

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
LODGE NO. 5 :
 :
v. : CASE NO. PF-C-24-47-E
 :
CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On May 9, 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 alleged that the City failed to comply with a grievance settlement agreement (Agreement) requiring the City to make whole Officer Steven Hartzell.

On June 24, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of August 28, 2024, in Harrisburg. Hearing Examiner John Pozniak, Esquire granted 2 continuances at the request of the parties and ultimately rescheduled the hearing for January 27, 2025. The parties agreed to conduct the hearing on that date via Microsoft TEAMS video. Another day of hearing was necessary and scheduled for February 21, 2025, also via Microsoft TEAMS video. 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. On May 1, 2025, the matter was reassigned to the undersigned hearing examiner. The parties simultaneously filed post-hearing briefs in support of their respective positions on May 8, 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. 6)¹

2. The Union is a labor organization within the meaning of Act 111, as read with the PLRA. (N.T. 6)

3. Steven Hartzell (Hartzell) was a police officer with the City's Police Department (Department) from 1993 to August 2019. On August 6, 2019, Hartzell was charged with misconduct and notified that he would be dismissed after a 30-day suspension. Hartzell remained in paid status until he retired on September 6, 2019. Hartzell and the FOP grieved the termination. Hartzell received monthly pension payments after retiring in September 2019. (N.T. 21-25, 47-50, 60-61; UX-2)

¹ The hearing transcripts for the 2 days of hearing are not consecutively paginated. Thus, I will cite to the January 27, 2025 hearing transcript as "N.T." and I will cite to the February 21, 2025 hearing transcript as "H.T."

4. Terminal leave payments are made to employees, who separate from employment with the City, for sick, vacation, and holiday leave accruals, as well as stress and longevity. The parties' Collective Bargaining Agreement (CBA), Department Directives, and the City's Civil Service Regulations (CSRs) establish rules governing how terminal leave payments are to be calculated and paid. (H.T. 7-9; CX-10, CX-12)

5. Article IX (B) of the CBA, provides the following: "Any vacation leave which is not used in any year may be accumulated: provided, however, that an employee may not have to their credit more than 560 hours of vacation time at the end of a calendar year." (N.T. 36-37, 138; UX-1)

6. Section 20.044 of the CSRs similarly provides, in relevant part, that "a uniformed or investigatory employee of the Police Department or District Attorney's Office may not have to his/her credit at the end of the calendar year unused vacation leave in excess of seventy (70) working days." Seventy working days equals 560 hours for bargaining unit officers. (H.T. 7-9; CX-12)

7. Section 20.044-1 of the CSRs further provides that officers may carry in excess of 560 hours beyond December 31st, but they must use the excess hours before March 31st or lose the excess hours. Department Directive 11.2 is the Department's vacation policy and expressly incorporates the CSRs regarding the use and accrual of vacation leave. (N.T. 32-33, 135-137; H.T. 15; CX-10, CX-12)

8. After Hartzell's September 6, 2019 retirement, the City paid Hartzell \$19,020.24, on February 28, 2020, for his accrued terminal leave payout, less taxes and withholdings, including payment for 353.5 hours of accrued vacation time, which is 206.5 hours below the 560-hour cap on terminal vacation leave payouts. This payout left Hartzell with a zero-leave balance. (N.T. 51-52, 57-58, 139; H.T. 17, 22-23; CX-9)

9. On July 24, 2023, the City, the FOP, and Hartzell executed the Agreement settling the grievance. (N.T. 21-25; UX-2)

10. The Agreement provides, in relevant part, as follows:

1. The City will adjust Grievant's date of separation to May 6, 2022-two years and eight months after his September 6, 2019 retirement-and make Grievant whole for all wages between September 6, 2019 and May 6, 2022, subject to customary taxes and withholdings. For purposes of this paragraph, "wages" includes all salary, longevity, stress, raises, and any step increases, as well as lost overtime and vacation, sick and holiday accruals for the period at issue. It is understood that the City will deduct pension payments received by Officer Hartzell, as well as interim earnings, from the wages owed to him pursuant to this paragraph. It is further understood that Officer Hartzell's pension benefit will not change based on this new separation date as his pension was frozen on the date he enrolled in DROP [Deferred Retirement Option Plan].

2. The City further agrees to pay a portion of the DROP differential Officer Hartzell would have received, equal to \$85,000. The City shall make this payment via IRS Form 1099.

3. All monies owed to Officer Hartzell shall be paid within 90 days of the parties' execution of this Settlement Agreement and receipt of a W-9 form executed by Officer Hartzell within the last 365 days.

. . . .

(N.T. 23-27; UX-2)

11. Shannon McNulty from Police Finance notarized the City's receipt of Hartzell's interim earnings on October 5, 2023. The gross terminal leave calculation was \$26,238.94. The City deducted \$23,650 from the gross terminal leave calculation, which is the pre-tax amount that the City transferred to Hartzell's deferred compensation account, leaving a balance of \$2,588.94. The City further deducted taxes in the amount of \$2,532.99. On October 20, 2023, the City issued a net terminal leave payment of \$55.95, including a terminal vacation leave payout for 206.5 hours of accrued vacation leave. Hartzell accrued more than 206.5 hours of vacation leave during the backpay period of 2 years and 8 months. (N.T. 50-51, 55, 88-90; CX-2; CX-6; CX-9)

12. When terminated officers are reinstated and continue to work, instead of remaining retired, the City will credit them with all of the hours accrued during the backpay period. However, those officers will forfeit any hours in excess of 560 hours if unused by the end of the calendar year after reinstatement, as extended to March 31st of the following year. (N.T. 134-141, 146)

13. Captain Gregory Malkowski is the Commanding Officer of Police Labor Relations. Captain Malkowski participated in the negotiation and execution of the Agreement. He believed that the Agreement had to comply with the CSRs requiring that officers receive no more than a one-time terminal leave payout for 560 hours of accrued vacation leave upon retirement. Union Vice President John McGrody testified that the Union's intention was "to have Officer Hartzell compensated for everything he would have had, had he not been unjustly terminated." (N.T. 33, 141)

14. On December 1, 2023, the City paid Hartzell \$73,855.18 after offsets and deductions. The City transferred the amount of \$21,350 to Hartzell's deferred compensation account before deducting federal taxes and deducted that amount from his adjusted gross backpay, per Hartzell's request. The City did not deduct the interim pension payments that Hartzell received during the backpay period, as required by the Agreement. (N.T. 82-84, 91-93, 100-101; UX-2, UX-3(a); CX-6; CX-7; CX-8)

15. The upper limit for deferred compensation is \$45,000 per year. After the City transferred \$23,650 from his terminal leave payout to deferred compensation in October 2023, Hartzell could only have \$21,350 transferred to deferred compensation in December 2023. Hartzell would not be able to transfer any more money into deferred compensation in 2023. (N.T. 92, 100-101)

16. Hartzell was overpaid his backpay in December 2023 because the City did not offset Hartzell's pension income for the backpay period. Hartzell received \$114,875.22 in pension income during the period. Upon discovering the mistake, the City recalculated his backpay by deducting his interim outside wages, unemployment compensation, and pension. The City calculated Hartzell's adjusted gross backpay at \$18,268.87. The City then

deducted Hartzell's taxes and Union dues. The City determined that the backpay amount owed to Hartzell was \$13,712.96. (N.T. 109-118; UX-3(a); CX-8)

17. The City did not deduct pension contributions because Hartzell entered the DROP, and he was not subject to pension contributions. After recalculating the backpay owed to Hartzell, there was not enough backpay to cover the City's December 2023 payment of \$21,350 into Hartzell's deferred compensation account. (N.T. 116-118; UX-3(a); CX-8)

18. The City determined that Hartzell was overpaid by \$60,142.22, by subtracting the amount of \$13,712.96, that he should have been paid, from the \$73,855.18, that he was actually paid on December 1, 2023. The City further determined that Hartzell owed the City the \$21,350 that the City paid into deferred compensation, resulting in a total overpayment of \$81,492.22. (N.T. 118-119; UX-3(a); CX-8)

19. The City originally calculated Hartzell's terminal leave without applying the wage increases provided in the CBA for the backpay period. The City recalculated Hartzell's terminal leave and determined that it owed Hartzell an additional \$5,083.23. (N.T. 121, 125-126; UX-3(a); CX-8)

19. The City has not paid Hartzell the separate amount of \$85,000 by way of IRS form 1099, as provided by the Agreement. The City acknowledged that it still owes Hartzell money. Hartzell maintains that he was not overpaid backpay and that his pension income during the backpay period was not supposed to be deducted from his backpay calculation. (N.T. 60-62, 125, 133-139; UX-3)

DISCUSSION

The Union contends that the City has violated Act 111, as read with the PLRA, by failing to timely comply with the Agreement. The Union argues that, after the City discovered clerical errors in computing the monetary amounts owed to Hartzell, the City unilaterally proposed an alternative form of payment in violation of the Agreement, rather than fix the errors. (Union Brief at 8). The Union asserts that the City ignored its obligation to make Hartzell whole by failing to pay him his \$85,000 tax-free 1099 payment and by failing to pay the correct amount of terminal leave. (Union Brief at 10). The Union also asserts that the City does not dispute its non-compliance with the Agreement, rather the City is requesting the Board to excuse its non-compliance for administrative convenience. (Union Brief at 8).

The Union recognizes that, under the Agreement, the City was required to offset Hartzell's pension income during the backpay period. The Union also recognizes that, in neglecting to deduct pension income, the City overpaid Officer Hartzell. (Union Brief at 11). The Union complains, however, that although the City believes that it makes more administrative sense to forego paying Hartzell \$85,000 via 1099 and to pay him the difference between that amount and the overpayment, the City has still failed to pay that difference to Hartzell. (Union Brief at 11, 14). Also, the Union contends that it was under no obligation to agree to a modified agreement under terms imposed by the City. (Union Brief at 14).

The Union further maintains that the City violated the plain language of the Agreement. The Agreement requires the City to pay Hartzell for all

accrued leave during the backpay period without limiting the terminal leave payout to 206.5 hours to comply with the 560-hour cap pursuant to the City's CSR. (Union Brief at 11-12). The Union argues that the CSRs do not prohibit paying the accrued vacation during the backpay period up to the cap again. (Union Brief at 12). The Union also argues that the Agreement never required the City to adjust the second terminal leave payment based on the CSR and that the City's assumption that these regulations should apply has no basis in the Agreement. (Union Brief at 12, 15). The Union further contends that the City acknowledged that it failed to properly calculate Hartzell's wage rates for his terminal leave and recalculated his terminal leave payout, yet did not pay Hartzell the money. (Union Brief at 13).

A public employer's refusal to comply with a grievance settlement agreement is an unfair practice. AFSCME District Council 47, Local 2187 v. City of Philadelphia, 36 PPER 124 (Final Order, 2005). In such cases, the Board will determine whether:

1) a settlement agreement exists, 2) the parties' intent is apparent from settlement agreement, and 3) the party has failed to comply with the agreement's provisions. In determining if the charging party satisfied its burden, the Board will restrict its review to the settlement agreement and appropriate testimonial and documentary evidence. The Board will not interpret the parties' agreement to resolve ambiguities regarding the existence and binding nature of the agreement or to determine the intent of the parties. Where such an inquiry is necessary, the parties should return to the arbitrator for appropriate interpretation.

AFSCME District Council 47, Local 2187, 36 PPER at 359. Additionally, 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 (Proposed Decision and Order, 2010). The same is true when evaluating an alleged failure to comply with a grievance settlement agreement.

In this case, a valid pre-arbitration grievance settlement Agreement exists that was properly executed by all parties involved including Hartzell, the Union, and Police Labor Relations. Despite the City's calculation errors, the parties' intent is apparent from the language of the Agreement. The record demonstrates that the City failed to comply with the plain language of the Agreement when, as a result of its errors, it knowingly withheld money that the City acknowledges it still owes to Hartzell. There are primarily 2 compliance issues presented: the terminal vacation leave calculation; and the backpay owed to Hartzell after the overpayment vis-a-vis the City's obligation to pay Hartzell a pre-tax \$85,000.

The Agreement provides that the City will "make Grievant whole for all wages between September 6, 2019 and May 6, 2022." The Agreement also explicitly includes all vacation accruals in the make-whole remedy. The Agreement does not mention the CSRs or the 560-hour cap. Union President McGrody testified that the Union's intent was for the City to compensate Hartzell for everything that he would have had if he was not terminated, which is consistent with make-whole relief. Both parties know that through custom, practice, and based on the CBA and the CSRs, retiring officers are entitled to a one-time payout of their accrued vacation leave not to exceed

560 hours. Based on these rules and practices, both parties understood that the cap would limit Hartzell's second terminal leave payout because he was not going to re-engage in City employment. In this context, the parties had a meeting of the minds that the CSRs applied and limited terminal vacation leave payouts to a one-time 560-hour cap. Both parties understood that for a terminal vacation leave payout for hours exceeding the one-time cap, there would have to be explicit language in the Agreement overriding the cap, which is not in this Agreement. Police Labor Relations may not even be authorized to agree to language explicitly suspending the CSR cap in individual cases.

Also, FOP, Lodge 5 v. City of Philadelphia, 56 PPER 56 (Proposed Decision and Order, 2025) is a case involving the same parties on behalf of a similarly situated retiree, albeit pursuant to an arbitration award instead of a settlement agreement. In that case, this Union argued that there is no apparent limitation-contractual, regulatory, or statutory-on the number of times that an officer can receive a terminal leave payout. In addressing that argument, this examiner stated the following:

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.

FOP Lodge 5, 56 PPER at 290.

In this case, all the evidence and calculations of Hartzell's leave accruals, wages, offsets, and taxes were provided by the City and were not rebutted by the Union. Hartzell received a terminal vacation leave payout for the unused 353.5 vacation hours that he had accrued as of the time of his termination and initial retirement. During the backpay period, Hartzell accrued additional hours, but the City paid him for only 206.5, which brought his total terminal vacation leave payout hours up to 560. This is consistent with the parties' intent to provide make-whole relief which placed Hartzell in the position of having never been terminated. No matter how many terminal leave payouts a grievant receives, the vacation leave payout is limited to 560 hours.

The parties did not intend, and the Agreement does not contemplate, that Hartzell receive a higher terminal leave payout than officers who retire one time without having been terminated. Although the Agreement does not explicitly reference whether the 560-hour-cap rule or the CSRs applied to Hartzell, it is well understood that the term "make whole," which is explicitly provided for in the Agreement, means placing Hartzell in the same position as if he had not been terminated, i.e., a one-time payout of up to 560 hours upon retirement. Therefore, the City properly calculated Hartzell's terminal leave vacation hours to be the 206.5-hour difference between the 560-hour cap

and the 353.5 vacation hours already paid in his first terminal leave payout, even though he had accrued more than 206.5 hours during the backpay period. If the Agreement had reinstated Hartzell to full-time employment status in 2023, the City would have credited him with all of the vacation hours that accrued to him during the backpay period in excess of 206.5 hours. However, any hours remaining to his credit in excess of 560 hours would have been forfeited by March 31, 2024.

Although the City applied an incorrect wage rate to Hartzell's terminal leave hours, the City corrected those calculations and acknowledges that it owes Hartzell the difference. However, the City has not yet paid that money to Hartzell and has committed an unfair labor practice is not doing so.

The Agreement provides that the City was to pay Officer Hartzell all monies owed within 90 days of the execution of the Agreement and the City's receipt of records of Hartzell's interim earnings. The Agreement was finally executed on July 24, 2023. Hartzell submitted his offset documents, which were notarized as received on Thursday, October 5, 2023. Thus, all money owed to Hartzell was due to him within 90 days of October 5, 2023, or January 3, 2024. In this regard, the City's terminal leave payout on October 20, 2023, and the backpay for wages and hours Hartzell would have worked during the backpay period were timely paid on December 1, 2023. However, the money still owed to Hartzell has been unreasonably delayed.

The City calculated Hartzell's backpay by offsetting interim outside earnings and unemployment compensation. However, the City did not offset Hartzell's pension income during the backpay period resulting in a backpay overpayment on December 1, 2023. The City paid Hartzell \$73,855.18. Per Hartzell's request, the City also transferred \$21,350 to his deferred compensation account. After the City paid Hartzell, it discovered the error and recalculated Hartzell's backpay by additionally offsetting his pension income. Hartzell's adjusted gross backpay was too low to pay for the deferred compensation payment that the City made on his behalf in the amount of \$21,350. The City determined that Hartzell's after-tax backpay was \$13,712.96. The City then concluded that it overpaid Hartzell by \$60,142.22 (i.e., \$73,855.18-\$13,712.96) and added the \$21,350 it paid on Hartzell's behalf to deferred compensation. The City then concluded that it overpaid Hartzell \$81,492.22.

During discussions with the Union, the City posited that it no longer owed Hartzell the full tax-free payment of \$85,000 because of the backpay overpayment. In the Agreement, the City agreed to pay: (1) backpay for wages and hours he would have worked, (2) terminal leave, and (3) a separate, additional \$85,000. If the City had properly paid Hartzell \$13,712.96, it would still owe Hartzell \$85,000 via 1099, plus the terminal leave of \$55.95, after a deferred compensation deduction, and the additional, corrected terminal leave of \$5,083.23. The City paid the \$55.95, but it has not paid the corrected terminal leave amount of \$5,083.23. The correct backpay of \$13,712.96, plus the initial net terminal leave of \$55.95, plus the corrected net terminal leave of an additional \$5,083.23, plus the separate \$85,000 totals \$103,852.14 for all 3 categories of pay owed to Hartzell. The City paid Hartzell \$73,855.18 in backpay after it also paid \$21,350 in deferred

compensation, and it paid \$55.95 for an initial net leave payout, which means the City has paid Hartzell \$95,261.13.

The City still owes Hartzell the difference between \$103,852.14 owed and \$95,261.13 paid, which is \$8,591.01, which is unreasonably overdue, and which should have been paid by January 3, 2024, under the Agreement. The fact that Hartzell and the Union disagreed with the City that Hartzell was overpaid and that he may have still been entitled to the full \$85,000 lump sum, or a substantially greater portion of it, did not excuse the City from withholding the \$8,591.01 for so long. The dispute was not a legitimate obstacle impeding compliance with the Agreement, when the City knew that it owed \$8,591.01. AFSCME, Local 159 v. City of Philadelphia, 19 PPER ¶ 19069 at 186 (Final Order, 1988).

CONCLUSION

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 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 Steven Hartzell the outstanding amount of \$8,591.01;

(b) Immediately pay Steven Hartzell interest at the rate of 6% per annum on the outstanding backpay amount of \$8,591.01 from January 3, 2024, until the date that the City issues payment to Steven Hartzell;

(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

(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 twenty-first day of May, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/S/Jack E. Marino

JACK E. MARINO
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE	:	
LODGE NO. 5	:	
	:	
v.	:	CASE NO. PF-C-24-47-E
	:	
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 Steven Hartzell the amount of \$8,591.01; that it has paid Hartzell interest at the rate of 6% per annum on the outstanding \$8,591.01, from January 3, 2024, until the date that the City issued all outstanding make-whole relief; 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