

*In the Matter of Arbitration Between:*

AFSCME DISTRICT COUNCIL 33,  
PHILADELPHIA CORRECTIONAL  
OFFICERS UNION, LOCAL 159  
AND LOCAL 1637

and

THE CITY OF PHILADELPHIA

Case #PERA-A-14-192-E  
(Act 195 Interest Arbitration)

Hearing Dates: 9/18/14;  
10/9, 10/17/14;  
11/12, 11/14/14;  
12/16, 12/18/14; 1/13/15

Panel of Arbitrators

Thomas W. Jennings, Esq.  
*JENNINGS SIGMOND*  
Union-Appointed Arbitrator

Kenneth M. Jarin, Esq.  
*BALLARD SPAHR*  
City-Appointed Arbitrator

Walt De Treux, Esq.  
*Neutral Arbitrator and Panel Chair*

Presenters

For the Union:

Stephen Holroyd, Esq.  
*JENNINGS SIGMOND*

Samuel Spear, Esq.  
*SPEAR WILDERMAN*

For the City:

Shannon D. Farmer, Esq.  
Brad Betack, Esq.  
*BALLARD SPAHR*

Kay Kyungsun Yu, Esq.  
Joseph Zaffarese, Esq.  
*AHMAD ZAFFARESE & SMYLER*

### Introduction

The City of Philadelphia and AFSCME District Council 33 are parties to a collective bargaining agreement governing the wages, hours, and working conditions of the City's non-professional employees. Those employees include statutory guards under Pennsylvania's collective bargaining laws for non-uniformed public employees (Act 195 or PERA). Within District Council 33, Local 159 and Local 1637 represent these groups of employees.

The prior contract between the parties that covered statutory guards had a termination date of June 30, 2014. The parties were unable to reach agreement on a new contract. The Union demanded interest arbitration, and the present Panel of Arbitrators was convened under the authority of Act 195.

Hearings were held on September 18; October 9 and 17; November 12 and 14; December 16 and 18, 2014; and January 13, 2015, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. Both parties filed post-hearing briefs, and the matter was submitted to the Panel of Arbitrators for a decision.

The Panel was tasked with considering numerous issues presented by both the Union and the City and reviewing thousands of pages of exhibits submitted in support of the parties' respective positions. The Panel engaged in several Executive Sessions to consider the evidence and arguments of the parties.

The Panel recognizes that the City of Philadelphia, geographically and politically coterminous with the County of Philadelphia, is required to annually

adopt a balanced budget and to annually adopt a Five Year Financial Plan for continued solvency.<sup>1</sup> In reaching its decision, the Panel gave serious consideration to the evidence presented on the City's budget, its Five Year Plan, and its "ability to pay" arguments. The Panel also considered the challenges faced by the employees in the covered positions in a stressful, difficult job and weighed their compensation and working conditions relative to other public safety employees. The following Award represents the Panel's efforts to achieve a fair balance between the City's financial realities and the interest of the bargaining unit employees in securing fair wages and working conditions for the challenging and often dangerous work they perform.

---

<sup>1</sup> The City is subject to the Pennsylvania Intergovernmental Cooperation Authority for Cities of the First Class Act ("PICA"), 53 P.S. §12720.101 *et seq.* and is controlled by the mandates of PICA. Those mandates specifically include requirements and conditions pertaining to interest arbitration awards issued pursuant to an Act of June 24, 1968 (P.L. 237, No. 111, 43 P.S. §217.1 *et seq.* ("Act 111"), a statute providing for interest arbitration between certain governmental units and public safety employees, not including correctional officers. There is no express statutory mention of Act 195 in PICA.

## Award

### 1. Term

This Award shall be effective from July 1, 2014 through June 30, 2017.

### 2. Wages

- a) Except as provided below, the base wage rates for all classifications covered by this Award shall be increased according to the following schedule:

July 1, 2014.....3.0%

July 1, 2015.....3.25%

July 1, 2016.....3.25%

- b) Effective January 1, 2016, all covered classifications shall receive an equity adjustment of \$600. The equity adjustment shall be added to their base wage rates.
- c) Upon final affirmance of the Hearing Examiner's decision in Case PERA-U-175-E, Security Guards employed by the City of Philadelphia at the Philadelphia Juvenile Justice Services Center (JJSC) shall be covered by this Award; provided, however, the Security Guards at the JJSC shall not receive the increases provided in (a) above or be subject to any other term of this Award for any date prior to the date that the Hearing Examiner's decision becomes final, as those employees continue to be covered by the District Council 33 master agreement up until that date and receive the benefits negotiated by District Council 33 under that agreement.

### 3. Longevity

Effective January 1, 2015, covered classifications shall receive longevity pay according to the following schedule:

<u>Years of Service</u>	<u>Percent</u>
3 through 4 years	2.25%
5 through 9 years	3.5%
10 through 14 years	3.75%
15 through 19 years	4.25%
20 through 24 years	4.75%
25 through 29 years	5.25%
30 years and above	5.5%

### 4. Rank Differential

Effective July 1, 2015, the differential in base wage rates between Correctional Officers and Correctional Sergeants shall be set at 10%. Effective July 1, 2015, the differential in base wage rates between Correctional Sergeants and Correctional Lieutenants shall be set at 10%.

### 5. Uniform Maintenance Allowance

Effective July 1, 2015, existing uniform maintenance allowance for covered employees shall be increased by \$50 per year.

### 6. Tool Allowance

Effective July 1, 2014, Prison Electronic Technician and Prison HVAC Mechanic shall receive the same uniform maintenance allowance and tool allowance as Prison Trades Worker II (Maintenance Mechanic).

### 7. Attendance/Leave

(a) (i) Employees on the Excessive Use of Sick Leave List shall not earn sick leave until they have been removed from the list.

(ii) Employees shall be placed on the Excessive Use of Sick Leave List after using six (6) uncertified days in full or partial day increments in any 12 month period.

(iii) An employee who has been notified that he or she is required to remain at work as a result of mandatory overtime and who leaves early due to illness on that day will be charged with an uncertified day unless the employee provides a doctor's note for the missed time.

(iv) Effective January 1, 2016, the practice of granting "T Time" at the Philadelphia Prison System ("PPS") shall be abolished. Any employee who calls out without paid leave and without being granted another form of approved leave (e.g., FMLA) will be considered AWOL and subject to disciplinary action under the AWOL policy.

(b) At the end of the calendar year, employees can sell back unused vacation time up to a maximum of  $\frac{1}{2}$  of the employees total vacation leave time earned during the calendar year. Only vacation leave time earned during the calendar year can be sold back to the City at the end of that same calendar year. The vacation time sold back to the City will be paid at 50 cents on the dollar.

(c) Employees can sell back unused Administrative Leave days at the end of the fiscal year, which will be paid at 50 cents on the dollar.

## **8. Discipline**

(a) An employee and his/her Union representative shall be notified in writing of any alleged work rule violation within fourteen (14) calendar days of the date the City first determines or reasonably should have determined that an alleged

work rule violation by that employee occurred; provided that, in the case of allegations that are the subject of a confidential investigation by law enforcement or another governmental entity or an investigation by internal affairs that may lead to a criminal investigation, the notice of the alleged work rule violation will be provided within fourteen (14) calendar days of the conclusion of the investigation so as not to compromise the confidentiality of the investigation.

(b) At the sole discretion of the Appointing Authority (i.e., the Commissioner of the PPS, the Commissioner of the Police Department, or the Executive Director of JJSC, as appropriate based on the location of the covered employee), all or a portion of a disciplinary suspension may be held in abeyance for a period of one calendar year from the date of imposition of the disciplinary penalty. If the employee maintains a clean work record during that year, the portion of the discipline held in abeyance will be removed from the employee's record and no longer considered. If the employee commits any additional disciplinary offenses during that year, the employee will be required to serve the portion of the discipline held in abeyance, in addition to any new penalty imposed for the additional offenses. Suspensions which are placed in abeyance in whole or in part are not subject to the grievance procedure at any time.

#### **9. Layoffs**

Employees will be covered by Civil Service Regulation 16.012 and City Council Ordinance 140206, which respectively change the calculation of layoff scores to use the longevity date in the City's HRIS system for the calculation of

seniority credit and amend the DROP ordinance so that temporary layoffs do not constitute a break in service.

#### **10. Probationary Period**

(a) The initial probationary period for all employees hired after the date of this Award shall be increased to 9 months.

(b) Employees who are on leave, regardless of reason, whether paid or unpaid, for longer than 7 calendar days during a probationary period shall have their probation extended by the length of the leave.

#### **11. Employee Safety**

(a) The City agrees to establish a health and safety committee at each PPS facility. The committee shall be composed of an equal number of representatives from the Union and the Employer. The purpose of the committee shall be to investigate present or potential safety hazards and to make recommendations for corrective action. Unless otherwise agreed to by the parties, the committees shall meet once each quarter unless a clear and present danger warrants a special meeting. The committees shall be chaired by the Prison Safety Officer and shall establish their own operating procedures, which shall be in conformance with the guidelines of the Risk Management Division. Union representatives on the committee shall be given a reasonable amount of time during working hours to investigate safety and health hazards brought to the committee and to serve on the committee.

(b) The City shall provide up to six fully paid psychotherapy visits per incident for any covered employee involved directly or indirectly in an act of serious

bodily injury, death, major disturbance or hostage taking, who requests such services. The method of administering this coverage shall be jointly established consistent with the following criteria:

(i) The parties will mutually agree to the psychologists or psychiatrists to be used from among those under contract with the City, but the records of these visits will not be considered workers compensation or Regulation 32 records;

(ii) The employee should experience no out-of-pocket expenses.

#### **12. Bid Posts**

The following language shall be included as a new Article in the collective bargaining agreement:

(a) A bid post is a post that is desirable because it involves considerably reduced and/or limited inmate contact and control, and consequently, involves less of the demands normally associated with exercising care, custody and/or control over inmates for an eight (8) hour shift. A bid post shall also include a post in which the work hours and/or days of such post may be those typically considered as a premium (e.g., day shift, Monday through Friday), but not necessarily operated on those hours and/or days.

(b) Existing positions satisfying the above criteria shall be mutually identified in writing by the parties at each institution within three (3) months of the issuance of this Award. Disputes regarding the application of this criteria and any other dispute regarding the implementation of this language shall be resolved by direct reference to the Panel issuing this Award. There shall be one proceeding to

resolve open issues regarding bid posts and existing positions, which shall be invoked by the Union within one hundred and twenty days (120) after the issuance of this Award.

(c) Upon identifying all bid posts pursuant to this procedure, all such bid posts shall be posted, bid and filled by the senior qualified bidder. The parties shall mutually determine the qualifications for each bid post in accordance with the procedure in (b) above.

(d) In the event that a new assignment that satisfies the criteria for a bid post is created after the issuance of the Award, and the parties are unable to agree whether the new assignment constitutes a bid post, the Union may pursue the dispute by submission to the grievance and arbitration process set forth in the collective bargaining agreement.

(e) The City agrees to post any future vacancy in a bid post 15 days prior to the filling of such vacancy unless an emergency requires a lesser period of time. Employees will be given an opportunity to bid on such a vacancy and the position shall be granted to the qualified senior bidder.

(f) The City must have good reason(s) for the permanent removal of employees from their bid posts. The parties shall determine the procedure to be followed in the event the City desires to remove an employee from a bid post. Any dispute over those procedures must be submitted in accordance with the timelines established by (b) above.

(g) Where an employee's actions, or lack thereof, are so serious that they cannot be tolerated, he/she will be permanently removed from the post effective

immediately. The employee will be advised of the reasons for removal in writing. In the event of such removal, the Union retains the right to file a grievance and process it to arbitration.

(h) The City may temporarily remove an employee from a bid post in the event of an emergency situation, during those periods of inactivity (down time) which may be inherent in some posts, and for other reasons determined by the parties pursuant to (f) above. Employees can be assigned to a different post for the period of emergency or inactivity.

### **13. Consolidated Contract**

(a) Within one hundred eighty (180) days of the adoption of a consolidated District Council 33 master agreement, the parties shall meet to discuss the adoption of a single consolidated contract based on the District Council 33 master agreement as modified where appropriate for the different categories of employees covered by this Award. In the event a consolidated District Council 33 master agreement is not adopted within one (1) year of the issuance of this Award, the parties shall meet to discuss the adoption of a single consolidated contract for the employees covered by this Award.

(b) As part of this process, the parties shall determine which provisions shall apply to covered employees working at the Philadelphia Juvenile Justice Services Center and in the Police Detention Unit.

(c) The Panel shall retain jurisdiction of this matter to resolve any disputes over the implementation of this Award and the consolidation of the contract.

**14. Unaffected Provisions**

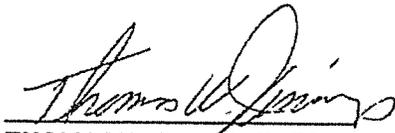
All remaining terms and conditions of employment not expressly modified by this Award or previously agreed to by the parties in negotiations shall remain "as is" through June 30, 2017. All proposals of the parties not included in the Award are denied.

**CONCLUSION**

It is understood that the signature of the Arbitrators attest to the fact that the contractual changes represent the majority opinion and Award on each issue by the members of the Arbitration Panel.

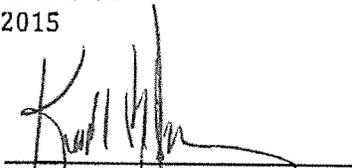


WALT De TREUX  
Neutral Arbitrator and Panel Chair  
Dated: March 23, 2015



THOMAS W. JENNINGS, ESQ.  
Union -appointed Arbitrator

*Dissent as to 917*



KENNETH M. JARIN, ESQ.,  
City-Appointed Arbitrator

*Dissent as to 712 Bid Posts*