

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION

CLAYTON SWARTZ,
Plaintiff

V.

THE CITY OF YORK and
MICHAEL HELFRICH, in his capacity
as the Mayor of the City of York,
Defendants

:
: No. 2021-SU-1642
:
: CIVIL ACTION
:
:
:
:
:

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the foregoing pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DONOT HAVE OR KNOW A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

Lawyer Referral Service of the
York County Bar Association
The York County Bar Center
137 East Market Street
York, PA 17401
Telephone: (717)854-8755

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NOTICIA

USTED HA SIDO DEMANDADO EN LA CORTE. Si usted desea defenderse de las quejas expuestas en las paginas siguientes, debe tomar accion dentro de veinte (20) dias a partir de la fecha en que recibio la demanda y el aviso. Usted debe presentar comparecencia escrita en persona o por abogado y presentar en la Corte por escrito sus defensas o sus objeciones a las demandas en su contra.

Se le avisa que si no se defiende, el caso puede proceder sin usted y la Corte puede decidir en su contra sin mas aviso o notificacion por cualquier dinero reclamado en la demanda o por cualquier otra queja o compensacion reclamados por el Demandante. USTED PUEDE PERDER DINERO, O PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI USTED NO TIENE O NO CONOCE UN ABOGADO, VAYA O LLAME A LA OFICINA EN LA DIRECCION ESCRITA ABAJO PARA AVERIGUAR DONDE PUEDE OBTENER ASISTENCIA LEGAL.

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THIRD AMENDED COMPLAINT

The Plaintiff, Clayton Swartz, by and through his attorneys, FrancePaskey, and more specifically Edward A. Paskey, Esquire and Douglas P. France, Esquire, file this Third Amended Complaint in Mandamus against the Defendants, the City of York and Michael Helfrich, in his capacity as the Mayor of the City of York. In support thereof, the following is averred to be true:

THE PARTIES

1. Plaintiff, Clayton Swartz, ("Swartz") is an adult individual with an address in the County of York, Pennsylvania and is employed by the City of York as a Police Officer. Swartz is also a member of Fraternal Order of Police, White Rose Lodge # 15 ("FOP") a labor organization as defined by the Pennsylvania Labor Relations Act, 43 P.S. §211.3(f)("PLRA") and the Collective Bargaining By Policemen Or Firemen Act ("Act

111"), 43 P.S. §§217.1-217.10, and is by operation of Pennsylvania law the exclusive collective bargaining agent for all active employees employed by the City of York in the police department.

2. Defendant, City Of York ("City"), is a duly ordained political subdivision of the Commonwealth of Pennsylvania and a City of the Third Class, as defined by the Third-Class City Code, 53 P.S. §35101 et seq. which maintains its business at 50 West King Street, York, Pennsylvania.
3. Defendant, Michael Helfrich ("Helfrich") is, and was at all times relevant hereto, the Mayor of the Defendant City of York. As such, he is charged by the relevant provisions of the Third-Class City Code with, inter alia, the duty to be vigilant and active in causing the laws of the Commonwealth relating to the government of the City to be enforced.

VENUE AND JURISDICTION

4. Jurisdiction in this Court exists pursuant to 42 Pa.C.S.A. §931.
5. Pursuant to 42 Pa.C.S.A. §931(c), venue in this Court is proper in that the actions complained of herein have and will occur in York County, Defendants maintain places of business within York County, Defendant Helfrich is located in York County, and the employees represented by Defendant City all reside within York County.

FACTS COMMON TO ALL COUNTS

6. For many years, the FOP has served as the exclusive collective bargaining representative for employees, including Swartz, employed by the City in its police department.

7. This relationship has been embodied in a series of collective bargaining agreements and interest arbitration awards rendered pursuant to Act 111.
8. The last conformed collective bargaining agreement between the parties bore a date of January 1, 2019, to December 31, 2022. A true and correct copy of this Agreement is attached hereto as Exhibit A.
9. Article XXVII of the CBA provides for the creation of an internal, administrative trial board for members of the FOP, such as Swartz, to request under certain circumstances to determine if the member is guilty or not guilty of alleged infractions of the General Orders of the City's Police Department.
10. A Trial Board was convened on August 19, 2020, pursuant to Article XXVII of the CBA, to decide whether Swartz was guilty or not guilty of three (3) separate disciplinary charges lodged against him by agents of the City, specifically Inspector Michael Davis and then Commissioner Osbourn Robinson related to an off-duty incident that was alleged to have occurred on or about May 30, 2020. Like Swartz, the City was present and participated in the Trial Board proceeding that was held on August 19, 2020.
11. The Trial Board members issued their mandated written verdict on or about September 10, 2020, finding Swartz not guilty of all three (3) separate disciplinary charges lodged against him.
12. On September 11, 2020, after the City refused to acknowledge the verdict of the Trial Board, refused to return Swartz to duty, refused to remove Swartz from unpaid administrative leave, and to provide Swartz with back pay, as well as award Swartz any

other remedy deemed fair and just, the FOP filed a grievance under Article XVIII of the CBA on behalf of Swartz.

13. The plain language of the CBA indicates that the decision of the Trial Board is “final and binding on both parties” to the agreement. See Exhibit A, Article XXVII.
14. On or about December 4, 2020, the AAA appointed Thomas Leonard as arbitrator to decide the FOP’s grievance.
15. On or about March 4, 2021, the Trial Board, after being advised by the Court of Common Pleas via a separate action unrelated to this complaint, issued its detailed written Findings of Fact in support of its September 10, 2020, not guilty verdicts.
16. After the issuance of the Findings of Fact, the City yet again refused to acknowledge the verdict of the Trial Board, to return Swartz to duty, to remove Swartz from unpaid administrative leave, and to provide Swartz with back pay, as well as award Swartz any other remedy deemed fair and just.
13. As a result of the continued refusal of the City to acknowledge the verdict of the Trial Board, on or about March 18, 2021, the FOP filed a second grievance under Article XVIII of the CBA on behalf of Swartz.
14. The City and FOP agreed to consolidate the September 11, 2020, grievance and March 18, 2021, grievance for purposes of the arbitration hearing before Arbitrator Leonard on April 27, 2021.
15. On several occasions prior to the grievance arbitration hearing, the City attempted to have the arbitration proceeding either rescheduled, determined to be moot, or simply cancelled.

16. Despite those attempts, the grievance arbitration occurred on April 27, 2021.
17. On April 28, 2021, Helfrich, in his capacity as the Mayor of the City of York, authored an op-ed that was published in the York Dispatch regarding the ongoing situation regarding Swartz's reinstatement. As part of his op-ed, Helfrich declared "Only a court will put Clayton Swartz back on the streets of York, not this Mayor. These are all facts. Some might say, truths." A copy of the op-ed is attached hereto as Exhibit B and incorporated herein by reference.
18. Regardless of the context of Helfrich's statement in the op-ed, it is clear to any and all readers that the implication of his statements included that Helfrich would not respect any decision by Arbitrator Leonard on the grievance arbitration.
19. On July 16, 2021, Arbitrator Leonard issued an Award ("Award") determining that the language in the CBA regarding the decision of the trial board being final and binding on the parties was indeed enforceable, that the City violated the CBA by refusing to reinstate Swartz as demanded by both grievances, and that Swartz should be returned to full duty and made financially whole. A copy of the redacted award is attached hereto as Exhibit C and incorporated herein by reference.
20. Keeping true to Helfrich's statement in his April 28, 2021, op-ed, the City and Helfrich refuse to accept the Award. In fact, Helfrich has both privately and publicly expressed that the decision of the arbitrator is "not necessarily the final answer" on Swartz being reinstated.

21. Contrary to Helfrich's statements, Article VI Arbitration/Mediation of the CBA states, in pertinent part that, "The Award of the Arbitrator shall be final and binding on the parties."
22. Swartz believes, and therefore avers, that the City and Helfrich will refuse to acknowledge Award and respect/implement the remedies afforded to him in the Award absent this Honorable Court compelling the City and Helfrich to do so.
23. Swartz believes, and therefore avers, that based on Helfrich's public and private statements that even if the City appeals Arbitrator Leonard's award, and the appeal is subsequently rejected for any legal or factual reason, that the City and Helfrich will refuse to acknowledge Award and respect/implement the remedies afforded to him in the Award absent this Honorable Court compelling the City and Helfrich to do so.
24. Swartz believes, and therefore avers, that based on Helfrich's public and private statements that even if the FOP files a Petition for Charge of Unfair Labor Practice with the Pennsylvania Labor Relations Board ("PLRB") because of the City's refusal to accept the Award that the City and Helfrich will ignore any order of the Pennsylvania Labor Relations Board compelling it to adhere to the Award as Helfrich, and in turn the City, will not view the PLRB as a "court."
25. The City and Helfrich's refusal to accept the Award is a clear abrogation of the City's contractual duty it has undertaken by being bound to the terms of the collective bargaining agreement.
26. Swartz is left with no adequate remedy at law or administratively as a result of the City's willful refusal to accept the Award.

27. Other than Helfrich's personal and public pledge not to return Swartz to full duty, the Defendants have no legal or contractual justification for the refusal to implement the Award.
28. Experience with numerous prior charges of unfair labor practice filed by undersigned counsel has demonstrated that at least twelve (12) months or more will be required, at a minimum, to process any charge to conclusion by the PLRB which, as reference in the previous paragraph, is likely to be disregarded by the City and Helfrich based on Helfrich's public and private statement.
29. The City and Helfrich have a duty to comply with the laws of this Commonwealth, including but not limited to Act 111, requiring the City to adhere to a) terms of interest arbitration awards that govern, in part, the terms of collective bargaining agreements, including the CBA between the City and the FOP and b) grievance arbitration awards such as the Award issued on July 16, 2021.
30. The City and Helfrich have a duty to comply with its contractual obligations as set forth in the current CBA between the City and the FOP, of which Swartz is a member by virtue of his employment.
31. To date, the City and Helfrich have provided no alternative meaning of the phrase "final and binding on both parties" as that language appears in the CBA as previously set forth.

32. The City and Helfrich continue to ignore the plain language of the CBA that both the decision of the Trial Board and Arbitrator Leonard are “final and binding on both parties” thereby depriving Swartz with an adequate alternative remedy.
33. Swartz is a third-party beneficiary of the terms of the CBA.
34. Swartz is not a party to the City’s Petition to Vacate and, individually, has no other adequate statutory or administrative remedy to pursue.
35. On or about January 4, 2022, Swartz learned for the first time that the City, by and through Helfrich, released confidential information to members of the public related to the internal affairs investigation referenced in paragraph 10 herein without Swartz’s consent or knowledge.
36. First, on June 4, 2020, Helfrich exchanged text messages with an individual identified as Aimee Lewis, then a reporter for the local ABC news affiliate that contained a document placed in Swartz’s personnel file maintained by the City. A copy of the text messages between Helfrich and Lewis are attached hereto as Exhibit D and incorporated herein by reference.
37. The document provided by Helfrich to Lewis was titled “Notice of Administrative Leave” and contained information that the City and Helfrich were required to maintain in confidence as part of Swartz’ personnel file maintained by the City. In fact, Helfrich specifically advised Lewis that this document was ‘not for [the] public,’ thereby acknowledging the confidential nature of the document.

38. Next, on June 6, 2020, Helfrich exchanged texts with an individual identified as James Sechrist about the evidence gathered during the internal affairs investigation into Swartz as follows:

Sechrist: Do you have any good proof yet?

Helfrich: None.

Sechrist: That sucks.

Helfrich: That's confidential.

A copy of the text messages between Helfrich and Sechrist are attached hereto as Exhibit E and incorporated herein by reference.

39. The information shared by Helfrich on June 4, 2020, and June 6, 2020, would not have been publicly available, touched on a personnel matter related to an employee of the City (i.e., Swartz), and not authorized by Swartz to be released to any third party.

COUNT I – MANDAMUS

40. Swartz repeats and reiterates paragraphs 1 through 39 herein as if more fully set forth at length.

41. Swartz possesses a clear right to relief in as much as he is the beneficiary of an Award issued by a duly selected, neutral arbitrator selected jointly by the City and FOP to arbitrate a contractual dispute who has issued an Award directing that Swartz be returned to full duty and made financially whole.

42. As set forth more fully in the preceding paragraphs, the City and Helfrich have assumed certain ministerial duties by virtue of their respective roles as a duly ordained political subdivision of the Commonwealth and Mayor.
43. The City has agreed to perform all ministerial duties required by virtue of being a public employer as that term is generally recognized under the laws of the Commonwealth, including but not limited to Act 111.
44. Section 1202 of the Third-Class City Code specifies that Helfrich is the chief executive of the City.
45. Section 1203 of the Third-Class City Code specifies that Helfrich has the duty to be vigilant and active in causing the laws of the Commonwealth to be executed and enforced.
46. Act 111 standing alone provides that the City and the Mayor to engage in grievance arbitration if properly requested and administered pursuant to a collective bargaining agreement.
47. The Third-Class City Code, by various sections, specifies that both Helfrich and the City may be bound by the terms of a collective bargaining agreement such as the CBA attached hereto as Exhibit A.
48. The CBA creates a contractual duty on behalf of Helfrich and the City to accept as final and binding the Award on July 16, 2021, reinstating Swartz to full duty and to be made financially whole.

49. By virtue of the City and the Mayor's refusal to adhere to the terms of the CBA and implement the terms of the Award, Swartz has no adequate remedy at law...particularly in light of the public statement of Helfrich that "only a court" will reinstate Swartz.

50. Based on information and belief, Swartz also has no adequate remedy at law in light of the telegraphed facts that neither the City, nor Helfrich will adhere to any order affirming the Award or order from the PLRB finding that the City committed an unfair labor practice by refusing to implement the Award.

WHEREFORE, Clayton Swartz respectfully requests this Honorable Court to issue a Writ of Mandamus against the City of York and Mayor Michael Helfrich compelling both to:

- a) accept the Award issued by Arbitrator Thomas Leonard dated July 16, 2021.
- b) immediately implement the relief provided in the Award to Swartz.
- c) pay to Swartz reasonable counsel fees as a result of pursuit of this action; and
- d) all such other relief deemed proper by the Court.

**COUNT II – INVASION OF PRIVACY - VIOLATION OF SWARTZ'S
CONSTITUTIONAL RIGHTS GUARANTEED UNDER ARTICLE 1, SECTION 1 OF
THE PENNSYLVANIA CONSTITUTION**

51. Swartz repeats and reiterates paragraphs 1 through 50 herein as if more fully set forth at length.

52. The right to informational privacy is guaranteed to Swartz and all Pennsylvania residents under Article 1, Section 1 of the Pennsylvania Constitution which states:

"All men are born and equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and

liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”

53. The right of privacy protects against disclosure of personal matters in which a person has a legitimate expectation of privacy.
54. The right of privacy exists where a person has an actual expectation of privacy and society is prepared to recognize the expectation of privacy as reasonable.
55. Swartz had a reasonable expectation that information about the internal affairs investigation referenced in paragraph 10 would remain private.
56. Swartz’s constitutionally protected right to informational privacy includes information contained in his personnel file and evidence related to the internal affairs investigation.
57. Prior to and on June 4 and June 6, 2020, Swartz did not provide Helfrich or the City with consent to release any of the confidential information related to his personnel file or the internal affairs investigation.
58. Helfrich had access to confidential information about Swartz by virtue of his position as Mayor for the City of York.
59. Helfrich and the City’s disclosure of records containing information about the internal affairs investigation constitutes a violation of his right of privacy under the Pennsylvania Constitution.

60. Swartz believes and therefore avers that Helfrich and the City knew that its actions would violate his constitutional right of privacy or Helfrich and the City acted with reckless disregard of his constitutional right of privacy.
61. Helfrich and the City's actions in releasing confidential information about Swartz to the public without his permission is so outrageous that an award of punitive damages is appropriate.
62. Helfrich and the City's actions demonstrate an evil motive to besmirch the otherwise impeccable reputation of Swartz.
63. Helfrich and the City's actions constitute a willful and reckless disregard for Swartz's right to privacy.

WHEREFORE, Clayton Swartz respectfully requests this Honorable Court enter judgment in his favor and against the City of York and Mayor Michael Helfrich as follows:

- a) an award of compensatory damages in excess of \$50,000.00.
- b) an award of punitive damages in excess of \$50,000.00.
- c) pay to Swartz reasonable counsel fees as a result of pursuit of this action; and
- d) all such other relief deemed proper by the Court.

Respectfully Submitted:

/s/ Edward A. Paskey

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/s/ Douglas P. France

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EXHIBIT A

AGREEMENT BETWEEN
WHITE ROSE LODGE NO. 15,
FRATERNAL ORDER OF POLICE
AND
CITY OF YORK,
PENNSYLVANIA



FOR THE PERIOD
JANUARY 1, 2019 THROUGH DECEMBER 31, 2022

UNION CONTRACT

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AGREEMENT

THIS AGREEMENT, made and entered into as effective the 1st day of January 2019, by and between the City of York, a municipal corporation being a Third-Class City of the Commonwealth of Pennsylvania, hereinafter referred to as "City", party of the first part and White Rose Lodge No. 15, Fraternal Order of Police, hereinafter referred to as "the Union", party of the second part.

WHEREAS, pursuant to the provisions of the Act of June 24, 1968, 43 P.S. § 217.1 et seq. ("Act 111") the City and the Union have collectively bargained concerning the terms and conditions of employment of the Union for the calendar years January 1, 2019, through December 31, 2022; and

WHEREAS, Act 111 provides that settlements entered into as a result of collective bargaining shall be reduced to written agreement; and

WHEREAS, following an interest arbitration, the City and the Union are subject to an agreement for all full-time Police Officers for the calendar years January 1, 2019 through December 31, 2022; and

NOW THEREFORE, the City and the Union are subject to the following:

ARTICLE I - PURPOSE

It is the intent and purpose of this Agreement to provide sound and mutually beneficial working relationships between the parties, to provide an orderly and peaceful means of resolving any misunderstandings or differences which may arise, and set forth herein the basic and full Agreement between the parties concerning rates of pay, wages, hours and other conditions of employment.

ARTICLE II - LAWS, ORDINANCES AND POLICIES

In the administration of all matters covered by this Agreement, officials and employees are governed by the provisions of any existing or future laws and regulations of the State of Pennsylvania; including policies, regulations and ordinances of the City which do not conflict with this Agreement. Police Officers shall be subject to only such residency requirements as may now or in the future be imposed by the laws of the Commonwealth of Pennsylvania.

ARTICLE III - RECOGNITION

The City agrees to recognize the F.O.P. as the exclusive bargaining agent on behalf of all full-time paid police officers. The Chief of Police is an integral member of City management, and as such is ineligible for inclusion in the bargaining unit. The Chief of Police may, however, be a member of the Fraternal Order of Police.

The management functions performed by employees in the rank of Captain are recognized by the Union. Employees with the rank of Captain are not covered by the following sections of the Labor Agreement: Grievances; Arbitration; Work Schedule; Discipline; Assignments; Strikes and Work Stoppages; and Labor/Management Committee.

ARTICLE IV - MANAGEMENT RIGHTS

The Police recognize that an area of responsibility must be reserved to management if it is to function effectively. In recognition of this principle it is agreed that the following responsibilities are not subject to collective bargaining and management representatives of the Department, unless specifically modified by any subsequent section of this Agreement, retain the exclusive right hereto to:

- (a) Determine the management, organization, the selection, retention, and promotion for occupations not within the scope of this Agreement.
- (b) Direct employees of the Department.
- (c) Maintain discipline.
- (d) Hire, promote, transfer, assign, retain and lay-off employees.
- (e) Discipline, suspend, demote, or discharge employees subject to the Just Cause provision of this Agreement.
- (f) Maintain the efficiency of the government operations entrusted to them.
- (g) Determine the methods and means by which such operations are to be conducted.
- (h) Schedule employee's duties to meet the needs of the City.
- (i) Determine duties to be included in any job classification.
- (j) Determine the number of personnel to be employed or retained in employment.
- (k) Determine the necessity of overtime and the amount of overtime required.
- (l) Take necessary action to carry out the mission of the City in cases of emergency.
- (m) Send for, confer, consult with, discuss or communicate in any way with any member of the bargaining unit without union representation except as provided for in the grievance procedure provided, however, that if during a meeting with a member, a superior or officer feels that the meeting may lead to the member becoming subject to disciplinary action greater than a reprimand, he shall so advise the member and the member shall become entitled to union representation or legal counsel.
- (n) Nothing herein above stated should in any manner be construed as a waiver of any rights guaranteed to municipal employees by the applicable Civil Service Act of the Commonwealth of Pennsylvania (or of any specific areas covered by this Agreement).

All rights and responsibilities of management not specifically modified by this Agreement shall remain a function of management. Management agrees to meet and discuss policy matters which affect wages, hours and terms and conditions of employment and also to discuss the impact these policy matters may have upon members of the bargaining unit, upon the request of duly authorized bargaining unit representatives. Meet and discuss does not mean that the Contract is being opened up for renewed negotiations. It is merely a means whereby labor and management can discuss the ramifications such new policy matters may have, for the mutual understanding of both parties.

ARTICLE V - GRIEVANCES

The purpose of this section is to provide an orderly method for the settlement of a dispute between the parties under the interpretation, application, or claimed violations of Departmental rules and regulations, State laws, City ordinances, and all clauses of this Agreement. Such a dispute shall be defined as a grievance under this Agreement and must be presented within ten (10) working days of the date that it occurred or within ten (10) working days of the date that the officer could reasonably be expected to have knowledge of the occurrence. Working days are Monday through Friday excluding holidays. Any grievance not answered within the stated time limits, unless an extension is agreed to in writing by the parties, shall be considered settled based upon the last timely response. Grievances shall be processed in accordance with the following steps, time limits, and conditions herein set forth:

Notice and Grievance Steps:

Any officer having a problem regarding his/her employment shall first discuss the problem with his/her immediate supervisor. If the problem is not settled to the officer's satisfaction, he/she shall, if the problem is a grievance, follow the procedure outlined below:

Step 1: A grievance shall be submitted in writing to the officer's division commander who shall promptly meet and discuss the grievance with the officer and his/her representative and reply in writing within three (3) working days.

Step 2: In the event the decision of the division commander does not satisfy the grievance, it may be appealed within five (5) working days to the Police Commissioner or Chief of Police who shall within five (5) working days meet and discuss the grievance with the officer and his/her representative. The Police Commissioner or Chief of Police has five (5) working days to reach a decision and reply in writing.

Step 3: In the event the decision of the Police Commissioner or Chief of Police does not satisfy the grievance, it may be appealed within five (5) working days to the Mayor or his/her designee who shall arrange to meet within five (5) working days with the officer, his/her representative and witnesses to both sides of the dispute. The Mayor or his/her designee has five (5) working days in which to reply to the grievance in writing.

Any grievance resulting from disciplinary action other than an oral or written reprimand shall begin at Step 2 of the Grievance procedure.

In the event that the Police Commissioner or Chief of Police is not available and the acting Police Commissioner or acting Chief of Police is the division commander who responded to Step 1 of the Grievance procedure, the grievant may elect to proceed to Step 3 or delay his appeal until the return of the Police Commissioner or Chief of Police. In the event that the grievant elects to delay his appeal until the return of the Police Commissioner or the Chief of Police, the time limit specified under Step 2 of the Grievance procedure shall begin upon receipt of the appeal by the Police Commissioner or the Chief of Police.

Officers shall have the right to present their own requests and grievances, except that in the case of grievances, the adjustment shall be consistent with the terms of this Agreement and the representative has been given reasonable opportunity to be present.

The settlement of any grievance shall not be made retroactive for more than thirty (30) days prior to the date the grievance was submitted in writing.

Reimbursement for loss of pay because of improper suspension or dismissal shall be made retroactive to the date of suspension or dismissal providing the grievance is timely.

If the City claims the police have violated any provisions of the Strikes and Work Stoppage section, it may present such claims to the police in manner as hereinafter provided for in the Strikes and Work Stoppage section.

ARTICLE VI- ARBITRATION/MEDIATION

Mediation may be considered by either the City or the FOP prior to and as an alternative to the arbitration process. Both parties recognize that should mediation be pursued, neither party gives up the right to submit the dispute or grievance to arbitration.

If the dispute or grievance is not settled in the foregoing steps of the grievance procedure and it involves the interpretation, application, or claimed violation of any provision of this Agreement, then either party may, upon written demand given to the other party, within ten (10) working days (after the City's answer in the last step or the Police's answer to the City's claim of violation of the no-strike pledge), submit said dispute or grievance to arbitration as follows:

The unresolved grievance may be submitted to arbitration before a single Arbitrator by the FOP or the City by the initiation of a Demand for Arbitration with the American Arbitration Association. The Arbitrator selection and arbitration proceedings shall be conducted in accordance with the Labor Arbitration Rules of the American Arbitration Association. The Arbitrator shall not have authority to add to, subtract from, modify, change or alter any of the provisions of this Agreement. The Arbitrator's award shall be final and binding on the parties. The fees and expenses of the Arbitrator shall be borne equally by the parties.

In the case of a grievance involving any continuing or other money claims against the City, no award shall be made by the Arbitrator which shall allow any alleged accruals extending back more than fifteen (15) calendar days prior to the date when such grievance shall have first been presented in writing, except in the case of an improper suspension or dismissal which shall be made retroactive to the date of suspension or dismissal.

ARTICLE VII - WORK SCHEDULE

Work schedule shall be as follows:

Hours of Work - The regular hours of work each day shall be consecutive; interruption for eating period shall be construed as part of the workday.

Work Day - The work day shall consist of eight (8) consecutive hours, ten (10) consecutive hours or twelve (12) consecutive hours depending if the officer is assigned to a division within the department that works eight (8), ten (10) or twelve (12) hour work days.

Work Week - The work week shall consist of five (5) assigned work days involving an eight (8) hour shift, or scheduled working days according to the established work schedule for specialty units and patrol divisions.

Relief Days - The schedule to reflect the current relief schedule for patrol and/or all other divisions.

Overtime -

- 1) All hours in excess of eight (8), ten (10), or twelve (12) consecutive hours on a regular work day shall be paid at one and one-half the hourly rate.
- 2) When an officer is recalled to duty before or after his scheduled day, or while on a relief day or vacation day, he shall receive a minimum of four hours pay at the one and one-half rate or at one and one-half hourly rate for actual hours worked, whichever is greater.
- 3) Double time for all hours worked in excess of eight (8), ten (10), or twelve (12) consecutive overtime hours paid at time and one-half.

No officer shall be reassigned involuntarily to any other platoon in the week until he has completed his weekend relief days. In the event of an emergency or disaster as declared by the Mayor of the City of York or the designee, management retains the right to alter the work schedule to fit the needs for the efficient operations of the Police Department during this week. At the end of the declared emergency or disaster, the City shall immediately return to the regular work schedule.

CONTRACTED OVERTIME/EXTRA DUTY

The City shall be free to negotiate an acceptable hourly rate with third-party entities when such entities request police service/protection to be provided by the City. The negotiated rate shall apply to all officers in the bargaining unit and in no event shall such officers receive less than time and one-half of their regular hourly rates for each hour worked on such detail.

This provision does not alter the existing practice by which officers are elected for these extra duty assignments.

ARTICLE VIII - SALARIES**SALARIES EFFECTIVE JANUARY 1, 2019**

All unit members hired before January 1, 2020 shall receive a salary based upon the following schedule:

Rank	2019 (2.25%)	2020 (2.5%)	2021 (2.75%)	2022 (2.5%)
Probationary Police Officer	\$50,346	\$51,605	\$53,024	\$54,350
Police Officer (after 12 months)	\$58,079	\$59,531	\$61,168	\$62,697
Police Officer (after 24 months)	\$66,938	\$68,611	\$70,498	\$72,260
Police Officer (after 36 months)	\$71,713	\$73,506	\$75,527	\$77,416
Police Officer 1st Class, Corporal & Detective	\$73,090	\$74,917	\$76,977	\$78,902
Sergeant & Detective 1st Class	\$77,863	\$79,810	\$82,005	\$84,055
Lieutenant & Inspector	\$85,650	\$87,791	\$90,205	\$92,460
Captain	\$94,215	\$96,570	\$99,226	\$101,707

All unit members hired on or after January 1, 2020 shall receive a salary based upon the following schedule:

Rank	2020	2021 (2.75%)	2022 (2.5%)
Probationary Police Officer	\$51,454 [≈ 70% of Full Police Officer]	\$52,869	\$54,191
Police Officer (after 12 months)	\$55,130 [≈ 75% of Full Police Officer]	\$56,646	\$58,062
Police Officer (after 24 months)	\$58,805 [≈ 80% of Full Police Officer]	\$60,422	\$61,933
Police Officer (after 36 months)	\$62,480 [≈ 85% of Full Police Officer]	\$64,198	\$65,804
Police Officer (after 48 months)	\$67,933 [≈ 92.5% of Full Police Officer]	\$69,863	\$71,610
Full Police Officer (after 60 months)	\$73,506 [100% of Full Police Officer]	\$75,527	\$77,416
Police Officer 1st Class, Corporal & Detective	\$74,917	\$76,977	\$78,902
Sergeant & Detective 1st Class	\$79,810	\$82,005	\$84,055
Lieutenant & Inspector	\$87,791	\$90,205	\$92,460
Captain	\$96,570	\$99,226	\$101,707

YORK CITY POLICE LONGEVITY

2019 - 2022

YEARS	PERCENTAGE
0 - 1	0.0%
1 - 2	0.0%
2 - 3	0.0%
3 - 4	0.0%
4 - 5	0.0%
5 - 6	2.5%
6 - 7	3.0%
7 - 8	3.5%
8 - 9	4.0%
9 - 10	4.5%
10 - 11	5.0%
11 - 12	5.5%
12 - 13	6.0%
13 - 14	6.5%
14 - 15	7.0%
15 - 16	7.5%
16 - 17	8.0%
17 - 18	8.5%
18 - 19	9.0%
19 - 20	9.5%
20 - 21	10.0%
21 - 22	10.5%
22 - 23	11.0%
23 - 24	11.5%
24 - 25	12.0%
25+	12.5%

ARTICLE IX - NIGHT SHIFT DIFFERENTIAL

For Officers hired before January 1, 2020, the shift differential for shifts beginning on or after 12:00 p.m. shall be 2.5% and the shift differential for shifts beginning on or after 9:00 p.m. and before 6:00 a.m. shall be 3.5%. Officers assigned to a 12 hour 2nd shift (PM) shall be entitled to a shift differential of 3.5%.

Officers hired on or after January 1, 2020 shall receive a shift differential of \$0.70 per hour for hours worked between 6 p.m. and 6 a.m. Effective January 1, 2022, Officers hired on or after January 1, 2020 shall receive a shift differential of \$0.75 per hour for hours worked between 6 p.m. and 6 a.m.

ARTICLE X - CLOTHING ALLOWANCE

Effective January 1, 2020, all police officers permanently assigned to plain clothes duty shall receive a \$750 year clothing allowance, \$375 to be paid in January and \$375 to be paid in July. A police officer who has completed three (3) or more months in any six (6) month period is entitled to an amount of money which bears the same proportion to \$375 as his/her time on plain clothes duty bears to six (6) months.

Effective January 1, 2020, all patrol division officers shall be entitled to a uniform allowance of \$600 per year.

Effective January 1, 1999, all police officers shall be entitled to a \$325.00 yearly cleaning allowance.

Effective January 1, 2015, all police officers shall be entitled to a \$150.00 yearly footwear allowance. This allowance shall be paid with the first cleaning allowance payment each year.

All probationary officers shall be provided with a complete set of uniforms and all necessary equipment at the City's expense at the time of their hiring, or prior to completion of the police academy. These officers shall not be eligible to purchase additional uniforms or equipment from the annual allotment during their first twelve (12) months of employment. Probationary police officers shall receive all additional compensations; college bonus, cleaning allowance and footwear allowance, at the time of hiring. It is agreed and understood that should a probationary officer leave the employ of the City within six (6) months, the full amount of compensation shall be deducted from his/her final paycheck. If the officer leaves the employ of the City after six months and less than twelve months, said compensation shall be prorated for the months in that period, and deducted from his/her final paycheck.

Effective January 1, 2015, it will be mandatory for all police officers to wear bullet resistant vest. The City shall provide at its expense bullet resistant vests to all police officers. He/She shall be required to wear it unless otherwise authorized by the Chief/Commissioner or his designee. Further, replacement of such vests shall be at City expense at the expiration date of the manufacturer's warranty. The cost of such vests shall not be considered as part of the equipment allowance. Police Officers assigned to plain clothes duty shall be subject to the Department's General Order 2.1.3 Protective Soft Body Armor, as amended. Where a police officer currently owns a bullet resistant vest, the Chief/Commissioner, at his discretion, shall have the option of replacing that vest with a new one. Should the Chief choose to do so, the City shall reimburse the police officer for his/her bullet resistant vest on a pro-rated basis. The City shall allow the officer to choose a vest that is different than the vest provided by the city, as long as the vest conforms to NIJ standards and is on the reimbursable list with approval from the Chief / Commissioner. The officer will be responsible for the difference between the costs of the City's supplied and the vest of his/her choosing. The officer will not receive any funds in return if he/she chooses a vest that costs less.

ARTICLE XI - COMPENSATION FOR COURT AND HEARINGS

A police officer shall be paid at the overtime rate of one and one-half times his/her normal hourly rate of pay for time spent, while off duty, in magisterial courts and courts of record when he/she has appeared in such courts upon subpoena or request of the court in his/her capacity as a police officer of the City of York. Provided, however, that a police officer shall receive a minimum of one (1) hour's pay at the overtime rate for off duty court appearances held within a sixty (60) minute period. If court appearances are scheduled at intervals of sixty (60) minutes, or longer the police officer shall receive a minimum of one hour's pay at the overtime rate for each off duty court appearance. The intent of this provision is to compensate a police officer on the basis of off duty time actually spent in court and not on the basis of the number of cases for which such appearance has been required.

In the event the officer is required to appear for magisterial, civil or criminal proceedings on a scheduled relief or vacation day, the officer shall then be compensated at a rate two (2) times his/her regular rate of pay for time spent.

The current method of compensating an officer whom is called to attend a court proceeding when off duty on a day when he he/she is scheduled to work shall be continued.

ARTICLE XII - INSURANCE**LIFE AND ACCIDENTAL DEATH & DISMEMBERMENT**

<u>Type of Benefit</u>	<u>Amount</u>
Life Insurance	\$60,000
Accidental Death & Dismemberment/Double Indemnity	\$60,000
Payment of the benefit is based upon the terms of the applicable Policy then in effect.	

MEDICAL PLAN

Effective January 1, 2020, the sole health insurance plan offered by the City to Officers is the PPO Plan currently in effect. Officers will continue to receive the hearing, dental, vision, and prescription coverage currently in effect. The PPO Plan shall contain a deductible carryover provision. If a participant satisfies the deductible in October through December of the calendar year, such paid deductible will satisfy the following calendar year's deductible for claims involving the same illness or injury. The participant fees under the PPO Plan are as follows:

	In Network	Out of Network
Calendar Year Deductible (Single/Family)	\$100/\$200	\$200/\$400
Co-insurance Out of Pocket Includes coinsurance amounts; when this is satisfied no other coinsurance is required. (Single/Family)	\$1,000/ \$2,000	\$2,000/\$4,000
Total Out of Pocket Maximum Includes coinsurance, copays & deductibles (Single/Family)	\$2,600/\$5,200	

	In Network	Out of Network
Coinsurance Level (Plan pays)	90%	70%
Primary Care Physician Co-Pay	\$10.00	70%
Specialist Co-Pay	\$20.00	70%
Inpatient Hospitalization (Plan pays)	90% after deductible	70% after deductible
Outpatient Surgery (Plan pays)	90% after deductible	70% after deductible
Diagnostic Laboratory/Radiology (Plan pays)	90% after deductible	70% after deductible
Outpatient Diagnostic X-Ray/ Complex imaging (Plan pays)	90% after deductible	70% after deductible
Urgent Care	\$50.00	\$50.00
Emergency Room Visit (waived if admitted)	\$75.00	70% after deductible

HEARING

<u>Type of Benefit</u>	<u>Frequency Covered</u>
Exams	Once annually; Specialist Co-pay
Devices	1 device per year / every 3 years

DENTAL CARE

<u>Type of Benefit</u>	<u>Coverage</u>
Preventive & General	100%
Prosthetic	50%
Maximum for preventive, General, & Prosthetic	\$3,000/yr.
Orthodontics- CHILDREN UNDER 19 YEARS OF AGE:	
Co-insurance	50%
Lifetime maximum per child	\$1,500

VISION CARE

Plan Benefit Frequency: 12 consecutive months

<u>Type of Benefit</u>	<u>Out of Pocket</u>
Examination	\$45.00
Lenses:	
Single	\$60.00
Bi-focal	\$100.00
Tri-focal	\$140.00
Cataract	\$125.00
Contact	\$190.00
Frames	\$70.00
Unit price for lenses and frames:	
Single lenses and frames	\$130.00
Bi-focal lenses and frames	\$170.00
Tri-focal lenses and frames	\$210.00
Corrective Eye Surgery coverage maximum	\$1,000/once lifetime

PRESCRIPTION DRUG PROGRAM DESIGN

Three-tier design as follows:

- \$5 generic
- \$15 formulary brand
- \$30 non-formulary brand

Mandatory generic with physician DAW override where medically necessary. Except in the case of a DAW override, if officer selects brand when generic is available, there will be an ancillary charge equal to the cost difference between the brand and what the City pays for the generic drug.

Step Therapy (existing drug therapies to be grand fathered, consistent with the participant's Annual Health Risk Assessment)

Lifestyle Drugs must be pre-Authorized

The City shall provide Police Professional Liability Insurance Coverage during the term of this Agreement so long as such coverage is available in the State of Pennsylvania.

RETIREE HEALTH CARE BENEFITS

Officers retiring on or after January 1, 2007 will receive the same health care plan and prescription plan available to active officers. Officers that retire before January 1, 2020 will contribute \$1,100 per person/\$2,200 per family per year towards the cost of their health care/prescription coverage.

Officers that retire after January 1, 2020 will contribute \$1,500 per person/\$3,000 per family per year towards the cost of their health care/prescription coverage.

Officers hired on or after January 1, 2020 will, upon retirement, contribute 10% of the applicable premium, or COBRA rate (if the City self-insures for health care/prescription coverage), towards the cost of their health care/prescription coverage.

WELLNESS/DISEASE MANAGEMENT

Effective January 1, 2020 the City shall implement the following Wellness/Disease management programs:

Annual Health Risk Assessments - Active officers and spouses who fully complete and submit the health risk assessment receive \$50 (each) in an employee Health Reimbursement Account (HRA).

Lifestyle Management Program - Active officers and spouses who engage with a nurse in risk reduction receive \$75 each, \$37.50 paid upon signing up and the remaining \$37.50 paid upon completion.

Disease Management Program - Active officers and spouses who participate in a disease management program involving counseling by qualified RNs receive \$100 (each) upon completion of four (4) sessions.

PREMIUM CO-PAYMENTS

Effective January 1, 2020, Officers enrolled in the PPO Plan will be charged a monthly premium co-payment, based upon their level of coverage, as follows:

Tier Group	2020	2021	2022
Employee Only	\$45.00	\$60.00	\$70.00
Family	\$90.00	\$120.00	\$140.00

The monthly premium co-payment shall be deducted as pre-tax dollars in equal amounts from the first two pay checks of each month.

OPT OUT / OPT IN PROVISION

Effective April 1, 2009, officers who have health care and prescription coverage available from another source, with documented verification of the same, may choose to opt-out of the City's health care and prescription Plans.

In return, the officer will annually receive \$1,200, payable in monthly installments of \$100.

If the officer chooses to reinstate medical coverage with the City, then upon written request from the officer, the City shall reinstate coverage for the officer and eligible dependents.

PLAN DOCUMENT

The Certificate of Coverage for the health insurance plan will govern all disputes that arise under the health insurance plan, provided that there shall be no reduction in the current benefits received by officers.

Additional information on health benefits can be obtained from the Certificate of Coverage or the Officer of Human Resources.

The City shall provide Police Professional Liability insurance coverage during the term of this agreement so long as such coverage is available in the Commonwealth of Pennsylvania.

ARTICLE XIII - PAID HOLIDAYS

The following paid holidays shall be granted to each police officer:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
President's Day	General Election Day
Good Friday	Veteran's Day
Easter Sunday	Thanksgiving Day
Memorial Day	Day Before Christmas
Independence Day	Christmas Day

In addition, any other day declared as a Holiday for City employees of the City of York.

If a holiday falls on a relief day or a vacation day, the police officer is granted another day off.

Should a police officer be required to work on a holiday, he shall receive another day off with pay, except the police shall be paid at time and one-half for having worked New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas in addition to compensatory time given.

Each police officer shall be entitled to one personal leave day with pay annually. Personal leave must be requested and approved in advance of its being taken by the Unit Commander. A request for a specific personal leave day may be denied if there has been an excessive amount of vacation leave or personal leave already approved for that specific day.

The City of York agrees to compensate each police officer an additional one-half ($\frac{1}{2}$) day's pay. It is agreed and understood that this payment shall be paid in a lump sum payment for the pay period immediately preceding Christmas.

If an officer is recalled or held over for duty on New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas the officer shall be paid / compensated double his/her rate of pay at a minimum of four hours or actual hours worked, whichever is greater.

ARTICLE XIV - VACATION

Police officers shall be granted vacation with pay as follows:

Years of Service	Vacation Time Granted
0 - 1	$\frac{1}{2}$ day per month based upon months remaining in year employed; Computed from date of employment.
1 - 5	14 days - 1 $\frac{1}{6}$ days per month
5 -10	16 days - 1 $\frac{1}{3}$ days per month
10-15	18 days - 1 $\frac{1}{2}$ days per month
15-20	21 days - 1 $\frac{3}{4}$ days per month
20 -25	25 days - 2 $\frac{1}{12}$ days per month
25 or more	28 days - 2 $\frac{1}{3}$ days per month

Vacation leave shall not be granted to new employees until they have completed six (6) months of continuous service with the City.

Vacation leave may be granted in advance of its being earned. However, should any police officer resign from the force while owing the City vacation leave, the amount of money equal to the number of days owed shall be deducted from the final pay check.

Vacation leave must be requested and approved in advance of its being taken.

Vacation leave shall be scheduled to provide for the orderly conduct of City operations.

Vacation preference for a police officer of a rank below Sergeant shall be determined on the basis of departmental seniority, to whatever extent practical, provided that the asking of such times does

not interfere with the efficient operations of the department. Vacation preference for a police officer with rank of Sergeant or higher shall be determined on the basis of seniority in rank.

Upon retirement, a police officer has the option of being paid for vacation and holidays he/she would have been credited with during the entire calendar year or using same for early retirement.

Effective January 1, 2008, accumulated, but unused vacation leave shall be payable to the employee only upon retirement (superannuation, vested and disability).

Police officers may carry over seven (7) days of vacation from year to year at the discretion of the Chief/Commissioner.

Employees may accumulate up to 100 hours of compensatory time. Compensatory time will be limited to 100 hours for retirement payout.

ARTICLE XV - SICK LEAVE

Sick leave shall be earned at the rate of thirty (30) days per year with a maximum accumulation of two hundred (200) days.

Upon retirement, the police officer is to be compensated twenty-five percent (25%) of the first two hundred (200) days of accumulated but unused sick leave. The police officer shall have the option of taking time off or being paid for the days.

Accumulated, but unused sick leave shall be payable to the employee only upon retirement (superannuation, vested and/or disability).

In the event of the death of an employee, any sick leave accrued to the time of death shall be paid to the spouse or his estate.

Three (3) or more consecutive days of illness, or if a pattern of continues absence because of illness occurs, a medical certificate will be required before the employee can qualify for sick leave.

Routine physical appointments by employees, as opposed to emergency physical care, do not qualify for sick leave.

Employees shall make every effort to schedule outpatient appointments outside of working hours.

Sick leave is to be used for the illness of the police officer. Should illness in the immediate household require the police officer's presence, sick leave for this purpose may be granted at the discretion of the Police Commissioner or the Chief of Police in accordance with the Family Medical Leave Act.

In the event that a police officer sustains an injury while in the course of his employment with the City of York, he shall receive his regular rate during the period of temporary total disability, less any Workers' Compensation payments.

A bonus of one-half ($\frac{1}{2}$) day's leave with pay shall be given to all police officers who use no sick leave in any calendar quarter. A bonus of one day of leave with pay shall be given to all police officers that use no sick leave in any calendar year. These extra leave days shall be applied to the succeeding year's vacation schedule.

The Union will participate in the City Sick Leave Donation Plan.

ARTICLE XVI - LEAVE FOR DEATH IN FAMILY

Employees shall be granted three (3) days with pay, upon request and upon authorization of the division commander, for the death of parent, grandparent, child, grandchild, spouse, brother, sister, step-parent, step-child, mother-in-law or father-in-law. All other leave for death in the family must be taken as vacation leave, if any, and in lieu of vacation time, then unused, accumulated sick leave may be used.

ARTICLE XVII - EDUCATIONAL ASSISTANCE PROGRAM

The purpose of the Educational Assistance Program is to give police officers financial assistance for approved courses of study related to Police Science/Criminal Justice in order to increase their job effectiveness and improve their performance.

The Educational Assistance program gives police officers the opportunity to be reimbursed 50% for college level courses taken in an approved accredited educational program related to Police Sciences/Criminal Justice.

REQUIREMENTS FOR ELIGIBILITY

All full-time police officers completing their probationary period are eligible to apply for educational assistance.

The City may grant time for accredited police related courses on duty, with the approval of the Police Chief/Commissioner and the Human Resources Director, in the event that it is not possible to schedule Police Science courses on off-duty time. In instances such as these, the time required to attend the courses will not be subtracted from the police officer's vacation.

REQUIREMENTS FOR REIMBURSEMENT

In order to be considered for educational assistance, an officer must obtain approval through the chain of command to the Police Chief/Commissioner and the Human Resources Director, prior to enrollment, as follows:

A request for educational assistance must be submitted through the officer's immediate supervisor to the Police Commissioner. The officer should submit the request no later than three (3) weeks prior to the start date of classes, for approval, keeping in mind any deadline for pre-registration.

The Police Chief/Commissioner will review and, if appropriate, approve the request and submit it to the Human Resources Director for review and approval.

AMOUNT/EXTENT OF REIMBURSEMENT

Officers who successfully complete the approved course(s), and upon providing the City with satisfactory evidence that the employee had personally paid for the course and received a final grade no lower than 2.0 (on a 4.0 scale), or a passing grade when grade given in that course is on a pass/fail system, will be reimbursed 50% of the reimbursable expense.

Reimbursable expenses consist of tuition cost, required special fees and required textbooks.

Effective January 1, 2020, all officers who have earned degrees for college courses or graduate level studies shall be entitled to an education bonus as follows:

Associates Degree -- \$350 per year

Bachelor's Degree -- \$550 per year

Master's Degree -- \$750 per year

An officer shall receive only one of the above allowances. The bonus will be paid in January of each year.

ARTICLE XVIII - DISCIPLINE

In the event an employee is suspended, he may request a hearing by the Board of Appeals by presenting his request in writing to the Police Commissioner or Chief of Police within two (2) working days from the date he receives notification of the suspension.

It is understood that an aggrieved officer under the provisions of this Article shall have the right to elect to grieve his suspension through the formal grievance procedure outlined in Article V of this Agreement; however, should an officer elect one of these two alternatives available to him, he shall be unable to subsequently elect the other alternative to grieve the same suspension.

It is further understood that this Article pertains to suspensions only.

The Board of Appeals shall consist of:

- The Police Commissioner or Chief of Police or appointee.
- President of Fraternal Order of Police or appointee.
- Disinterested party.

Each member of the Board's vote shall carry equal weight in the final decision. A written decision shall be given to the employee within five (5) working days after the meeting. The decision of the Board shall be final and binding on both parties. Expenses and fees of the disinterested member shall be borne equally by said parties.

It is understood and agreed that any officer who is suspended, reprimanded or otherwise disciplined for just cause shall not receive a disciplinary shift change in addition thereto. This provision shall not apply to any shift change resulting from the need to maintain an efficient Police Department.

ARTICLE XIX - JUST CAUSE

The City of York shall not discipline, suspend, demote or discharge any police officer without just cause. This paragraph is not intended to diminish the City of York's management rights under Article IV of this Agreement to discipline, suspend, demote or discharge any police officer.

ARTICLE XX - PERSONNEL FILES AND REPRESENTATION

In the event the City should place any information that may be considered of a derogatory nature, or affect a police officer's performance record in the police officer's personnel file, the officer shall be given a copy of said information at that time.

All such material shall be purged from the officer's personnel file as follows:

- a) Material relating to a level 1 offense (oral or written reprimands), shall be purged one year after the issuance of the reprimand, provided that the officer has continued to serve as a police officer of the City of York and no further disciplinary action has been taken against the officer in the interim.
- b) Materials relating to level 2 offenses (oral or written reprimands), shall be purged two years after the issuance of the reprimand, provided that the officer has continued to serve as a police officer of the City of York and no further disciplinary action has been taken against the officer in the interim.
- c) Materials relating to level 3 offenses (suspensions of from one to five days), shall be purged three years after the completion of the serving of the suspension, provided that the officer has continued to serve as a police officer of the City of York and no further disciplinary action has been taken against the officer in the interim.
- d) Materials relating to level 4 offenses (suspension of from six to ten days), shall be purged four years after the completion of the serving of the suspension, provided that the officer has continued to serve as a police officer of the City of York and no further disciplinary action has been taken against the officer in the interim.
- e) Materials relating to level 5 offenses (suspension of from eleven to thirty days), shall be purged five years after the completion of the serving of the suspension, provided that the officer as continued to serve has been taken against the officer in the interim.

There shall be one official set of personnel files that shall be maintained and used in cases of disciplinary action against police officers.

In the event a supervisor or the department should determine that an investigation of a police officer should be conducted, police officers shall then be entitled to the procedures as set forth under the City of York Police Department General Orders, as amended.

All complaints and allegations of misconduct not resolved as prescribed herein will be thoroughly investigated by the Inspectional Service Division in accordance with the following guidelines:

Notification - The member under investigation and his or her commanding officer will be notified immediately, unless the complaint or allegation involves a continuing offense and/or such notification would otherwise affect the ability to ascertain all facts relevant to the case.

Questioning of Members - Members are required to answer all questions by or render any relevant statements to, any officer conducting an official investigation.

A member under investigation shall not be required to answer any question that may tend to incriminate him or her, nor shall a refusal to answer such questions constitute grounds for disciplinary action.

Interrogation of Members - The interrogation shall be conducted at a reasonable hour, preferably at a time when the member is on duty, unless the seriousness of the investigation is such that an immediate interrogation is required.

The interrogation shall take place at the offices of the Inspectional Service Division or at City Hall.

If the member being interrogated is under arrest, or is likely to be placed under arrest as a result of the investigation, he or she shall be completely advised of his or her rights prior to the commencement of the interrogation.

Interrogation sessions shall be reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

A member under interrogation shall not be subjected to offensive language or threatened with transfer, demotion, disciplinary action or dismissal. No promise or reward shall be made as an inducement to answer any question.

The complete interrogation of any member, including all recess periods, shall be recorded, and there shall be no unrecorded questions or statements. A copy of this recording shall be available to the member or his or her counsel upon request.

At the request of any member under interrogation, he or she shall have the right to be represented by counsel or any other representative of his or her choice who shall be present at the times during such interrogation unless waived by the member. The interrogation shall be suspended for a reasonable time until representation can be obtained.

Personal Property - A member's personal property shall not be subjected to search or seizure without probable cause, and a warrant when required by law. Departmental property may be searched at any time, even if assigned to and/or used exclusively by one member, however, wall lockers are the property of White Rose Lodge No. 15, Fraternal Order of Police, and cannot be searched without the consent of the individual assigned to the locker.

Communications - Departmental communications facilities may be monitored at any time, under conditions permitted by law.

Equipment - The use of any investigative technique constituting entrapment is strictly prohibited.

The parties further agree that a police officer at any time during the course of a meeting with any member of the Police Department, where the superior officer feels said meeting could result in

disciplinary action greater than a reprimand, shall be entitled to F.O.P. representation, or attendance of legal counsel of his choice.

ARTICLE XXI - DEPARTMENTAL MEETINGS

The Department may call two (2) departmental meetings annually, only one of which shall be mandatory. Compensation shall be in compliance with the Fair Labor Standards Act (FLSA) and the current collective bargaining agreement.

ARTICLE XXII - RETIREMENT

All Police Officers hired before January 2, 1978, shall be granted retirement under the provisions of this paragraph. Police officers shall be eligible for retirement after twenty (20) years of continuous service. If an officer retires prior to reaching age fifty (50), he shall continue to contribute to the Police Pension Fund an amount equal to that he was paying prior to retirement. At age Fifty (50), the officer will be eligible for retirement pay in an amount equal to fifty percent (50%) of his yearly annual salary at retirement (longevity included).

All Police officers hired on or after January 2, 1978 shall be granted the same pension benefits as those hired prior to January 2, 1978, except that those hired after January 2, 1978, shall be eligible for retirement only after twenty (20) years and six (6) months of continuous service.

All Police Officers hired on or after January 1, 2015 shall be granted the same pension benefits as those hired prior to January 1, 2015, except that those hired after January 1, 2015, shall be eligible for retirement only after twenty (20) years and six (6) months of service and after attaining the age of fifty-five (55).

Effective January 1, 2013, all future retirees shall receive a 2.5% cost of living adjustment (COLA) for life.

It is recommended that police officers electing retirement give at least thirty (30) day notice where possible and, if a bona fide job opportunity arises, at least fifteen (15) days. It is understood that such a requirement is not mandatory and is voluntary on the part of the police officer.

The Union endorses all retirees to elect to receive a 2.5% COLA beginning January 1, 2013.

DEFERRED RETIREMENT OPTION PLAN (DROP)

Effective January 1, 2007, the existing pension plan shall be modified to provide for a deferred retirement option plan (DROP). The Drop shall be designed by the plan actuary in an actuarially neutral manner, which will allow police officers who are eligible for retirement under the Pension Plan to retire while still continuing their employment for a period not to exceed three (3) years. In order to enter the DROP Program, a retirement eligible officer must make the request in writing and specify the date on which he will separate from employment.

During the period of time a member is in the DROP Program, the officer's monthly pension benefit shall be deposited in a self-directed deferred compensation account, such accounts to be mutually agreed to by the parties.

Notwithstanding any other provision of the Agreement, if an officer elects to enter the DROP, the officer will begin participating in the retired member's healthcare plan that is in effect at the time of entry into the DROP. While the member remains in the DROP, the annual contribution towards the cost of retiree health care/prescription coverage shall be deducted in equal amounts from the first (1st) two (2) pays of each month.

EARLY RETIREMENT OPTIONS

1. When an Officer who participates in the City of York Police Pension Fund separates from service of the employer other than by retirement or disability, s/he shall forfeit any benefit accrued under Section 3.3 of the Pension Fund unless s/he has been credited with 12 years of vesting service. An Officer who has been credited with 12 years of vesting service shall be entitled to a vested deferred pension if he files with the Association a written notice of his other intention to vest within 30 days of the date s/he terminates employment or ceases to be a member of the eligible class of employees. Such vested deferred pension shall be equal to the benefit accrued to the date of termination.
2. Notwithstanding the above, if the Officer has been credited with 20 years and 6 months of vesting service such vested pension shall be equal to the normal retirement benefits based upon his average annual compensation at the date of termination if the Officer continues to make contributions to the Plan after termination until s/he attains age 50 in an amount equal to the amount he was contributing at the date of termination, or based upon the average annual compensation s/he would have as of his attainment of age 50 had s/he continued in employment until such time if the Officer continues to make contributions to the Plan after termination until s/he attains age 50 in an amount equal to the amount he would have contributed if s/he continued in employment until such time.
3. Officers hired after January 1, 2015, shall be eligible for this option, except that they must continue to make contributions to the Retirement Plan until reaching the age of 55 and have the pension benefit based upon the final average salary the officer would have attained at the age of 55, or cease contributions and to receive a pension at age 55 calculated using the salary earned at the time of leaving employment.
4. To provide an opportunity and incentive for early retirement any police officers may purchase years of service time up to a total of two years to be applied toward his years of service to qualify for a pension. The formula for calculating the purchase price shall be the same as that used to calculate the purchase price for non-intervening active military service purchase. This opportunity is being offered to police officers who give written notice to the city of their election to exercise this option by December 31, 2002 and whose retirement shall be effective by January 15, 2003. The City may offer this option in the future as an incentive for early retirement in lieu of furloughs or layoffs.
5. The parties agree that, if in the future the Mayor shall determine that it is necessary to permanently reduce the number of sworn police officers on the police force, prior to any police officers being furloughed or laid off, the City will notify the FOP and will offer the same incentives provided in paragraphs 2 above for the purpose of reducing the staff of sworn officers through early retirement rather than furlough or layoff. If, after thirty days following the notice of the intent to reduce the number of sworn officers, a sufficient number of officers

meet the required reduction have not elected to exercise the early retirement options, then the City may proceed with furloughs or layoffs as it deems necessary. (This provision shall not apply to temporary furloughs or layoffs for economic reasons) Not to exceed 90 days.

MILITARY BUYBACK PROVISION

In order to provide an incentive for early retirement, an option to purchase non-intervening active military service buyback provision shall be added to the Police Pension Ordinance and shall be effective January 1, 2004. Officers shall be permitted to buy up to three years of non-intervening military time at an amount calculated pursuant out the following formula: 10% of the average of the first three years of salary from the date of hire as a York City police officer (used in the calculation of pension benefits) multiplied by the years of non-intervening military service up to a maximum of three years, increased by 4.75% cumulative annual interest from the first year of employment as a police officers for the City of York to the effective date of retirement. The payment shall be deposited into the pension fund.

ARTICLE XXIII - PROMOTIONS

The procedures herein set forth in the Article shall govern all promotions in the Police Department.

All promotions to the ranks of Sergeant, Lieutenant and Captain in the Police Department shall be from eligibility lists established by the Civil Service Board. The Board shall govern the composition of the written test, establish guidelines for the oral test and approve those regulations and procedures to be followed in taking tests.

Each candidate for promotion shall be rated by written test, oral test, evaluation and seniority. The relative importance of each rating factor shall be determined by the Board, but the written test shall not be less than 50 percent (50%) of the total score. A seniority allowance of one half ($\frac{1}{2}$) point for each full year of service after completion of the first five years shall be added to the total score. Seniority shall not exceed five points of the total score. Scoring procedure will be in compliance with current Civil Service regulations.

Oral tests are to be given by an Oral Test Board composed of not less than three (3) qualified professional persons in the law enforcement field who have not previously served in a professional capacity with any of the candidates to be tested.

The Police Commissioner or Chief of Police, with the approval of the Mayor, shall select one of the top three officers on the list who are certified by the Board for promotion.

ARTICLE XXIV - ASSIGNMENT

Assignments within the Police Department will be based upon skill and ability. Bid lists will be posted; however, seniority will be considered only when demonstrated abilities are nearly equal.

INVESTIGATIVE DIVISION:

It is hereby determined that position of Detective requires special aptitudes which can best be discovered and developed by job training and observation, and accordingly appointment to such positions shall be made as follows:

- a) Assignment to the Detective unit shall be made by the Police Commissioner or Police Chief upon the written request of the Detective Division Commander.
- b) In the event more than one officer applies for said assignment and it is determined that two or more of those applying possess the same skill, ability and qualifications, then seniority shall be the determining factor.
- c) Management shall not remove a person from the position of Detective for other than just cause.
- d) Completed a minimum of four (4) years of service within the Department
- e) Obtained a rating of satisfactory in the investigations category with an overall rating of not less than very satisfactory in the previous year's performance evaluation.
- f) In the event more than one (1) officer is being considered for said assignment then the final determination will be made in conformance with the guidelines established within the main section of this article.

ARTICLE XXV - PAY FOR ACTING RANK

Any police officer who is assigned in an acting capacity within a vacant position within a higher salary range for a period exceeding fifteen (15) consecutive working days shall be paid the higher salary for the period worked in such acting capacity. Such pay shall be retroactive to the beginning of this assignment.

It is agreed and understood that a police officer assigned to another position shall be expected to carry out the necessary job responsibilities required of other officers of the same rank.

ARTICLE XXVI - INSPECTOR

The assignment of a police officer to the position of Inspector shall not be construed to be a promotion, although because of the extreme responsibility of the position, he/she should receive at least the salary of a Lieutenant. At the discretion of the Police Commissioner or Chief of Police, with the advice and consent of the Mayor, the Inspector may be returned to his/her civil service rank and salary at any time.

The assignment of "Inspector" is a staff position and the individual shall have no line of authority except as it applies to his own staff.

ARTICLE XXVII - STRIKES AND WORK STOPPAGES

During the term of this Agreement, there shall be no strikes, stoppages of work, slowdown, or any direct interference with the City's operations. Any employee participating in such actions may be disciplined or dismissed. Any claim by the City of violation of this section shall be presented to

the President the Union. in writing and if unresolved within five (5) working days shall be subject to the arbitration provisions of this Agreement. The Union agrees that pending the raising, processing and settlement of a contract violation, that there should be no strikes, stoppages of work, slowdowns, or any direct or indirect interference with the City's operations.

The parties agree that this Agreement constitutes the entire contract between them governing the rates of pay and working conditions of the employees in the bargaining unit during the term hereof and settles all demands and issues on all matters subject to collective bargaining, including any demands made by the Police during negotiations.

ARTICLE XXVIII - LABOR/MANAGEMENT COMMITTEE

The Union and the City agree to establish a committee of four (4) consisting of equal representation, and said committee shall hereafter be referred to as the Labor/Management Committee, for the purpose of resolving employee or management problems.

It is understood that either labor or management may request a convening of this Committee, and prior to the convening of the said Committee, either or both parties shall submit to the other, a copy of the agenda, listing the issues they wish to discuss, seven (7) days in advance.

A primary function of this Committee shall be to discuss the application of the rules and regulations for police officers of the City of York and disputes over contract language.

The Union shall, when necessary, have an additional floating member for this committee who shall sit in on the meetings to replace a permanent member who is unable to attend.

Members of this Committee shall be paid for attendance at this meeting if held during their regular work shift.

Both parties will notify each other within thirty (30) days of the signing of this Agreement as to whom will be the respective representatives of the Union and Management.

Any agreements mutually reached by the Labor/Management Committee shall be reduced to writing and shall be attached to, and become part of this Agreement.

ARTICLE XXIX - DUES DEDUCTIONS

The City agrees to deduct the monthly F.O.P. membership dues from the earned wages of each employee within the bargaining unit who requires the City individually, in writing, to do so. The Union hereby certifies that its present amount of membership dues has been fixed pursuant to its constitution and by-laws. In the event that the amount of its dues is hereafter changed, such change will be provided in writing to the City thirty (30) days prior to any change in dues deductions. The Union agrees to hold the City of York harmless against any and all claims, demands, suits and other forms of liability that may arise out of or by reason of action taken by the City of York in connection with the deduction of dues. The term "dues" shall not be deemed to include any fine, assessment, contribution or other form of payment required from the Union members.

Should any change in the deduction of dues result in increased cost to the City's payroll system, the Union will absorb the cost of this change.

ARTICLE XXX - F.O.P. BUSINESS

Effective January 1, 1999, F.O.P. representatives/officers shall be permitted thirty (30) days of time off with pay to conduct F.O.P. business.

ARTICLE XXXI - MEMORANDUMS OF UNDERSTANDING

All Memorandums of Understanding will be attached to this document and enforced upon date of agreement.

ARTICLE XXXII - PROVISIONS APPLICABLE TO NEW POLICE OFFICERS

Employees hired prior to their completion of Act 120 Training who subsequently voluntarily separate from employment with the City for any reason other than death or disability within two (2) years of his or her date of graduation from the Police Academy shall be required to reimburse the City for any all costs paid by the City for the Officer's Police Academy tuition from the date of the Officer's separation from employment. The City may deduct any amount owed for this reimbursement from the Officer's accrued, but unused leave time for which the Officer would otherwise be entitled to compensation.

Employees hired after having completed Act 120 Training who subsequently voluntarily separate from employment with the City for any reason other than death or disability within two (2) years of his or her first day of employment as a certified police officer shall be required to reimburse the City for any all costs paid by the City for the Officer's police vest. The amount owed shall be payable within seven (7) business days from the date of the Officer's separation from employment. The City may deduct any amount owed for this reimbursement from the Officer's accrued, but unused leave time which the Officer would otherwise be entitled to compensation.

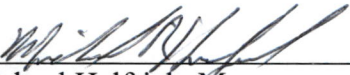
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TERMS OF AGREEMENT


This Agreement shall be effective as of January 1, 2019 and shall continue in full force and effect to December 31, 2022, and thereafter from year to year unless either party to this Agreement seeks to amend this Agreement pursuant to the provisions of Act 111.

It is agreed that other benefits previously enjoyed by the Police under arbitration awards, which awards have not subsequently been changed by agreement of the parties, shall remain as heretofore.

FOR THE CITY OF YORK:

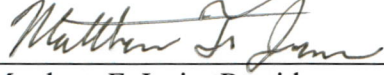


Michael Helfrich, Mayor




AliceAnne Frost, City Controller

FOR THE UNION:



Matthew F. Irvin, President
White Rose Lodge #15 Fraternal Order of Police



Timothy P. Clymer, Recording Secretary
White Rose Lodge #15 Fraternal Order of Police

ATTEST:



Dianna Thompson-Mitchell, City Clerk

Click [here](#) to view agreement

INTRODUCED BY: Sandie Walker

DATE: October 20, 2020

WHEREAS, The White Rose Lodge #15 Fraternal Order of Police (FOP) is the recognized bargaining unit for Police Officers in the York City Police Department; and,

WHEREAS, The City of York and the FOP members of the City of York, are parties to a Collective Bargaining Agreement that expired on December 31, 2018; and,

WHEREAS, though the City and the FOP both negotiated in good faith for a replacement agreement, ultimately an Act 111 Interest Arbitration hearing was held in 2019 with an award being presented in January 2020; and,

WHEREAS, the City and the FOP agree that the Award was fair and beneficial to both parties; and,

WHEREAS, in an unprecedented joint effort, an updated Collective Bargaining Agreement for the period of January 01, 2019 to December 31, 2022 was drafted to incorporate the changes of the January 2020 Arbitration Award into the expired agreement; and,

WHEREAS, the updated agreement for the period of January 01, 2019 to December 31, 2022 inclusive has been ratified by the Union membership, a copy of which is attached hereto; and,

WHEREAS, the agreement must be approved by the Council of the City of York and the Mayor of the City of York recommends that Council approve the agreement;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of York, Pennsylvania, that the Agreement between the City of York and the White Rose Lodge #15 Fraternal Order of Police for the period of January 01, 2019 to December 31, 2022 inclusive is approved. The Mayor is authorized and the Controller is authorized and directed to execute the agreement.

PASSED FINALLY: October 20, 2020

BY THE FOLLOWING VOTE:

YEAS: Rivera, Washington, Ritter-Dickson, Walker Nixon – 5

NAYS: None, _____, _____, _____, _____


Henry Hay Nixon, President of Council

ATTEST:



Dianna L. Thompson-Mitchell, City Clerk

EXHIBIT B

YORKDISPATCH

CONTRIBUTORS | Opinion *This piece expresses the views of its author(s), separate from those of this publication.*

OP-ED: Mayor: Only a court will put Officer Swartz back on York City streets

Mayor Michael Helfrich York City

Published 3:03 p.m. ET Apr. 28, 2021

I hope this letter may serve to educate the people of York on the processes that are required to remove a police officer from the employment of the City of York. Let us start at the beginning.

The Fraternal Order of Police is a union that represents the interests of police officers. That union negotiates a contract with the employer every few years. If there is a dispute with the contract negotiations, or during the period of the contract, the decision on how to resolve that dispute goes to outside parties called arbitrators.

These rules, which are established by state law, must be followed by the City of York. State law and the FOP contract prohibit the termination of a police officer without due process. In addition, after the City of York prepares the case for termination, that case must go to a trial board made up of three York City Police officers. Only if two of the three officers agree with the accusations do we move to the next step.

More: York mayor: Arbitration hearing for Clayton Swartz held Tuesday, ruling could be months away

More: Ex-cop guilty of murder and manslaughter in George Floyd case

More: York City: Police union mulled retaliation against inspector after Swartz probe

More: Chief: Investigation launched to see if York County cop participated in insurrection

Then, that police officer, upon notification of termination, may appeal to the City Council or arbitrator for a second full hearing of the case. If two police officers do not support the charges submitted by the mayor, police commissioner, and internal affairs inspector, then the police officer must remain employed by the City of York.

That's right! Two police officers overrule the city government and the people's elected officials. You may be thinking, "What kind of business allows two employees to override the

president of the company, the head of security, and their investigator?" I believe the answer is no business allows this.

In the case of Clayton Swartz, the trial board did not follow the rules established for trial boards. They did not supply any written findings for the decision that two of the three officers made to find the charges unsubstantiated. That is why I made the decision to appeal to the courts under the Local Agency Law. This law allows otherwise final decisions of local boards, authorities, etc. to be appealed to the courts for not following procedures or issuing a decision that harms the public. I believe this trial board has done both. That is why I approved a second appeal that is now before the court.

In a recent news report, the FOP's attorney stated that I was trying to negotiate the return of Clayton Swartz to duty. This is a half-truth. Knowing that the court may rule against the city, I was trying to negotiate the conditions upon which he would return if we were to reinstate Mr. Swartz for a short period of time. I was negotiating to permanently eliminate these biased and unjust trial boards and to have Mr. Swartz work in an area where he would not be working with the public.

My goals and the points at which I stopped negotiating, are known to the FOP president. I made him well aware that I would never make the decision to allow Clayton Swartz to interact with the people of York City as a representative of our York City Police Department. That is why the negotiations ended. Only a court will put Clayton Swartz back on the streets of York, not this mayor. These are all facts. Some might say, truth.

Now to address some politically motivated fiction by an announced political candidate and his advisors. It was recently stated that Commissioner Moe Robinson left York City because I did not support the decision to terminate Clayton Swartz. Commissioner Robinson, who signed the order to terminate Clayton Swartz, left the York City Police Department for reasons completely unrelated to this case. He and I were in agreement on the termination. If I didn't support the termination, why would I have ordered not one, but now two appeals?

York City does not need more misinformation, particularly from those campaigning to be future leaders of our city. The people of York City have proven time and time again that they will not fall for this type of campaigning.

In this letter, I have written the truth. I am well aware that some do not like the stance that I have taken. But, I must stick with the facts as they were presented to me. Our internal investigation has concluded that Clayton Swartz was not forthcoming and truthful about all of the events surrounding the alleged reenactment of the George Floyd murder. None of us will

ever know exactly what happened that night. There is no video or sound recording. But, the point at which Clayton Swartz forfeited his employment was when he was found by our investigation to not be forthcoming and truthful. That in itself is cause for termination. I stand by that until a court forces me to do otherwise.

— *Michael Helfrich is mayor of York City.*

EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration between

White Rose Lodge #15
Fraternal Order of Police

Case Number: 01-20-0015-5559

and

City of York

Grievance: Officer Clayton Swartz
Reinstatement

OPINION AND AWARD

Hearing Date: April 27, 2021

Briefs Received: June 4, 2021

Arbitrator: Thomas P. Leonard, Esquire

For Lodge #15:

Edward A. Paskey, Esquire
France Paskey, PC

For City of York:

Joseph C. Rudolf, Esquire
Clark Hill, PLC

Procedural History

The City of York (City) and White Rose Lodge #15 Fraternal Order of Police (FOP) are parties to a collective bargaining agreement covering the wages, hours and terms and conditions of employment of the paid police officers of the City of York. The CBA contains a grievance procedure at Article V and a provision for arbitration/mediation at Article VI that sets forth a binding arbitration of unresolved grievances to be conducted in accordance with the Labor Arbitration Rules of the American Arbitration Association.

On September 11, 2020, the FOP filed a grievance on behalf of Officer Clayton Swartz alleging the Police Commissioner refused to take Swartz off unpaid leave despite a Trial Board finding him not guilty on all three counts for which he had earlier been suspended. (Grievance 2020-003)

The grievance proceeded to arbitration. On November 20, 2020, the American Arbitration Association notified the undersigned that the parties had selected him as the arbitrator to hear this grievance.

On December 16, 2020, the AAA notified the parties that an arbitration hearing would be held on March 26, 2021. On February 25, 2021 the Court of Common Pleas ordered the appeal that the City had taken of Trial Board's Findings be remanded to the Trial Board to provide findings of fact and reasons for its decision. The parties agreed to continue this arbitration hearing to April 27, 2021.

On March 8, 2021, the FOP filed a second grievance on behalf of Officer Swartz alleging that the City refused to reinstate Swartz following the remanded Trial Board decision which included findings of fact and reasons for its decision but and still found him not guilty on all three counts for which he had earlier been suspended. (Grievance 2021-001).

On April 5, 2021, the parties agreed to consolidate Grievance 2021-001 for hearing with this grievance. The hearing was held as scheduled, as a virtual hearing on the Zoom platform. The hearing was transcribed by a court reporter.

At this arbitration hearing the parties presented testimony, cross-examined witnesses and introduced documentary evidence. The parties submitted post-hearing briefs, which were forwarded to the arbitrator on June 4, 2021. The parties agreed to the arbitrator's request to extend the date for the issuance of this Award to July 16, 2021.

Issues

Are these grievances arbitrable? If so, did the City violate Article XVIII of the CBA when it refused to accept as final and binding the decision of the Trial Boards' finding Clayton Swartz not guilty when it refused to reinstate him? If so, what shall be the remedy?

Relevant Contract Provision

Article XVIII – Discipline

In the event an employee is suspended, he may request a hearing by the Board of Appeals by presenting his request in writing to the Police Commissioner or Chief of Police within two (2) working days from the date he receives notification of the suspension.

It is understood that an aggrieved officer under the provisions of this Article shall have the right to elect to grieve his suspension through the formal grievance procedure outlined in Article V of this Agreement; however, should an officer

elect one of these two alternatives available to him, he shall be unable to subsequently elect the other alternative to grieve the same suspension.

It is further understood that this Article pertains to suspensions only. The Board of Appeals shall consist of:

- The Police Commissioner or Chief of Police or appointee.
- President of Fraternal Order of Police or appointee.
- Disinterested party.

Each member of the Board's vote shall carry equal weight in the final decision. A written decision shall be given to the employee within five (5) working days after the meeting. *The decision of the Board shall be final and binding on both parties.* Expenses and fees of the disinterested member shall be borne equally by said parties.

(Emphasis added by Arbitrator)

Facts

Clayton Swartz is a police officer for the City of York. On July 16, 2020, the City issued Swartz a Notice of Charges against him based on a complaint from three complainants. These three individuals complained that on May 30, 2020, at a May 30, 2020 graduation party for Swartz' fiancée's sister he engaged in a mock reenactment of George Floyd's death. The charges against Swartz allege that he violated three provisions of the York City Police Department Rules - Unbecoming Conduct, Use of Alcohol off Duty and Truthfulness.

On June 4, 2020 the City placed him on paid administrative leave. In mid July, the City converted the leave to unpaid administrative leave.

The Notice of Charges stated that "[p]ursuant to General Order 2.3 you have the right to a Trial Board hearing or a hearing before the Police Commissioner. "

Swartz elected a hearing before a Trial Board, which held a hearing on August 19, 2020. On September 10, the Trial Board issued its one page "Trial Board Findings." The Board found Swartz "Not Guilty" on all three charges.

On September 10, Police Commissioner Osborne Robinson stated that despite the Not Guilty findings, he was not going to take Swartz off unpaid administrative leave. On September 11, 2020, the FOP filed a grievance on the grounds that the Trial Board found Swartz not guilty on all charges and that Article XVIII of the CBA states that a decision of the Trial Board "shall be final and binding on both parties." (Grievance 2020-003 or "First Grievance")

On September 15, the Police Commissioner formalized his September 10 statement by issuing a letter approving the Trial Board's finding of "Not Guilty" on the charge of Use of Alcohol, but disapproving the Board's findings on Conduct Unbecoming and Truthfulness.

On September 15, the City filed a Petition for Review of the Trial Board Findings (First Petition) with the York County Court of Common Pleas. The Petition sought to overturn the "Not Guilty" findings by way of a Local Agency Law appeal, 2 Pa. C.S. § 751 et seq. The City's appeal had two grounds: (1) that the Trial Board Findings failed to comply with the statutory requirement of the Local Agency Law that the decision be supported by written findings of facts and a reasoned adjudication; and (2) they were not supported by "substantial evidence" in the record, as is required by the Local Agency Law.

On October 14, 2020, the appeal was assigned to Hon. Kathleen J. Prendergast. On February 25, 2021, Judge Prendergast issued a Memorandum Opinion and Order that granted the First Petition, in part, and also dismissed it in part, without prejudice. The Court determined that it had subject matter jurisdiction over the First Petition and that "decisions made by a police disciplinary trial board are subject to appeal under the Local Agency Law." The Court further

held that the Trial Board Findings were defective because they lacked written findings of fact and reasons for the adjudication. The Court struck down the Trial Board findings and remanded the matter back to the Swartz Trial Board so that it “may issue an adjudication that complies with [the Local Agency Law].” The Court additionally held that “[a]ll other issues raised by the parties are moot at this time and dismissed without prejudice.”

On March 4, 2021, the Trial Board issued the Revised Trial Board Findings. The Revised Trial Board Findings, like their predecessor, found Swartz “Not Guilty” on all three charges, but now contained findings of fact and reasons for adjudication.

On March 18, 2021, after the Revised Trial Board Findings were issued following the remand, the FOP filed grievance 2021-001 seeking Swartz’s reinstatement based upon the “Not Guilty” findings and the language of the CBA (Grievance 2021-001 or “Second Grievance”) The Second Grievance similarly contends that Article XVIII of the CBA requires the City to reinstate Swartz to duty based upon language which states the “decision of the Board shall be final and binding on both parties.”

On March 30, 2021, Police Commissioner Michael Muldrow (who succeeded Commissioner Robinson) notified Swartz by letter that he disapproved of the March 4 Revised Trial Board Findings.

On April 2, 2021, the City filed its Second Petition for Review under the Sunshine Act and Local Agency Law (the “Second Petition”) seeking to void the Trial Board’s Revised Findings on the grounds that it violated the Sunshine Act and that the Revised Trial Board Findings remained unsupported by “substantial evidence” in the Reproduced Record, as is required under the Local Agency Law. Swartz filed Preliminary Objections to the Second Petition, which the City answered, and which are not yet fully briefed as of June 3, 2021.

On April 5, 2021, upon the request of the City, the FOP agreed to consolidate the First and Second Grievances into a single matter for the arbitration.

On April 9, 2021, Swartz filed a motion to compel this arbitration and to stay all judicial proceedings on the City's Second Petition because of this grievance arbitration. The City opposed the motion. On April 15, 2021, Judge Matthew Menges, ruling from the bench, ordered that the arbitration could move forward at the Arbitrator's discretion but denied Swartz's motion to stay the Second Petition. In issuing his ruling, Judge Menges specifically stated that "there is no reason that the judicial proceeding cannot continue to move forward in a parallel track to the arbitration proceeding."

Discussion

Counsel could not stipulate to the issues in dispute. Accordingly, the issues set forth above are what I have derived from counsel's respective statements at the beginning of the arbitration hearing.

Arbitrability

The first issue is whether the grievances are arbitrable. In any agreement containing an arbitration clause, there is a presumption of arbitrability. The United States Supreme Court discussed this presumption of arbitration in the Steelworker's Trilogy case of United Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574 (1960). "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation. Doubts should be resolved in favor of coverage." Id at 582-583. Pennsylvania public sector labor law has adopted a similar

presumption of arbitrability. This presumption is applied in cases arising out of Act 111, the Police and Fireman's Collective Bargaining Law, 43 P.S. 217.1 et seq. which governs this case. See, Pennsylvania State Police v. Pennsylvania State Troopers Association (Betancourt), 540 Pa. 66, 656 A. 2d 83 (1995).

Our Supreme Court has held that Act 111 recognizes the importance of the swift resolution of disputes in the police and firefighter work settings and the importance to avoid protracted litigation. See Chirico v Board of Supervisors for Newton Township, 504 Pa. 71, 78-79, 470 and Appeal of Upper Providence, 514 Pa. 501, 511, 526 A. 2d 315, 320 (1987) and Guthrie v. Borough of Wilkinsburg, 509 Pa. 590, 499 A. 2d 570 (1985)

In light of this presumption of arbitrability, it is the burden of the party contesting arbitrability to establish that a dispute does not fall within the definition of a grievance subject to arbitration.

The City contends that the grievances are not arbitrable, since the arbitrator has no jurisdiction to dissolve the automatic stay granted to the City as a matter of law under the Judicial Code, 42 Pa. C.S. 101, et seq especially §5105 (Right to Appellate Review) as well as the Pennsylvania Local Agency Law, 2 Pa. C.S. § 751 et seq.

The City argues that the pending appeal of the Trial Board's decision by the City under the Local Agency Law divests the arbitrator of jurisdiction because the appeal is outside the scope of the provisions of the CBA. The City relies on the Judicial Code, specifically that there is a "right to appeal" from the final order of every government unit. See 42 Pa. C.S. § 5105(a)(2). The City points out that subsection (e) of such provision states that an "appeal shall operate as a supersedeas to the extent and upon the conditions provided or prescribed by law."

42 Pa. C.S. § 5105(e). It argues that this provision means that when the City filed its appeal of the Trial Board's Findings, it operated as an automatic supersedeas that stayed the status quo pending the City's appeal.

The City also argues that the relief that the FOP seeks in the First and Second Grievances is the exact same relief for Swartz that he pursues in his Preliminary Objections seeking dismissal of the Second Petition by the City. These arguments are simply seeking the removal of the automatic supersedeas under Pennsylvania law and must be made in the Court of Common Pleas where the Local Agency Law appeal is pending, and has no relation to the contents of the parties' CBA. The argument is not arbitrable before an arbitrator but is rather a question of law for the court.

The FOP argues that the City failed to cite to case authority for the proposition that its appeal under the Local Agency Law to the Court of Common Pleas serves as an automatic supersedeas of the arbitration or serves as a basis to dismiss the grievance because it is not an arbitrable grievance. The FOP argues that the administration of this grievance arbitration hearing is not governed by the Judicial Code (Title 42). It is governed by the terms of the CBA and the rules of the American Arbitration Association. Even if this grievance arbitration was governed by Title 42, 42 Pa. C.S.A. § 5105 (e) states that "an appeal shall operate as a supersedeas to the extent and upon the conditions provided or prescribed by law." The City has not identified any "extent" or "conditions provided or prescribed by law" that would authorize a lawful supersedeas in a contractual grievance arbitration under Act 111.

Additionally, the FOP has cited to Supreme Court precedent on a similar case where the employer was arguing that another statute removed the arbitrability of a grievance. In City of Arnold v. Wage Policy Comm. Of Arnold Police Dep't, 643 Pa. 28, 717 A.3d 744 (Pa. 2017)

our Supreme Court held that an arbitrator had subject matter jurisdiction to adjudicate a dispute between a police union and city over a widow's pension benefit because the statute at question regarding the payment of the benefit was incorporated into the CBA between the parties. The ruling reversed a decision of the Commonwealth Court concluding that the arbitrator did not have subject matter jurisdiction over the dispute because it involved the decision of a police pension board, which it characterized as a local agency. City of Arnold v. Wage Policy Comm. of City of Arnold Police Dep't, 138 A.3d 719, 726 (Pa. Cmwlth. 2016). In overturning the ruling of the Commonwealth Court, the Supreme Court stated that the lower court failed to consider that specific circumstances of the case, in which the pension benefits at issue were incorporated into the CBA and both Act 111 and the CBA provided that any disputes would be resolved through arbitration.

The FOP argues that the present case is analogous to the City of Arnold. The FOP argues that the effect of the trial board's verdict obviously relates to the terms and conditions of employment for Swartz (i.e. compensation, hours, working conditions, and discipline); and that the right to a trial board (and its final and binding nature) is contained within the express terms of the CBA. Therefore, subject matter jurisdiction properly lies with this Arbitrator to decide the dispute between the parties regarding Officer Swartz.

Having reviewed the arguments on the automatic stay, I must conclude that the City has not rebutted the presumption that the grievances are arbitrable. There is nothing from the Court directing me to stay the arbitration. Judge Menges' bench order states that the arbitration could proceed. The City has not set forth how the appeal meets the conditions of Section 5105 (e). The City does not cite to a specific statute granting the City an automatic stay for an appeal of a police trial board finding. Finally, I am guided by City of Arnold, where the Supreme

Court has explained the right to arbitrate a grievance even when another administrative agency could address an issue related to the grievance. Accordingly, I will address the merits of the grievances.

The Merits

Initially, I will address the City's request that an order in the arbitration be held in abeyance while the Local Agency Law Appeal runs its course. It argues that the Court should be allowed to rule upon the Second Petition for Review so that the City, should it lose in the arbitration case but win in the Local Agency Appeal, is not put in the position of having to recoup money paid in error to the Swartz.

I am not going to hold this arbitration case in abeyance. It is inconsistent with the role for which the parties have retained my services, to determine whether the City violated the CBA. Also, holding the case in abeyance would impact Swartz's interests more than the City's interests. During the pendency of the Local Agency Appeal, no matter how long it takes, he would be without City employment and the wages and benefits from the employment. (I do note that the City asserts that it has maintained his medical benefits during this time.)

Turning to the merits, the FOP alleges that the City has violated the CBA by failing to follow the Trial Board's finding Swartz Not Guilty on the three charges and reinstating him from unpaid administrative leave. The FOP has the burden of proving that the City is acting in violation of the CBA. The FOP argues that it has met its burden by pointing to the clear language of CBA, at Article XVIII, that the decision of the Trial Board is "final and binding on both parties."

The City responds that the FOP's argument ignores the Court's ruling that the Local Agency Appeal could proceed. The Court of Common Pleas has twice upheld the City's right to file a Local Agency Law appeal of the Trial Board. If the arbitrator sustained the FOP's appeal and reinstated Swartz before the Court has disposed of the Second Petition, this would demand an interpretation of Article XVIII that is both (1) contrary to law because it violates the City's now-settled legal right of appeal and (2) "harsh, absurd or nonsensical" because it permits an arbitrator to effectively decide the City's lawful appeal before the Court of Common Pleas.

The FOP's argument is simple and straightforward. First, the language in Article XVIII is clear that the Trial Board decision is final and binding. For the City to refuse to follow the Trial Board findings ignores this clear language that the parties have bargained. For this reason alone, the grievances should be sustained.

Second, in addition to the clear language, the FOP introduced testimony from four witnesses as to how the parties have applied the language. The language at issue in Article XVIII, that the findings of the Trial Board are "final and binding," has been in the parties CBAs since 1976. Retired Officer Dennis Smith, who was on the bargaining team when the clause was made part of the CBA, testified that its purpose was to avoid costly and time consuming arbitration of discipline. To his knowledge, since 1976, neither the City nor the FOP has appealed a decision of the Trial Board directly to the Court of Common Pleas until the Swartz case. Lt. Timothy Clymer, who is the FOP's Recording Secretary, corroborated Smith's testimony. He testified that his review of all the Trial Board decisions involving FOP members came up with no cases where the City or the FOP directly appealed a Trial Board decision to court. Inspector Michael Davis and former Chief of Police Tony Bankert gave similar testimony on this issue.

The City presented no witnesses to rebut the FOP's witnesses' testimony on this point. The City did attempt to use the cases of officers REDACTED (20^{REDACTED}) and REDACTED (20^{REDACTED}) to contradict the FOP's argument. However, the cases are easily distinguishable in their procedural posture and history from the present case. In neither of these cases did the FOP appeal the Trial Boards' findings directly to court or file a grievance directly against the Trial Boards findings.

Third, the FOP argues that if the City's position on the merits prevailed, it would nullify a longstanding provision of the CBA that has been in place for 45 years and that has provided for the expeditious and efficient resolution of police officer discipline disputes. It would replace it with lengthy and costly court appeals. This change would be disruptive to the harmonious labor relations that is the purpose of Act 111.

Upon review of all of the evidence and the parties' arguments, I must conclude that the FOP has made a persuasive argument for finding that the City violated Article XVIII of the CBA when it refused to accept as final and binding both decisions of the Trial Board finding Clayton Swartz not guilty when it refused to reinstate him.

Accordingly, the following Award will be entered.

Award

Grievance 2020-003 and Grievance 2021-001 are sustained. The City should reinstate Officer Clayton Swartz to full duty and make him whole for the wages lost as a result of the City placing him on unpaid administrative leave, and for any lost seniority, benefits, and other emoluments of employment due to him under the CBA that may have resulted from the City's refusal to accept the Not Guilty verdicts in the Trial Board Findings of September 10, 2020 and March 4, 2021.

The Arbitrator will retain jurisdiction for sixty (60) days to resolve any disputes over the implementation of the Award.

July 16, 2021
Harrisburg, Pennsylvania

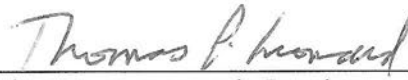

Thomas P. Leonard, Esquire

EXHIBIT D



Aimee >

Is there an official
police report on
the Swartz inci-
dent?

Like is there an
active investiga-
tion

AIMEE
LEANS
6/4/20

Jun 4, 2020, 2:46 PM



iMessage



York County Prothonotary Civil E-Filed - 10 Jan 2022 04:23:32 PM



< 165



Aimee >

[CITY LETTERHEAD]



June 4, 2020

VIA HAND DELIVERY

Officer Clayton Swartz

[INSERT ADDRESS]

Re: Notice of Administrative Leave

Dear Officer Swartz:

The Department has received several complaints about your off-duty conduct at a party on May 30, 2020. Based upon the seriousness of the allegations reported to the Department and your ability to effectively serve as a City of York Police Officer while the Department's investigation into those allegations is pending, you are hereby placed on administrative leave, effective immediately and until further notice.

While on administrative leave, you will continue to receive payment of your normal salary even though you will not be required to report for duty. During this period of administrative leave, you are relieved from performing any and all duties as a City of York Police Officer, and you are directed to refrain from acting as, identifying, or holding yourself out as a Police Officer. You are further directed to turn over your weapon, MPOETC ID Card, Badge, keys and [FILL IN ANY OTHER PROPERTY]. Please note that these items will be reissued to you if you return to active duty. You are also directed to stay away from the Police Department unless directed by me.

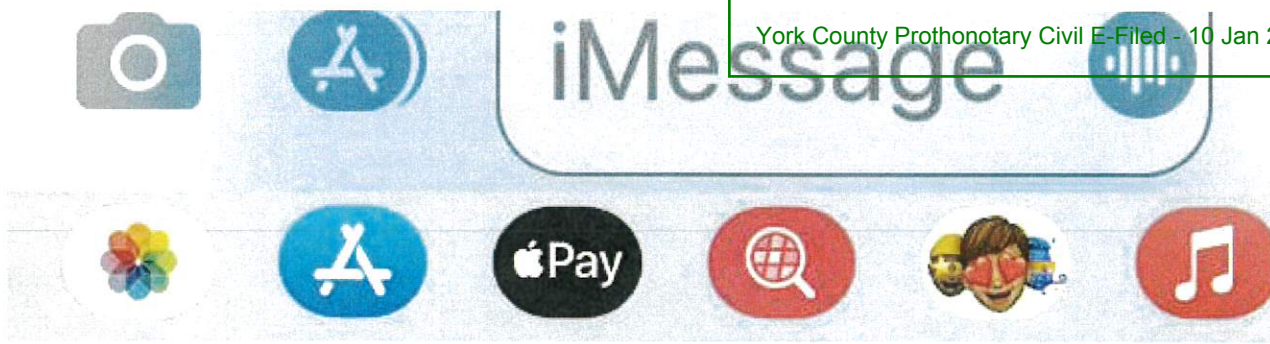
Finally, while you are on administrative leave, you must remain available to appear for employment interviews during normal working hours. Accordingly, to the extent that you envision being outside of the area during normal work hours from Monday through Friday, you are further ordered to provide a contact cell phone number and personal email address where you can be reached to report for an interview for which you will receive adequate notice. Until then, I expect your complete compliance and cooperation with this directive. You may address any questions regarding this order directly to me but must do so in writing.

Sincerely,

Commissioner Osborne Robinson III
City of York Police Department

cc: Michael Irvin, FOP President

Please only use





Aimee >

Please only use
middle paragraph
info. This pic is
not for public.
Only for your info.

Last comment,
the pay in paid
leave is required
by the US
Supreme Court





165

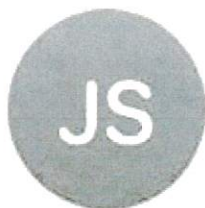


Aimee >

Only for your info.

Last comment,
the pay in paid
leave is required
by the US
Supreme Court
decisión Cleve-
land Bd of Ed vs
Loudermill 1985

EXHIBIT E



Jim >

Jim Sehnitz

Jun 6, 2020, 10:52 PM

Thank you. I know, about the riots v today. I have been thinking about that this whole time.

You will be well remembered



Text Message



York County Prothonotary Civil E-Filed - 10 Jan 2022 04:23:32 PM





165



Jim >

remembered
compared to
Charlie Robertson

Or whatever the
fuck his name
was

Well, at least for a
few days.



Text Message

York County Prothonotary Civil E-Filed - 10 Jan 2022 04:23:32 PM





165



Jim >

few days.

Nope

Your wikipedia
will be great

We'll see what I
have to decide
about Officer
Swartz.



Text Message

York County Prothonotary Civil E-Filed - 10 Jan 2022 04:23:32 PM





Jim >

Swartz.

Do you have
good proof yet?

None

That sucks

That's confiden-
tial



Text Message



York County Prothonotary Civil E-Filed - 10 Jan 2022 04:23:32 PM





Jim >

trial

No problem

I just hope there
is strong evi-
dence one way or
the other

Back to answer-
ing messages on
FB. Have a

VERIFICATION

I, Edward A. Paskey, Esquire, do hereby verify that I am the attorney of record for the pleading party herein, and that the facts set forth in the foregoing Petition are true to the best of my knowledge, information and belief, upon information supplied by Plaintiff/Petitioner. The verification of Plaintiff/Petitioner could not be obtained in a timely fashion in order to prevent expected harm toward the Plaintiff/Petitioner.

I understand that false statements made herein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

FRANCEPASKEY

Dated: 1/10/22

BY: /s/Edward A. Paskey
Edward A. Paskey, Esquire
Supreme Court I.D. PA 80304
2675 Eastern Boulevard
York, Pennsylvania 17402
(717) 757-4565

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

FrancePaskey

Date: January 10, 2022

/s/Edward A. Paskey
Edward A. Paskey, Esquire
PA Atty. ID No. 80304
2675 Eastern Boulevard
York, PA 17402
Attorney for Plaintiff, Clayton Swartz

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION

CLAYTON SWARTZ,	:	
Plaintiff	:	No. 2021-SU-1642
	:	
V.	:	CIVIL ACTION
	:	
THE CITY OF YORK and	:	
MICHAEL HELFRICH, in his capacity	:	
as the Mayor of the City of York,	:	
Defendants	:	

CERTIFICATE OF SERVICE

AND NOW, to wit, this 10st day of January 2022, I Edward A. Paskey, Esquire, do hereby certify that I have this date served a copy of the foregoing Second Amended Complaint by E-mail and United States, First Class, Postage Prepaid, addressed as follows:

Mr. Joseph Rudolf, Esq.
Clark Hill
Two Commerce Square
2001 Market Street
Suite 2620
Philadelphia, PA 19103

Respectfully Submitted:

FRANCEPASKEY

/s/Edward A. Paskey

Edward A. Paskey, Esquire
Attorney ID No. PA 80304
2675 Eastern Blvd.
York, PA 17402-2905
Phone: (717) 757-4565