

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
LODGE NO. 5 :
 :
v. : CASE NO. PF-C-24-23-E
 :
CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On March 6, 2024, the Fraternal Order of Police, Lodge No. 5 (Union or FOP) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Philadelphia (City) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. The Union specifically alleges that the City failed to comply with an arbitration award requiring the City to reinstate and make whole Sargent Mark Palma.

On April 2, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of July 10, 2024, in Harrisburg. The parties agreed to conduct the hearing on that date via Microsoft Teams video. Another day of hearing was necessary and, after multiple granted continuance requests by the City, the second video hearing was held on December 20, 2024. During the video hearings on both dates, the parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. At the first hearing, the parties agreed that, of the allegations in the charge, only Palma's terminal vacation leave payout remains at issue. (N.T. 5). The Union filed its post-hearing brief on March 3, 2025. The City filed its post-hearing brief on March 7, 2025.

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

FINDINGS OF FACT

1. The City is a public employer and political subdivision within the meaning of Act 111, as read with the PLRA. (N.T. 54)

2. The Union is a labor organization within the meaning of Act 111, as read with the PLRA. (N.T. 54)

3. The collective bargaining agreement (CBA) between the Union and the City provides that officers are entitled to paid leave for vacation, sick, holiday, and administrative leave purposes. These leave benefits are paid out upon an officer's separation from employment with the City and is called "terminal leave." (N.T. 14, 76-77; CX-1)

4. Article IX (A) (5) of the CBA provides that an officer with 14 or more years of service accrues 22 vacation days per year, at 8 hours per day, totaling 176 hours per year. Officers also receive an additional 32 administrative hours, that are rolled into vacation time, resulting in 208 hours per year. (N.T. 88-91; UX-1)

5. On July 1st of each calendar year, officers receive the 32 hours for administrative leave, which must be used by June 30th of the

following calendar year. Any of the 32 administrative hours that an officer does not use are lost. Administrative leave is not paid out in a terminal leave calculation. When an officer takes vacation, the administrative leave hours are deducted before deducting from an officer's vacation balance. (N.T. 92, 98-99)

6. Pursuant to Civil Service Regulations, Officers are capped at 560 hours of vacation time by December 31st of each calendar year. The City has a policy, that has been in effect since at least 2011, allowing officers to carry over 592 hours into the next calendar year. The policy provides that the extra hours must be used by March 31st of the next calendar year. On April 1st, the excess vacation leave is forfeited.¹ Upon separation from City employment, the City will pay out a maximum of 560 hours of vacation leave. There is no terminal leave payout for any vacation hours above 560. The City does not cap officers' sick or holiday leave time for terminal leave payouts. (N.T. 21, 26-28, 61-66, 37-38, 72, 75-76, 81; UX-1; CX-1)

7. Palma had been a police officer with the City of Philadelphia Police Department (Department) since September 11, 1989. He attained the rank of Corporal and then Sergeant. The City terminated Palma effective August 6, 2019. The FOP grieved and arbitrated Palma's termination. Upon termination, Palma entered retirement. (N.T. 15-19, 37-38, 77; CX-1)

8. On March 22, 2020, the City paid Palma a terminal leave payment for his termination/retirement in August 2019, which included his accrued vacation leave. He had accumulated 543 hours of vacation leave, but the City deducted 8 hours to recoup an overpayment. The City paid Palma for 535 hours of vacation time, which is 25 hours below the cap. His total sick, holiday, and vacation leave time was 938.6 hours. (N.T. 20-21, 74-78, 96; CX-1)

9. On September 15, 2022, Arbitrator David J. Riley, Esquire issued an arbitration award (Award) providing, in relevant part, as follows:

The City will promptly reinstate Mark Palma to his former position with the Department without loss of seniority, and revise his personnel records, to the maximum extent permitted under governing law, to reflect that his August 5, 2019 discharge has been adjusted to a thirty-day suspension. In addition, the City will make him whole for all wages and benefits lost as a consequence of his discharge, including overtime, through the date of his reinstatement, less all outside wages and other earnings received by him as to this period and the period of a thirty-day unpaid disciplinary suspension. I will retain jurisdiction of this matter to resolve any dispute as to the monies to be paid to Mr. Palma based on this award, including the issue of whether he satisfied his obligation to mitigate his damages.

(UX-3)

10. Upon reinstatement, Palma elected to retire again. The City required him to be reinstated to the payroll for 1 day and then go off the payroll again. Palma's retirement date was moved from August 6,

¹ Presumably, leave time over 560 hours that are administrative would remain with the officer until June 30th.

2019, to December 23, 2022, requiring adjustments to his pension. (N.T. 19; CX-1)

11. In calculating Palma's terminal leave payout for his second retirement, the City gave Palma 25 hours of vacation time for the backpay period of approximately 3 years and 4 months, representing the difference between the cap of 560 hours and the 535 hours that Palma received in his first terminal leave payout. Palma would have accrued 176 hours of vacation time per year for about 3 years and 4 months (minus the 30-day suspension). The City's paystub for Palma's backpay, dated May 26, 2023, shows that the City paid Palma a terminal leave payout of \$18,785.67. The City separately paid Palma for the days that he would have worked during the backpay period. (N.T. 23-25, 39-40, 79-82; UX-4)

12. Palma was paid all of the sick and holiday leave that he accrued during the backpay period. Palma was paid out for 689.4 hours of combined sick, holiday, and vacation time for the backpay period upon his second retirement. (N.T. 39-41, 79-82, 96; CX-1)

DISCUSSION

Initially, the City contends that the Board is the improper forum for the Union's claims. The City asserts that the Union did not exhaust its appellate remedies because Arbitrator Reilly expressly retained jurisdiction to resolve compliance disputes and that the Union is forum shopping because the Union lost the same argument that it is making here before Arbitrator Reilly in a supplemental award involving another arbitration. (City Brief at 6-7). The City attached that supplemental Reilly arbitration award to its brief submission. However, I have not considered that award because it was not introduced at the hearing, and the Union did not have an opportunity to elicit testimony about the award, including the facts and circumstances involved in that arbitration, or to otherwise challenge the award. Also, arbitration awards are not precedent for the Board and its hearing examiners. Additionally, the supplemental Reilly award is dated December 9, 2024, which is 9 months after the charge in this case was filed and 5 months after the first hearing. Thus, that award did not influence the Union's decision to pursue this compliance matter with the Board when it filed the unfair labor practice charge on March 6, 2024.

In a claim by a union for an employer's failure to comply with an arbitration award, the requirement that any appeals of the award be exhausted pertains to court of common pleas appeals and not returning to the arbitrator for clarification. In this case, the Union was not aggrieved by the Award and had no reason to appeal it to court. Whether or not the Union or the City chooses to return to the arbitrator for clarification when the arbitrator retains jurisdiction is not in the nature of an appeal and it does not create an open ended requirement that the parties return to the arbitrator, instead of the Board. In this regard, the Award became final and binding when the 30-day period to appeal to the Philadelphia Court of Common Pleas expired.

Also, the fact that an arbitrator may retain jurisdiction for clarification purposes does not oust this Board of its statutory jurisdiction to entertain unfair labor practice charges alleging that the employer failed to comply with a final and binding arbitration

award. The Board has consistently and historically determined the specific meaning of make-whole remedies directed by arbitrators. Accordingly, the City's argument that the Board is not the proper forum to hear this claim is dismissed. The refusal to comply with an arbitrator's remedy is a statutory violation within the Board's jurisdiction, and the Union's claims are in the proper forum.

On the merits, the Union contends that the City failed to make Palma whole when it refused to pay him terminal vacation leave for the vacation time that he accrued during the backpay period, up to 560 hours, as part of his make-whole remedy pursuant to the Award. (Union Brief at 7-8). While recognizing that the CBA and Civil Service Regulation 20.044 caps officers at 560 hours, the Union argues that "there is no apparent limitation-contractual, regulatory, or statutory-on the amount of times that an officer can receive a terminal leave payout." (Union Brief at 9). The Union emphasizes that "[a] make-whole award is intended to put wrongfully terminated employees back in the position that they would have been in had the contract violation not occurred. Had Palma not been wrongfully terminated, he would [have] accrued vacation leave between August 2019 and December 2022 and would have received a terminal leave payment upon his December 2022 retirement. (Union Brief at 11-12).

The City parries that it has fulfilled its obligations to Palma under the Award because it provided him with the maximum allowable vacation leave payout of 560 hours with a 535 hour payout when he was terminated and first retired and another 25-hour vacation leave payout when he retired the second time. (City Brief at 7-8). The City further contends that, because Palma was already paid for every day that he would have worked, paying him for vacation leave for those same days would pay Palma twice for time for which he was already compensated. (City Brief at 8).

The Union's explanation of the purpose of make-whole relief, although absolutely correct, actually supports the City's position, not the Union's. The reason that Palma is not owed another terminal leave payout for all the vacation hours that would have accrued to him during the backpay period up to 560 is precisely because the Award placed Palma in the position in which he would have been had he not been terminated. If Palma had not been terminated in August 2019, he would have continued to work and accrue vacation time without a terminal leave payout until his retirement in December 2022. In December 2022, Palma would have received the one-time vacation leave payout of 560 hours, even though he would have accrued more than that. Placing Palma in the same position as if he had not been terminated means one terminal vacation leave payout of 560 hours, which he has received.

Paying Palma for accrued vacation time during the backpay period over the cap is not authorized by the CBA. For this reason, the Board stated, in Wyoming Borough Police Department v. Wyoming Borough, 43 PPER 22 (Final Order, 2011), that "if under the collective bargaining agreement . . . an employee would not otherwise be paid for unused leave upon resignation, [the employee] would not be entitled to such a payout for leave under the Board's remedial make-whole relief." Id. at 82, n. 3.

In this case, the parties' CBA provides for a one-time payout of accrued vacation leave up to 560 hours. Officers employed by the City lose any hours over that cap amount by March 31st and carry over hours are not paid out. Palma was paid for 560 hours, and the CBA does not provide for a second payout of 560 hours of accrued leave. Thus, a second payout for hours accrued during the backpay period in this case, beyond 25 hours, is not part of Palma's make-whole remedy. Therefore, the City properly paid Palma a terminal vacation leave payment of 25 hours (i.e., the difference between the original terminal leave payout of 535 hours and the 560-hour cap) as part of his make-whole relief during the backpay period.

Accordingly, the City has not engaged in unfair practices in violation of Section 6(1)(a) and (e) of the PLRA as read with Act 111 by refusing to pay Palma a second terminal vacation leave payout in excess of 25 hours for vacation leave accrued during the backpay period.

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 Act 111, as read with the PLRA.
2. The Union is a labor organization within the meaning of Act 111, as read with the PLRA.
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 with Act 111.

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 eleventh day of March 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/S/ JACK E. MARINO

JACK E. MARINO, Hearing Examiner