE, SEATTLE POLICE DEPARTMENT,

Respondent,

v.

SEATTLE POLICE OFFICERS' GUILD,

Petitioner.

ANSWER OF RESPONDENT TO PETITION FOR REVIEW

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I. INTRODUCTION

Officer Adley Shepherd punched a handcuffed woman in the face so hard that he fractured her orbital socket. The arbitrator hearing the appeal of his dismissal agreed that Officer Shepherd violated the Seattle Police Department's ("SPD") policy on use of force. The arbitrator also found that Officer Shepherd's "patience was being tried" by the handcuffed woman, and that, when she kicked him, he felt pain and "perhaps reflexively, used force." Nevertheless, the arbitrator reinstated his employment.

Applying this Court's analysis in *Int'l Union of Operating Eng'rs, Local 286 v. Port of Seattle*, 176 Wn.2d 712, 295 P.3d 736 (2013) ("*Operating Eng'rs*"), the superior court and Division I found an explicit, dominant, and well-defined public policy against the use of excessive force in policing. They also held that reinstatement, under the circumstances of this case and facts found by the arbitrator, violated that public policy.

SPD must be able to address the use of excessive force by its officers with measures strong enough to deter future such force and to assure accountability, and the public must be able to trust that officers will not lead with their fists. The reviewing courts properly recognized that reinstatement under these facts violates public policy because, among other reasons, it sends a message that excessive force on restrained subjects is acceptable when the officer's patience is stretched thin or he is in pain. This

decision does not undercut the arbitrator's factual findings or subvert the case law on arbitration; rather, it is based on those findings and follows from this Court's holdings. The Court should therefore deny review.

II. COUNTERSTATEMENT OF ISSUES FOR REVIEW

1. Did the reviewing courts err by recognizing they were bound by the arbitrator's factual findings, basing their opinions on those findings, and determining as a matter of law that the award was so lenient that it violated the public policy against the use of excessive force in policing?

2. Did the reviewing courts apply an incorrect legal standard when they followed this Court's precedent in *Operating Eng'rs* to determine that the award was so lenient that it violated the public policy against the use of excessive force in policing?

3. Were the reviewing courts required to remand when they had concluded as a matter of law that, under these facts, any penalty short of termination violated the public policy against the use of excessive force in policing?

III. COUNTERSTATEMENT OF THE CASE

A. Officer Shepherd Punched a Handcuffed Suspect in the Face.

Early in the morning on June 22, 2014, Officer Adley Shepherd and two other officers responded to a report of possible domestic violence. CP 15. After speaking with the caller and her son, Robert Shelby, Officer Shepherd

spoke with Miyekko Durden-Bosley, who arrived at the scene on foot. CP 15-17. Ms. Durden-Bosley, the mother of Mr. Shelby's child, was intoxicated, agitated, and verbally confrontational. CP 16-17. She denied threatening Mr. Shelby, and yelled insults at Officer Shepherd. CP 17.

Officer Shepherd exclaimed, "My patience is done. It's done. It's, it's over. So, somebody's going to go to jail. Who's it going to be?" CP 17. He said "we can do eenie meenie miney." CP 52, CP 539.[1] Officer Shepherd then told Ms. Durden-Bosley she was under arrest; he and another officer handcuffed her hands behind her back and took her to the patrol car. CP 17-18. Ms. Durden-Bosley resisted and repeatedly denied making a threat. CP 18. As Officer Shepherd got her into the car's rear seat, Ms. Durden-Bosley spun around, fell or sat backwards onto the seat of the car, and kicked him in the face with her right foot, yelling "Fucking bitch!" *Id*.

Officer Shepherd twice said "she kicked me," and appeared to step back, as Ms. Durden-Bosley appeared to be trying to sit up. *Id*. Then, as Ms. Durden-Bosley's hands remained handcuffed behind her, Officer Shepherd dove into the car and punched her with his fist in her right eye. CP 19, CP

[1] This exchange is seen in the in-car video marked as City Hearing Exhibit 81 in the underlying arbitral hearing, at 12:39-12:43. The exhibits from that hearing are on the thumb drive that contains the certified record filed in the superior court. *See* CP 539-51. The video can also be viewed at https://www.youtube.com/watch?v=xdZkFO_5jvA, at 0:59-1:01 (last visited June 4, 2021).

539.[2] Roughly two seconds elapsed between the kick and the punch. *Id.*

Ms. Durden-Bosley suffered a serious injury to her right eye: an orbital floor fracture and medial wall fracture. *Id.* She was not charged with assault on Officer Shepherd. *Id.* The photograph of her below was taken soon after the punch. CP 20; *see also* CP 657.

B. SPD Terminated Officer Shepherd for Violating Its Policies.

After a thorough investigation determined that Officer Shepherd had violated SPD's policies on use of force, SPD's Chief of Police terminated his employment. *See* CP 21, 620-23. SPD's use of force policies stem, in part, from the United States Department of Justice's ("DOJ") report concluding

[2] The punch is seen in the in-car video that was marked as City Hearing Exhibit 25 in the underlying arbitral hearing, at 14:26-14:33, and is also on the thumb drive. *See* CP 539-51. The video can also be viewed at https://www.youtube.com/watch?v=xdZkFO_5jvA, at 2:46-2:53 (last visited June 4, 2021).

that SPD engaged in a pattern or practice of using unnecessary or excessive force, in violation of the Fourth Amendment and the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601 (2017) (former version at 42 U.S.C. § 14141). *See* CP 674. As a result of this report, the City and DOJ entered into the Consent Decree in 2012. *See* CP 738-814.

Much of the Consent Decree consisted of SPD's commitments regarding use of force principles, including the principle that officers normally should not use reportable force against restrained people unless necessary or reasonable under the circumstances. CP 755 (¶ 70(f)). SPD revised its internal use of force policies in January 2014, consistent with the Consent Decree. CP 816-25. One policy provision stated, in relevant part:

> An Officer may **not** use physical force:
>
> - To punish or retaliate
> …
> - On handcuffed or otherwise restrained subjects except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, escape, or destruction of property. Use-of-force on restrained subjects shall be closely and critically reviewed. Officers must articulate both:
>
> - The exceptional circumstances, and
> - Why no reasonably effective alternative to the use-of-force appeared to exist.

CP 823 (emphasis in original).

C. Termination Was Overturned and the Case Was Appealed.

The Seattle Police Officer's Guild ("SPOG") grieved Officer Shepherd's termination, and in June 2018, a Disciplinary Review Board ("DRB") consisting of one SPOG representative, one SPD representative, and one neutral representative, Arbitrator Jane Wilkinson ("the arbitrator"), heard testimony. *See generally* CP 11-45. On November 19, 2018, the arbitrator issued the DRB's Award. *Id*. The arbitrator found that SPD's rule on excessive force was clear, and that Officer Shepherd violated that policy. CP 31-35. The handcuffed and intoxicated Ms. Durden-Bosley was not a flight risk, and even if she was, Officer Shepherd had a variety of options available to him other than the force he used. CP 34-35.

Yet despite these findings, the arbitrator deemed termination too harsh. CP 35-44. She determined that the circumstances (he was kicked, felt pain, "perhaps reflexively" used force, and "[h]is patience was being tried") mitigated the seriousness of his offense. CP 37. The arbitrator reinstated Officer Shepherd and reduced his discipline to a 15-day suspension. CP 44.

SPD applied in King County Superior Court for a writ of certiorari or review of the arbitrator's award (CP 1-6), and the Chief Civil Judge granted the application. CP 404-05. After thorough briefing (*see* CP 552-67, CP 907-1067, CP 1068-1074) and oral argument (RP 1-62), the superior court issued its decision on August 16, 2019. CP 1075-84.

The court noted that arbitral awards are not typically reviewed. CP 1076. But the court also noted that an award may be overturned if it is contrary to an explicit, dominant, and well-defined public policy. *Id*., citing *Operating Eng'rs*, 176 Wn.2d at 721. The court analyzed the public policy against the use of excessive force in policing under *Operating Eng'rs* and determined that the policy was explicit, dominant, and well-defined. CP 1077-81. The court then determined that the award was so lenient that it violated this public policy. CP 1081-84. Citing to the arbitrator's finding that Officer Shepherd's "patience was being tried," and that he, "feeling stinging pain" "perhaps, reflexively, used force," the court concluded that the award "serves to condone retaliatory action in the form of excessive force," and thus violated the public policy. CP 1082-84. The court vacated the award.

Division I affirmed the superior court. After a detailed and well-reasoned analysis of the Fourth Amendment, 42 U.S.C. § 1983, 34 U.S.C. § 12601, and the Consent Decree, Division I determined (as had the superior court) that those authorities established an explicit, dominant, and well-defined public policy against the use of excessive force in policing. Op. at 16-30. Then, relying on the arbitrator's factual findings, Division I concluded that the award was so lenient that it violated that public policy. *Id*. at 31-43.

IV. ARGUMENT

"[L]ike any contract, an arbitration decision arising out of a

collective bargaining agreement can be vacated if it violates public policy." *Operating Eng'rs,* 176 Wn.2d at 721. The decision is treated like part of the contract, and it will be vacated if it violates an explicit, well-defined, and dominant public policy. *Id.* The reviewing courts properly determined that the award here violated the explicit, dominant, and well-defined public policy against the use of excessive force in policing.

A. Neither Reviewing Court Substituted Its Factual Determinations for Those of the Arbitrator.

SPOG contends that review is warranted because Division I permitted the superior court to substitute its factual findings for those of the arbitrator. When determining whether an award violates public policy, courts "do not review an arbitrator's factual determinations." *Operating Eng'rs,* 176 Wn.2d at 716, n.1. However, neither reviewing court substituted its factual findings for those of the arbitrator. Both recognized that they were not permitted to do so, and in fact relied on the arbitrator's factual findings.[3] *See, e.g.*, CP 1077 (trial court required to accept findings of fact as to violation of SPD policy and impact of discipline on Officer Shepherd); Op. at 3 (courts do not review arbitrator factual determinations).

SPOG's purported examples of impermissible trial court fact-

[3] SPOG also claims that the superior court "conducted its own examination of the facts based primarily on its repeated viewing of the video of the incident." PFR at 5 (emphasis in original). SPOG cites no authority limiting the number of times a reviewing court can view evidence in the record.

finding fall short. SPOG claims that, although the arbitrator did not conclude that Officer Shepherd acted in a "retaliatory" fashion, the superior court did make such a finding. PFR at 5. This assertion misstates the record. The superior court relied on the arbitrator's finding that the punch may have been a reflexive response to pain (CP 37), to conclude that reinstatement served to "condone retaliatory action" (CP 1083); there was no finding that Officer Shepherd engaged in retaliation. Similarly, the arbitrator's finding that Officer Shepherd (and others) genuinely believed Officer Shepherd was following SPD policy when he punched Ms. Durden-Bosley was not overturned by the reviewing courts; in fact, both tribunals explicitly cited this finding as part of the basis for their determination of a violation of public policy. *See* CP 1081-82; Op. at 35-36.

SPOG's claims that the superior court ignored certain evidence (PFR at 6) are similarly unsupported. SPOG points to the finding that Ms. Durden-Bosley's kick was significant, but this finding is consistent with the arbitrator's conclusion (relied on by the reviewing courts) that Officer Shepherd, 'feeling stinging pain' 'perhaps, reflexively, used force.'" CP 1082 (citing CP 37). And, although SPOG cites witness testimony that Officer Shepherd's punch was within SPD policy, that is not what the arbitrator found. Instead, the arbitrator found that Officer Shepherd violated SPD policy. The reviewing courts accepted that factual finding.

SPOG does not (and cannot) point to a single arbitral factual finding that was rejected or added by the reviewing tribunals. Review by this Court is therefore unwarranted.

B. The Reviewing Courts Properly Determined That the Award Reinstating Officer Shepherd Was So Lenient That It Violated Public Policy.

SPOG asserts that the superior court and Division I did not exercise appropriate deference to the arbitrator when they determined that the award violated public policy. To the contrary: the reviewing courts applied existing authority, including this Court's holdings, to the specific facts of this case, and properly determined that reinstatement of Officer Shepherd violated the public policy against the use of excessive force in policing.

1. Arbitral awards can be vacated if they violate public policy.

SPOG spends several pages arguing that judicial review of arbitral awards is narrow, and that there exists a public policy in favor of arbitration.[4] PFR at 7-11. These are not remarkable propositions, and the City does not dispute that judicial review of arbitral awards is generally limited. *See, e.g., Operating Eng'rs*, 176 Wn.2d at 720 ("Courts will review an arbitration decision only in certain limited circumstances…"). But this Court's cases also establish that because an arbitration decision arises out

[4] Notably, most of the cases cited by SPOG for these propositions do not involve claims that the award violated an explicit, dominant, and well-defined public policy.

of a contract, it can be vacated if it violates public policy. *Id*. at 721; *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 167 Wn.2d 428, 435, 219 P.3d 675 (2009) (citing *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 67, 121 S. Ct. 462, 148 L. Ed. 2d 354 (2000)). Because the superior court and Division I both correctly concluded that the arbitral award was contrary to public policy, the authorities cited by SPOG have limited applicability to this matter.

2. Division I's ruling is consistent with this Court's prior authority.

SPOG claims that the rulings of the superior court and Division I controvert this Court's decisions in *Kitsap County* and *Operating Eng'rs*. But an analysis of these cases shows that the reasoning used here is consistent with the principles set forth in this Court's previous holdings.

In *Kitsap County*, a sheriff's deputy was reinstated by an arbitrator after being fired for misconduct that included untruthfulness. 167 Wn.2d at 431. The arbitrator found that the county should have recognized his mental disability and referred him for treatment. *Id*. at 432-33. The Court of Appeals held that reinstatement violated public policy, but this Court reversed, finding that neither the *Brady* rule[5] nor statutes criminalizing lying to law enforcement supplied an explicit, dominant, and well-defined public

[5] *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) (prosecutors must disclose evidence favorable to the accused).

policy against reinstating an untruthful officer. *Id*. at 436-39.

This Court took up the issue again several years later in *Operating Eng'rs*. In that case, a Port of Seattle employee was fired after he hung a noose in the workplace. 176 Wn.2d at 715. The arbitrator reinstated him, finding that he "was more clueless than racist." *Id*. at 719. After both the superior court and the Court of Appeals determined that his reinstatement violated public policy, this Court accepted review. *Id*. at 720. Unlike in *Kitsap County*, this Court found that there was an explicit, dominant, and well-defined public policy against workplace discrimination and harassment, and that this policy set forth an affirmative duty on the part of employers to sufficiently discipline harassers. *Id*. at 721-23. The Court then considered whether the arbitration award violated the public policy at issue, noting that "when an arbitrator's punishment is so lenient that it will not deter future discrimination—including discrimination committed by others—it must be vacated." *Id*. at 723. Due to several mitigating factors, however, this Court could not say that the 20-day suspension the arbitrator imposed "would not provide sufficient discipline to cause this or other employees to understand the serious nature of a noose in the workplace and thus prevent a similar incident in the future." *Id*. at 723-24.

SPOG's argument appears to be that the outcome of the reviewing courts' analysis here cannot be squared with the results of *Kitsap County*

and *Operating Eng'rs*. This argument, however, misapprehends the reasoning set forth in those cases.

First, the analysis of the superior court and Division I as to whether there is an explicit, dominant, and well-defined public policy against the use of excessive force in policing follows this Court's precedent. *Kitsap County* held that the statutes at issue did not provide an explicit, dominant, and well-defined public policy because they simply were not strong enough: they did not prohibit people who violated them from serving as officers, nor did they place any duty upon the employer with respect to prevention of the conduct. 167 Wn.2d at 436-38. *Operating Eng'rs* further refined the analysis and found that the laws against workplace harassment and discrimination did set forth an explicit, dominant, and well-defined public policy. 176 Wn.2d at 721-23. Although those laws did not (and could not) set standards regarding the specific amount of discipline required to remedy misconduct, they did create an affirmative duty for employers to prevent harassment by imposing sufficient discipline to deter future misconduct. *Id*. at 722-23.

Applying the analysis developed in these cases, both the superior court and Division I concluded that the Fourth Amendment of the United States Constitution, 42 U.S.C. § 1983,[6] 34 U.S.C. § 12601, and the Consent

[6] Notably, 42 U.S.C. § 1983 was one of the bases for the explicit, dominant, and well-defined public policy against sexual harassment by law enforcement officers found by the

Decree entered into between the City and DOJ established an explicit, dominant, and well-defined public policy against the use of excessive force in policing. CP 1078-81, Op. at 16-30. SPOG does not contest this conclusion, noting only in a footnote that there "is at least a serious question" as to whether there is such a public policy, but asserting that the Court "need not reach this issue." PFR at 12-13, n.5. SPOG's concession is unsurprising, given the extensive analysis conducted by the superior court and Division I, and the number and nature of authorities supplying the basis for the public policy. Far from a "free-wheeling" public policy concern (PFR at 11), the public policy against the use of excessive force in policing is explicit, dominant, and well-defined.

Second, the reviewing courts' determination that the arbitral award was so lenient that it violated the public policy at issue is also consistent with this Court's precedent. Though SPOG contends that Division I "challenges" this Court's decision in *Operating Eng'rs* (PFR at 13), this is simply untrue. In fact, Division I found the case "instructive," noting that in *Operating Eng'rs*, the terminated employee was unaware of the hateful history of the noose, he had intended it as a prank on a white co-worker, his actions were "more clueless than racist," and the African-American

court in *City of Brooklyn Ctr. v. Law Enforcement Labor Servs., Inc*., 635 N.W.2d 236, 242 (Minn. Ct. App. 2001), a case cited by this Court in *Kitsap County*. 167 Wn.2d at 437.

employee who reported it did not find it harassing or criminal. Op. at 32-33, citing *Operating Eng'rs*, 176 Wn.2d at 719, 723-24. Under those circumstances, this Court could not say that the 20-day suspension imposed by the arbitrator was so lenient that it violated the public policy against racial harassment. Op. at 33, citing *Operating Eng'rs*, 176 Wn.2d at 724. However, Division I determined that the circumstances in this case were quite different, and applied the same analysis with a different result. *See infra* § B(3). This conclusion does not contravene this Court's existing authorities, but rather applies their analyses to a different set of circumstances. RAP 13.4(b)(1) therefore does not support review.

3. Division I's ruling does not overstep the role of the reviewing court.

SPOG complains that the reviewing courts did not give proper deference to the arbitrator and overstepped their authority by substituting their judgment on the appropriate penalty. As Division I explained, however, SPOG misunderstands the role of the courts in reviewing an arbitral award. The superior court and Division I acted within their authority in determining that the award here violated public policy.

The reviewing courts recognized that "the punishment required to change a specific individual's behavior is left to the arbitrator . . .". *Operating Eng'rs*, 176 Wn.2d at 723; CP 1081, Op. at 39. However, this is

not the end of the inquiry. "[W]hen an arbitrator's punishment is so lenient that it will not deter future discrimination—including discrimination committed by others—it must be vacated." 176 Wn.2d at 723 (emphasis added). The same analysis applies to the public policy here: when the punishment is so lenient that it will not deter future uses of excessive force, it must be vacated. This determination must be made by the court, not the arbitrator. *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766, 103 S. Ct. 2177, 76 L.Ed.2d 298 (1983) ("[T]he question of public policy is ultimately one for resolution by the courts."); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 57, 94 S. Ct. 1011, 39 L. Ed. 2d 147 (1974) (arbitrator's expertise is the "law of the shop," while courts must determine the "law of the land"). The reviewing court does not improperly substitute its judgment for that of the arbitrator when, accepting all of the arbitrator's factual findings as true, it determines that the award violates public policy.

SPOG complains that there are no "guideposts" for a reviewing court to determine whether an award is so lenient that it violates the public policy against the use of excessive force in policing. Such a determination must necessarily be highly factually dependent, but that does not mean it cannot be done. Indeed, this Court in *Operating Eng'rs* cited some of the types of factors that a reviewing court should consider, including the intent and knowledge of the employee regarding the misconduct, and the effect of

the misconduct on others. 176 Wn.2d at 719, 723-24.

The superior court and Division I considered similar factors, in light of the public policy at issue, in determining that the award here was so lenient as to not deter future misconduct. Both tribunals accepted the arbitrator's finding that Officer Shepherd's "patience was being tried." CP 1082, Op. at 35. However, this fact weighed in favor of a public policy violation, as to do otherwise had the effect of condoning "the use of force when dealing with difficult subjects when it is universally understood that a significant part of the job of the patrol officer is dealing with difficult subjects and doing so with patience." *Id*.

That Officer Shepherd was in pain and perhaps reflexively reacted to the kick was another factor that weighed in favor of a public policy violation. Op. at 33-35, CP 1083. Given that the arbitrator also found that Ms. Durden-Bosley was not much of a flight risk and that Officer Shepherd had other avenues available to him besides using force (CP 34-35), the conclusion that the reflexive punch was a mitigating factor "is tantamount to excusing officers who act before they think." Op. at 35.

The reviewing courts also accepted the arbitrator's factual findings that Officer Shepherd had been trained on SPD's use of force policy, that he violated that policy, and that nevertheless he (and some co-workers) believed he had done nothing wrong. Op. at 35-38, CP 1077, 1081. Again,

the arbitrator's conclusion that Officer Shepherd's mistaken belief is a mitigating factor runs contrary to the public policy against the use of excessive force in policing. *See, e.g., Graham v. Connor*, 490 U.S. 386, 397, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989) (officer's good intentions will not "make an objectively unreasonable use of force constitutional.").

This analysis is well within the purview of a reviewing court and follows the analysis conducted by and contemplated in *Operating Eng'rs*. The reviewing courts did not substitute their judgment for that of the arbitrator. Instead, taking all of the arbitrator's factual findings as true, the reviewing courts determined that reinstatement of Officer Shepherd, under the specific circumstances of this case, violated the public policy against the use of excessive force in policing. Review is therefore unwarranted.

C. Remand Was Unnecessary.

SPOG asserts that the reviewing courts further erred because they "fashion[ed] their own remedy," rather than remanding to the arbitrator for further proceedings, as required by *Operating Eng'rs*. PFR at 15-16. SPOG misapprehends both *Operating Eng'rs* and the reviewing courts' orders.

In *Operating Eng'rs*, the superior court, after finding that the award violated public policy, issued its own remedy, which included a suspension, a letter of apology, training, and a probationary period. 176 Wn.2d at 725. This Court reversed, relying on federal precedent:

> [A]s a rule the court must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since this step would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for in the collective-bargaining agreement. Instead, the court should simply vacate the award, thus leaving open the possibility of further proceedings if they are permitted under the terms of the agreement. The court also has the authority to remand for further proceedings when this step seems appropriate.

176 Wn.2d at 725 (citing *United Paperworkers Int'l Union v. Misco, Inc.,* 484 U.S. 29, 40 n.10, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987)) (emphasis added). Because this Court ultimately found no public policy violation, however, the arbitrator's original award remained in effect.

Here, however, both reviewing tribunals concluded that the award reinstating Officer Shepherd violated public policy and thus required vacatur, not remand. In other words, because reinstatement itself, under the circumstances and facts of this case,[7] violated public policy, remand to the arbitrator was inappropriate. *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 62-63, 121 S. Ct. 462, 148 L. Ed. 2d 354 (2000) ("[T]he question to be answered is not whether [the employee's conduct] itself violates public policy, but whether the agreement to reinstate

[7] SPOG's assertion that the reviewing courts decided, in effect, that termination is the only permitted remedy in an excessive force case is absurd, as it ignores both tribunals' explicit reliance on the specific facts of this case. *See, e.g.*, Op. at 43 ("[W]e hold that the [arbitrator's] decision to reinstate Shepherd is insufficient under the circumstances of this case, as found by the [arbitrator]. We need not speculate whether the [arbitrator's] decision would be insufficient in any case where an officer is found to have violated SPD's use-of-force policy.") (emphasis in original).

him does so."). The reviewing courts did not fashion their own remedy; they did what was required by their public policy determination. Review, therefore, is not merited.

V. CONCLUSION

The public policy against the use of excessive force in policing is a fundamental concept rooted in our nation's history. Following this Court's precedent, the reviewing courts correctly recognized that this public policy is explicit, dominant, and well-defined. The reviewing courts then examined the specific and egregious facts of this case, accepting all facts found by the arbitrator, and determined that the reinstatement of Officer Shepherd under these circumstances violated the public policy against the use of excessive force in policing. This was a correct discharge of the reviewing courts' duties, and review by this Court is not merited.

DATED this 4th day of June, 2021.

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CERTIFICATE OF E-FILING AND E-SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on this date I electronically filed the foregoing document with the Clerk of the Court via the Washington State Appellate Courts' Portal, which will send notice of filing to all counsel of record and the parties listed below.

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DATED this 4th day of June, 2021.

s/ Kim Fabel
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SEATTLE CITY ATTORNEY'S OFFICE

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