

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FOP LODGE 5 :
 :
 v. : Case No. PF-C-24-80-E
 :
 CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On August 30, 2024, the Fraternal Order of Police Lodge 5 (FOP or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of Philadelphia (City or Employer), alleging that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by refusing to comply with a July 6, 2024 grievance settlement agreement regarding Police Staff Inspector Joseph Bologna.

On September 18, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing, directing a hearing on December 30, 2024, if necessary. After two continuances, the hearing ensued on March 31, 2025, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.¹ The parties each filed separate post-hearing briefs in support of their respective positions on July 17, 2025.

The Hearing Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The City is a public employer and political subdivision under Act 111, as read *in pari materia* with the PLRA. (N.T. 8)

2. The FOP is a labor organization under Act 111, as read *in pari materia* with the PLRA. (N.T. 8)

3. The FOP is the exclusive bargaining representative for a unit of police employees at the City. (City Exhibit 2)

4. The FOP and the City were parties to a collective bargaining agreement (CBA) effective July 1, 2021 through June 30, 2024. On November 15, 2023, the parties agreed to extend the CBA for an additional year through June 30, 2025. (City Exhibits 2, 3)

5. Article VI of the CBA, which is entitled "Hours of Work and Overtime," provides in relevant part as follows:

D. Compensatory Time (In Lieu of Overtime)

1. Employees at the rank of Captain or above shall be granted compensatory time in lieu of overtime for all hours worked in excess of the normal work day. Compensatory time shall be computed on an hour for hour basis, and may be accrued

¹ The hearing was held virtually by agreement of the parties.

up to thirteen hundred (1,300) hours maximum, effective July 1, 2014.

2. Effective July 1, 2011, officers at the rank of captain and above will be permitted to accumulate compensatory time on an hour for hour basis up to a cap of 1,300 hours.
3. Upon retirement of an employee holding the rank of Captain and above, will be permitted to cash out up to six hundred (690) [sic] hours of the accumulated compensatory time, subject to the existing rules and regulations.
4. An employee holding the rank of Captain and above shall have the right to take annually five (5) days of compensatory time consecutively, to be scheduled with the approval of the appointing authority.
5. The lump sum purchase of accumulated unused compensatory time at retirement described above shall be in addition to the compensatory time that employees at the rank of Captain and above may presently take off prior to the effective date of their retirement, which is not to exceed one hundred twenty (120) hours.
6. Employees holding the rank of Captain and above may cash in three (3) weeks of accumulated, unused compensatory time per year, provided that all cashed-in compensatory time shall be deducted from an employee's balance of unused compensatory time. One week of compensatory time each year can be cashed out in January using the existing rules. The other two weeks of compensatory time eligible for cash out will continue to be cashed out under the existing schedule.

(City Exhibit 2)

6. Article VIII of the CBA, which is entitled "Sick Leave," provides in relevant part as follows:

- B. At retirement, occurring on or after July 1, 2004, an employee who has retired may elect to use all or part of his or her accumulated sick leave to purchase an extension of the five (5) year period of retiree health, medical, dental, optical and prescription coverage in lieu of receiving a cash payment as provided in Appendix D of the 1990 Act 111 Interest Arbitration Award. For purposes of purchasing extended coverage, one hundred twenty (120) hours of accumulated sick leave will buy six months of extended coverage. All such purchases must be in full blocks of one hundred twenty (120) hours.

The number of compensable sick leave hours for employees who have retired above the rank of police officer shall be determined by applying the cash payment formula as provided in Appendix D of the 1990 Act 111 Interest Arbitration Award[.] Those compensable hours may be used to purchase extended coverage, according to the following schedule...

(City Exhibit 2)

7. Article IX of the CBA, which is entitled "Vacation Leave," provides in relevant part as follows:

- B. Accrual
Any vacation leave which is not used in any year may be accumulated; provided, however, that an employee may not have to their [sic] credit more than 560 hours of vacation time at the end of a calendar year.
- ...
- D. Payment of Accumulated Vacation Leave Upon Retirement
Any member of the bargaining unit who leaves the City's service in order to retire under the Municipal Retirement System has the option to receive a lump sum cash payment for the balance of his/her earned and unused vacation leave within thirty (30) days of retirement, payable at their daily rate of pay at the time of retirement or to exhaust this earned and unused vacation leave of retirement.

(City Exhibit 2)

8. Article XI of the CBA, which is entitled "Holiday Compensatory Time," provides in relevant part as follows:

- B. Holidays Compensatory Time
Police Department employees shall receive, in lieu of the Thirteen (13) holidays specified above, compensatory time off with pay on an hour for hour basis aggregating during a full calendar year, one hundred and four (104) hours.
- C. Payment/Accumulation of Holiday Compensatory Time
Each employee shall have the right to use holiday compensatory time at their convenience consistent with past practice, to be paid in cash for such time at the end of the fiscal year, or to accumulate this time without limit.

(City Exhibit 2)

9. Article XVII of the CBA, which is entitled "Compensation," provides in relevant part as follows:

- D. Clothing Allowance and Clothing Maintenance
 - 1. Effective July 1, 2021, employees shall receive a uniform allowance of Eight Hundred Dollars (\$800.00) per year.
 - 2. Employees shall receive a uniform maintenance allowance of Five Hundred Dollars (\$500.00) per year.
 - ...
- I. District Commander's Compensation
 - ...
 - 3. Effective July 1, 2023, Commanders who do not receive the 8% District Commander differential in Article 17(I) of the CBA shall receive a 2% differential.
 - 4. Effective January 1, 2024, all Commanders shall have their compensation adjusted to reflect the 8% District Commander differential in Article 17(I). Commanders who already receive the 8% differential shall not experience any additional increase.

(City Exhibit 2)

10. Joseph Bologna was employed as a Police Staff Inspector for the City since November 2017. (N.T. 21; City Exhibit 1)

11. On June 8, 2020, Staff Inspector Bologna was charged with certain misconduct under the Police Disciplinary Code and notified that he was suspended without pay for a period of 30 days with the intent to dismiss. (N.T. 130; City Exhibit 2)

12. On June 19, 2020, Staff Inspector Bologna retired from City employment. (City Exhibit 2)

13. The FOP subsequently filed a grievance alleging that the City violated the CBA by imposing discipline on Staff Inspector Bologna and processed the grievance to arbitration. (N.T. 130; City Exhibit 2)

14. On June 6, 2024, the parties resolved the grievance by way of a Settlement Agreement, which provides in relevant part as follows:

The City will promptly reinstate Grievant to his former position as of June 8, 2020, within the Philadelphia Police Department without loss of seniority and will revise his personnel records to remove all reference to the 30-day suspension without pay and dismissal to the maximum extent permitted under governing law. Grievant's reinstatement is subject to his meeting the employment standards for Police Officers and for City of Philadelphia employees, including, but not limited to, fitness for duty as determined by the City's Medical Evaluation Unit, background checks, City indebtedness verification, and obtaining all necessary certifications and clearances.

The Grievant shall be made whole, including, but not limited to, backpay and lost compensatory time, subject to cap limits in the collective bargaining agreement, for the period from June 8, 2020, through the date of his reinstatement, less all outside wages and other earnings ("offsets"), including but not limited to all pension payments, received by him between June 8, 2020 and his reinstatement, and subject to all applicable taxes, contributions, deductions, and withholdings. Grievant's failure to comply with and participate in the process to determine offsets described above will toll the accrual of backpay until Grievant comes into compliance. In consideration of the foregoing, the FOP and Grievant agree to withdraw the grievance and demand for arbitration in this matter...

(N.T. 30-31, 130-131; City Exhibit 1)

15. Staff Inspector Bologna returned to work for the City on July 15, 2024. He provided the City with his Employee Earnings Affidavit on July 24, 2024. (N.T. 23, 28-29, 31-32, 39; City Exhibits 5, 17)

16. During Staff Inspector Bologna's separation from employment, the City conducted promotional examinations for the ranks of Inspector and Chief Inspector. (N.T. 22)²

17. Specifically, the City posted job announcements for both the Police Inspector and Chief Police Inspector positions on February 19, 2024, which both also closed on March 15, 2024. (N.T. 102-103, 105; City Exhibits 12, 13)

18. Staff Inspector Bologna submitted applications for both the Police Inspector and Chief Police Inspector positions on March 15, 2024, which the City accepted. (N.T. 22-23, 49, 108, 110; City Exhibits 14, 15)

19. By email dated May 10, 2024, the City notified Staff Inspector Bologna that his applications were not advanced in the hiring process because he did not meet all the requirements. Bologna testified that he was not eligible because he was not back on the job yet. The City's Hiring Services Manager, Laura Allen, confirmed in her testimony that Bologna did not advance in the process because he was not a permanent civil service employee. (N.T. 23, 108-110, 116, 118; City Exhibit 16)

20. The examinations for both positions occurred in May 2024, while Staff Inspector Bologna was still separated from his City employment. (N.T. 22-23, 104, 106; City Exhibits 12, 13)

21. By emailed dated July 17, 2024, the FOP requested that Staff Inspector Bologna be granted the opportunity to complete the examinations for both positions at the earliest possible time. The City subsequently denied the request. (N.T. 23-24; City Exhibit 17)

22. Staff Inspector Bologna testified that, as a commander in the City's Police Department, he earned compensatory time on an hour-for-hour basis for any time he worked beyond his regular schedule, in lieu of overtime. He described how he got paid out for those hours of compensatory time three times per year. He stated that the compensatory time could be taken as leave time or as actual money. (N.T. 24-25)

23. Staff Inspector Bologna testified that there was a cap on how much compensatory time he could accrue, which was 1,300 hours. He explained that there are opportunities during the year to sell back some of his compensatory time. He indicated that he was permitted to sell back up to three weeks of compensatory time or 120 hours. He described how his practice was to always cash out or sell back his compensatory time when he could. (N.T. 25)

24. Staff Inspector Bologna testified that, ever since he became a commander, which is a rank of captain or above, in 2012, he has always been capped out or had more than 1,300 hours of compensatory time. If he had continued working during his 49-month separation from the City, he would have continued to sell back 120 hours of compensatory time each year, just like he had always done before. (N.T. 26)

² The record shows that the ranks above the Staff Inspector position with the City are, in ascending order, Inspector, Chief Inspector, Deputy Commissioner, and Police Commissioner. (N.T. 21-22).

25. Staff Inspector Bologna testified that he had a choice to either bank his holiday leave or receive his holiday time by getting paid. His practice was always to cash out his holiday leave every year, which he started doing when he first became a police officer with the City. (N.T. 26-27)

26. Staff Inspector Bologna testified that the bargaining unit employees receive a uniform check every year. However, he did not receive any uniform checks for his 49-month separation from the City. (N.T. 27)

27. Staff Inspector Bologna testified that, during his separation, there was an Act 111 interest arbitration award, which provided for a two percent increase in commander's pay, followed by another six percent increase in commander's pay, for which he would have been eligible had he continued working. At the time of the March 31, 2025 hearing, he had just started receiving that commander's pay, even though he had been back to work since July 2024. He acknowledged that the City provided that pay both prospectively and retroactively to July 15, 2024. But he had still not received any of that pay for the time he was off work. (N.T. 28-29)

28. The parties eventually stipulated that Commanders received a cumulative eight percent increase to their base pay pursuant to an Act 111 interest arbitration award, along with a March 2023 Memorandum of Agreement (MOA), resolving an outstanding grievance over the issue. (N.T. 45; City Exhibit 4)

29. Staff Inspector Bologna testified that the Act 111 award also provided for bonuses during his separation from the City. (N.T. 29)

30. On cross-examination, Staff Inspector Bologna testified that, when he was separated from City employment, he cashed in some of his sick time in order to purchase coverage for medical insurance. He explained that he never activated the coverage under the health insurance policy because he ultimately took a job with the FOP and received coverage through them. He described converting 1,500 hours for approximately 10 years' of coverage, which is set forth in the CBA. (N.T. 33-36; City Exhibits 2, 5)

31. On cross-examination, Staff Inspector Bologna agreed that the bargaining unit employees receive 32 hours of administrative leave every year, which are combined with their vacation hours, and which automatically get deducted first when employees use their vacation time. (N.T. 36-38)

32. On cross-examination, Staff Inspector Bologna acknowledged that there is a cap of 560 hours of vacation time in the CBA, which gets extended to 592 hours until March 31 of each year. He admitted that the City properly restored 750 hours to his vacation bank on October 6, 2024, which did not include the amounts he accrued since July 15, 2024 when he returned to work. He emphasized how that was a lot of vacation time to use between October and March of the next year. (N.T. 38-40)

33. On cross-examination, Staff Inspector Bologna agreed that the City restored 432 hours of holiday time to his bank, which was the correct amount. He took issue with not being permitted to cash it out like he had always done in the past. He explained that, once that time is put into his bank, he cannot take it out. His understanding was that he can only take out what he accrues this year in holiday time. (N.T. 40-41)

34. On cross-examination, Staff Inspector Bologna acknowledged that the City correctly restored 654 hours of sick leave to his account on October 6, 2024, which did not include the amounts he accrued since he returned to work. He explained that he had to take precautions when he separated from the City for his wife to have coverage just in case. He described how he purchased the coverage at the conversion rate set forth in the CBA at the time. The FOP stipulated that it does not take issue with the City's calculation of sick time owed to Bologna. The FOP further stipulated that its position is that the additional sick time should be restored because Bologna no longer needs that medical coverage that he previously purchased. (N.T. 41-43)

35. On redirect examination, Staff Inspector Bologna testified that bargaining unit employees are entitled to five years of health care upon retirement under the CBA. He clarified that the bargaining unit employees are also entitled to purchase extended time beyond those five years by using their sick time. He engaged in that process when he left City employment in June 2020. He explained that he never used that extended time, despite his purchase under the CBA. His understanding was that he would not be entitled to the 10 years of extended health care if the City were to restore the sick leave he used to make the purchase. (N.T. 52-53)

36. Staff Inspector Bologna received \$362,058.37 in pension benefits during his separation from the City. (N.T. 65-66; City Exhibit 6)

37. Leanette Abraham has been employed with the City as a General Assistant Manager in the Central Finance Unit since 2018. She previously worked as a Payroll Supervisor for two years. She began working for the City in 2012. (N.T. 69-70)

38. General Assistant Manager Abraham testified that the City's Finance Unit calculated that the City owed Staff Inspector Bologna \$625,089.64 for the backpay period. She described how Bologna received \$176,160.00 in outside earnings, which the City calculated from the Earnings Affidavit that Bologna provided. She also noted how Bologna received \$48,374.00 in unemployment compensation benefits. These offsets reduced his backpay amount to \$400,555.64. (N.T. 77-80; City Exhibits 7, 8)

39. General Assistant Manager Abraham testified that the backpay amount was further reduced by the pension contributions that Staff Inspector Bologna would have paid at the rate of 6.84 percent, which totaled \$42,756.13. When combined with the offset for pension benefits he received in the amount of \$362,058.37, this yielded a total reduction of \$404,814.50, which was more than the backpay amount owed. The City took a further credit of \$3,461.36 for FOP dues for that period. (N.T. 80-81; City Exhibit 8)

40. General Assistant Manager Abraham testified that the City devised two scenarios to resolve the situation. The first scenario involved completing a payment to Staff Inspector Bologna, who would in turn then be responsible for repaying the pension offset in the amount of \$362,058.37 himself. Under this scenario, Bologna would owe that money to the City. The City calculated that Bologna would receive a net payment of \$239,852.65 under this scenario after the gross of \$400,555.64 was reduced by the pension contribution amount of \$42,756.13, along with the applicable tax deductions and FOP dues. (N.T. 83-84; City Exhibit 9)

41. General Assistant Manager Abraham testified that the second scenario involved the City recovering only \$305,000.00 in pension benefits and that Staff Inspector Bologna would owe the City \$57,058.37 for the balance in pension payments. Under this scenario, Bologna would receive a check from the City for \$1,952.55. She testified that the City presented these two scenarios to Bologna, but she was unsure when that occurred. (N.T. 84-85, 89-91; City Exhibit 9)³

42. General Assistant Manager Abraham testified that the City paid Staff Inspector Bologna \$8,910.84 on March 21, 2025, which represented the retroactive commander's pay for the period ending July 21, 2024 through the pay period ending March 16, 2025. (N.T. 85-87; City Exhibits 10, 11)

43. On cross-examination, General Assistant Manager Abraham conceded that the City's calculations of the backpay award did not include the two percent increase in commander's pay that Staff Inspector Bologna would have received in 2023, nor did the City's calculation include the six percent increase in commander's pay that he would have received in 2024. She also admitted that the City's calculations for fiscal year 2025 were not correct to the extent that they did not include the commander's plus play. She agreed that the amount would have been an eight percent increase for approximately 1.5 years. She acknowledged that the City's calculation for the total gross amount due of \$625,089.64 was also incorrect. She further admitted that the bargaining unit employees received a number of lump sum bonuses pursuant to the 2021-2024 interest award, along with some supplemental awards, which were also not included in the City's calculation. (N.T. 92-96; City Exhibit 7)

DISCUSSION

The FOP argues that the City violated Section 6(1)(a) and (e) of the PLRA⁴ and Act 111 by refusing to comply with the June 6, 2024 grievance settlement agreement regarding Police Staff Inspector Joseph Bologna. Specifically, the FOP contends that the City failed to comply with the settlement agreement because the City failed to properly calculate the backpay that was owed. The FOP takes issue with the City's alleged failure to include the commander's pay that Bologna would have earned during his separation, along with a number of lump sum bonuses that were also admittedly due. The FOP likewise maintains that the City failed to include the uniform

³ It is unclear how exactly the City arrived at this calculation. City Exhibit 9 does show that \$1,952.55 is the result of \$400,555.64, which is the alleged backpay amount after offsets for outside earnings and unemployment compensation, less the appropriate taxes and deductions, including the \$42,756.13 in pension contributions, the \$3,461.36 in Union dues, and the \$305,000.00 figure. Where, however, the City generated the \$305,000.00 figure remains a little uncertain. Abraham testified that the figure was the largest amount of pension recovery that could be deducted from the award based on the standard tax deductions and with the pension due on the award also being deducted. (N.T. 84). Of course, the \$57,058.37 figure represents the difference between the total alleged pension benefits received of \$362,058.37 minus \$305,000.00.

⁴ Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act... (e) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section seven (a) of this act." 43 P.S. § 211.6.

payments Bologna would have received, as well as the cashed out payments for his compensatory and holiday time. The FOP further submits that the City failed to properly credit Bologna for his leave time that he would have accrued during his separation for administrative leave hours, sick leave that he used to purchase extended health insurance coverage, and vacation hours, which he was not able to fully enjoy due to their expiration on March 31st of the next year. Lastly, the FOP asserts that the City also failed to comply with the make-whole requirements of the settlement agreement by refusing to allow Bologna to test for promotional opportunities, which occurred during his separation.

The City, for its part, defends the charge on the grounds that it complied with the settlement agreement by correctly calculating the backpay award and determining that no money was owed to Bologna after applying the proper offsets and deductions. Similarly, the City claims that it complied with the settlement agreement here because promotional examinations were not negotiated or made part of the agreement between the parties. The City also relies on the Commonwealth Court's decision in City of Philadelphia v. PLRB, 759 A.2d 40 (Pa. Cmwlth. 2000) for the proposition that the City was not required to modify the promotional processes in its Home Rule Charter simply to comply with a make-whole agreement.

Where a grievance has been resolved through a settlement, a public employer violates its duty to bargain when it refuses to comply with the grievance settlement agreement. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, Rockview SCI, 47 PPER 43 (Final Order, 2015). Where there is a settlement agreement, the Board will determine (1) if a meeting of the minds on the settlement actually exists; (2) whether the parties' intent is apparent from the settlement agreement; and (3) whether the party has failed to comply with the agreement's provisions. AFSCME District Council 47 Local 2187 v. City of Philadelphia, 36 PPER 124 (Final Order, 2005). The burden is on the complainant to establish by substantial evidence that the respondent has failed or refused to comply with the terms of the settlement agreement. Rockview SCI, *supra*.

In this case, the FOP has sustained its burden of proving that the City refused to comply with the grievance settlement agreement by incorrectly calculating Staff Inspector Bologna's back pay. First of all, there is no dispute over the first two elements of the test for determining whether the City refused to comply with the settlement agreement. The parties clearly reached a meeting of the minds to reinstate Bologna and to make him whole for the period of June 8, 2020 through the date of his reinstatement, which was July 15, 2024. Likewise, the parties' intent is also readily apparent from the settlement agreement, as the term "make-whole" is a clear and unambiguous term when used in a labor relations context, FOP Lodge 5 v. City of Philadelphia, 54 PPER 37 (Proposed Decision and Order, 2022), and seeks to place the employe in the same economic position he would have been in had the employe not been unlawfully terminated. Teamsters Local 776 v. Borough of Gettysburg, 54 PPER 17 (Proposed Decision and Order, 2022). Thus, the only question, then, turns on whether the City has failed to comply with the agreement's provisions.

While the City was clearly permitted to offset the backpay award for outside earnings and pension benefits, the record nevertheless shows that the City still failed to properly calculate the original gross amount of backpay that was due pursuant to the agreement. Indeed, the City admittedly failed

to include the eight (8%) percent pay increase for commander's pay, plus the various lump sum bonuses, which the bargaining unit employees received through the interest arbitration award.⁵ Similarly, the record shows that the City failed to permit Staff Inspector Bologna to sell back up to three weeks of his compensatory time, or 120 hours, for each year that he was separated from the City, which he clearly would have been allowed to do had he been working for that 49-month period. In addition, the record further shows that the City failed to permit Bologna to cash out his holiday leave every year, which he was always permitted to do under the CBA.⁶ The City also failed to provide Bologna with his uniform allowance and/or uniform maintenance allowance for each year that he was out, which he clearly would have received had he continued working during that period.

On top of that, the FOP has also demonstrated that the City refused to comply with the grievance settlement agreement by not restoring the additional sick leave time that Staff Inspector Bologna used to purchase health insurance benefits upon his separation from the City. Bologna certainly would not have had to make that purchase if he had continued working for the City during his separation period.⁷ As a result, those benefits must also be restored.

The FOP further contends that Staff Inspector Bologna should be granted some amount of additional time to use his vacation hours. The record shows that the City properly restored 750 hours of vacation time on October 6, 2024. Unfortunately for the FOP, however, the record does not show that the City somehow precluded Bologna from using any of those hours prior to March 31, 2025, at which point any excess time beyond the 560-hour cap would have expired, pursuant to the CBA. Notably, those 750 hours represent a difference of 190 hours above the 560-hour cap, which results in a total of 4.75 weeks, assuming a 40-hour workweek. Although Bologna testified that was a lot of leave to use by March 31 of the next year and that he typically used two weeks of vacation time per year, (N.T. 39), he did not testify, nor is there any evidence to support a determination, that the City denied any requests by him to use these vacation hours during that period. Thus, it would be speculative to conclude that Bologna was unable to use 4.75 weeks of leave in a nearly six-month period between October 6, 2024 and March 31, 2025. As such, the FOP's argument in this regard has been rejected.⁸

⁵ The City did eventually start providing that commander's pay to Staff Inspector Bologna, but that was only prospectively, and retroactive to July 15, 2024, the date of his reinstatement. The City had still not provided that commander's pay for the period that Bologna was separated though.

⁶ Although the City appears to have restored the correct amount of holiday hours to Staff Inspector Bologna, the record shows that he could only cash out what he accrues in a year for his holiday time. He should have been able to cash it out just as he would have been able to do had he been working for that period.

⁷ Bologna never actually used that medical coverage and instead froze it, just in case he would need it later for his family. Of course, he acknowledged that he would not be entitled to those years of extended medical coverage once the City restores the sick leave he used to make the purchase.

⁸ Bologna would also not be entitled to have the City credit him with four years of his administrative leave time, which was 32 hours per year, because those hours expire each year, meaning the employees do not accrue administrative leave time from year to year. Thus, Bologna would still only be entitled to 32 hours for the current year, despite never having used those hours in prior years. (N.T. 38).

As detailed above, the City asserts that it complied with the settlement agreement by correctly calculating the backpay award and determining that no money was owed to Bologna after applying the proper offsets and deductions. However, the City concedes in its post-hearing brief that it did not include several additional aspects of the backpay award when it made the calculations, including the commander's pay, bonuses, and compensatory and holiday pay. Yet the City insists that the charge should nevertheless be dismissed because, even if those amounts are eventually included in the backpay calculation, they still would not overcome the credit the City has taken for the pension contributions and benefits, along with the interim earnings. The City also makes the same argument that it has used repeatedly before the Board, and which the Board has continuously rejected, that the City is not required to pay for these portions of the backpay award because the grievance settlement agreement does not expressly mention them. The City's arguments are unavailing and without merit.

It is beyond question that make-whole relief includes ***all benefits and forms of compensation that [an employe] would have earned from employment***, had there not been an unlawful action, such as overtime, premiums, tips, bonus payments, commissions, longevity increases, out-of-pocket medical expenses, holiday pay, accrued leave, and interest. FOP Lodge 5 v. City of Philadelphia, 57 PPER 34 (Proposed Decision and Order, 2025). Thus, it is of no consequence whether the grievance settlement agreement expressly mentions the commander's pay, bonuses, compensatory time, holiday time, uniform allowance, or sick leave, as these emoluments of employment unequivocally represent wages and benefits that Staff Inspector Bologna would have earned had he not been separated from the City. Therefore, the City will be directed to recalculate the gross backpay due to Bologna with the inclusion of these payments and benefits.

Nor does it matter that the credits the City took for the pension offsets and interim earnings exceeded the gross backpay calculation when the City initially ran the numbers. The City claims in its post-hearing brief that its credit will still exceed the gross backpay calculation even if some of these amounts are eventually included. But that assertion is pure conjecture and speculation on the City's part, and the claim is dubious at best. By the City's own calculations, the credit it was entitled to was \$404,814.50, which exceeded the gross backpay amount owed of \$400,555.64, by a difference of \$4,258.86. When combined with the City's credit for the FOP dues of \$3,461.36, the credit amount increases to \$7,720.22. Of course, the City's calculations conveniently neglected to include the commander's pay, bonuses, compensatory time and holiday pay, which almost certainly would exceed \$7,720.22 in the end.

To be sure, the City paid Staff Inspector Bologna \$8,910.84 on March 21, 2025, just for commander's pay that was due for the period of July 21, 2024 through March 16, 2025, which was approximately eight months. General Assistant Manager Abraham conceded that the City did not include the two percent commander's pay for 2023, along with the additional six percent commander's pay increase for 2024 during Bologna's separation. What is more, the City failed to include the lump sum bonuses, which the bargaining unit employes received during Bologna's separation, along with the compensatory and holiday pay that Bologna would have been permitted to cash out each year, consistent with his applicable pay rates for those years. That compensatory time, in and of itself, would add up to approximately 12 weeks of pay, which represents 120 hours for each year multiplied by the four years Bologna was

off work. This represents nearly three months of pay, at the applicable rate for each year, before the four years' of holiday time and uniform allowance is even added in to the calculation.⁹

The City simply cannot fulfill its bargaining obligation to the FOP by incorrectly calculating a backpay award pursuant to a make-whole grievance settlement agreement, which neglected to include several emoluments of employment that were obviously due, and then refuse to discuss the same any further. As previously set forth above, the City's calculations of the gross backpay due was obviously inaccurate, and therefore, not likely to be less than the credits to which the City was entitled for the pension benefits and contributions, as well as the outside earnings and unemployment compensation, that Staff Inspector Bologna received during his separation. In any event, even if the City were correct that its credit for the pension and interim earnings offsets still exceeds the gross backpay calculation, despite the inclusion of these additional make-whole elements of the backpay award, the City must nevertheless recalculate the amounts and meet with the Union to verify its accuracy. See PSCOA v. Commonwealth of Pennsylvania, Dept. of Corrections (Greensburg SCI), 48 PPER 36 (Proposed Decision and Order, 2016), 48 PPER 87 (Final Order, 2017) (holding that a public employer's duty to bargain includes an inherent obligation to verify its backpay calculations arising from the adjustment of grievances to the employe representative, so that the employe representative can confirm that the calculations are accurate). Regardless of whether or not the City's credit will eventually exceed the gross backpay calculation owed pursuant to the grievance settlement agreement, the record shows that the City failed to properly calculate the amounts due and to properly fulfill its bargaining obligation to the FOP in connection with the adjustment of Bologna's grievance.

Finally, the FOP has also demonstrated that the City violated the grievance settlement agreement by refusing to permit Staff Inspector Bologna to test for promotional opportunities, which arose during his separation. In particular, the City conducted promotional examinations for the positions of Police Inspector and Chief Police Inspector in May 2024, for which Bologna would have been eligible to participate had he been working during his separation. In fact, the City does not dispute this point, but instead relies on the same argument advanced above, which posits that the settlement agreement is devoid of any mention of promotional examinations. Once again, however, this argument falls short. At least one Board hearing examiner has held that make-whole relief also includes restoration of non-monetary facets of employment, such as seniority. FOP Lodge 5 v. City of Philadelphia, 54 PPER 37 (Proposed Decision and Order, 2022). In addition, the Board has recognized that the denial of a promotional opportunity represents adverse

⁹ Notably, Staff Inspector Bologna testified credibly and persuasively that his practice was to always cash out or sell back his compensatory time when he could, and that he was still always capped out with 1,300 hours of compensatory time since he became a commander in 2012. As a result, the record shows that Bologna was able to accrue enough compensatory time after each cashing-out period to again reach the maximum amount permitted under the CBA. Accordingly, the City will be directed to not only pay Bologna the cashed out amounts of compensatory time for each year of the separation, but also to deduct only 120 hours from his bank of compensatory time for the most recent year, such that he would begin to accrue those hours again just as he would have done if he had continued working. The City is not permitted to deduct 480 hours, or any other alleged amount for the total cashed-out payment, from the 1,300 amount total for his current leave.

employment action, which must be remedied as part of make-whole relief, FOP Pennsylvania Conservation Police Officers Lodge 114 v. Commonwealth of Pennsylvania, 55 PPER 20 (Proposed Decision and Order, 2023, 55 PPER 60 (Final Order, 2024), and fails to place the employe in the same economic position he would have been in had the discharge not occurred. See Teamsters Local 776 v. Borough of Gettysburg, 54 PPER 17 (Proposed Decision and Order, 2022). Even City of Philadelphia v. PLRB, 759 A.2d 40 (Pa. Cmwlth. 2000), which the City relies on here, supports such a conclusion, as the Court there observed that "make-whole" requires that the employe in question be given the same opportunities as other police officers, including prospects for promotion and advancement. *Id.* at 43. Notably, the Court in that case went on to explain that the City's Home Rule Charter, which the City insists precludes it from allowing Staff Inspector Bologna the opportunity to undergo the promotional examinations, does not exempt the City from complying with Act 111 or the parties' CBA. *Id.* at 44. What the Court concluded in City of Philadelphia was that permitting a discharged officer to receive credit for passing the written portion of the examination process for promotional opportunities on the next exam, and to retain his score for that next exam, had the effect of extending the civil service eligibility list beyond the maximum two years and violated the City's Charter to the extent that the discharged officer would have been in a better position than police officers who placed on the prior exam and who were not promoted. *Id.* at 45. However, the FOP here is only seeking to have Staff Inspector Bologna be granted the opportunity to actually take the promotional exams, which he missed in May 2024, not to have him credited for a portion of a prior exam on the next testing opportunity.

The City misperceives the Court's holding in City of Philadelphia, *supra*. The Court there certainly did not opine that testing for promotional examinations cannot be part of a make-whole remedy. To the contrary, the Court simply found that crediting an employe for his score on a prior exam during the subsequent examination process was unlawful for the reasons stated above. But none of those concerns are present in this case. The FOP is merely requesting that Staff Inspector Bologna be permitted to take a makeup test, which the City's civil service regulations allow. Furthermore, there is no issue regarding the expiration of the civil service list since it is still less than two years since the City administered the examinations in May 2024, much less certified the eligibility lists for those positions. And, permitting Bologna to test for those positions does not place him in a better position than any of the other candidates. In reality, the City's denial of the testing opportunity actually places him in a worse position than the rest of the candidates since he is being denied a promotional opportunity he would have been eligible for had the City not discharged him. As such, the City will be directed to permit Bologna to test for those promotional opportunities.

At any rate, even if the City were correct that permitting Staff Inspector Bologna to undergo the promotional testing now as part of the make-whole relief somehow violated its Charter and the civil service regulations, the same result must obtain. The City overlooks a critical fact from City of Philadelphia, *supra*, which was that the make-whole relief at issue there stemmed from an arbitration award, whereas the make-whole relief here was the result of the City voluntarily negotiating and entering into a grievance settlement agreement.

The Pennsylvania Supreme Court has long held that it will not allow a public employer to enter into agreements and include terms which raise the

expectations of those concerned, and then subsequently refuse to abide by those provisions on the basis of its lack of capacity to do so. Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh, 391 A.2d 1318 (Pa. 1978). Such a proposition would invite discord and distrust and create an atmosphere wherein a harmonious relationship would virtually be impossible to maintain. *Id.* at 1322. Even if a collective bargaining agreement violates a statutory provision, this does not excuse the public employer from its duty to bargain in good faith. Wilkes-Barre Township Police Benevolent Ass'n v. Wilkes-Barre Township, 878 A.2d 977 (Pa. Cmwlth. 2005). Good faith bargaining requires that questions as to the legality of proposed terms of a collective bargaining agreement should be resolved by the parties to the agreement at the bargaining table. *Id.* at 984 citing Pittsburgh Joint Collective Bargaining Committee, *supra*.

Thus, if the City had concerns that the make-whole relief it was negotiating for in the grievance settlement agreement in this case potentially violated its Charter, it was incumbent upon the City to raise those issues at the bargaining table, and not now at this late hour. The City agreed to provide Staff Inspector Bologna with make-whole relief in June 2024, which clearly encompasses promotional testing opportunities, and cannot subsequently disclaim that agreement on the basis of an alleged illegality. Accordingly, the FOP's unfair labor practices charge under Section 6(1)(a) and (e) of the PLRA must be sustained for this reason as well.

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 political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. The Board has jurisdiction over the parties hereto.
4. The City has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the City shall

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA and Act 111;
2. Cease and desist from refusing to bargain with the representatives of its employes;

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately comply with the June 6, 2024 grievance settlement agreement by recalculating and tendering full back pay and make-whole relief to Staff Inspector Bologna, to include his commander's pay, lump sum bonuses, compensatory and holiday pay, uniform allowance and/or uniform maintenance allowance, all at the proper yearly rates, for the period of June 8, 2020 through July 15, 2024, together with six (6%) percent per annum interest, along with all other benefits or emoluments of employment he was entitled to pursuant to the grievance settlement agreement, including but not limited to any out of pocket medical expenses, pension contributions, and restoration of the proper amounts of compensatory time and sick leave that he used to purchase medical coverage;

(b) Immediately provide the FOP with any and all information regarding methods and rates for all payment calculations to verify their accuracy pursuant to its collective bargaining obligation under the grievance settlement agreement.

(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 the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(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; and

(e) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 14th day of November, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FOP LODGE 5

v.

CITY OF PHILADELPHIA

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Case No. PF-C-24-80-E

AFFIDAVIT OF COMPLIANCE

The City hereby certifies that it has ceased and desisted from its violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act; that it has immediately complied with the June 6, 2024 grievance settlement agreement by recalculating and tendering full back pay and make-whole relief to Staff Inspector Bologna, to include his commander's pay, lump sum bonuses, compensatory and holiday pay, uniform allowance and/or uniform maintenance allowance, all at the proper yearly rates, for the period of June 8, 2020 through July 15, 2024, together with six (6%) percent per annum interest, along with all other benefits or emoluments of employment he was entitled to pursuant to the grievance settlement agreement, including but not limited to any out of pocket medical expenses, pension contributions, and restoration of the proper amounts of compensatory time and sick leave that he used to purchase medical coverage; that it has immediately provided the FOP with any and all information regarding methods and rates for all payment calculations to verify their accuracy pursuant to its collective bargaining obligation under the grievance settlement agreement; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed 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