

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE, COUNTY, :
& MUNICIPAL EMPLOYEES, :
DISTRICT COUNCIL 47, LOCAL 2187, :
v. : CASE NO. PERA-C-24-70-E
CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On March 29, 2024, the American Federation of State, County & Municipal Employees, District Council 47, Local 2187 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Philadelphia (City) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act). The Union specifically alleged that the City failed to comply with a grievance settlement agreement requiring back payments to 3 Grievants.

On April 11, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of August 2, 2024, in Harrisburg. I continued that hearing at the request of the City to permit time for settlement discussions. On November 27, 2024, the Union's Attorney requested that a new hearing be scheduled because the City had still not yet paid the Grievants. I rescheduled the hearing for April 4, 2025, via Microsoft TEAMS. The parties appeared for the video hearing on that date, but no evidence was introduced because, although the Grievants had been paid by then, a dispute arose regarding the manner in which the interest on the backpay was to be calculated. I rescheduled the hearing for July 16, 2025, via TEAMS. During the video hearing on that date, the parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. The parties simultaneously filed post-hearing briefs in support of their respective positions on September 11, 2025.

The examiner, based upon all matters of record, makes following:

FINDINGS OF FACT

1. The City is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8-17; JX-1)

2. The Union is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 8-17; JX-1)

3. On or about June 15, 2021, the Union filed a class action grievance with the City alleging that Khadijah Hogg, Mary McElduff, and Gabriella Wright were not properly compensated in violation of the parties' collective bargaining agreement (CBA). (N.T. 8-10)

4. Ms. Hogg, Ms. McElduff, and Ms. Wright are civilian forensic scientists in the Police Department. They were being paid at a lower salary than other employees who were similarly situated and who were hired at the same time with the same start date. (N.T. 8-10, 21-22)

5. The City increased all 3 Grievants' salaries by March 10, 2023. The Union continued to seek backpay for the difference between the lower salary that they actually earned until March 10, 2023, and the higher salary that they began earning as of that date. (N.T. 8-10)

6. On March 30, 2023, the Union demanded arbitration. On the day of the arbitration hearing, the parties reached a tentative grievance settlement agreement (Agreement). The Agreement was finally executed on December 15, 2023. (N.T. 8-10, 21-24; JX-1)

7. On March 29, 2024, the Union filed the charge of unfair practices in this case because the City had not yet paid the Grievants' backpay pursuant to the Agreement. (N.T. 35; JX-1)

8. The Grievants were paid on December 27, 2024. The Union seeks interest on the backpay amount for time between December 15, 2023, and December 27, 2024. (N.T. 8-10, 25-26; UX-1; UX-2; UX-3)

9. After offsetting interim gross earnings, Ms. Wright's net backpay for the period was \$34,198.85. The City deducted taxes, withholdings, and contributions resulting in the take-home backpay amount of \$17,071.80. (N.T. 27-29; UX-1)

10. After offsetting interim gross earnings, Ms. McElduff's net backpay was \$25,545.19. The City deducted taxes, withholdings, and contributions resulting in the take-home backpay amount of \$13,387.86 (N.T. 30-32; UX-2)

11. After offsetting interim gross earnings, Ms. Hogg's net backpay was \$29,928.72. The City deducted taxes, withholdings, and contributions resulting in the take-home backpay amount of \$14,782.03. (N.T. 32-34; UX-3)

12. The take-home amounts of backpay were deposited into the Grievants' accounts, not the net amounts of backpay. (N.T. 45-46)

13. All Union employees receive a take-home pay amount in their bi-weekly paychecks after taxes and other deductions and contributions. The City offsets interim earnings for employees reinstated pursuant to an arbitration award. (N.T. 47-48, 51)

DISCUSSION

The Union contends that the City engaged in unfair practices by taking too long to make the back payment amount to the 3 Grievants and by not paying interest on the adjusted gross or net backpay amounts. The City recognizes that it owes interest, but parries that the interest should be calculated on the backpay amounts that the Grievants take home after taxes and other deductions.

Where an employer complies with a final and binding arbitration award in an unreasonable amount of time, the employer commits an unfair practice under the Act. AFSCME, Local 159 v. City of Philadelphia, 19 PPER ¶ 19069 (Final Order, 1988); Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 41 PPER 121 (Proposed Decision and Order, 2010). In determining timeliness, the Board will consider such factors as: (1) the nature and complexity of the compliance required under the award; (2) the length of time before compliance occurred; (3) the employer's ability to comply with the

award; (4) the steps taken by the employer toward compliance; and (5) the employer's explanation or lack thereof for the delay. Fraternal Order of Police, Lodge 5, supra. The same standard applies to grievance settlement agreements.

On or about June 15, 2021, the Union filed a class action grievance complaining that Ms. Hogg, Ms. McElduff, and Ms. Wright were not properly placed on the salary scale. On March 10, 2023, the City adjusted the 3 Grievants' placement on the pay scale and increased their salaries. The Union sought payment for the difference in their lower salaries and their salaries as of March 10, 2023. Immediately prior to the arbitration hearing on the grievance, the City settled the grievance with the Union and agreed to pay the Grievants backpay for the difference between their lower and higher salaries. The Agreement was fully executed on December 15, 2023. On March 29, 2024, the Union filed the charge of unfair practices in this case because the City had not yet paid the Grievants' backpay pursuant to the Agreement. The City paid the Grievants on December 27, 2024.

In this case, the City paid the Grievants their backpay over one year after the final execution of the December 15, 2023 Agreement. The nature of calculating and issuing payment to the Grievants was not complex, and the City did not explain or demonstrate that there were any obstacles that reasonably prevented the City from calculating and issuing the backpay to the Grievants. Thus, the unreasonable delay constitutes an unfair practice, and the City owes interest on the backpay amount, which it has not paid. The question thus becomes whether the interest is calculated on the gross amount of backpay, as offset by interim gross earnings, or the amount of backpay that the Grievants actually received after taxes and other deductions.

Both parties agree that the Board follows the National Labor Relations Board (NLRB) Case Handling Manual for Compliance Proceedings and that the NLRB Compliance Manual governs how to calculate interest in this case. Corry Area Education Association v. Corry Area School District, 38 PPER 155 (Final Order, 2007); Teamsters Local Union No. 776 v. Borough of Gettysburg, 54 PPER 17 (Proposed Decision and Order, 2022). The Board and its examiners frequently order the payment of interest on backpay as part of the make-whole remedy to the employee for not having use of the money over a period of time. North Schuylkill Educational Support Personnel Association v. North Schuylkill School District, 36 PPER 1 (Final Order, 2005).

The Union argues that "[t]he NLRB distinguishes between gross back pay and net back pay, but net pay has a particular definition." (Union Brief at 10). The Union further contends that under the NLRB standard, net backpay is the amount owed to an employee after subtracting interim earnings from gross earnings and not after subtracting taxes, deductions, and contributions from gross earnings. (Union Brief at 11).

Section 10536.2 of the NLRB Compliance Manual defines gross backpay as follows: "Gross Backpay: What the [employee] would have earned from respondent had there been no unlawful action. Earnings include not just wages, but all other forms of compensation such as vacation pay, health and retirement benefits, bonus payments, and use of vehicles." The same Section further defines net backpay as follows: "Net Backpay: The amount owed a[n] [employee] by respondent. Net backpay is generally gross backpay minus interim earnings but may be adjusted by other gross compensation not subject to offsetting interim earnings, and periods during the backpay period in which the

[employee] was unavailable for employment or failed to seek interim employment." NLRB Compliance Manual § 10536.2. Section 10566 of the NLRB Compliance Manual provides that "[i]nterest is charged on net backpay and other monetary liabilities due in an unfair labor practice case. NLRB Compliance Manual § 10566.

The NLRB does not define net backpay as the amount of backpay owed after taxes, contributions, and other deductions have been made. Net backpay is simply gross backpay less interim earnings and offsets. In the Act 111 context, hearing examiner Pozniak also recognized that the term "net backpay" describes the amount owed to an employee after gross backpay has been offset by interim earnings and not by taxes, deductions, and contributions. FOP, Lodge 5 v. City of Philadelphia, 54 PPER 37 n.5 (PDO, 2022). In this case, the Grievants did not separate from City employment, so the interim earnings were the Grievants' actual gross earnings while they were employed by the City during the backpay period. Offsetting those interim earnings from the gross earnings they should have received during that time yields the net backpay of \$34,198.85 for Ms. Wright, \$25,545.19 for Ms. McElduff, and \$29,928.72 for Ms. Hogg. Thus, the City owes interest on those net backpay amounts before taxes and other deductions.

The Union also maintains that when interest is applied to the amount due the employees after taxes and deductions, the Grievants face additional taxes on the interest payment after they already paid tax on the gross backpay. The Union argues that the "Grievants should not be taxed twice for the City's noncompliance." (Union Brief at 12). However, the Grievants are not being taxed twice on the interest.

The Grievants will have to pay taxes on the interest income regardless of whether the interest amount is calculated based on the net backpay before taxes and deductions or the take-home amount of backpay after taxes and other deductions. The Union did not explain how paying tax on interest income calculated after the net amount of backpay has been reduced by taxes and other deductions results in double taxation on the interest. Whatever the interest amount is, the Grievants will be taxed only once on that interest amount. The Grievants are not going to be double taxed because they have not yet been taxed on the interest amount; they were taxed on other earnings.

Accordingly, the City has violated Section 1201(a)(1) and (5) of the Act by failing to timely comply with the December 15, 2023 Agreement. The City will pay the 3 Grievants interest on their net backpay amounts, before taxes and other contributions were deducted by the City, pursuant to the NLRB's definition of net backpay, to make them whole. The interest will be paid at 6% per annum on those net backpay amounts from December 15, 2023, to December 27, 2024.

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 within the meaning of Section 301(1) of PERA.

2. The Union is an employee organization within the meaning of the Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.
4. The City has violated Section 1201(a)(1) and (5) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner;

HEREBY ORDERS AND DIRECTS

that the City shall:

1. Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed in PERA;
2. Cease and desist from refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of the Act:
 - (a) Immediately pay Ms. Hogg, Ms. McElduff, and Ms. Wright all make whole relief as required by the Agreement;
 - (b) Immediately pay interest at the rate of 6% per annum on the amount of \$34,198.85 to Ms. Wright, \$25,545.19 to Ms. McElduff, and \$29,928.72 to Ms. Hogg from December 15, 2023, to December 27, 2024;
 - (c) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days; and
 - (d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventeenth day of September, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/S/Jack E. Marino

JACK E. MARINO
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE, COUNTY, :
& MUNICIPAL EMPLOYEES,
DISTRICT COUNCIL 47, LOCAL 2187, :

v. : CASE NO. PERA-C-24-70-E
:
CITY OF PHILADELPHIA :

AFFIDAVIT OF COMPLIANCE

The City of Philadelphia hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Act; that it has paid Khadijah Hogg, Mary McElduff, and Gabriella Wright all make whole relief as required by the December 15, 2023 Settlement Agreement; that it has paid interest at the rate of 6% per annum on the amount of \$34,198.85 to Ms. Wright, \$25,545.19 to Ms. McElduff, and \$29,928.72 to Ms. Hogg from December 15, 2023, to December 27, 2024; that it has posted a copy of the proposed decision and order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public