

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

LEBANON POLICE BARGAINING ASSOCIATION :  
: Case No. PF-C-22-64-E  
v. : &  
: Case No. PF-C-23-66-E  
CITY OF LEBANON :  
:

**PROPOSED DECISION AND ORDER**

On December 21, 2022, the Lebanon Police Bargaining Association (Union), filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices, under the Pennsylvania Labor Relations Act (PLRA or Act), as read with Act 111, at Case No. PF-C-22-64-E, alleging that the City of Lebanon (City) violated Section 6(1)(a) and (e) of the PLRA. The Union specifically alleged that the City violated its duty to bargain when, on December 5, 2022, Chief Bret Fisher issued a memo unilaterally requiring police officers working the day shift to park in a designated free parking lot. The parking mandate allegedly changed the practice of permitting officers to park where they wanted, even at their own expense.

On February 28, 2023, the Secretary of the Board (Secretary) issued a letter to the Union stating that no complaint would be issued on its charge. The Secretary specifically stated that the location of employe parking is a managerial prerogative, and thus the Union failed to state a cause of action under Section 6(1)(e) of the PLRA. The Secretary also concluded that the specification of charges failed to allege sufficient facts to support an independent violation of Section 6(1)(a).

On March 10, 2023, the Union filed exceptions to the Secretary's administrative dismissal. On April 18, 2023, the Board issued an Order Directing Remand to Secretary for Further Proceedings. On May 31, 2023, the Secretary issued a Complaint and Notice of Hearing (CNH), designating a hearing date of August 25, 2023, in Harrisburg.

On July 13, 2023, the Union filed a charge of unfair labor practices alleging violations of Section 6(1)(a) and (e) under the PLRA, as read with Act 111, at Case No. PF-C-23-66-E. In that charge, the Union specifically alleged that the City unilaterally extended the 2-year probationary period for promotions for Sergeant Patrick McKinney without bargaining. On August 11, 2023, the Secretary issued a CNH designating a hearing date of November 15, 2023. On August 14, 2023, the Secretary issued an Amended CNH again designating a hearing date of November 15, 2023.

On August 18, 2023, I continued the hearing at Case No. PF-C-22-64-E at the request of the City and without objection from the Union, and rescheduled the hearing for November 15, 2023, thereby consolidating it for hearing purposes with Case No. PF-C-23-66-E. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. Also during the hearing on that date, the Union withdrew its charge at Case No. PF-C-23-66-E. On January 22, 2024, the Union and the City each filed separate post-hearing briefs in support of their respective positions.

The examiner, based upon witness testimony, admitted documents, and all matters of record, makes the following:

#### FINDINGS OF FACT

1. The City is a public employer and political subdivision pursuant to the PLRA and Act 111. (N.T. 7-8)

2. The Union is a labor organization pursuant to the PLRA and Act 111. (N.T. 7-8)

3. In May 2022, the City moved its offices, including the Police Department, from 400 South 8<sup>th</sup> Street 4 blocks north to 735 Cumberland Street, which is also Route 422. At the previous location, officers were permitted to park where they wanted without being directed to park in a designated lot. (N.T. 15-17, 19-20, 44-45, 61, 69 96-98)

4. The current City Hall Building is a large white building with pay metered parking surrounding it in lots and along 422. In front of City Hall, between Liberty and North 7<sup>th</sup> Streets, there are metered parking spaces providing 2-hour free parking. The spaces along the perimeter of the 2-hour free parking lot can be rented by the month. There is also a 30-space metered lot between North 8<sup>th</sup> Street and Liberty Street where spaces can be rented. These lots are City-owned lots. (N.T. 19-23, 45-46, 69; UX-1)

5. The Harrisburg Area Community College (HACC) rents space in the City Hall Building on the 3<sup>rd</sup> floor. Some spaces around City Hall are reserved for HACC students. Also, Intermediate Unit No. 13 rents space in the new City Hall Building. The City has discussed making spaces near City Hall available to the Intermediate Unit. (N.T. 65-66, 101-102; UX-1)

6. The City also owns a parking lot at 124 North 8<sup>th</sup> Street.<sup>1</sup> When the Police Department initially moved to the new City Hall Building, in May 2022, the access gate at the 124 North 8<sup>th</sup> Street lot was not completed and officers were initially permitted to park closer to City Hall in metered parking. The designated lot currently has security access gates at the entrance and exit to the lot on North 8<sup>th</sup> Street and an entrance-only access gate on the alley side of the lot. Officers were issued access cards in May or June 2022. The parking in the designated lot is free parking for City employees. (N.T. 19-20, 61, 69-73, 102)

7. On May 13, 2022, then Chief of Police Todd Breiner issued an email to all officers in the Police Department, including the Union President and Vice President. In the email, Chief Breiner stated: "The employee parking lot located on N. 8<sup>th</sup> Street is now completed. Starting on Monday, May 16<sup>th</sup> you will need to park in that lot. Please bring all City vehicles from the Municipal Building parking lot and park them in the new lot on N. 8<sup>th</sup> Street. I am told the gates will not be operational on Monday. We will return to enforcing the two hour lot on Monday." (N.T. 48, 70-72, 85, 107, 110; CX-1)

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<sup>1</sup> Throughout the hearing, the attorneys and witnesses referred to the address of the parking lot as both 130 North 8<sup>th</sup> Street and 124 North 8<sup>th</sup> Street. I will refer to the address of the parking lot as 124 North 8<sup>th</sup> Street, but both addresses refer to the same lot.

8. All City employes park their personal vehicles in the designated lot at 124 North 8<sup>th</sup> Street, except the Fire Chief, the Fire Captain, the Mayor, and 3 employes who need accommodations for their physical disabilities. Also, City-owned vehicles are parked in the designated lot. Police cruisers and detectives' vehicles are parked at the Police Department or in the Police Department garage, which is attached to the City Hall Building. (N.T. 65-66, 100, 111-112)

9. The designated lot is 2 blocks north of the Police Department and City Hall. It takes "a few seconds over 2 minutes" to walk from the designated lot to the Police Department. The officers are not permitted to park in any paid or metered parking space around City Hall that are closer to City Hall than 124 North 8<sup>th</sup> Street. (N.T. 20, 27, 97)

10. From the time that the Police Department moved to 735 Cumberland Street, officers were consistently told to park at the designated lot. The Union did not request bargaining or impact bargaining over the May 13, 2022 parking directive. The Union did not agree to the mandate to park in the designated lot. (N.T. 16-17, 40, 44, 48)

11. The Union President, Officer Sean Buck, testified that, from May 2022 to December 2022, officers were required to park at the designated lot. Between May 2022 and December 2022, former Union President, Sergeant Patrick McKinney, parked in metered spaces closer to City Hall so as not to have to walk the 2 blocks from the designated lot. Sergeant McKinney knew that he was parking contrary to orders. At the time, Captain Fisher, now Chief Fisher, told him to move his vehicle from a metered space to the designated lot. (N.T. 45, 62-64)

12. Sergeant McKinney is a military veteran. At some point, he began parking in a spot reserved for veterans in the HACC parking lot. He was told to move, and he thereafter began parking in the designated lot. (N.T. 65-66)

13. Officer Ryan Margut is the Union Vice President. Prior to December 5, 2022, Officer Margut had been parking at the metered lot at North 8<sup>th</sup> Street and Spring Street. These parking spaces are available to the public. (N.T. 77-81)

14. In May 2022, Officer Margut submitted an application to rent space on the perimeter of the 2-hour lot, which was denied. After December 5, 2022, Officer Margut began parking at the designated lot at 124 North 8<sup>th</sup> Street. In addition to Officer Margut, another officer tried paying for metered parking in the 1-hour meter lot between North 8<sup>th</sup> Street and Liberty Street. That officer was not permitted to park there. The Chief told that officer to move his car even though he had put money in the meter. (N.T. 28-30, 82-83, 87)

15. In August of 2022, Captain Sims advised Officer Margut that he should not be parking in the metered spaces and that he should be parking at the designated lot at 124 North 8<sup>th</sup> Street. Officer Margut disregarded Captain Sims and continued parking in metered parking until December 5, 2022. (N.T. 83-84, 90-91, 99-100)

16. No officers who were continuing to park in metered spaces between May 16, 2022 and December 5, 2022 were disciplined. (N.T. 91, 107)

17. The parties' Collective Bargaining Agreement (CBA) provides that: "The City has the right to control the operation of all equipment and other properties of the City." Union President Buck testified that, pursuant to this contractual provision, the Union and the City agreed that the City can manage, direct, plan and control City property which includes City-owned parking lots. (N.T. 45-47, 69; JX-1)

18. Captain Bret Fisher became Acting Chief of Police in November 2022. He was appointed Chief of Police in January 2023. While Captain, Chief Fisher also received the May 13, 2022 email from then Chief Breiner. Chief Fisher understood that email to be an order from the Chief of Police to park at the 124 North 8<sup>th</sup> Street lot, and officers would be ticketed if they continued to park in the 2-hour lot. (N.T. 94-96, 105-107)

19. Chief Fisher credibly testified that, following the May 13, 2022 email, management expected officers to park in the designated lot. He testified that the May 13, 2022 email governed parking behavior as of May 16, 2022, and that he immediately began parking in the designated lot. Chief Fisher also credibly testified that the Union did not attempt to bargain the issue with command staff. (N.T. 99, 111-112)

20. Chief Fisher walks through the City-owned metered lots, and he is aware of when officers park in those spaces. The Chief was aware that Captain Sims told Officer Margut, in August 2022, that Officer Margut needed to park in the designated lot. (N.T. 99-100)

21. On December 5, 2022, Chief Fisher issued a Memorandum to all Police Department personnel stating as follows: "Effective immediately, All personnel working day-shift (0700-1500/0800-1600) Week days & Weekends will park in the gated City of Lebanon Employee Parking lot located at 130 [124] North 8<sup>th</sup> St." Chief Fisher credibly testified that he issued the December 5, 2022 memo to end a lack of enforcement of Chief Breiner's directive. (N.T. 12-13, 110-111; JX-3)

22. In approximately February 2023, the Police Department switched length and rotation of shifts. Previously, officers worked 8-hour shifts and rotated every 2 weeks. Currently, officers work 12-hour shifts and rotate every 4 weeks. Under the 12-hour shift schedule, officers work either 7 a.m. to 7 p.m. or 7 p.m. to 7 a.m. The directive for officers to park in the designated lot at 124 North 8<sup>th</sup> Street applies only to officers working the 7 a.m. to 7 p.m. shift. (N.T. 18-19, 36-37)

## **DISCUSSION**

During the hearing in this case, the City moved for the dismissal of the charge, at Case No. PF-C-22-64-E, following the Union's case-in-chief, arguing that the charge was untimely filed. (N.T. 91-93). I deferred ruling on the motion at the time. In its post-hearing brief, the City renewed its motion and argued that the charge filed on December 21, 2022, was more than 6 weeks after the Union and bargaining unit members were aware of Chief Breiner's May 13, 2022 email directing officers to park at the 124 North 8<sup>th</sup> Street lot, effective May 16, 2022. I agree with the City that the charge is untimely.

Section 9(e) of the PLRA provides as follows: "No petition or charge shall be entertained which relates to acts which occurred or statements which

were made more than six weeks prior to the filing of the petition or charge." 43 P.S. § 211.9(e). In Harmar Township Police Wage and Policy Committee v. Harmar Township, 33 PPER 33025 (Final Order, 2001), the Board opined as follows:

The nature of the alleged unfair labor practice frames the limitations period. For a refusal to bargain a change in terms and conditions of employment, notice to the union of the implementation of the challenged policy or directive triggers the statute of limitations. Officers of the Upper Gwynedd Township Police Department v. Upper Gwynedd Township, 32 PPER ¶ 32101 (Final Order, 2001); Fraternal Order of Transit Police v. SEPTA, 27 PPER ¶ 27178 (Final Order, 1996). "Implementation . . . is the date when the directive becomes operational and serves to guide the conduct of employes, even though no employes may have been disciplined or corrected for failure to abide by the directive." Upper Gwynedd Township, supra. In Upper Gwynedd Township, the Board held that even where no employe was disciplined under the new policy, because the union had actual notice of the directive when it was announced, a charge filed more than six weeks later was untimely.

Harmar Township, supra. The record demonstrates that Chief Breiner's May 13, 2022 memo was a directive changing parking policy for officers effective May 16, 2022, thereby triggering the statute of limitations on that date. Chief Breiner's email provided actual notice to the Union President and Vice President as well as the entire bargaining unit of officers that the parking mandate became operational and guided the conduct of officers as of May 16, 2022.

As emphasized by the City in its brief, former Chief Breiner's email directive states that "[t]he employee parking lot located on N. 8<sup>th</sup> Street is now completed. Starting on Monday, May 16<sup>th</sup> you will need to park in that lot. Please bring all City vehicles from the Municipal Building parking lot and park them in the new lot on N. 8<sup>th</sup> Street." (emphasis added). Chief Breiner's language is clearly mandatory and not suggestive or voluntary. The Chief did not state "you will need to park in that lot," unless of course you do not wish to do so or unless you prefer to park somewhere else. Then-Captain Fisher understood the May 13, 2022 parking mandate to govern behavior as of May 16, 2022, and he began parking in the designated lot, as did other officers and command staff. Although several officers refused to comply with the parking mandate of May 13, 2022, and they were not disciplined, the implemented mandate was no less effective at governing behavior. Harmar, supra. Even the Union President, Officer Buck, testified that after May 2022, officers were required to park in the designated lot.

Additionally, the record contains evidence demonstrating that Chief Breiner's mandate was also implemented in the multiple times that officers were consistently told to move their cars to the mandated lot. The parking mandate of May 2022 was also implemented every time the City denied an officer's application for rental parking. Sergeant McKinney testified that he knew that he was parking in metered spaces contrary to orders. Then-Captain Fisher told McKinney to move his car to the designated lot, again demonstrating that the May 2022 parking mandate was in effect and governing behavior regardless of the personal wishes of individual officers who refused to comply with it. Sergeant McKinney was again told to move his car from reserved veterans parking in the HACC parking lot again showing the implementation of the parking mandate from May 2022. The fact that the May

13, 2022 mandate did not preclude parking at meters other than the 2-hour lot does not change the fact that all officers were required to park in the mandated lot, which precluded parking at any of the metered spaces in the vicinity of City Hall.

The City denied Officer Margut's application to rent a space on the perimeter of the 2-hour parking lot. In August 2022, Captain Sims advised Officer Margut to move his car from a metered space to the designated lot. Although Officer Margut continued parking in metered spaces, his behavior did not render the May 13, 2022 directive any less mandatory, implemented, or effective. The record yields the inference that the vast majority of the police officers complied with the May 2022 parking policy change mandating parking at the 124 N. 8<sup>th</sup> Street lot, further demonstrating that Chief Breiner's directive was governing behavior as of May 16, 2022.

The repeated denials of parking applications for metered and rental spaces, the multiple communications from command staff to officers to move their cars from metered spaces to the designated lot, and the issuance of access cards to the designated lot in May or June 2022 demonstrates that the May 13, 2022 parking directive was implemented and governing behavior as of May 16, 2022. Accordingly, the December 21, 2022 charge of unfair labor practices, alleging that the City violated its duty to bargain a change in parking policy for officers by memo dated December 5, 2022, was untimely filed beyond the 6-week limitations period under the PLRA. The purpose of Chief Fisher's December 5, 2022 memo was to remind officers of and to reinforce compliance with Chief Breiner's existing May 13, 2022 parking mandate and not to implement a new mandate. (F.F. 21)

#### CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The City is a public employer and a political subdivision within the meaning of the PLRA, as read *in pari materia* with Act 111.
2. The Union is a labor organization within the meaning of the PLRA, as read *in pari materia* with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The City has not committed unfair labor practices within the meaning of Section 6(1) (a) or (e) of the PLRA, as read *in pari materia* with Act 111, under Case No. PF-C-22-64-E.
5. The Union withdrew Case No. PF-C-23-66-E with prejudice.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

**HEREBY ORDERS AND DIRECTS**

that the charge is dismissed, the complaint is rescinded and that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifth day of March, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

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JACK E. MARINO, Hearing Examiner