

American Arbitration Association
Case Number: 01-20-0003-7575

-----X
In the Matter of the Arbitration

Between

AFSCME DISTRICT COUNCIL 47
"UNION"

OPINION

-and-

AND

CITY OF PHILADELPHIA
"CITY"

AWARD

Grievance 2187-20-18
Discharge – Bangorn Banhdith
-----X
BEFORE: Randi E. Lowitt, Esq., Arbitrator

APPEARANCES

For the City

Cara Leheny, Esq.

For the Union

Jessica Brown, Esq.
Willig Williams Davidson

Pursuant to the provisions of the collective bargaining agreement between THE CITY OF PHILADELPHIA (hereinafter, "the City") and AFSCME DISTRICT COUNCIL 47 (hereinafter, "the Union"), the above-named arbitrator was designated by the American Arbitration Association as Arbitrator to hear and decide the matter in dispute between the above-identified parties.

Hearings were held by ZOOM, with consent of all parties, on September 9, 2020 and December 10, 2020. The parties were represented by counsel and were afforded a full and fair opportunity to conduct direct and cross examination of sworn witnesses, to present relevant evidence and to argue their relative positions. The record was closed after receipt of written briefs, February 24, 2021. All matters, while not necessarily cited in this Opinion and Award, have been considered. All Claims not expressly granted herein are denied.

The parties arranged for a court reporter for the hearings. That record was made available to the parties and to the Arbitrator. Any additional notes taken by the Arbitrator and all materials attendant to the arbitration will be destroyed or deleted at the time this Opinion is disseminated.

The Issue:

Did the City have just cause to terminate Ms. Bangorn Banhdith

If not, what shall be the remedy?

BACKGROUND

Prior to the start of the hearing, the parties stipulated to the following facts:

AFSCME DC 47, Local 2187 (Banhdith) v. City: Stipulations

1. The City of Philadelphia (“City”) and AFSCME District Council 47, Local 2187 (“Union” or “Local”) are parties to a collective bargaining agreement that requires the City to have “just cause” to impose disciplinary action, including discharge. J-1 at § 16(A) (p. 18).
2. The City requires employees in the Civil Service to establish a “bona fide residence” in the City within six months of hire and to “maintain [a] bona fide residence in the City” throughout employment. The City Controller may require proof of the residency of any employee in the civil service. *See* J-4 at Phila. Code § 20-101(1) & CSR 30.01.
3. The City Controller (“Controller”) is an independently elected official. It is “the independent financial watchdog for the City,” and its mission is “to promote the effective and efficient operation of Philadelphia government by identifying cost savings, recommending best practices and modernization, and exposing fraud and mismanagement.” <https://controller.phila.gov/>
4. The current Controller is Rebecca Rhynhart, who took office January 1, 2018.
5. Bangorn Banhdith was hired by the Controller’s Office on August 14, 2006 as an Auditor Trainee. On December 22, 2014—after successive promotions to Auditor and Auditor 2—she was promoted to Auditor 3.
6. Ms. Banhdith has held a civil service position throughout her employment with the City.
7. Upon hire, Ms. Banhdith provided [REDACTED], Philadelphia, PA 19101 as her address.
8. Her parents, N [REDACTED] B [REDACTED] and B [REDACTED] L [REDACTED], are the sole owners of the home on [REDACTED] Street.
9. On August 19, 2008, Ms. Banhdith married S [REDACTED] A [REDACTED], who is the sole owner of a home with an address of “[REDACTED], West Chester, PA.”

10. On August 11, 2010, Ms. Banhdith signed and dated a “Confirmation of Residency Requirement” confirming that she maintained residence at the [REDACTED] Street address.

11. In early 2017, the Controller’s Office received a complaint that Bangorn was residing in West Chester, PA, and was in violation of the civil service residency requirement. *See J-5 (2019 Investigation) at Appx. A.*

12. The Controller’s Office initiated an investigation. During the investigation, it was determined that Ms. Banhdith slept at her parents’ [REDACTED] Street home three nights a week (Monday-Wednesday) and the remaining four nights at her husband’s [REDACTED] Lane, West Chester home. It was further determined that Ms. Banhdith was joint owner of [REDACTED], a restaurant in Malvern, PA, where she also worked. *Id.*

13. The lead investigator for the 2017 investigation was Joseph Purul, now-Investigator Administrator for the Controller’s Office.

14. From Oct. 13, 2017 through October 15, 2017, Ms. Banhdith was suspended for three (3) days for failure to properly list her sources of income and financial interests on her Pennsylvania Statement of Financial Interests form, and also for failure to disclose income to the Philadelphia Department of Revenue. *See J-8.*

15. On June 3, 2019, the Investigations Unit notified Ms. Banhdith that her residency was under investigation and requested an interview.

16. On June 6, 2019, Deputy Controller, Investigations Unit, Terri Domsy interviewed Ms. Banhdith in the presence of a union representative, Anthony Coco. Joseph Purul, Investigator Administrator for the Controller’s Office was also present.

17. The interview was adjourned at Ms. Banhdith’s request.

18. On July 2, 2019, the interview resumed. In addition to Ms. Domsy, Ms. Banhdith, Mr. Purul, and Mr. Coco, Cathy Scott, then a Local 2187 staff representative, also attended.

19. During the investigation, it was determined that Ms. Banhdith typically slept at her parents’ [REDACTED] Street home four nights a week (Monday-Thursday) and the remaining three nights at her husband’s [REDACTED] Lane, West Chester home. *See J-5.*

20. It was also determined that Ms. Banhdith is registered to vote in Philadelphia. *Id.*

21. On October 25, 2019, Ms. Domsy forwarded a report of the investigation to First Deputy Controller Kellan White; Ms. Banhdith also received a copy. *See* J-6.
22. On November 7, 2019, the Controller's Office held a hearing on the investigation's conclusions.
23. On December 10, 2019, Mr. White informed Ms. Banhdith that he accepted the recommendation of the Controller's General Counsel and Chief of Staff that she be suspended for 30 days with intent to dismiss. J-7 at City73.
24. On January 1, 2020, Ms. Banhdith was served with a Notice of Suspension from January 13, 2020 through February 11, 2020. J-7 at City74.
25. On January 13, 2020, AFSCME District Council 47, Local 2187 filed a grievance contending that Ms. Banhdith had been terminated without just cause. J-2.
26. On February 1, 2020, Ms. Banhdith was served with Notice of the Controller's Intention to Dismiss her and Notice of her Dismissal, effective February 12, 2020. J-7 at City75.
27. On February 27, 2020, the Mayor's Office of Labor Relations held a Step IV grievance hearing.
28. On March 17, 2020, following denial of the grievance, the Local filed a demand for arbitration. J-3.

Mr. Joseph Purul is an Investigations Administrator for the City, working in the Controller's office, in the Investigations Division for thirty six (36) years, reporting directly to Terri Domsy, the Deputy Controller of the Investigations Unit. (23-26).¹ Mr. Purul has been involved in two, separate investigations into Ms. Banhdith's residency, the first in 2017 and the second in 2018. As the investigator, he wrote a report for the 2017 case,

¹ Numbers in parentheses correspond to appropriate page numbers in the transcripts. When indicated as a 2-designation, the page number is from the second transcript, which began with page 1 again, not with numbers following the prior transcript.

and in his current role, he coordinated the investigation with the investigator. With regard to the 2017 investigation, Ms. Banhdith was called into a meeting with Mr. Purul and was asked to physically show Mr. Purul her purported residence in Philadelphia, on [REDACTED] Street. Mr. Purul did accompany her to the residence. (27-29).

When we arrived at the property, she knocked on the door, the screen door. She didn't use a key, didn't appear to have a key. I would think she would have used it to get in. An older woman answered the door who she introduced me as her mother. We went inside the house. And she spoke with her mom for a few minutes. And then I asked her, you know, where did you stay. So, she took me into a small room. She said that was her room. Bedroom was a futon with a chest. The chest had what appeared to be a lot of sweaters. Didn't look like regular clothing in it. There was a small stand, I guess you would call it, with a little purple stereo. There was a picture of her and someone. And I asked who that was. She said it was my husband. And, I said, where is he. And she said, at our house in West Chester. When we were leaving, I noticed it was mail on the chest by the front door. I said – it was a bag that was hanging I believe on the door knob of the chest. And I asked if I could see, because there were letters inside. They were in a yellow plastic bag that you would get from a supermarket. (29-30).

Mr. Purul was asked to review the investigative report prepared in 2018, which report references the 2017 investigation, as well. (Joint Exhibit #5). He also reviewed pictures he had taken at and of the [REDACTED] Street address in 2017. Another photograph showed the home in West Chester, Pennsylvania, on [REDACTED] Lane, where investigators saw Ms. Banhdith coming and going from the nearby, local train station. (31-37).

Mr. Purul explained that the investigation in 2017 “was that case we worked on concerning her residency...” and that investigation revealed that Ms. Banhdith and her husband owned a restaurant near the home in West Chester, which led to questions about her required financial statement. Ms. Banhdith was interviewed for the 2017 investigation, and the investigator who interviewed her gave the report to Mr. Purul. (38-40) “The conclusion was that Bangorn Banhdith was not adhering to the residency rule as a civil employee, we found her to be at both residences, in the City and outside the City. And also found that she wasn’t reporting her taxes and didn’t request outside employment, and also did not complete her state and financial statement truthfully.” (40). Mr. Purul then explained that, after the election in 2017, there was a change in administration within the City. After the new Controller took office, in 2018, Ms. Domsy “asked me if I knew anything about the prior investigation concerning Bangorn Banhdith and residency...she went to review the report, because she had received information another complaint about Ms. Banhdith and the residency, and the new investigation was opened in 2018.” (42)

Mr. Purul explained that, for the 2018 investigation, certain information about Ms. Banhdith was culled from HR. (City Exhibit #1). Mr. Purul learned that Ms. Banhdith was married in August 2008, that she got her drivers’ license in Philadelphia, but that she subsequently renewed it

nearer to West Chester, although she kept the address as Philadelphia. He determined that the PECO account and the water bill for the [REDACTED] Street address was in Ms. Banhdith's father's name. Ms. Banhdith does receive mail at [REDACTED] Street. She is registered to vote in Philadelphia. Conversely, the deed to the [REDACTED] Lane address is in the name of Ms. Banhdith's husband, as is the PECO bill. (43-60). Turning to the restaurant that Ms. Banhdith owns with her husband, Mr. Purul noted that when a City employee has a second job, certain financial disclosures are mandatory. She had not made them prior to the 2017 investigation, but everything was correctly done when checked for the 2018 investigation. As to the restaurant, Ms. Banhdith is listed as working on Fridays and Saturdays. (Joint Exhibit #6). (61-64).

Specifically, with regard to the 2018 investigation, Mr. Purul instructed Investigator Jeffrey Hussein with regard to how to investigate because "he was new to it in our office, so I gave him some background and some other information. Basically, we're going to go there and surveil at the anticipated times that the subject would be departing to work. So, we based the hours in the mornings on that." (65-66). Photos were taken and Ms. Banhdith's timesheets were examined, but surveillance was not conducted in West Chester. "Comparing it to the 2017 observations, where we did do surveillance at ... [REDACTED] Lane. She was seen there. She was also seen at the Philadelphia address. So, at this point, when we

were doing the observation in Philadelphia, she was not seen. Then she was seen for a couple days and not seen and seen, but finish out the days of surveillance. So the decision was not to send someone out at the ... [REDACTED] Lane address because we're coming back with the same information as prior in the 2017 case." (66-71). (City Exhibit #4).

Mr. Purul recalled that Ms. Banhdith was interviewed two times during the 2018 investigation. She presented documents for the investigation. (City Exhibit #s 2, 3). They show proof of payment of bills for [REDACTED] Street. (73-75).

On cross examination, Mr. Purul acknowledged that, if any discrepancies existed, his recollections during the arbitration would be less accurate than those in his reports in 2017 and 2018. He acknowledged that the 2017 investigation was precipitated by an anonymous complaint. That information was relayed to him at a meeting, on a Friday, at which Ms. Banhdith was also present, and at which Ms. Banhdith was asked to show Mr. Purul the house on [REDACTED] Street. Mr. Purul again recalled that she showed him around the house and that she answered questions. He recalled that, subsequent to his visit, Ms. Banhdith was interviewed, but not by him, and that Ms. Banhdith was surveilled. He acknowledged that there is no requirement that a person only own property in Philadelphia, only that there be a *bona fide* residence. And, there is no requirement a person living in Philadelphia has to be listed on a lease or mortgage.

Further, a person is permitted to own a business outside the City, with appropriate paperwork filled out and permission given. (76-85).

As for Ms. Banhdith's voter registration, it is in Philadelphia. Ms. Banhdith paid the PECO bill at [REDACTED] Street, during a time she did not know she was under investigation. Conversely, Mr. Purul reiterated, the PECO bill from [REDACTED] Lane is paid by Ms. Banhdith's husband. "I can say that during the interview, Ms. Banhdith said that she doesn't contribute to the household except maybe buying groceries at times." (85-91). Mr. Purul said he had no reason to think this statement was not the truth. When asked what information Mr. Purul was able to find going through City data bases that would show Ms. Banhdith was a resident at [REDACTED] Lane, Mr. Purul said "We didn't find anything that I can recall. The only thing was the marriage license that indicated the address out there. And he was the owner of the property prior to her marriage." (93). Mr. Purul did acknowledge that the second page of the marriage license lists Ms. Banhdith's address as [REDACTED] Street. (94). Mr. Purul acknowledged that Ms. Banhdith's husband was on her health insurance. And, she lived on [REDACTED] Street when she became an employee of the City. (Union Exhibit #7). (95 -99).

With regard to the surveillance, Mr. Purul acknowledged that the 2018 surveillance only surveilled Ms. Banhdith in the mornings on [REDACTED] Street, with no observations in the evenings. He acknowledged that there

was no surveillance in 2018 of the [REDACTED] Lane house. He acknowledged that Ms. Banhdith had told him in 2017 that she stayed in the [REDACTED] Street house three nights per week and that in 2018 she told him she stayed at the [REDACTED] Street house four nights per week. He acknowledged that the Verizon bill, certain credit card bills, and an auto insurance bill listed [REDACTED] Street as Ms. Banhdith's address. And he acknowledged that Ms. Banhdith presented documents showing her clocking into a Planet Fitness in South Philadelphia. Ms. Banhdith presented internet service bills and bank statements showing payments for bills. Further, Mr. Purul acknowledged that Ms. Banhdith had given many of the documents to the investigators, obviating the need for a subpoena. (100-108).

With regard to the 2017 investigation and Ms. Banhdith not paying certain City wage taxes relative to income from the restaurant, Mr. Purul acknowledged that Ms. Banhdith had corrected this. He recalled that this inquiry was not part of his second investigation, but was something they noted during the second investigation. (108).

Ms. Terri Domsy is the Deputy Controller of Investigations for the City, starting in that position at the end of January 2018. According to Ms. Domsy, she began the second investigation because "a person came to my office in September 2018. ...said to me that they believed she was not complying with the residency rule." Ms. Domsy was not given any further information by that person. Ms. Domsy explained that the "office is

charged with investigating residency violations....” Ms. Domsy read the rule, looked into the law regarding the rule, spoke to the Solicitor’s office and otherwise educated herself about the obligations and requirements. “...the person had to have her sole legal residence in the City of Philadelphia. They could have more than one residence, but their main legal residence had to be here in Philadelphia... ...a person who was in the Civil Service, not only had to sleep and had to live here with their family and they had to have their legal connections and live sort of grounded or rooted ruled in Philadelphia, whereas an exempt employee could reside there during the week as long as it wasn't a sham and they didn't just rent an apartment and pretend to live somewhere, and actually live in New Jersey or somewhere else, but an exempt to live here during the week and maintain their home and family elsewhere and go join their family on the weekends.” Further, Ms. Domsy distinguished between exempt employees, who “must reside here, whereas the Civil Service must be a bona fide resident here and that their home in Philadelphia has to be the sole legal residence, although they could have a second residence if they choose...a vacation home or second home where they maybe visit periodically.” (116- 126).

With regard to the investigation into Ms. Banhdith, Ms. Domsy said she spoke to Mr. Purul because “it was brought to my attention this was something ongoing and that there had been a previous investigation,

which I was unaware of it." (127). Ms. Domsy asked Mr. Purul to oversee the 2018 investigation "and asked him to start pulling or updating any documents...to see if anything had changed substantially or at all." (128). Ms. Domsy and Mr. Purul conducted the interviews, after writing to Ms. Banhdith and telling her that her residency was under investigation. Ms. Domsy recalled asking Ms. Banhdith to bring documentation to prove that she was "indeed a resident of the City of Philadelphia." There were two interviews. During the first, in June 2019, Ms. Domsy, Mr. Purul, Ms. Banhdith and Mr. Anthony Coco, a Union rep, were in attendance. Ms. Banhdith told Ms. Domsy that she "legally lived at the [REDACTED] Street. And she actually said the word legally in that sentence. ...She said for all her life." Ms. Banhdith told Ms. Domsy that she went to her husband's home "going there like Thursday night or Friday, coming back on – like for work on Monday. And she's been doing that since 2013." Ms. Banhdith confirmed to Ms. Domsy that her husband was on her health insurance. And, after the first interview, Ms. Banhdith provided Ms. Domsy with documents reflecting her residency at [REDACTED] Street. (City Exhibit #2). (128-137)

The second interview occurred with Ms. Domsy, Mr. Purul, Ms. Banhdith, her Union rep, Mr. Coco, and Ms. Kathy Scott from AFSCME. Ms. Domsy told Ms. Banhdith they were "revisiting her residency. And Ms. Scott agreed that the – it was the Controller's prerogative to revisit...." Ms.

Scott also notified Ms. Domsy that she had participated in the 2017 investigation and “the way that the residency issue was resolved was that Mr. Rubin, the then First Deputy, said to them or to Ms. Banhdith that hey, just sleep in Philadelphia one more night. She was sleeping there Thursday, Friday, Saturday and Sunday night, that if she would sleep there Friday, Saturday and Sunday night, just add one more day, that would make her compliant.” Notwithstanding this assertion by Ms. Scott, Ms. Domsy did not find and was not given any additional information to validate the statement purported to be by Mr. Rubin. However, even so, Ms. Domsy still believed Ms. Banhdith would be in violation of the City rules. There were further discussions about which bills Ms. Banhdith paid in Philadelphia, the restaurant in which she was a 50% owner located near the [REDACTED] Lane home, the fact that she did not have a personal credit card, and that she filed joint tax returns with her husband using the [REDACTED] Lane address, although she did not make any financial contributions to the upkeep of that home other than to occasionally purchase groceries. Ms. Banhdith told Ms. Domsy that all of her family resided in Philadelphia. As to the bills provided by Ms. Banhdith, Ms. Domsy said that there were redactions. Ms. Domsy created a record of the meeting and asked Mr. Purul to review it to see if she had missed anything important. After further investigation and discussion with Mr. Purul, Ms. Domsy said she reached the conclusion “based on the facts and the law, as I read it and applied

it, that Ms. Banhdith was not a bona fide resident of the City of Philadelphia.” (138-154).

“...I looked at all the factors. I looked at them and I compared to what I learned. And I felt the indicia that she was not a bona fide residence of Philadelphia, but that she legally resided in West Chester County was that she was married – legally married to her husband. ...They did get married. I mean, you can get married wherever you want, but they did choose to get a marriage certificate through the other county. They were married there. His home that he owned by himself, her husband, was in West Chester County, that since 2008, that she did provide substantially for his welfare. There was a provision in the – you know, financial support of spouse. And, although she claimed that she did not pay for anything at the household, by providing health insurance, which is a substantial contribution to someone’s well-being, was a major factor in her care of him or for him. I believe they did own this business together in that county, that they paid their taxes as a married couple filing jointly. ...I felt at least the factors – it wasn’t the fact that she paid for her husband – assist her family in someway financially, I thought that deeply rooted her with the factor that related to her husband and to West Chester County.” (155-156). Additionally, Ms. Domsy assessed Ms. Banhdith’s candor and determined that, with Ms. Banhdith’s education, with the position she holds and the fact that she is in a “rule based”

position, it was disingenuous for Ms. Banhdith to have said she was uncertain of the rules or obligations. (158-159).

On cross examination, Ms. Domsy reiterated that she was the Deputy of the Investigative Division and that, although she familiarized herself with Civil Service Regulations, she was not very familiar with collective bargaining agreements. She said that, when the complaint came to her, she did not write it down; "All I did was talk to Joe. And then we opened up like an actual – we didn't get a case management system until recently. So, we have like an Excel sheet...." (162-163). Ms. Domsy acknowledge that a complaint came in November but the initial interview with Ms. Banhdith did not occur until the following June. Ms. Domsy was shown an Administrative Rule. (City Exhibit #4). This particular rule "is a City's rule of how to conduct what they believe to be the -it's like an overarching, like hey, what's going to do this and how it will get done. ...It gives us some authority...." Ms. Domsy recalled that Mr. Purul explained what had happened in 2017. "...I guess he believed it was resolved, the issue." (164-168). Referring to the first interview, Ms. Domsy recalled that Mr. Coco said he would provide certain documents, which were not provided. Ms. Domsy took notes during the meeting. She recalled that Mr. Coco asked about the 2017 investigation because he seemed to have the impression that the issue had concluded then. "...I asked them if you have some kind of correspondence or

documentation or E-mails or letters regarding the outcome, please share them with me. So, I got the impression that they didn't know either, you know, like it wasn't resolved if they didn't even know what happened." (168-171). During the second interview, Ms. Scott was the point person for the Union. Ms. Domsy recalled Ms. Scott telling her what Mr. Rubin had allegedly told Ms. Banhdith, and acknowledged that she never followed up with Mr. Rubin to either confirm or deny. Ms. Domsy acknowledged that there was no observation made of the [REDACTED] Lane home during the 2018 investigation. When asked if the investigation had determined whether or if Ms. Banhdith was a member of any organizations in West Chester, whether Ms. Banhdith went to religious services in West Chester, Ms. Domsy said it had not. Ms. Domsy also acknowledged that Ms. Banhdith worked well over 40 hours per week at the Controller's Office but typically only a few hours per night on the weekends at the restaurant she owned with her husband. Ms. Domsy was asked about Ms. Banhdith filing taxes jointly with her husband and whether it would be more expensive if she and her husband had filed separately. Ms. Domsy was also shown the IRS form 1040 instructions and she noted that there was no provision to list two separate addresses when filing. (Union Exhibit #10). (171-180).

Ms. Domsy reiterated that there was certain information missing from the bank account information provided by Ms. Banhdith; she was

asked if she had followed up with Ms. Banhdith or the Union about it. Ms. Domsy said she had not. Ms. Domsy was shown documents that appear to show Ms. Banhdith's bank account receives direct deposit from the City for Ms. Banhdith. (Union Exhibit #2). (181-184). Again, Ms. Domsy said that the information she had received was redacted, but she again acknowledged that she never asked for unredacted information. Finally, Ms. Domsy acknowledged that Ms. Banhdith is not a CPA. (185-186).

Mr. Kellen White is the First Deputy at the Controller's Office for the City. He explained that the Controller's Office is charged with auditing every department every year and stopping fraud. Mr. White had run the campaign for the current Controller, Ms. Rebecca Rynhart, who took office in January 2018. Ms. Rynhart's campaign was premised in auditing and professionalizing the office, as well as transparency and ceasing fraud and waste; she said that her investigative unit would have more experience. Within the auditing department, auditors are tasked with following standard accounting procedures. He was asked about an employee being a bona fide resident. "I guess primarily it would be that their residence which they have in Philadelphia is a primary residence. ...it's where they live, work and play. They are tax paying in the City of Philadelphia. They live in the City of Philadelphia. Their family lives in the City of Philadelphia. ...their life is established here in the City, not

elsewhere.” (187-194). Mr. White also discussed Administrative Rule 43 and the obligation of the Controller’s Office to investigate residency issues. “...we...work closely with the OIG’s office to take on residency cases as they are brought to our attention. ...We get most of our residency complaints through out fraud line, whether it’s online or via phone.” (194-195). “Once we conclude our investigation, Terri’s group brings it to me and the Controller’s shows us this investigation has concluded. And then a letter is sent to the hiring manager of the department.” (196). When asked what happens if, at the end of an investigation, the Controller’s office believes there had been a residency violation, Mr. White said that “...we follow certain rules that are established for the City. So, what typically happens is we recommend dismissal. And then it goes to a hearing. And then whatever the result of the hearing – whatever the result of the hearing is, discipline that is given to the employee. ...So, the residency rules that require all City employees live in the City of Philadelphia, bona fide residency..... ...if our office determines that someone is violating the residency rules, then the head of the department should – is expected to or should take the next step to properly dismiss that employee....” (197-200). Mr. White received the report written by Ms. Domsy and he, also, concluded that Ms. Banhdith was not a bona fide resident of the City of Philadelphia. Mr. White recommended discipline, after receiving a recommendation from the

Chief of Staff and the General Counsel, subsequent to the hearing with the Investigative Unit and Ms. Banhdith. Ms. Banhdith was suspended for thirty (30) days with intent to dismiss. An appeal was heard and the determination for dismissal sustained. (Joint Exhibit #7). (200-204).

On cross examination, Mr. White acknowledged that, prior to taking the job in the Controller's Office, he had no experience with auditing or investigations. Part of his job also includes personnel management. Mr. White has become familiar with the Civil Service regulations and with the collective bargaining agreements covering the employees in the department. Mr. White agreed that the concept of Civil Service is to hire people who are professional and qualified for their job, according to the rules and regardless of politics. Notwithstanding the fact that he was not at the initial meeting, Mr. White acknowledged that he was the person who made the ultimate decision about Ms. Banhdith. (205-210).

Mr. White admitted that there was no issue with or indication of any problems with Ms. Banhdith's work, or with her performance appraisals. When asked about the investigation from 2017, Mr. White said "...in my opinion, that – well, one, there was no documentation in her file that any arrangement was made to – I didn't feel like, and the chief of staff, general counsel agreed, that whatever agreement that the former First Deputy made stood up to the actual intention of the Ad Board Ruling." (211-212).

Mr. White reiterated his belief that the primary residence is where a person lives, works and plays, and where a person's family is. He acknowledged that Ms. Banhdith has three family members, a husband and two parents, and that her parents live in Philadelphia. He acknowledged that Ms. Banhdith worked in Philadelphia full time and worked outside of Philadelphia part time. He noted the evidence that Ms. Banhdith goes to the gym in Philadelphia. He was unaware of whether or if she did anything fun outside of Philadelphia and he was unaware that Ms. Banhdith's extended family lives in Philadelphia. (212-214).

Ms. Cathy Scott is currently the President of District Council 47. In 2017, she was a staff representative for Local 2187. Ms. Scott has worked for the City since 1971 and became active with the Union in 1978. In February 1983 she became a Union employee. Ms. Scott reviewed her history working for the Local and through the present. Ms. Scott testified that she is familiar with the City of Philadelphia residency requirements. While serving as a Staff Representative in 2017, one of her areas of responsibility was the City Controller's Office, causing her to be one of the Union Representatives involved during the investigation of Ms. Banhdith. Initially, Mr. Anthony Coco, the Shop Steward, went to meetings with Ms. Banhdith to try to assist with both the residency question and, ultimately, the tax/financial disclosure question that arose because of Ms. Banhdith's involvement with the restaurant. (2-10 – 2-18). “After there was an

extensive discussion at a meeting that I attended to what tax forms needed to be filed, redoing the financial disclosure form, and submitting a request for authorization for outside employment to the Department, there was an agreement as to what forms needed to either be filed or revised, and there was a decision made by the Department directing Banghorn to file the wage tax as a resident at a higher rate than a nonresident would be.” (2-18 – 2-19). Present at the meeting were Ms. Scott, Mr. Coco, Ms. Banhdith and Mr. Bill Rubin, the First Deputy City Controller. “...first in terms of the residency because of Banghorn was leaving the City on Wednesday night and coming back to the City on Sunday, where she was spending time and living in the City, and going to work. The recommendation – well, the expectation, it wasn’t a recommendation. They wanted her to change it to Thursday night that she would go to her husband’s...Bill Rubin...instructed her that she needed to stay in the City from Sunday night through Thursday, that she could leave Thursday go to West Chester County, and that she – if she returned on Sunday, that would satisfy their issue in addressing the residency.” (2-19 – 2-22). Ultimately, the disciplinary action against Ms. Banhdith was supposed to have resolved the issue completely. (Joint Exhibit #8) (2-23).

Subsequently, in 2018, Ms. Scott was advised of a new investigation into Ms. Banhdith’s residency. Ms. Scott sent an email to Ms. Domsy

regarding the prior investigation and discipline, because, since there was new Controller, she wanted to keep them apprised. (Joint Exhibit #5) (2-23 – 2-26). Although Ms. Scott was no longer the Staff Representative, she “wanted to make them aware that this had been addressed, and actually Banghorn had changed her way of going to West Chester County in order to comply with the previous administration’s believe that if she did that, that the residency was not an issue.” (2-27).

On cross examination, Ms. Scott reiterated her statement about what Mr. Rubin had told Ms. Banhdith. She said Mr. Rubin had made the statement at a meeting on September 6, 2017 and reiterated it in the October 5, 2017 disciplinary meeting. While Ms. Scott was not present at the September meeting, Mr. Coco told her. (2-29 – 2-33). Ms. Scott acknowledged knowing, by October 2017, that Ms. Rynhart had won the primary to become the new Controller. She acknowledged that she did not know if Mr. Rubin set down his alleged requirement for Ms. Banhdith, and her residency in writing, but that she had never seen it if he had. (2-38 – 2-44). Finally, on redirect, Ms. Scott said she had no reason to believe that requirements set forth would change simply because the Controller changed. (2-46).

Ms. Banhdith testified on her own behalf. She had worked at the Controller’s office for approximately fourteen (14) years prior to this, holding the position of Auditor 3 at the time of her dismissal. Ms. Banhdith

stated that she lived at the [REDACTED] Street address and has done for her entire life, living with her parents. She has two younger siblings. She is married, but does not live with her husband. (2-49 – 2-52). Ms. Banhdith explained that “it is a cultural norm, a family value. He’s from the same culture, so he totally understands. Coming from an Asian family, you have a family obligation, especially as the oldest, to care for your parents financially, physically whether they need or not. It’s just respect to your parents for raising you.” (2-52).

Ms. Banhdith reviewed some of her history with the Controller’s office, including her acceptance letter to work there, a copy of her transcript from Drexel University, and her resume. (Union Exhibit #s 1, 3, 4) (2-54 – 2-56). Ms. Banhdith began working for the Controller’s Office in 2006, and was married in 2008 at the restaurant she and her husband own. She worked at the restaurant on Fridays and Saturdays, prior to COVID. Her husband lives in West Chester. They have never lived together. Ms. Banhdith votes in Philadelphia, pays car insurance in Philadelphia, and typically attends religious services in Philadelphia with her parents and extended family, which extended family lives in South Philadelphia near her home. Ms. Banhdith pays the telephone, electric and cable bills for her home in Philadelphia. Conversely, she does not belong to any social or religious organizations in West Chester and does

not socialize with people in West Chester, other than her husband. (2-57 – 2-62).

Ms. Banhdith was asked about the redactions to certain bills she supplied to the City. (City Exhibit #2.) She explained that she had been told by Mr. Tim Reddick, a former Special Investigations Director, that she could redact certain personal information. During the 2017 investigation she agreed to provide information, as noted in the investigative report, but was permitted to redact certain specific information. (City Exhibit #14) (2-63 – 2-67). Ms. Banhdith recalled being disciplined in 2017; she received a three (3) day suspension, was required to update certain financial disclosure forms, and was required to deal with certain wage taxes. (2-67 – 2-68).

Ms. Banhdith maintained that, prior to her discharge, she would sleep in Philadelphia from Monday through Thursday. Some Fridays she would stay in Philadelphia; some Fridays she would go to West Chester. On Saturday she would be in West Chester. On Sundays, she would either be in West Chester or in Philadelphia. Ms. Banhdith said she adopted that as her schedule because of the 2017 investigation, when she was told that, to be compliant, she needed to spend an additional night in Philadelphia. Ms. Banhdith still lives in Philadelphia, with her parents, again averring that she has family values and obligations. (2-69 – 2-73).

On cross examination, Ms. Banhdith acknowledged being an accountant when she began working for the City. She acknowledged that, as accountant, she should be attentive to detail. She had, as part of her job, led complex audits. As an Auditor 3, she is a resource for the lower-level auditors. She acknowledged that it is important for her to be knowledgeable about City rules and regulations. (2-74 - 2-79).

Ms. Banhdith was shown her confirmation of residency, which she signed, dated August 11, 2010. (City Exhibit #5) (2-80). She acknowledged that her husband lived in West Chester and that they own a restaurant in Frazer. (2-81). Ms. Banhdith was shown certain Google Maps pages. The first page showed the distance between the [REDACTED] Street address in Philadelphia and the [REDACTED] Lane address in West Chester. (City Exhibit #8). Another page showed the distance from the [REDACTED] Street address to the restaurant. Another page showed the distance from the [REDACTED] Lane address to the restaurant. (2-82 – 2-84).

Ms. Banhdith was shown the 2017 Investigative Report. (Joint Exhibit #5). She, again, acknowledged that Mr. Reddick said she could redact certain information. (2-84 – 2-86). Ms. Banhdith was shown documents that she had provided to the Controller's Office in 2019. (City Exhibit #2, 3). (2-86 - 2-89). Ms. Banhdith reiterated that Mr. Rubin had told her to stay in Philadelphia one additional night per week, but acknowledged that she did not receive the instruction in writing and she did not ask for it

in writing. (2-89 – 2-90). Ms. Banhdith reiterated that she did live in Philadelphia with her family, partly because of cultural obligations. Ms. Banhdith asserted that she told this to Ms. Domsy at the end of the July 2019 meeting, because of the second investigation. (2-90 – 2-95). On redirect examination, Ms. Banhdith recalled that neither Ms. Domsy nor the investigator asked her to provide any non-redacted information. (2-95). Ms. Banhdith was asked about the restaurant and noted that her husband owned it before they were married, but she became co-owner in or around 2013. (2-95 – 2-96).

Ms. Terry Domsy was called on rebuttal. Ms. Domsy maintained that Ms. Banhdith did not ever tell her about her cultural obligations, relative to living in Philadelphia with her family. If Ms. Banhdith had told her, Ms. Domsy said she would have spoken with Ms. Banhdith about that assertion. Ms. Domsy did acknowledge hearing about the cultural obligations during the departmental hearing, but said that did not change the City's determination with regard to Ms. Banhdith. (2-98 – 2-103).

Relevant Portion of the CBA

Section 16 - Discipline and Discharge

A. *JUST CAUSE.* It is agreed that management retains the right to impose disciplinary action or discharge provided that this right, except for any employee in probationary status, is for just cause only.

(Joint Exhibit #1)

Relevant Portion of Philadelphia Code

§ 20-101. Residence Requirements.

(1) Every employee in the civil service shall establish his or her bona fide residence in the City within six months of his or her appointment, and shall thereafter maintain bona fide residence in the City, except that no person shall be appointed as a laborer in the civil service of the City unless he or she has been a bona fide resident of the City for at least one year prior to his or her appointment. The City Controller may require proof of the residence of any employee in the civil service.

Relevant Portion of the Civil Service Regulations

30.RESIDENCE REQUIREMENT

30.01 - REQUIREMENTS. An Ordinance of Council, Bill No. 08003, enacted in 2008 pursuant to authority of Section 7-401(u) of the Charter, requires that every employee in the civil service shall establish his or her bona fide residence in the City within six months of his or her appointment, and shall thereafter maintain bona fide residence in the City, except that no person

shall be appointed as a laborer in the civil service of the City unless he or she has been a bona fide resident of the City for at least one year prior to his or her appointment. The City Controller may require proof of the residence of any employee in the civil service.

POSITIONS OF THE PARTIES

The City:

The City maintains that it had just cause to discharge Ms. Banhdith for violating the *bona fide residence* requirement. As an initial matter, the City finds it disingenuous for Ms. Banhdith, an Auditor 3 who is responsible for assisting lower level auditors and leading complex audits on her own, to not be familiar enough with the City's rules and regulations to have been aware that she was in violation of this rule, as well as being previously unaware that she should have reported her ownership in and income from the restaurant she co-owns with her husband.

The City reviewed the events that led to and culminated in the 2017 investigation. It reviewed Mr. Purul's investigation, Ms. Banhdith's testimony and Ms. Purul's testimony, and the documentary evidence that had been provided at that time. The City specifically highlighted the issue Ms. Banhdith had with not having reported her restaurant income and her

co-ownership. The City asserts that it did not find credible at that time and it does not find credible now that Ms. Banhdith was not aware of the rules and regulations regarding that issue. “She did not disclose any ownership in her restaurant, which she has, in fact, jointly owned since 2013, on that annual mandatory state ethics disclosures form even though it plainly requires disclosure of ‘any financial interest in any legal entity engaged in business for profit.’ These are not challenging requirements requiring a Ph.D. to understand; thousands of public employees whose jobs do not center on auditing City department’s compliance with federal, state, and local law, regulations, and policies are able to complete them truthfully. Yet, in 2017, Ms. Banhdith claimed that she genuinely, and in good faith, could not understand these instructions. Apparently so mystifying are these topics that, on her 2017 and 2018 requests to engage in outside or self-employment, when asked to “list ownership or management interest in any business entity,” she replied, “none,” despite being a 50% owner of the restaurant.” (City Brief, p. 25). Although Ms. Banhdith cured these financial issues, and was suspended for three (3) days, the City is not persuaded that this resolved the residency issue. Notwithstanding the Union’s contention that Mr. Rubin had, in essence, told Ms. Banhdith how to resolve her purported residency problem, the City highlights the fact that there is no evidence of that instruction.

The City then speaks to the election of the current Controller, Ms. Rhyhart, who was elected on a platform that included transparency as well as rooting out fraud and waste. The City implied that the prior investigation, done under the prior Controller, although concluded was able to be reopened when a new complaint arose under the new administration. It points out that Ms. Domsy did, in fact, receive a complaint about Ms. Banhdith, which led to the instant investigation, and which led to Ms. Domsy going to great lengths to educate herself on the requirements of *bona fide residence*. More importantly, the City relies on the idea that it did nothing incorrect or inappropriate when it reinvestigated Ms. Banhdith's residency, specifically quoting *City of Meadville, Firemen's Civil Serv. Comm'n v. Neff*, 450 A.2d 1078, 1080 (Pa. Commw. Ct. 1982) (“[T]he fact that a municipality may not have enforced a residency requirement or rule in the past does not mean that it is forever precluded from attempting to enforce it at some future date.”).

The City avers that, in the course of this investigation, Ms. Banhdith “evidences minimal connections to the Philadelphia address...” in that the home is owned by her parents, that her putative bedroom is devoid of “ornamentation,” that she was not seen “commuting” from the Philadelphia house when she was being surveilled, and that the documentary information she provided to prove Philadelphia residency was riddled with redactions. (Id, p. 14).

Turning to the just cause standard, the City maintains that Ms. Banhdith had notice of the City's rules and regulations regarding residency and failed to follow the rules. It is not persuaded that Ms. Banhdith's and the Union's reliance on any alleged instruction by Mr. Rubin is valid or warranted, especially since there is nothing in writing to validate that reliance. "That failure to secure proof that Ms. Banhdith's bona fide residency had been established is so shockingly inept as to render the underlying premise—that such an instruction was given in the first place—unworthy of credence. Alternatively, this stunning failure to secure written "authorization" can be viewed as an admission that ...even if Mr. Rubin gave such an instruction and Ms. Banhdith followed it, grievant still would not be a bona fide Philadelphia resident. Why bother to obtain written proof when that proof, in and of itself, is insufficient to establish residency?" (Id., p. 19)

As to the current investigation, the City insists that "the record is replete with the thoroughness of the investigation, as well as the objectivity with which it was approached. When alerted that Ms. Banhdith's status as a bona fide Philadelphia resident was in question, Ms. Domsy educated herself regarding the requirement, reviewing not only case law but City Solicitor opinions on the subject. She then spoke with Mr. Purul, who informed her of the 2017 investigation, and she reviewed that report. The Controller did everything that it reasonably could to

investigate the circumstances. It surveilled the Philadelphia address and did an exhaustive document search into property, utility, driver's license, and tax records. It also interviewed Ms. Banhdith twice, adjourning once upon her request. It gave her the opportunity to provide whatever documentation she believed to be relevant to the issue." (Id., p. 20). Additionally, the City contends that Ms. Banhdith did not mention her cultural or religious mores until well after the investigation was concluded, but that, if she had, then the City would have been able to speak to her about that, as well. The City highlights Ms. Banhdith's assertions, about which there was no corroborating evidence, that she attended religious services in Philadelphia but not West Chester, that she socializes in Philadelphia but not West Chester, and that all her family except her husband live in Philadelphia and not West Chester. "At every turn, grievant has either outright lied—and then made fantastic claims that she simply "misunderstood" simple and clear instructions—or obfuscated facts that might undermine her claim to be a bona fide resident of Philadelphia. Therefore, her uncorroborated assertions should be accorded no weight." (Id., p. 26).

With regard to the actual residency requirement, "(t)he "bona fide" residency requirement for civil service employees is not merely an address in Philadelphia where the employee occasionally sleeps. It means that the employee is actually domiciled in Philadelphia; that Philadelphia is the

place where the employee intends to permanently reside. The evidence in this case demonstrates that Ms. Banhdith's home is in West Chester. Her uncorroborated explanations, rationalizations, and justifications to the contrary cannot be credited due to her history of disingenuousness." (Id., p. 21). The City explains that residency and *bona fide residency* are not the same, in that a residence is a place, almost any place, where a person lives at times, but that a *bona fide residence* is a domicile, a place that is not temporary, a place where, in essence, a person has permanent residence. And, the City highlights the tests set forth in by the Courts and the Philadelphia Civil Service Commission, and concludes that "(i)t is indisputable that civil service employees must be domiciled, and not merely resident, in Philadelphia in order to satisfy the 'bona fide residence' requirement. Viggiano, 459 A.2d at 876; McCarthy, 339 A.2d at 636. It is the individual's "actual conduct," and not a mere assertion, that determines domicile. Viggiano, 459 A.2d at 876." (Id., p. 23). The City avers that Ms. Banhdith is a *bona fide resident* of West Chester. Notwithstanding her time spent in Philadelphia, it enumerates the factors that go against her being a *bona fide resident* of Philadelphia: her husband lives in West Chester, the restaurant is near West Chester, she travels to West Chester every weekend and often during the weeks, she files a joint tax return with her husband listing the West Chester address, she renewed her drivers license at a location near West Chester, she has

her husband on her health benefits, she was married at the restaurant. “Ms. Banhdith did her best to obscure her West Chester life. She lied on state ethics forms. She continued to misrepresent her restaurant ownership on the City’s secondary employment forms. She deliberately redacted the addressee’s name on bills and records showing the Philadelphia address. She avoids having any West Chester property in her name. But her marital home and her life are there. That is her domicile, and, thus, she is not a bona fide resident of Philadelphia.” (Id., p. 27).

Having proven that Ms. Banhdith is not a *bona fide* resident of Philadelphia, and, therefore, having proven that Ms. Banhdith is ineligible to hold her civil service position in Philadelphia, the City argues that dismissal is the only appropriate resolution. Therefore, the City demands that “(t)he grievance should be denied and the discharge upheld because Ms. Banhdith is not a bona fide resident of the City of Philadelphia, as is required for her to hold a civil service position. Her claim that she lacked notice of the rule should be disregarded, as well. If, however, that claim is credited, any remedy should require Ms. Banhdith—now that she is on notice of the Controller’s enforcement of the rule—to come into compliance with it in no more than sixty (60) days.” (Id., p. 28).

The Union:

The Union avers that the burden of proof is on the City and that the City has not met its just cause burden. It maintains that the City has not shown that Ms. Banhdith is domiciled outside of Philadelphia. It highlights the fact that, despite the City's dismissing what Mr. Rubin told her, Ms. Banhdith did rely on his instructions in good faith. And, it stresses that the mere fact of a change in Controller should not, all of a sudden, open up a host of investigations that have been considered closed, since the change in administration should be apolitical.

According to the Union, "(t)he relevant factors to consider, as noted by the Controller's office and the Philadelphia Law Department, in any inquiry should be: "(1) the purchase, lease, or rental of residential property within the claimed domicile; (2) mailing address; (3) place of voter registration; (4) address of motor vehicle operator's license; (5) address of telephone listing; (6) where taxes are paid; (7) frequency of habitation; (8) residence of spouse and children." Exhibit J-5 at 30-31 (citing *McCarthy v. Philadelphia Civil Service Com.*, 19 Pa. Commw. 383 (1975)). The analysis is made on a case-by-case basis and "none of these factors is necessarily determinative; rather all factors are weighed together to determine domiciliary intent." *Id.* Not included in these factors, however, is the ownership (or partial ownership) of a business outside of Philadelphia." (Union Brief, p. 2). The Union insists that Ms.

Banhdith can only be considered a *bona fide resident* of Philadelphia when examining the factors.

In examining the factors to be considered, the Union pointed out that Ms. Banhdith had been subject to an investigation in 2017, which concluded and after which Ms. Banhdith had been told by Mr. Rubin to stay an additional day in Philadelphia to cure any possible defect in her residency requirement. Further, it points out that, during that investigation, and to this day, Ms. Banhdith still lives in Philadelphia, still pays utility and other bills in Philadelphia, still has her driver's license listing a Philadelphia address, and is still registered to vote in Philadelphia. While it is true that she co-owns a restaurant with her husband in Frazer, her husband is the sole owner of the house in West Chester. Ms. Banhdith may not own the residence in Philadelphia, but she is not required to based on the factors. However, she does receive first class mail at the Philadelphia address, including the utility and other substantive bills. Despite the fact that she may receive some mail in West Chester, she does not receive anything similar. Ms. Banhdith pays taxes on her wages in Philadelphia, and, after the first investigation, corrected the errors regarding the taxes she owed on the restaurant income.

A suggested factor for determining domicile is the "residence of spouse and children." However, the City Solicitor made it clear in his 86-17 Opinion that, "the residence or domicile of an employee's spouse and children is not sufficient, standing alone, to determine residence." Exhibit J-5 at 36. The Grievant does not have any

children therefore, this is not an applicable factor. The Grievant's husband does not live in Philadelphia. In some, if not most, situations, this factor would weigh in favor of domicile in West Chester County but it does not here. An assumption made by the Controller's office is that married people **always** live together. The investigators failed to take into consideration that the Grievant's cultural norms differ from prevailing Western culture. The Grievant testified that it is essential for her to care for and provide for her parents, which she does by primarily residing with them. The Grievant sees her husband at their restaurant on weekends and stays with him on the weekends. This arrangement, under the circumstances, weighs in favor of concluding that the Grievant is domiciled in Philadelphia.

(Id., pp. 10-11)

The Union maintains that the assumptions made by the Controller's office during the investigation are just those, assumptions. And, when weighing the factors against what Ms. Banhdith actually does, which has been shown through documentary evidence, it is evident that Ms. Banhdith lives and is a *bona fide resident* of Philadelphia.

The Union clearly distinguishes this case from the *McCarthy* case, where a firefighter spent some nights in the fire house, some nights in his mother's house and some nights with his wife and children in New Jersey. It juxtaposes *McCarthy's* having ten children who also lived in New Jersey with Ms. Banhdith who has no children; similarly, it juxtaposes the cultural norms cited by Ms. Banhdith with none having been cited in *McCarthy*.

The Union compares Ms. Banhdith's situation with *City of Phila. v. City of Phila. Civ. Serv. Comm'n*, wherein the employee was domiciled at

and took care of his mother-in-law, spending a minority of his time with his spouse. “These facts are virtually identical to the undisputed facts here: the Grievant is providing care to her parents and the time she spends outside of Philadelphia is in the minority and is largely on her days off from the City. ...A careful analysis of the above factors results in a finding that the Grievant is domiciled in Philadelphia. While she does regularly stay at her husband’s residence outside of the City, that one factor does not overcome all of the other factors in favor of finding domicile in Philadelphia.” (Id., p. 12).

The Union argues that politics should not come into play when making this determination.

The fact that a new Controller was elected, with new deputies, is not a legitimate reason to delay or change the conclusion reached by the Controller’s Office in its 2017 investigation. The Grievant relied on Mr. Rubin’s assertion that she would be in compliance if she lived in Philadelphia four nights per week. The City has implied that this statement was not made or does not matter. First, Mr. Rubin is a current City employee who could have been called to testify at the arbitration, but the City elected not to call him as a witness. The fact that he was not called to rebut the Grievant’s testimony allows the fact finder to make an inference that his testimony would benefit the Grievant.

Contrary to the City’s assertions, Mr. Rubin’s statement does matter. He was originally in charge of this investigation and was charged with enforcing the City’s residency requirement. The Grievant relied in good faith on his instruction. It is unjust to the Grievant that a newly elected administration apparently changed its interpretation of the rules. At a minimum, the Grievant should have been given notice and a chance to cure any alleged defect in her domicile

status. This did not occur, and the grievance should be separately sustained on due process grounds.
(Id., p. 13).

Therefore, the Union demands that “The Employer should be directed to reinstate Bangorn Banhdith and to make her and the Union whole. This includes not only all lost income and other emoluments of employment resulting from the Employer’s action, but also reimbursement by the City to the Union for the costs of carrying the Grievant on its health and welfare plan during her separation from employment. Further the Arbitrator should retain jurisdiction over this matter for the purpose of relieving any disputes that arise from the implementation of the remedy.”
(Id., p. 14).

OPINION

After a complete review of all the evidence and testimony, I find that the City did not have just cause to discharge Ms. Banhdith. My reasoning follows.

An initial examination of *bona fide residency* or domicile can begin, as both parties appear to agree, with *Viggiano* (459 A.2d 875) and *McCarthy* (339 A.2d 634). A thumbnail sketch of items to be considered, as the parties appear to agree, are the following:

- the purchase, lease, or rental of residential property within the claimed domicile;

- residence as listed on formal declarations such as
 - o voter registration;
 - o motor vehicle registration;
 - o driver's license;
 - o tax returns;
- telephone listing address;
- frequency of habitation;
- spouse and children's residence;
- location of domicile where claimed residence is not the same as domicile;
- how long the domicile has been maintained; and
- how long the claimed residence has been maintained.

Using these factors and examining Ms. Banhdith's situation, it is true she neither owns nor leases nor rents the property in Philadelphia; it is her childhood home and she still lives there with her parents. However, she does not own or share ownership in the house in West Chester either. Ms. Banhdith's voter registration and her driver's license are in Philadelphia. Her tax return shows the West Chester address, but she does file jointly with her husband and, since he owns a home there, this is not probative of domicile. Ms. Banhdith owns a cell phone, the bill for which lists the Philadelphia address. These days, there are a good number of people who do not have landlines, so, that is not probative either. As to frequency of habitation, Ms. Banhdith's unrebutted testimony is that she spends the majority of her time in Philadelphia most weeks, with the exception of certain weeks. While her spouse lives 100% of the time in West Chester, he and Ms. Banhdith have no children. While Ms. Banhdith does cover him with her health insurance, there is no showing that she

supports him. Health insurance is not probative; many couples choose the insurance of one spouse over the other because of the benefits provided. The indicia of *bona fide residency* is not disproved by the fact that Ms. Banhdith has a spouse who lives in a different place than she contends she does.

There were two, separate investigations into Ms. Banhdith. The first, in 2017, disclosed that she owned a restaurant with her husband and that she had neither received appropriate permission nor had paid appropriate taxes on that. Ms. Banhdith remedied that situation, as Mr. Purul noted. She was also suspended for three (3) days. The onset of that first investigation was an alleged residency violation. If that residency violation had not been somehow put to rest or been dormant, then it would have been open and evident when this second investigation came into play. Whether Mr. Rubin made the statements it is alleged he made, the investigation either closed or fizzled out. In either instance, it would not be inappropriate for Ms. Banhdith and the Union to conclude that the first investigation was closed. Clearly it was appropriate for Ms. Domsky to look into Ms. Banhdith when a complaint was brought to her attention. Ms. Domsky testified that Mr. Purul seemed to believe that the first investigation, conducted by him, was closed. Ms. Domsky and Mr. Purul could have and might have approached Ms. Banhdith to inquire as to what, if anything, had changed since the initial investigation. They did

not. Parts of the second investigation were premised on the first investigation. While this arbitration focuses on the second investigation that was opened regarding whether Ms. Banhdith was a *bona fide resident* of Philadelphia, the investigation appeared to be treated as a continuation of the first one.

During the course of his testimony regarding the first investigation, Mr. Purul made the following statement: *When we arrived at the property, she knocked on the door, the screen door. She didn't use a key, didn't appear to have a key. **I would think she would have used it to get in.*** (emphasis and italics added). The fact that he would *think* she would have used a key to get in is simply supposition. He did not say he asked Ms. Banhdith why she did not use a key or whether or if she had a key. Perhaps it was because she was arriving with an unannounced stranger, and she was acting respectfully towards her parents. Many of statements regarding this second investigation and the prior one was based on supposition, not necessarily on fact. Mr. Purul made the following additional statement about the second investigation: *Basically, we're going to go there and surveil at the **anticipated times that the subject would be departing to work.** So, we based the hours in the mornings on **that.*** (emphasis and italics added). Ms. Banhdith was being surveilled but was not obligated to travel at the times the investigator was surveilling.

This lack of seeing Ms. Banhdith does not equate to her not being in Philadelphia at the time of the surveillance.

The fact of Ms. Banhdith's marriage license having a non-Philadelphia address is not probative of lack of residency. Many people are married in places that are vastly different than where they are domiciled, where they have a *bona fide residence*. Whether only miles away from where they live or a "destination wedding," this is not uncommon. Neither is it uncommon for a person to renew a driver's license at a location that is less crowded than another. It is certainly conceivable that a location outside of Philadelphia proper would be less crowded than one in Philadelphia proper. The fact that the home on [REDACTED] Street is owned by her parents is not probative of lack of residency. Ms. Banhdith explained that she had lived in that home since she was a child. Unless her parents transferred ownership, the house would not be in her name.

As to the documents provided during the second investigation and the fact of the redactions, Ms. Banhdith testified that she had been told, during the first investigation she could redact private information. This was unrebutted. While the City contended that Ms. Banhdith's redactions implied that she was hiding something and/or did not show sufficient nexus between her and the Philadelphia address, the City also acknowledged that it did not ask her to cure this perceived defect or issue. This lack of inquiry, along with others, makes it appear as if the City

were shifting the burden of its determination to discharge onto Ms. Banhdith. It is the City's burden to prove that Ms. Banhdith should be discharged. Further, it is the City's burden to do a thorough investigation. It is not and should not be a simple step to reach the conclusion that an employee should be discharged.

Not once was there testimony that anyone in the City asked Ms. Banhdith why she lived as she did. Not once was there testimony that anyone asked Ms. Banhdith why she continued to live as she did, after the 2017 investigation, although she did say that she changed her days/times to reflect what she had been told, so that she spent more time in Philadelphia, which she had been told would be deemed sufficient. Based on her having been reported to Ms. Domsy, it is fair and appropriate that an additional investigation was opened. That said, as previously stated, presumptions are in favor of a grievant, not in favor of the employer and the Employer in this instance, the City of Philadelphia, has not met the threshold to prove just cause to have discharged Ms. Banhdith.

It is the City's burden and obligation to show just cause in the discharge of Ms. Banhdith. The City alleges she is not a *bona fide resident* of Philadelphia. That has not been proven. There have been allegations, there have been suppositions, but there has been no concrete evidence to show that Ms. Banhdith is not, in fact, a *bona fide resident* of

Philadelphia and, further, that she is not living as she says she is, culturally, taking care of her parents, notwithstanding being married to a person she sees only or typically on the weekends. It does not appear that the Union argued that Ms. Banhdith was not aware of the *bona fide residence* rule, but, rather, that she believes she is and has been in compliance since the conclusion of the first investigation. That is not an unreasonable belief. Given that, and if the City does believe that Ms. Banhdith is not a *bona fide resident* of Philadelphia, then the City should give Ms. Banhdith time to cure any alleged defects to her residency, but must provide valid guidance to do so, which presumes but does not conclude that there might be defects.

The City cited two prior arbitrations, *Conroy* decided by Arbitrator Darby and *Black* decided by Arbitrator Peck. Both are distinguishable. In *Black*, there had been two investigations, the first of which concluded that Black was NOT a *bona fide resident* of Philadelphia, a conclusion that was not cured by the time of the second investigation. As Arbitrator Peck stated, "Detective Black was fortunate that the City did not discharge him after the first IAD investigation, and that he was given a second chance." In this instance, Ms. Banhdith was not found to have violated the residency requirements either during or after the first investigation. The other factors in *Black*, regarding his indicia of residency, are also completely distinguishable. As to *Conroy*, again there was a prior

investigation before the second one that led to the arbitration. During the first investigation, Conroy acknowledged and admitted to living in New Jersey, not Pennsylvania. And, again, during the second investigation, Conroy was not seen at her putative Pennsylvania location. Arbitrator Darby said

This issue has been addressed in arbitration many times before in this bargaining unit. In analyzing the residency issue Arbitrators McConnell, Peck and Symonette applied a “beyond a reasonable doubt” burden on the City, since police officers can be summarily discharged if found to be in violation of the residency requirement. They also evaluated a number of fact-specific criteria to decipher an officer's primary residence, including where the officer: 1) rents, leases or owns their primary residence; 2) pays state and local taxes; 3) registers personal property; 4) is licensed to drive; 5) votes; 6) spends the majority of his or her time; 7) registers children for school; and 9) socializes.

Further, Arbitrator Darby noted that Arbitrator Peck's case and the Conroy case both involved employees who were found to have been in violation of the *bona fide residency* requirement prior to the second investigation. And, Arbitrator Darby further determined that there was absolutely no evidence that Conroy was living in Pennsylvania subsequent to the first determination. Clearly, this is not the case with Ms. Banhdith.

The City did not have just cause to discipline and to discharge Ms. Banhdith.

In view of the foregoing, I issue the following

AWARD

1. Ms. Banhdith shall be returned to work within forty-five (45) days of the issuance of this Award, either in person or remotely, depending on how the City is currently operating based on COVID constraints.
2. Ms. Banhdith shall be made whole in the manner requested by the Union; however, the City may dispute the amount of back pay owed, based on income and unemployment received during her time out of work. Additionally, the City shall reimburse the Union for the costs of the health and welfare plan contributions made on Ms. Banhdith's behalf during her time out of work, if appropriate.
3. Should the City continue to insist that Ms. Banhdith is not currently a *bona fide resident* of the City, as per the Civil Service Regulations, then the City must provide Ms. Banhdith with valid guidance and information regarding the purported requirements for her to be in compliance and must afford her the opportunity to comply within one hundred and eighty (180) days of her return to work.
4. The Arbitrator shall retain jurisdiction for the implementation of this Award for two (2) years from the date of issuance.



Randi E. Lowitt
Arbitrator

Dated: March 8, 2021

State of New Jersey)
) ss.:
County of Morris)

I, Randi E. Lowitt, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.



Randi E. Lowitt
Arbitrator

Dated: March 8, 2021