

**AMERICAN ARBITRATION ASSOCIATION**

*In the Matter of Arbitration Between:*

**FRATERNAL ORDER OF POLICE  
LODGE #5**

**and**

**CITY OF PHILADELPHIA**

**AAA Case #01-19-0003-1616  
(Gr: P/O Obie Hazzard - Restricted Duty)**

**Walt De Treux, Arbitrator**

*Hearing Date: 8/25/23  
Briefs Received: 12/22/23  
Decision Date: 1/22/24*

**Appearances:** For the FOP – Joseph B. Salamon, Esq., *WILLIG WILLIAMS & DAVIDSON*  
For the City – Frank E. Wehr, II, Esq., *DIVISIONAL DEPUTY CITY SOLICITOR*

**Introduction and Statement of Relevant Facts**

City of Philadelphia Police Officer Obie Hazzard works in the 12<sup>th</sup> Police District and has been on the force since November 2008. Beginning in 2019, the Department placed Officer Hazzard on restricted duty three times in response to Protection From Abuse (PFA) orders filed by [REDACTED] and an FBI investigation initiated after his police rig and vest were discovered during a drug raid at a friend's house. The restricted duty assignments ran from January 24, 2019 through September 3, 2021; November 25, 2021 through May 5, 2022; and May 6, 2022 through October 17, 2022.

Officer Hazzard filed a grievance, alleging that the facts and circumstances did not justify his placement on lengthy periods of restricted duty and that unreasonable delays in the internal investigation process prevented his return to full duty. He argues that he lost out on significant overtime opportunities.

The parties did not resolve the grievance through the contractual steps and referred the matter to arbitration. At an August 25, 2023 videoconference hearing, the 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. The parties filed post-hearing briefs and submitted the matter to the Arbitrator for a decision.

### **Issue**

The parties stipulated to the following issue,

*Did the City of Philadelphia violate the collective bargaining agreement by retaining Officer Obie Hazzard on restricted duty? If so, what shall be the remedy?*

### **Analysis and Decision**

The parties share a long history of arbitrating restricted duty cases. In *FOP Lodge #5 and City of Philadelphia (Daniel Meade)*, AAA Case #01-20-0009-6264 (Buchheit 2021), Arbitrator Scott Buchheit concisely captured the precedent set by the long line of cases. He identified three points relevant to restricted duty cases<sup>1</sup>,

“...(1) the PPD normally acts within its contractual rights to restrict duty of an Officer during an IAD investigation...while the internal charges are pending; (2) the PPD acts outside of its contractual rights when retention of an Officer in restrictive duty status is unreasonable as to its reason or length of time; and, (3) whether or not retention of an Officer in restrictive duty is reasonable, and therefore, consistent with the City’s contractual and managerial rights, is a judgment to be made based upon the particular facts of each case.” (p. 13)

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<sup>1</sup> Generally, prior arbitration cases have found that unreasonable retention of an officer on restricted duty status violates Articles XX, Section A (Discipline & Discharge) and XXII, Section L (Transfers) of the collective bargaining agreement and the implied covenant of good faith and fair dealing. *See, e.g., FOP Lodge #5 and City of Philadelphia (Fred Mole)*, AAA Case #01-19-0003-1606 (Reilly, 2021)

The facts in the present case are somewhat complicated due to the series of events that led to Grievant's restricted duty periods.

**Restricted Duty – 1/24/19 to 9/3/21**

On [REDACTED], [REDACTED], [REDACTED] accused Grievant of domestic violence and obtained a Protection from Abuse (PFA) order. In accordance with Department protocol, Grievant relinquished his service weapon. The Department placed him on restricted duty on January 24, 2019, opened an Internal Affairs investigation, and referred the matter to the District Attorney to determine if criminal conduct occurred.

Generally, the Department keeps an officer on restricted duty until the PFA has been vacated, the DA declines prosecution, and IA interviews the officer and completes its investigation. The [REDACTED] PFA was vacated on March 8, 2019. The DA declined criminal prosecution on September 26, 2019. IA interviewed Grievant on October 31, 2019.

Normally, Grievant would have returned to full duty soon after the IA interview and the completion of the investigation. However, on September 26, 2019, the same day the DA declined prosecution, the Department learned that the FBI recovered Grievant's rig and vest during a drug raid at the home of Grievant's friend. Grievant had been staying at the friend's house on occasion after separating from [REDACTED]. IA immediately opened an investigation. It could not interview Grievant until the FBI criminal investigation concluded.

In May 2020, Grievant self-reported that [REDACTED] received a package suspected to be cocaine and intended for a neighbor's house. The Department quickly concluded that Grievant did not engage in any wrongful or criminal conduct.

On September 9, 2020, the FBI notified the Department that Grievant would not be criminally charged in relation to the drug raid. IA interviewed the Grievant on September 25, 2020. The Department concluded that Grievant was unaware and had no involvement in the suspected drug activity at his friend's house. IA submitted the investigation for review and approval in October 2020. IA did not formally review, approve, and close the investigation until September 21, 2021. It sustained a charge against Grievant for failing to properly care for his equipment. Discipline for that offense did not rise to the level of termination. The Department returned Grievant to full duty on September 3, 2021, a few weeks prior to the formal close of the investigation.

**Restricted Duty – 11/25/21 to 5/5/22**

On November 18, 2021, Grievant and [REDACTED] attended family court [REDACTED]. Four days later, [REDACTED] obtained a PFA order after accusing Grievant of threatening her. The Department ordered Grievant to relinquish his service weapon, placed him on restricted duty effective November 25, 2021, and opened an IA investigation.

During the course of the investigation, the Department learned that In January 2021, Grievant obtained a restraining order against [REDACTED] after she assaulted him outside a police station [REDACTED]. She responded by filing a complaint against him with the Department, alleging that he filed a false police report accusing her of cutting him on his back. IA found her complaint unfounded and closed its investigation on October 5, 2021. Grievant's restraining order against [REDACTED] was made permanent and remains in effect to the present.

The November 25, 2021 PFA was vacated on March 4, 2022. IA interviewed Grievant on March 24, 2022. On April 4, 2022, it interviewed his family law attorney, who corroborated Grievant's assertion that he did not threaten [REDACTED]. Grievant returned to full duty on May 5, 2022, even though the IA investigation was not formally closed until February 10, 2023.

### **Restricted Duty – 5/6/22 to 10/17/22**

One day after Grievant returned to full duty, the Department returned Grievant to restricted duty when it learned that [REDACTED] obtained a third PFA against Grievant on [REDACTED] [REDACTED]. IA incorporated the allegations in this PFA into the existing investigation of Grievant. The PFA was vacated on October 17, 2022. The Department returned Grievant to full duty the same day.

The Union argues that each period of restricted duty involved unreasonable delays in returning Grievant to full duty. The City counters that the first period of restricted duty was reasonably extended due to the pandemic and changes in the IA Chief Inspector position, what it described as "unforeseeable and uncontrollable challenges created by the pandemic and personnel turnover." It contends that the second and third periods of restricted duty followed the Department's usual protocol.

The Union's challenge to the second and third periods of restricted duty lacks merit. As Arbitrator Buchheit noted in the *Meade* Award, the Department "normally acts within its contractual rights to restrict duty of an Officer during an IAD investigation...and while the internal charges are pending." The *Meade* case involved an allegation of excessive use of force.

The present case involving the imposition of a PFA creates even more opportunity for delay. An officer has to relinquish his service weapon while subject to the PFA. Therefore, he is unable to perform his full police duties. Since only a court can vacate the PFA, an officer cannot return to full duty until the court takes action. And IA cannot complete its investigation, including an interview with the officer, until the PFA has been vacated.

The Department placed Grievant on restricted duty on [REDACTED] (the second period of restricted duty). The PFA was vacated on March 4, 2022. IA promptly interviewed Grievant on March 24, 2022 and interviewed his alibi witness on April 4, 2022. The Department returned Grievant to full duty on May 5, 2022, even though the IA investigation was not formally reviewed, approved, and closed until February 2023.

The Department placed Grievant on his third period of restricted duty on May 6, 2022 due to a PFA issued in March 2022. The order was vacated on October 17, 2022, and the Department returned Grievant to full duty the same day.

The Union argues that the Department should have recognized [REDACTED] as an unreliable witness and serial abuser of the PFA process and discounted her allegations from the start. But it is the court that issues and vacates the PFA. The Department could not just simply ignore the PFAs, regardless of its opinion of the accuser or the predictable disposition of the PFAs. To the contrary, the Department has to secure Grievant's weapon during the pendency of the PFA, rendering him incapable of performing his full police duties. The Department cannot take action to lift restricted duty status until the court takes action to vacate the PFA.

In the second period of restricted duty, the Department put Grievant back in full duty status within two months of the PFA being vacated, one month after its final interview in the IA

investigation, and 7 months before the formal close of the investigation. In the third period of restricted duty, the Department placed Grievant in full duty status the very day the PFA was vacated. The return of Grievant to full duty before the IA investigations formally closed indicates that the Department recognized that Grievant's accuser was abusing the PFA process and expeditiously returned him to full duty. The delay in lifting the restricted duty status appears to be attributable to the timing of the court hearings rather than any unreasonable inaction on the part of the Department.

The first period of restricted duty does not lend itself to as clear an analysis as the subsequent restricted duty periods. The fact pattern surrounding the restricted duty status is much more involved, including a PFA, a referral to the DA, an FBI investigation, a mis-delivery of drugs to ██████ home, and a complaint against police filed by ██████. Again, the Department could not reasonably complete its investigation and return Grievant to full duty status before the PFA was vacated, before the DA declined prosecution,<sup>2</sup> before the FBI completed its investigation, and before IA interviewed Grievant.

The PFA was vacated on March 8, 2019. The DA declined prosecution on September 26, 2019. And on September 9, 2020, the FBI advised that no criminal charges would be filed. IA interviewed Grievant on September 25, 2020. Based on those facts and circumstances, I find that the Department reasonably retained Grievant on restricted duty status until at least September 25, 2020.

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<sup>2</sup> The parties did not or could not explain why the DA took so long to decline prosecution. But the Department did not act unreasonably in retaining Grievant on restricted duty status pending a decision on whether he would be criminally charged. The Department cannot be faulted for the DA's delay.

IA did not close its investigation until September 21, 2021, almost one full year later after its interview with Grievant. The investigation was submitted for review in October 2020. The City generally asserts that final review and approval of the investigation took almost one full year because the Department “faced unprecedented delays and challenges caused by the pandemic and personnel turnover at the Chief Inspector role that is crucial to assuring integrity in internal affairs investigations.”

Captain Charles Vogt, Commanding Officer of Investigation Support Services (a division of Internal Affairs), testified that the COVID-19 pandemic presented IA with difficulty in closing out investigations, as IA investigators fell behind on their caseloads and had logistical issues with conducting interviews. Capt. Vogt explained that the pandemic led to a “bottleneck” of IA investigations that had to be reviewed by the Chief Inspector and the Deputy Commissioner. He also noted that three different Chief Inspectors served at IA during 2020-2021.

The City did not adequately explain how a completed investigation such as Grievant’s case took so long to get through the “bottleneck.” If, due to the pandemic, the investigator could not interview Grievant or had too large a caseload to devote adequate time to Grievant’s case, then a year’s delay in returning Grievant to full duty status may arguably have been reasonable. But by early October 2020, Grievant had been interviewed and the investigation completed and forwarded for review and approval. The delay was solely in the review and approval process, not in the investigative process. The City did not introduce any evidence demonstrating the number of cases that had to be reviewed before Grievant’s case could be considered. It did not establish that Grievant’s case sat behind other investigations that had also been completed and were only waiting for review and approval.



The City also did not adequately explain how the change in Chief Inspectors affected the review of Grievant's case. Chief Inspector Flacco left the IA position on July 13, 2020, prior to the completion of the investigation, so he played no role in the delay. Chief Inspector Buford served from November 20, 2020 to May 17, 2021, during the majority of the time the review and approval process for Grievant's case stalled. The City offered no evidence or testimony to establish the reason Chief Inspector Buford could not review Grievant's case. Acting Chief Inspector Stanford served with IA from April 16, 2021 through September 18, 2022 (with an earlier tour as IA Inspector from December 5, 2019 to April 16, 2021). The City offered no specific evidence or testimony to establish the reason Acting Chief Inspector Stanford could not have reviewed or approved Grievant's case in a more timely fashion.

Absent more specific evidence of the reasons for the delay in the review and approval of the IA investigation into Grievant, I find that the lengthy delay from the submission of the IA report for review and approval to the formal close of the investigation was unreasonable, and the City's retention of Grievant on restricted duty during the time period discussed below violated the parties' collective bargaining agreement.

During Grievant's second restricted duty period, it took the Department one month after IA conducted its final interview to return him to full duty. It did so before the IA investigation was formally closed. In light of the "bottleneck" of IA cases awaiting review and approval during Grievant's first restricted duty period, the Department should have acted in a similar manner and in a similar time frame. As noted, the PFA was vacated, the DA declined prosecution, the FBI declined to pursue criminal charges, and the IA investigation was completed. Recognizing that the review and approval process would be unreasonably delayed,

the Department had a contractual obligation to return Grievant to full duty status based on the facts and outcomes of which it was already aware. The Department should have returned Grievant to full duty status prior to the formal review, approval, and close of the IA investigation, just as it did during Grievant's second and third periods of restricted duty. Considering that the IA investigation report was submitted in October 2020, the Department should have returned Grievant to full duty at the latest by the end of 2020.

For these reasons, I find that Grievant's retention on restricted duty status from January 1, 2021 to September 3, 2021 was unreasonable and in violation of the collective bargaining agreement.

As a remedy, Grievant seeks to be made whole for compensation lost during the period he was unreasonably retained on restricted duty status. The City paid Grievant his regular salary and benefits while on restricted duty, so his lost compensation primarily involves lost overtime opportunities. The City maintains that the collective bargaining agreement does not guarantee overtime, and therefore, such a remedy is not warranted. Prior arbitration cases have resulted in an award of lost overtime compensation when an officer's return from restricted duty status is unreasonably delayed. (See, e.g, *Meade and Mole, infra*) The intent of a make whole remedy is to place Grievant in the same position he would have been in but for the contract violation. Had Grievant been returned to full duty status on January 1, 2021 and through September 3, 2021, he would have likely earned overtime compensation. Accordingly, Grievant's request for lost overtime compensation will be granted.

### **Award and Remedy**

The grievance is sustained in part. Consistent with the Decision above, the City violated the collective bargaining agreement by retaining Grievant Officer Obie Hazzard on restricted duty status for the period from January 1, 2021 to September 3, 2021. To remedy the contract violation, the City is directed to make Grievant whole for any losses incurred during that time period, including but not limited to, lost overtime compensation. The parties are directed to determine the amount of overtime that would have been available to Grievant between January 1, 2021 and September 3, 2021 had he been in full duty status.

The Arbitrator will retain jurisdiction of this case for the sole purpose of resolving any dispute over the implementation of the remedy.

*Walt De Troux*

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