COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FALLS TOWNSHIP POLICE ASSOCIATION	:	
	:	
	:	
v.	:	Case No. PF-C-23-68-E
	:	
FALLS TOWNSHIP (BUCKS)	:	

PROPOSED DECISION AND ORDER

On July 28, 2023, the Falls Township Police Association (Association or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Falls Township (Township or Employer), alleging that the Township violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by refusing to comply with a January 5, 2022 arbitration award regarding Police Officer Stephanie Metterle.

On August 21, 2023, the Secretary of the Board issued a Complaint and Notice of Hearing, directing a hearing on September 28, 2023, if necessary. The hearing was initially continued to December 1, 2023, at the Township's request and without objection by the Union. On November 30, 2023, the hearing was continued indefinitely based on the representation that the parties had reached a tentative resolution of the dispute underlying the charge. However, on August 26, 2024, the Union requested that the matter be relisted for hearing, which was subsequently scheduled for October 1, 2024. The hearing ensued on October 1, 2024, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union filed a post-hearing brief in support of its position on January 21, 2025. The Township filed a post-hearing brief in support of its position on January 22, 2025.

The Hearing Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 5)

2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 5)

3. The Association is the exclusive bargaining representative for a unit of police employes at the Township. (Union Exhibit 2)

4. The Association and the Township were parties to a collective bargaining agreement (CBA) effective January 1, 2018 to December 31, 2022. (Union Exhibit 2)

5. Stephanie Metterle began working at Falls Township as a police officer in October 2009. She was terminated from her position in October 2020, which the Association challenged through the contractual grievance procedure. (N.T. 13; Union Exhibit 1)

6. The parties litigated the grievance before Arbitrator Thomas McGonnell, who ultimately issued an award on January 5, 2022, which provided in relevant part as follows:

> The discharge was not supported by just cause. The discharge is reduced to a thirty (30) day suspension. The Township is ordered to reinstate the Grievant to her former position; restore her seniority; and make her whole for any loss of wages (minus the 30-day suspension), benefits, and other emoluments of employment flowing from the discharge. The Township is ordered to adjust the Grievant's disciplinary records to reflect the altered discipline. I will retain jurisdiction for ninety (90) days for the purpose of addressing any issues relating to remedy. Should either or both parties raise an issue or issues during that ninety (90) day period, I will then retain ongoing jurisdiction on that issue or issues until the issue(s) is resolved or a supplemental award is issued...

(N.T. 13-15; Union Exhibit 1)

7. On February 4, 2022, the Township filed a Petition to Vacate the Arbitration Award in the Bucks County Court of Common Pleas. (N.T. 15, 70)

8. On April 21, 2023, the Bucks County Court of Common Pleas issued an Order, denying the Petition to Vacate the Arbitration Award. (N.T. 70)

9. On May 18, 2023, the Township filed a Notice of Appeal to the Commonwealth Court. (N.T. 70)

10. On December 20, 2023, the Township reinstated Officer Metterle to her position as a police officer. (N.T. 15)

11. On May 10, 2024, the Commonwealth Court circulated an opinion and order, denying the Township's appeal. (N.T. 70)

12. The parties stipulated and agreed that the attorneys were engaging in settlement discussions about this case until September 6, 2024. (N.T. 71)

13. On September 18, 2024, the Township issued a check to Officer Metterle, purporting to cover the backpay amount due pursuant to the arbitration award. Officer Metterle did not cash the check because she did not believe it to be the correct amount due. (N.T. 16; Township Exhibit 2)

14. Officer Metterle testified that she earned overtime pay prior to her termination by the Township. She identified as Union Exhibits 3(a), 3(b), 3(c), 3(d), and 3(e) a series of printouts detailing the overtime wages she earned in 2016, 2017, 2018, 2019, and 2020, respectively. (N.T. 18-21; Union Exhibits 3(a), 3(b), 3(c), 3(d), 3(e))

15. Officer Metterle earned 377 hours of overtime in 2016, 617 hours of overtime in 2017, 415.5 hours of overtime in 2018, 54.25 hours of overtime in 2019, and 146.25 hours of overtime in 2020. (N.T. 22-23; Union Exhibits 3(a), 3(b), 3(c), 3(d), 3(e))

16. Officer Metterle testified that she had a reduction in her overtime hours in 2019 because she became pregnant and eventually had a

child. She explained that she reached a point in her pregnancy in October 2018 where she was put on light duty because of the risk, during which she was not able to earn overtime. She then eventually went into preterm labor and had her first daughter on April 26, 2019, at which point she took a leave of absence to care for her daughter. She returned to work in September 2019 without restrictions. However, she described how her overtime hours were again reduced in 2020 due to the Covid-19 pandemic and the corresponding closures. She went off work again due to a Covid protocol in July 2020 and never returned to work. She was placed on administrative leave until her termination in October 2020 and was unable to earn overtime hours. (N.T. 23-25)

17. Officer Metterle had a second child on September 10, 2021, which was after her termination. She was not planning on having a second child prior to her discharge. She created her plan to have her second child after she was terminated. She testified that she was heavily influenced to do so by her termination. She described how she was not working at that point, and her family knew the grievance process would take some time. She explained how she decided with her family to have a second child then. She testified that she would not have had a second child in 2021 had she not been discharged. (N.T. 25-26)

18. Officer Metterle testified that the father of her children is Officer Raymond Fanelli, who also works at the Township. She described how she was able to take off work on FMLA leave right after the birth of her first child. She was out for four months and returned to work on September 1, 2019. Officer Fanelli did not take FMLA leave at that time because she did, and she was able to care for the baby. (N.T. 26-27)

19. Officer Metterle testified that she and Officer Fanelli had an au pair living with them prior to her termination. She explained how the au pair lived in their house and served as their full-time babysitter. She indicated that they had to let their au pair go after the termination because they did not need childcare anymore since she was no longer employed. She testified that they would have remained in the au pair program had she not been terminated. (N.T. 27-28)[1]

20. Officer Metterle testified that she receives paid time off as a Township police officer, which includes vacation, personal, holiday, and Kelly time. She has not had any of those forms of leave restored to her bank for the time she spent off work due to the termination. (N.T. 28-29)

21. Officer Metterle had $85,294 in her pension when she was terminated. She withdrew those funds from her pension in 2021, but did not pay taxes on them. She rolled those funds into another plan initially. She eventually cashed in her pension in 2022 and paid $21,323 in federal taxes and penalties as a result. (N.T. 29-34, 42; Union Exhibit 4, 5, 6)

22. Officer Metterle testified that she cashed in her pension in 2022 because she did not have any income and needed to pay her mortgage. She would not have withdrawn her pension if she had not been terminated. She had never withdrawn money from her pension account prior to her termination. (N.T. 34-35)

[1] Officer Metterle's specific au pair was from Austria and would have had only so much time remaining on her visa. (N.T. 27-28).

23. Officer Metterle testified that she made monthly payments to the Township to maintain her health insurance after she was terminated. She eventually found a job at Access Healthcare in February 2023. She resigned from that position after she got notice the Township was returning her to work there in December 2023. She received health insurance through Access Healthcare, which had substantially higher copays and out-of-pocket expenses. She also had to contribute $330 per month at Access Healthcare. She did not have to make contributions for health insurance at the Township. (N.T. 35-37)

24. Officer Metterle testified that she has paid out-of-pocket medical expenses since she was terminated by the Township. She paid $125.00 out of pocket for treatment at a dermatologist, which she would not have had to pay if she was still covered under the Township's medical insurance. She also received a bill for $984.70 from Capital Health Medical Center, which she had not paid at the time of the hearing. She explained that this bill has been submitted to collections. She described how she would not have had to pay for this bill if she was still covered under the Township's medical insurance because she had been treating there for 11 years and had never received a bill for such high out-of-pocket costs, even though both of her children were delivered there. (N.T. 37-40; Union Exhibit 7, 8)

25. On cross-examination, Officer Metterle testified that, when she was reinstated, none of her credentials were still active. She had to work in the office, while not in uniform, doing four years of legal updates, retraining in CPR and first aid, firearms, and MPOETC certifications. As a result, she was not out on the road for three or four months, and was unable to work overtime. (N.T. 52-53)

26. The Township submitted wage calculations purporting to be the make-whole remedy due to Officer Metterle. The Township took an offset for $102,078.57, which includes the $85,294 in pension contributions she withdrew following her termination, in addition to the interest portion to pay those pension contributions back.[2] The Township calculated the overtime due by using an average of Metterle's overtime hours per year from October 2018 through October 2020. (N.T. 67-69; Township Exhibit 2, 3)

DISCUSSION

In its charge, the Union alleged that the Township violated Section 6(1)(a) and (e) of the PLRA[3] by failing to comply with the January 5, 2022 arbitration award. Specifically, the Union maintains that the Township undercompensated Officer Metterle with regard to her overtime earnings because the Township only took into account two years of those earnings when it calculated the backpay award. In addition, the Union argues that the Township violated the PLRA and Act 111 by failing to make Officer Metterle whole for the federal taxes and penalties she was forced to incur when she withdrew her pension funds in 2022. The Union further contends that the

[2] The parties agree that the Township properly offset the $85,294 in pension contributions, but disagree regarding the interest portion on that amount. (N.T. 67-69).

[3] Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer (a) To interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act...(e) To refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this act." 43 P.S. § 211.6.

Township failed to make Officer Metterle whole for out-of-pocket medical expenses and accrued leave, which she would have earned but-for the discharge in 2020. The Township, for its part, submits that the charge should be dismissed because it was prematurely filed, or in the alternative, untimely filed within the PLRA's six-week limitations period. The Township also asserts that the charge should be dismissed because the Township complied with the January 5, 2022 award and has made Officer Metterle whole for all the compensation she was due pursuant thereto.

In cases where refusal to comply with an arbitration award is alleged, the Board's inquiry is limited to first determining if an award exists, second if the appeal procedure available to the aggrieved party has been exhausted, and third if the party has failed to comply with the provisions of the arbitrator's decision. PSSU v. Commonwealth of Pennsylvania, 17 PPER ¶ 17154 (Final Order, 1986). Eventual compliance, determined to be untimely, violates the PLRA. Fraternal Order of Police Lodge 5 v. City of Philadelphia, 41 PPER 123 (Proposed Decision and Order, 2010) *citing* Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 38 PPER 72 (Proposed Decision and Order, 2007). The burden of proof is on the charging party to show by substantial and legally credible evidence that the respondent has not complied with the arbitration award. *Id.* citing St. Joseph's Hospital v. PLRB, 323 A.2d 106 (Pa. 1977). The Board may not review the merits of the award or substitute its judgment for that of the arbitrator. *Id.* citing City of Duquesne, 5 PPER 117 (Final Order, 1974). If, upon review of the award as a whole, the Board is unable to discern the intent of the arbitrator and the award is therefore ambiguous, the Board will dismiss an unfair practice charge alleging noncompliance with the award. AFSCME Local 197 v. City of Philadelphia, Office of Housing & Community Development, 24 PPER ¶ 24052 (Final Order, 1993).

Section 9(e) of the PLRA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the petition or charge." 43 P.S. § 211.9(e). As a general matter, the nature of the unfair practice claim alleged frames the limitations period for that cause of action. Upper Gwynedd Township Police Dept. v. Upper Gwynedd Township, 32 PPER § 32101 (Final Order, 2001). For a refusal to bargain a change in terms and conditions of employment, notice to the union of the implementation of the challenged policy or directive triggers the statute of limitations. Harmar Township Police Wage and Policy Committee v. Harmar Township, 33 PPER § 33025 (Final Order, 2001). Implementation is the date when the directive becomes operational and serves to guide the conduct of employes, even though no employes may have been disciplined or corrected for failure to abide by the directive. *Id.* Mere statement of future intent to engage in activity, which arguably would constitute an unfair labor practice, does not constitute an unfair labor practice for engaging in that activity. Upper Gwynedd Township, at 264. The Board will dismiss a charge as prematurely filed where the complainant files the charge prior to actual implementation. City of Allentown, 19 PPER § 19120 (Final Order, 1988).

As detailed above, the Township argues that the Union's charge of unfair labor practices should be dismissed because it was prematurely filed on July 29, 2023, which was allegedly prior to the exhaustion of appeals. The Township reasons that, since it appealed the arbitration award to the Commonwealth Court, the appeals did not exhaust until 30 days after May 10, 2024, when the Commonwealth Court eventually denied the Township's Petition to Vacate and no further appeals were taken. The Township cites PLRB v.

Commonwealth of Pennsylvania, 387 A.2d 475 (Pa. 1978) as support for its position. However, the Township's argument ignores a long line of Board precedent indicating that the arbitration award became enforceable once it was affirmed by the Common Pleas Court on April 21, 2023.

In FOP Lodge 5 v. City of Philadelphia, 39 PPER 9 (Final Order, 2008), the Board addressed the same argument, which was advanced by the city employer in that case. In rejecting the city employer's argument, the Board opined as follows:

> The City's reliance on PLRB v. Commonwealth is misplaced given that the state of the law has changed since the Supreme Court issued that decision. PLRB v. Commonwealth involved repealed provisions of the Rules of Judicial Administration governing appeals of arbitration awards, under which arbitration awards were stayed pending each level of appellate review. As the Board held in Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 32 PPER ¶ 32102 (Final Order, 2001):
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> The Supreme Court's 1978 decision in PLRB v. Commonwealth, *supra*, was fully consistent with then existing Rules of Appellate Procedure, which provided for an automatic supersedeas for political subdivisions appealing arbitration awards...to the Commonwealth Court. It was therefore logical for the Court to instruct the Board to wait until the aggrieved employer's appeal procedures were exhausted in the arbitration arena. To opine otherwise and permit the order of compliance at an earlier stage, would thereby violate the automatic supersedeas.
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> However, in 1987 the Rules of Appellate Procedure were amended and the amendment to Rule 1736 fundamentally altered the protections provided to employers by the Supreme Court in PLRB v. Commonwealth, *supra*. Pa.R.A.P. 1736 provides as follows:
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> (a) General Rule. No security shall be required of...
>
> (1) Any political subdivision...except in any case in which a common pleas court has affirmed an arbitration award in a grievance or similar personnel matter...
>
> (b) Supersedeas Automatic. Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a supersedeas in favor of such party.
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> The note following the rule more fully explains the amendment:
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> The 1987 amendment eliminates the automatic supersedeas for political subdivisions on appeals from the common pleas court where that court has affirmed an arbitration award in a grievance or similar personnel matter.
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> Thus, once an arbitration award has been affirmed by a common pleas court, the award becomes enforceable. The aggrieved employer has been stripped of its ability to delay compliance with the award by seeking further redress in subsequent appeals. The Commonwealth Court explained that Pa.R.A.P. 1736(a)(2)

> "expressly negates an automatic supersedeas for a political subdivision in an appeal from an arbitration award." Commonwealth Dept. of the Auditor General v. AFSCME, Council 13, 573 A.2d 233, 234 (Pa. Cmwlth. 1990). *See also*...Cheltenham Twp. Police Ass'n v. Cheltenham Twp., 21 PPER ¶ 21026 (Final Order, 1989); City of Philadelphia, Office of Housing and Community Development v. AFSCME, Local 1971, 37 Pa.D.&C. 4th 116 (Phila. County Common Pleas, 1996); Crawford County v. AFSCME, Council 85, 27 PPER ¶ 27117 (Crawford County Common Pleas, 1996)(where arbitration award affirmed by common pleas, application for a stay denied; while appellate court could ultimately reverse arbitrator, no irreparable harm in requiring employer to comply with award).
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> ...
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> As regards appeals by political subdivisions from arbitration awards, the Board's research has disclosed no Board decisions where the Board has stayed enforcement of an award following a common pleas affirmance of the award, pending further appeal in Commonwealth Court. To the extent that there may be any post-1987 Board final orders that withhold enforcement of affirmed arbitration awards pending a second level of appellate review in reliance on PLRB v. Commonwealth, *supra,* the Board will no longer adhere to them as precedent. To find otherwise would defeat the purpose of the changes to Pa.R.A.P. 1736 and would occasion unwarranted delay in the timely enforcement of arbitration awards which remain on appeal under the narrow scope of judicial review of arbitration awards.
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> City of Philadelphia, 32 PPER at 266-267. Since City of Philadelphia, the Board has consistently entertained unfair labor practice charges to enforce arbitration awards pending appellate review in Commonwealth Court. E.g., Somerset Area Education Ass'n v. Somerset Area School District, 37 PPER 1 (Final Order, 2005)...
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> The Board's policy of enforcing arbitration awards on appeal is consistent with the current rules of appellate procedure, and the policies and purposes of Act 111 and the PLRA. Indeed, prompt enforcement of arbitration awards, both grievance and interest awards, furthers the purposes and policies of Act 111 and the PLRA. As was recognized by the Pennsylvania Supreme Court in its landmark decision concerning Act 111 interest arbitration:
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> An arbitration panel is a temporary "one shot" institution, convened to respond to a specific conflict. Once it reaches a decision it is disbanded and its members disperse. Its resolution of the dispute must be sure and swift, and much of its effectiveness would be lost if the mandate of its decision could be delayed indefinitely through protracted litigation. (Citations omitted).

City of Philadelphia, 39 PPER at 30-31.

In this case, the record shows that the January 5, 2022 arbitration award was affirmed by the Common Pleas Court on April 21, 2023. As a result,

the award became enforceable by the Union as of April 21, 2023, pursuant to Board law. The Township did not have an automatic supersedeas after April 21, 2023, and there is no evidence that the Township either sought or obtained a stay at any point thereafter. Therefore, the Union's attempt to enforce the award by filing the instant charge on July 28, 2023 was ripe and not premature, as alleged by the Township. Accordingly, the Township's argument in this regard must be rejected.

The Township's argument that the charge was untimely filed is similarly unavailing. While the Union waited for more than six weeks following the expiration of the 30-day appeal period after Common Pleas affirmed on April 21, 2023, the Township stipulated and agreed that the attorneys were engaging in settlement discussions about this case until September 6, 2024. In fact, the Township's attorney admitted in his opening statement during the October 1, 2024 hearing that "[t]he parties had [] good faith negotiations about the amount of back pay and other issues due to her [sic]. It was, about a few weeks ago, the parties, I guess, agreed to disagree. And at that point, there's a dispute over the amount." (N.T. 8). This evidence of ongoing negotiations shows that the Union reasonably believed the Township would comply with the award, all the way up until September 2024. There is no evidence that the Township refused to comply with, or made its intent known, that it would not implement the award, more than six weeks prior to the filing date of July 28, 2023. To the contrary, the record shows only that the parties were engaging in settlement discussions and had good faith negotiations regarding how the Township could comply until September 2024.[4] As such, the record supports a finding that the Township essentially acknowledged its responsibility to implement the award through September 2024, thereby tolling the limitations period through that date. Accordingly, it must be concluded that the Union's July 28, 2023 charge was timely filed. *See* Susquehanna Regional Police Ass'n v. Susquehanna Regional Police Dept., 31 PPER ¶ 31064 (Final Order, 2000)(citing Crawford Central School District, 618 A.2d 1202 (Pa. Cmwlth. 1992))(charge filed seven months after arbitration award was timely filed within PERA's four-month limitations period where the parties communicated about implementation and calculations, requested a remedial award, and the employer acknowledged its responsibility to implement the award for five months following issuance of the award); Wyoming Borough Police Dept. v. Wyoming Borough, 43 PPER 22 (Final Order, 2011)(statute of limitations does not necessarily accrue immediately upon issuance of an arbitration award; but is tolled during a period of negotiations where employer gives assurances of its attempt to comply); IBEW Local 81 v. Scranton Housing Authority, 33 PPER ¶ 33134 (Final Order, 2002)(limitations period begins to run when union knows, or should know, that employer will not be complying with award, such as where the employer takes a "firm and unyielding stance" regarding its obligation to comply with the award).

Turning to the merits of the charge, the Union contends that the Township refused to comply with the January 5, 2022 award because the Township has failed to make Officer Metterle whole. Specifically, the Union maintains that the Township's make-whole remedy failed to include the proper overtime wages, federal taxes and penalties on her pension withdrawal, out of pocket medical expenses, and accrued leave. Of course, the Township submits that it has properly calculated the make-whole remedy and provided Officer Metterle with everything she was due pursuant to the make-whole award.

[4] While an attorney's statements during the hearing typically cannot be used as evidence or testimony, the instant statements represent a party admission, which is binding on the Township.

The parties do not contest that an award exists. Nor does the record show that the award has not yet become enforceable. As previously set forth above, the award became enforceable once the Common Pleas Court affirmed on April 21, 2023. Thus, the only question then, is whether the Township has failed to comply with the provisions of the arbitrator's decision. The arbitrator's award provides, in relevant part as follows:

> The discharge was not supported by just cause. The discharge is reduced to a thirty (30) day suspension. The Township is ordered to reinstate the Grievant to her former position; restore her seniority; and make her whole for any loss of wages (minus the 30-day suspension), benefits, and other emoluments of employment flowing from the discharge. The Township is ordered to adjust the Grievant's disciplinary records to reflect the altered discipline...

(Union Exhibit 1). The dispute here essentially boils down to what the proper make-whole remedy would be.

First of all, however, it must be noted that the Township did not issue a check purporting to constitute the make-whole remedy until September 18, 2024, which was approximately 17 months after the Common Pleas Court affirmed the award on April 21, 2023. What is more, the Township did not even reinstate Officer Metterle to her position until December 2023, some eight months following the Common Pleas affirmance. Thus, even if the Township had issued the proper make-whole remedy on September 18, 2024, the Township still committed an unfair labor practice because it did not comply with the award in a reasonable period of time. Indeed, it cannot be seriously contended that 17 months was a reasonable period for compliance by issuing the backpay. Nor does the Township even make such an argument. In the same vein, it cannot be seriously disputed that eight months was an unreasonable period of time for the Township to reinstate Officer Metterle. The Township should have reinstated her within 30 days of April 21, 2023. As a result, the Township must be found in violation of Act 111 and the PLRA based on the timeliness of its payment and reinstatement of Officer Metterle, regardless of whether the payment properly made her whole.

In addition, the Union has also sustained its burden of proving that the Township refused to comply with the award by failing to include all the money and benefits due pursuant thereto. In AFSCME DC 47, Local 2186 v. City of Philadelphia, 54 PPER 10 (Proposed Decision and Order, 2022), the Board's hearing examiner rejected the city's argument that an arbitrator's award, which provided for make-whole relief, permitted the city to exclude overtime earnings where the record showed that the grievant regularly worked overtime prior to her separation from the city. The examiner recognized that the Board has long held that an arbitrator's make-whole remedy includes the payment of overtime in such cases, even if the award does not expressly direct such a payment, citing FOP Lodge 5 v. City of Philadelphia, 30 PPER ¶ 30105 (Proposed Decision and Order, 1999), 30 PPER ¶ 30204 (Final Order, 1999), and specifically directed the city to pay her average overtime amount across the five years of wages submitted during the hearing. Yet, for some reason, in this case, the Township claims that it was only required to include the average of Officer Metterle's overtime wages for two years instead of the five years of available records. The Township offers no justification for this, aside from generally citing to Teamsters Local 776 v. Borough of Gettysburg, 54 PPER 17 (Proposed Decision and Order, 2022) and FOP

Lodge 5 v. City of Philadelphia, 30 PPER 30204 (Final Order, 1999). But these cases do not provide for a limit of two years in calculating an employe's overtime earnings for purposes of a make-whole award. Rather, the evidence of record was simply based on two years of calculations. As Hearing Examiner Marino observed in Borough of Gettysburg "the Board has recognized that make-whole arbitration awards clearly seek and intend to place the employe in the same economic position [she] would have been in had the employe not been unlawfully terminated." 54 PPER at 82. Likewise, Hearing Examiner Marino further cited City of Philadelphia, *supra,* and noted that, "[i]n its make-whole awards, the NLRB will compute back pay on the basis of a forty-hour week plus the adjusted *average overtime hours worked* by each employe." (emphasis in original).

Here, the record shows that Officer Metterle had significant overtime earnings for the years of 2016, 2017, and 2018, which was then reduced for the years of 2019 and 2020. The Township's decision to only include the average overtime earnings for the last two years, which were coincidentally her lowest, of course, in calculating the backpay due, only served to artificially deflate her earnings and provide the Township with a windfall. The record shows that Officer Metterle had reduced overtime hours in 2019 because of pregnancy and childbirth. The record also shows that she had reduced overtime hours in 2020 because of Covid-19 closures and her eventual administrative suspension and termination. Inclusion of only those two years in calculating her overtime earnings due pursuant to the make-whole award does not place Officer Metterle in the same economic position she would have been in had she not been unlawfully terminated. Therefore, the Township will be directed to pay Officer Metterle her average overtime hours across the five years of wages submitted during the hearing, which represents a much more accurate depiction of her earnings, and which is consistent with the Board's process of remedial relief. AFSCME DC 47, Local 2186 v. City of Philadelphia, 54 PPER 10 (Proposed Decision and Order, 2022); *See also* Fraternal Order of Police Lodge 5 v. City of Philadelphia, 41 PPER 181 (Proposed Decision and Order, 2010) wherein the hearing examiner held that the City should look at the overtime paid to the affected bargaining unit employe for working special events in the preceding years, and average that amount in computing his overtime. (citing City of Philadelphia, 30 PPER ¶ 30204 (Final Order, 1999)(the Board adopted the Federal standard for the computation of back pay, including overtime, as set forth in Ellis & Watts Products, 143 NLRB 1269 (1963), *enf'd* 344 F.2d 67 (6th Cir. 1965)).

Next, the record shows that the Township also failed to comply with the January 5, 2022 award by taking an offset for $102,078.57, representing the $85,293.73 pension withdrawal, as well as $16,784.84 in interest that would have accrued on those funds. The Union does not dispute that the Township was entitled to offset the $85,293.73 for the pension withdrawal. However, the Union asserts that the Township was responsible for the interest on that amount, along with the $21,323 in taxes and penalties that Officer Metterle was forced to incur when she withdrew those funds in 2022. The Township counters that Officer Metterle did not have to roll over her pension contributions to an IRA, and that the Township has no authority over how much money she owes to the IRS from when she ultimately withdrew those funds. The Township further claims that Officer Metterle is responsible for repaying the contributions that she withdrew, as well as the interest that would have accrued, in order to get back on the Township's pension. Unfortunately for the Township, however, the record shows that Officer Metterle was forced to withdraw her pension funds in 2022 to pay her mortgage. She would not have been forced to withdraw those funds and to pay taxes and penalties on them if

not for the Township's unlawful termination. The Board and its hearing examiners routinely direct employers to include pension contributions as part of a make-whole remedy. AFSCME DC 47, Local 2186 v. City of Philadelphia, 54 PPER 10 (Proposed Decision and Order, 2022); FOP Lodge 5 v. City of Philadelphia, 54 PPER 37 (Proposed Decision and Order, 2022); Teamsters Local 776 v. Borough of Gettysburg, 54 PPER 17 (Proposed Decision and Order, 2022); Corry Area Education Ass'n v. Corry Area School District, 38 PPER 155 (Final Order, 2007). There is no meaningful difference between employer contributions to an employe's pension and the interest that would have accrued on the employe's contributions to the pension during the period of her unlawful discharge.

In Corry Area School District, the Board opined that "a cash payment equal to a lost pension contribution does not come close to compensating the loss of contributions into a statutorily-regulated pension, which impact on a retirement date or ultimate pension benefit." Not only has the Township here failed to make a cash payment to Officer Metterle for the interest that would have accrued on her pension during the time of her unlawful discharge, but also, the Township has actually taken an offset against that accrued interest from the make-whole remedy it owes her, which clearly impacts on her eventual retirement date or ultimate pension benefit. The Board certainly would not permit the Township to simply pay Officer Metterle directly for the cash value of the interest that would have accrued on her pension. Why then the Township thinks it could permissibly take an offset for that amount is a mystery. Furthermore, the Board noted in Corry that its "method of calculating backpay offsets interim earnings from the employer's backpay liability in calendar quarter increments, and is designed to make employes whole for lost wages, as well as taking into consideration matters such as tax implications and periodic wages adjustments." Thus, the interest that would have accrued on Officer Metterle's pension contributions and the taxes and penalties she incurred from withdrawing those funds were part of the Township's liability for the January 5, 2022 make-whole award.

In Wyoming Borough Police Dept. v. Wyoming Borough, 43 PPER 22 (Final Order, 2011), the Board recognized that longevity increases, out-of-pocket medical expenses, holiday pay, accrued leave, and interest are typical components of make-whole relief. Indeed, out-of-pocket medical expenses that would have otherwise been covered by the employer's health insurance policy must be reimbursed to make the employe whole. *Id.* The record here shows that Officer Metterle incurred out-of-pocket medical expenses for treatment that would have been covered under the Township's medical insurance had she not been unlawfully discharged. In fact, one of her bills had unfortunately been submitted to collections at the time of the hearing. The Township offers no reason or justification for why it has not made her whole with regard to these expenses. The Township's post-hearing brief is devoid of any arguments contradicting its liability on this point. The January 5, 2022 make-whole award clearly encompasses such relief. Therefore, the Township will be directed to pay these expenses to remedy this clear violation of the PLRA.

Finally, in Wyoming Borough, the Board held that reimbursement for holiday pay and accrued leave is in accordance with the applicable collective bargaining agreement. Thus, an employe who would not otherwise be paid for unused leave under the applicable CBA upon resignation, would not be entitled to such a payout for leave under the Board's remedial make-whole relief. *Id.* The Township contends that Officer Metterle was not entitled payment for her accrued leave because the award does not mention leave time. However, the

National Labor Relations Board Compliance Manual provides in Section 10536.1 that "[b]ackpay awards are intended to make whole the person who has suffered from a violation for earnings and other compensation lost as a result of that violation." Further, the National Board's Compliance Manual provides in Section 10540.1 that "[g]ross backpay must take into account ***all benefits and forms of compensation that [an employe] would have earned from employment***, had there not been an unlawful action. All forms of wages, including overtime, premiums, tips, bonus payments, and commissions, are to be considered in determining backpay." (Emphasis added)[5]. This Board specifically adopted and approved the use of the National Board's Compliance Manual in Corry Area Education Ass'n v. Corry Area School District, 38 PPER 155 (Final Order, 2007). Accrued leave is a benefit and form of compensation that Officer Metterle would have earned from her employment had there not been an unlawful termination. Therefore, it is of no consequence whether the award specifically mentions accrued leave or not. What is more, the Township's argument that leave time is accrued under the contract only by those who are working is without merit. While the CBA generally provides in Articles 23 and 24 for the accrual of leave by those employes who are working, the Township conveniently ignores the fact that Officer Metterle would have been working had the Township not unlawfully discharged her. The Union also persuasively notes how those provisions are devoid of any "use it or lose it" clause, such that employes are prevented from preserving the value of their accrued leave from year-to-year. Instead, Article 23, Section 2 provides for employes to be paid the cash value of holidays that they are unable to use due to illness, injury, or duty requirements, while Article 24 permits employes to be paid for any unused vacation days at the end of the year if the employe was unable to take those vacation days for unusual circumstances. (Union Exhibit 2). Thus, it is irrelevant whether Officer Metterle receives pay for her accrued leave on top of weeks for which she receives her regular working pay because she was entitled to be paid for that unused leave time pursuant to the CBA.[6] Accordingly, the Township will be further directed to include her accrued leave as part of the make-whole relief.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.

2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA.

3. The Board has jurisdiction over the parties hereto.

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[5] The National Board uses the term gross back pay to describe the amount owed to an employe prior to an offset for interim earnings or unemployment compensation. Likewise, the National Board uses net back pay to describe the amount owed to an employe following such an offset. This distinction is not relevant to the outcome here, as this Board clearly allows public employers to take an offset for interim earnings and unemployment compensation that an employe may have received during the back pay period, which the Township has already done.

[6] Significantly, Officer Metterle did not resign from her position either like the employe at issue in Wyoming Borough.

4. The Township has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the examiner

HEREBY ORDERS AND DIRECTS

that the Township shall

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA and Act 111;

2. Cease and desist from refusing to bargain with the representatives of its employes;

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately comply with the January 5, 2022 arbitration award by tendering full backpay to Officer Metterle for her lost overtime wages from her discharge in October 2020 to her reinstatement in December 2023, minus 30 days, by using an average of all five years of her overtime earnings submitted at the hearing in this matter, along with all other benefits or emoluments of employment she was entitled to pursuant to the award, including but not limited to her out-of-pocket medical expenses, pension contributions and interest accrued thereon, taxes and penalties she incurred, and all of the leave she would have accrued under the CBA had it not been for her unlawful discharge, together with six (6%) percent per annum interest;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 4th day of March, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FALLS TOWNSHIP POLICE ASSOCIATION	:	
	:	
	:	
v.	:	Case No. PF-C-23-68-E
	:	
FALLS TOWNSHIP (BUCKS)	:	

AFFIDAVIT OF COMPLIANCE

The Township hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act; that it has immediately complied with the January 5, 2022 arbitration award by tendering full backpay to Officer Metterle for her lost overtime wages from her discharge in October 2020 to her reinstatement in December 2023, minus 30 days, by using an average of all five years of her overtime earnings submitted at the hearing in this matter, along with all other benefits or emoluments of employment she was entitled to pursuant to the award, including but not limited to her out-of-pocket medical expenses, pension contributions and interest accrued thereon, taxes and penalties she incurred, and all of the leave she would have accrued under the CBA had it not been for her unlawful discharge, together with six (6%) percent per annum interest; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

_____
Signature/Date

_____
Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

_____
Signature of Notary Public