

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :  
LODGE NO. 5 :  
 :  
v. : CASE NO. PF-C-24-51-E  
 :  
CITY OF PHILADELPHIA :

**PROPOSED DECISION AND ORDER**

On May 29, 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 refused to comply with a binding Act 111 grievance arbitration award directing the City to reinstate Officer Andre Coles and make him whole.

On June 26, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of Friday, October 11, 2024, in Harrisburg. At the request of the City, I continued the hearing to November 14, 2024, and the parties agreed to conduct the hearing via Microsoft Teams video. During the video hearing on that date, both parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. Both parties filed post-hearing briefs in support of their respective positions on March 3, 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. 7)

2. The Union is a labor organization within the meaning of Act 111, as read with the PLRA. (N.T. 7)

3. Andre Coles is a police officer with the City's Police Department (Department). The City terminated Officer Coles on May 13, 2021. (N.T. 29-30, 65; JX-2)

4. John McGrody is the Union Vice President, and he handles grievances, arbitrations, contract enforcement, and contract negotiations for Union members. (N.T. 14-15)

5. Approximately 2 years ago, vice President McGrody met with Deputy Commissioner Christine Coulter who provided him with a checklist of required offset documents for a reinstated employee to provide the City. Deputy Commissioner Coulter also asked Vice President McGrody to share the checklist with his members to speed up the backpay process. Vice President McGrody made copies, and he has been providing the checklist to his members for the past 2 years. He informs reinstated members that they must provide the information

on the checklist and any other information requested by the City upon reinstatement. (N.T. 96-99)

6. On or about May 13, 2021, the City suspended Officer Coles for 30 days with the intent to dismiss. On May 14, 2021, the Union grieved Officer Coles' dismissal contending that his termination was without just cause. (N.T. 18-19; JX-2)

7. On March 28, 2023, the parties entered into a Memorandum of Agreement (MOA) providing "that the City shall have ninety (90) days from the date that all required documentation is received from the affected FOP member(s) to pay backpay and other financial damages arising from an arbitration award or settlement agreement. The FOP agrees that no penalties or delay damages will accrue before the ninety-first (91<sup>st</sup>) day after all required documentation was received from the affected FOP member(s)." (JX-1)

8. The MOA also provides: "The City and the Police Department reiterate their commitment to appropriately staff their Finance and Human Resources teams to be better able to timely process awards and settlements." (JX-1)

9. During the arbitration proceedings, Vice President McGrody informed Officer Coles that he had to collect all documents regarding his interim earnings during his termination period. (N.T. 20)

10. On April 24, 2024, Arbitrator Robert Gifford, Esquire issued an award (Award) concluding that the City had just cause to discipline Officer Coles but not to discharge him. He modified the penalty to a 5-day suspension without pay and ordered the City to reinstate Officer Coles "within a reasonable period of time and made whole in all respects." Arbitrator Gifford further directed the City to expunge Officer Coles' personnel record of documents regarding his dismissal and to modify those records to reflect the suspension. (N.T. 17-19; JX-2)

11. When the Award was issued, Vice-President McGrody again informed Officer Coles that he had to collect and submit his offset documents to the City. On April 26, 2024, the Union emailed the Award and Officer Coles' contact information to certain Deputy Commissioners and other individuals in the Department's Labor Relations Unit. The Award was not appealed.<sup>1</sup> (N.T. 20-22; UX-2)

12. On May 28, 2024, Vice President McGrody again emailed City officials informing them that the City had not reinstated Officer Coles and had not contacted Officer Coles; he again included Officer Coles' contact information. Vice President McGrody also informed Officer Coles that, after reinstatement, Police Finance requires that a form listing the offset documents received must be notarized in person. The form is called the Employee Earning Affidavit (Affidavit). The City's requirement for an in-person notarization of the Earning Affidavit is not a bargained-for provision in any agreement between the parties. (N.T. 25-26, 36-37; UX-2; CX-5)

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<sup>1</sup> The Attorney for the Union represented during her opening statement that the Award was not appealed. Although the statement is not testimony, the City did not contest the representation that the Award was not appealed.

13. Shannon McNulty is the Budget Officer in Police Finance, and she was involved in processing Officer Coles' backpay. (N.T. 58-59, 85)

14. On May 30, 2024, the City Law Department sent the Award to the Police Labor Relations Unit. Sergeant Wagner in the Labor Relations Unit prepared an interdepartmental memo and submitted it along with the Award to the Commissioner for approval. Sergeant Wagner also provided copies of the Award to the Police Board of Inquiry and Police Finance. Police Finance received the Award as approved by the Deputy Commissioner on June 10, 2024. (N.T. 46-48, 53, 60-63)

15. On July 8, 2024, 2.5 months after the issuance of the Award, the City reinstated Officer Coles. On July 10, 2024, Officer Coles emailed his offset documents to Melissa Lumpkin in Police Finance and Vice President McGrody, who was able to open and read the documents. Officer Coles could not submit his offset documents to the City until he was reinstated because the City needs the offset documents up to the day before reinstatement to the City's payroll to calculate his back pay and other make whole relief. Officer Coles' emailed document submission could not be notarized at that time because the form listing the documents was not filled out in person before the City's notary. (N.T. 20, 24-27, 30-31, 37, 40, 51, 56, 62, 74-75)

16. Once reinstated, the City is supposed to send an email invitation to submit documents, which includes a City-approved checklist and the Affidavit. Officer Coles' July 10, 2024 document submission was not accepted by the City because the Affidavit was not the "correct" form. It did not include Officer Coles' name or a "legitimate" Social Security Report. (N.T. 63, 69-70, 79)

17. In late September or early October 2024, Officer Coles informed Vice President McGrody that he had not yet received his make whole payment and that he could not get an appointment for an in-person meeting with the City's notary. (N.T. 23-24)

18. Between July 10, 2024, and October 1, 2024, Officer Coles repeatedly attempted to contact Ms. Lumpkin for an appointment, and he received no response. On October 1, 2024, Ms. Lumpkin emailed Officer Coles stating: "Please complete the attached arbitration affidavit. You can access your social security benefits by creating an account on . . . . Once it's finished, please reach out to me via email to make an appointment. DO NOT NOTARIZE THE DOCUMENT." On October 9, 2024, Ms. Lumpkin contacted Officer Coles and told him that his documents were not clearly legible. The same day, Officer Coles re-emailed his documents to Ms. Lumpkin who acknowledged receipt of the documents and made an appointment with him to come in the next day, October 10, 2024, to complete the notarization process. (N.T. 32-33, 37, 40-42; CX-4, CX-5)

19. The City will not calculate backpay until it receives hard copies of offset documents in person after reinstatement along with the Affidavit provided by the City. The City requires a reinstated grievant to make an appointment with Ms. Lumpkin who checks with Ms. McNulty's availability to notarize the Affidavit. A reinstated employee is not permitted to walk in without an appointment. (N.T. 80-81)

20. On October 10, 2024, at 10:00 a.m., Officer Coles met in person with Melissa Lumpkin from Police Finance and submitted his offset documents in person. Ms. McNulty was also present. After Officer Coles completed the

Affidavit in front of Ms. McNulty, she notarized his Affidavit, which detailed his document submission. Ms. Lumpkin also informed Officer Coles that she did not need his hard copies that day because she had his email, which came in clear. Officer Coles also entered his name, badge number and his payroll number in a book. Ms. McNulty was unaware of Officer Coles' July 10, 2024 document submission until October 1, 2024. The Earning Affidavit notarization must be completed before the City will calculate the retroactive payment. (N.T. 30-31, 35-37, 63-65, 76, 69-70, 79-85)

21. After October 10, 2024, or October 12, 2024, Officer Coles attempted to contact Ms. Lumpkin approximately 5 times, having called her approximately once per week. Officer Coles credibly testified that when he met with Ms. Lumpkin on October 10<sup>th</sup>, or 12<sup>th</sup>, 2024, his documents were clearly legible. Ms. McNulty also credibly testified that Ms. Lumpkin told her that Officer Coles' emailed documents were clearly legible.<sup>2</sup> (N.T. 33-36, 68, 83)

22. On November 6, 2024, Central Finance notified Police Finance that they could not read the offset documents. On November 8, 2024, Ms. Lumpkin notified Officer Coles and asked him to come in again to submit the same documents. On November 10, 2024 or November 12, 2024, Officer Coles again returned with hard copies. Officer Coles was confused because the Affidavit of the receipt of his offset documents was already notarized. Officer Coles did return to meet with Ms. Lumpkin on November 10, 2024 or November 12, 2024. (N.T. 33-36, 70-71, 84, 87)

23. As of the November 14, 2024 hearing in this case, Officer Coles had not received any of his backpay. (N.T. 34-35)

24. No one from the City has informed Vice President McGrody that the document submissions with the FOP checklist provided by Deputy Commissioner Coulter were no longer satisfactory. No reinstated officers have informed Vice President McGrody of the FOP checklist was not satisfactory. Vice President McGrody cannot determine the difference between the City provided Affidavit or the FOP provided checklist, other than the name in the Coles reinstatement matter. Vice President McGrody provided the same FOP checklist to reinstated officers approximately 20-25 times in the past 2 years without any problems from Police Finance. Employees' document submission packets with the FOP form have been accepted by the City in the past. The rejection of Officer Coles' document submission packet and checklist is the first City objection of which Vice President McGrody is aware. (N.T. 97-101)

## **DISCUSSION**

As of the date of the filing of the unfair practice charge in this case, Officer Coles had not been reinstated or paid, and the Award had not been appealed. The Board has long held that the failure to comply with the terms of a grievance arbitration award occurs after a reasonable period of time or a bargained for time period for compliance. Commonwealth of Pennsylvania, 8 PPER ¶ 233 (Nisi Decision and Order, 1977); Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 41 PPER 124 (PDO, 2010). If the award has been appealed, the award becomes binding upon a court of common pleas court's affirmance of the award. FOP Lodge 5 v. City of Philadelphia,

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<sup>2</sup> The record is unclear as to which document submission Ms. McNulty was referring.

39 PPER 9 (Final Order, 2008). To determine whether the time lapse is reasonable, the Board considers the following factors: (1) the nature and complexity of the relief directed by the award; (2) the length of time before compliance occurred; (3) the steps taken by the employer toward compliance; (4) legitimate obstacles interfering with compliance; and (5) the employer's explanation or lack thereof for the delay. City of Philadelphia, 19 PPER ¶ 19069 at 185 (Final Order, 1988); Commonwealth of Pennsylvania (Department of Community Affairs), 19 PPER ¶ 19165 (Proposed Decision and Order, 1998); Commonwealth of Pennsylvania (Office of Administration), 17 PPER ¶ 17151 (Proposed Decision and Order, 1986).

The Board and its examiners have held that 30 days from the date of an arbitration award is a reasonable time to reinstate an employee absent circumstances preventing reinstatement or an appeal. In this case, the Award was not appealed, and there were no obstacles, complexities, or explanations to justify any delay in reinstating Officer Coles. Officer Coles retained his Municipal Certification throughout the separation period. The City also could have obtained the results of any required urine tests, physical exams, or background checks within that period of time. The Board and its examiners have also held that the City's system of requiring approval and evaluation from multiple City employees does not excuse its unreasonable delay in reinstating employees. The Award was issued on April 24, 2024, and FOP Vice President McGrody sent Officer Coles' contact information to the proper City officials on April 26, 2024. Officer Coles should have been reinstated by Monday, May 27, 2024, and his reinstatement on July 8, 2024, constituted an unreasonable delay and an unfair practice. The City's Law Department, knowing that it was not going to appeal, did nothing with the Award for the first 36 days.<sup>3</sup> Indeed, once the City's Law Department forwarded the Award to Labor Relations, the City effectuated Officer Coles' reinstatement within 39 days, which is still unreasonable, but which may have avoided a charge.

An officer who has been separated from City employment due to wrongful discharge and who has been reinstated by an arbitrator must provide documents that verify interim earnings during the period of separation, as prescribed by the arbitrator, before the City can calculate the appropriate backpay amount. The City will not accept any offset documents and begin calculating any backpay amounts until a wrongfully terminated employee is actually reinstated because the offsets for the retroactive payment must include any earnings up to the day before reinstatement to the City payroll. This is a reasonable requirement. Officer Coles could not provide his offset documents until he was reinstated on July 8, 2024. This delay affected the timeline for compliance with the make-whole remedy directed in the Award. Officer Coles emailed his offset documents to Ms. Lumpkin on July 10, 2024.

The parties' March 2023 MOA provides that the City has 90 days from the submission of the interim earnings documents to pay the backpay award to the reinstated employee. Under the MOA, the City does not have to pay interest on outstanding backpay until the 91<sup>st</sup> day from document submission. According to the City, a valid document submission occurs only after the reinstated employee gets an appointment with Police Finance, personally appears for that appointment with offset documents, and fills out the Earning Affidavit,

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<sup>3</sup> Most Act 111 grievance arbitration awards reinstating officers are not appealed because it is highly unlikely that a court will reverse the award given the restrictive standard of review.

detailing the documents included in the submission, in front of a City employed notary, i.e., Ms. McNulty, who then notarizes the Affidavit.

In this case, the Union provided the City with all of Officer Coles' contact information 2 days after the Award was issued. Ms. McNulty credibly testified that the City generally relies on that contact information to send the reinstated employee an invitation. The record shows that the City did not contact Officer Coles to make an appointment for an in-person document submission at or about the time of his reinstatement. Rather, Officer Coles took the initiative to email his documents along with the checklist, provided to the FOP by Deputy Commissioner Coulter, to Ms. Lumpkin in Police Finance. However, even though this email submission would not be adequate in itself for the City to begin its calculations, the City was on notice that Officer Coles was ready for an appointment for an in-person document review and Affidavit notarization.

However, the City ignored Officer Coles' July 10, 2024 email submission and his repeated attempts thereafter to contact the City. Ms. Lumpkin did not contact Officer Coles until October 1, 2024, at which time Ms. Lumpkin provided him with the City's Affidavit and invited him at that time to make an appointment. The City attempted to toll the 90-day grace period provided for in the MOA by neglecting to contact Officer Coles and get him an in-person appointment in a timely manner, especially when the City knew that Officer Coles was ready with his documents on July 10, 2024.

The record shows that once Ms. Lumpkin received a second submission from Officer Coles on October 9, 2024, she was able to get him an appointment for an in-person document submission and notarization on the very next day. Therefore, there was no reason not to address any deficiencies in Officer Cole's July 10, 2024 document submission and get him an appointment in July 2024. This delay in reinstating Officer Coles in addition to the 3-month delay in getting him an appointment, without any demonstrated obstacles on this record, was unreasonable. Three-month delays, according to Vice President McGrody, are a consistent pattern for the City, and it is not contemplated by the MOA, which also provides that the City will commit to improving staffing in Finance and Human Resources to be better able to timely process awards and agreements.

Officer Coles' initial document submission, 2 days after his reinstatement, shows that he was prepared to submit his documents upon reinstatement. Given the quickness with which the City demonstrated that it could make an appointment, i.e., within 1 day, Officer Coles should have had an appointment within 2 weeks of a May 27, 2024 reinstatement date and, at a minimum, within 2 weeks of Officer Coles' July 10, 2024 submission. Officer Coles had not yet been paid by the November 14, 2024 hearing, which is almost six months after the date that he should have been reinstated and more than 90 days from the time that he should have received his appointment. The City's assertion that Central Finance could not read the documents, which the City believes justified further delay, is without merit. Officer Coles, Ms. McNulty, and Vice President McGrody credibly testified that the documents were legible.

The City's delay in reinstating Officer Coles combined with the City's deliberate neglect of Officer Coles' repeated attempts to contact the City's Finance personnel and the City's deliberate delay in making contact with him for an appointment do not toll the 90-day mandate required by the MOA. Even if Officer Coles' July 10, 2024 document submission was somehow inadequate,

the City was contacted by him on that date, and the City had a duty to invite him for an appointment at that time. The City cannot be permitted to unilaterally control delaying the 90-day grace period by delaying reinstatement and by deliberately ignoring reinstated employees who need a document submission appointment. The clock on the 90-day grace period under the MOA, in this case, started to run 2 weeks after the May 27, 2024 reasonable reinstatement date, which is June 10, 2024. The 91<sup>st</sup> day upon which the imposition of interest began is Monday, September 9, 2024, even though on these facts Finance could not offer him an appointment until after July 10, 2024. The City cannot hamstring Finance by delaying reinstatement, and Finance cannot neglect reinstated employees for months.

Accordingly, the City has violated Section 6(1)(a) and (e) of the PLRA by failing to timely comply with the Award. Specifically, the City failed to reinstate Officer Coles within a reasonable time and ignored its obligation to timely contact Officer Coles and make an appointment for an in-person document submission and the notarization of his Earning Affidavit.

### **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 with Act 111.
2. The Union is a labor organization within the meaning of the PLRA as read with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The City has violated Section 6(1)(a) and (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 City shall:

1. Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA and Act 111;
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 Act 111 as read with the PLRA:

(a) Immediately pay Officer Coles all make whole relief as ordered in the Award;

(b) Immediately pay Officer Coles interest at the rate of 6% per annum on any and all backpay from September 9, 2024, until the date that the City issues all make-whole relief to Officer Coles;

(c) Cease and desist from delaying the reinstatement of officers awarded reinstatement by an arbitrator; and from delaying in-person appointments with those officers post reinstatement to present in person their financial offset documents; and from refusing to answer phone calls and emails affecting the timely setting of appointments, in violation of the MOA;

(d) 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

(e) 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 seventh day of March, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/S/Jack E. Marino

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JACK E. MARINO  
Hearing Examiner



COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :  
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CITY OF PHILADELPHIA :

**AFFIDAVIT OF COMPLIANCE**

The City of Philadelphia hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act, as read with Act 111; that it has paid Officer Coles all make whole relief as ordered in the Award; that it has paid Officer Coles interest at the rate of 6% per annum on any and all backpay from September 9, 2024, until the date that the City issues all make-whole relief to Officer Coles; that it has ceased and desisted from delaying the reinstatement of officers and from delaying in-person appointments to present in person their financial offset documents; that it has ceased and desisted from refusing to answer phone calls and emails affecting the timely setting of appointments to process compliance with awards and agreements, in violation of the MOA; 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.

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Signature/Date

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Title

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

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Signature of Notary Public