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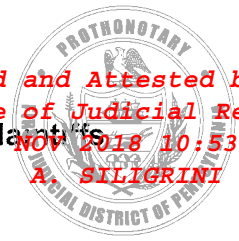
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Filed and Attested by the
Office of Judicial Records

13 NOV 2018 10:53 am

A. SILIGRINI



FRATERNAL ORDER OF POLICE, LODGE NO. 5, by its
guardians ad litem, JOHN McNESBY, PRESIDENT,
ROOSEVELT LEN POPLAR, VICE PRESIDENT, JOHN
McGRODY, VICE PRESIDENT, STEVE WEILER, VICE
PRESIDENT, NICHOLAS DENOFA, VICE PRESIDENT,

Plaintiffs,

v.

THE CITY OF PHILADELPHIA, its Officials, Agents,
Employees and Assigns; JIM KENNEY, in his official capacity
as Mayor of the City of Philadelphia; LARRY KRASNER, in
his official capacity as District Attorney of the City of
Philadelphia; R. RICHARD ROSS, JR., in his official capacity
as Police Commissioner of the City of Philadelphia,

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

TERM, 2018

NO.

NOTICE TO PLEAD

NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER
AT ONCE. IF YOU DO NOT HAVE A LAWYER OR
TELEPHONE THE OFFICE SET FORTH BELOW TO FIND
OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA COUNTY BAR ASSOCIATION
LAWYER REFERRAL and INFORMATION SERVICE

One Reading Center
Philadelphia, Pennsylvania 19107
Telephone: (215) 238-6333

AVISO

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) días, de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE.
SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE
DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR
TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA
ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR
ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE A PHILADELPHIA
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COMPLAINT

I. PARTIES

1. Plaintiff, Fraternal Order of Police, Lodge No. 5 ("Lodge No. 5"), is an unincorporated labor organization with offices located at 11630 Caroline Road, Philadelphia, PA 19154-2110. Its guardians ad litem are its President, John McNesby ("President McNesby"), and its Vice Presidents--Roosevelt Len Poplar, John McGrody, Steve Weiler, and Nicholas Denofa.

2. Defendant, City of Philadelphia ("City"), is a City of the First Class within the meaning of the First-Class City Code, 53 P.S. §§ 13101 et seq., and in accordance

with the Philadelphia Home Rule Charter, 351 Pa. Code §§ 1.1-100 et seq. The City also is a public employer within the meaning of the Act of June 24, 1968, P.L. 237, No. 111, 43 P.S. § 217.1 et seq. (“Act 111”). Included under the rubric of the City government is the Office of Mayor of the City, the City’s District Attorney’s Office and the Philadelphia Police Department (“Department”).

3. Defendant Jim Kenney (“Mayor Kenney”) is the elected Mayor of the City. His office is at City Hall, Room 215, Philadelphia, PA 19107.

4. Defendant Larry Krasner (“Krasner” or “District Attorney Krasner”) is the elected District Attorney of the City. His office is at Three South Penn Square, Philadelphia, PA 19107-3499.

5. Defendant Richard Ross, Jr. (“Commissioner Ross”) is the appointed Commissioner of the Philadelphia Police Department (“Department”). His office is located at the Philadelphia Police Headquarters, 750 Race Street, 19106.

II. JURISDICTION

6. This Court has jurisdiction pursuant to § 931 of the Judicial Code.

III. FACTUAL ALLEGATIONS

7. Lodge No. 5 is a labor organization within the meaning of Act 111 and has historically served as sole collective bargaining representative for all non-civilian Philadelphia Police Department employees for the following job classifications: Police Officer; Police Officer I, Police Corporal; Police Detective; Police Sergeant; Police Lieutenant; Police Captain; Police Staff Inspector; Police Inspector; Chief Police Inspector; and Graphic Artist (hereinafter “Police Officers”).

8. All the bargaining unit employees are employed by the City and working

for the Department.

9. The bargaining unit is comprised of approximately 6,500 uniformed members of Lodge No. 5 who are assigned to protect and serve the residents, workers, and visitors in the City.

10. These members perform the full range of police duties of the City, including, but not limited to, patrolling the City, investigating criminal activity, arresting criminal suspects, conducting motor vehicle stops, and testifying in court regarding criminal investigations conducted by the Police Officers.

11. The City of Philadelphia and Lodge No. 5 are parties to a collective bargaining agreement ("Agreement" and "CBA") derived pursuant to Act 111, which governs the wages, hours, work schedules, health care, pension benefits, discipline and discharge, as well as other working conditions of Lodge No. 5's bargaining unit members.

12. The current Agreement has an effective date of July 1, 2017 through June 30, 2020, which includes a recognition provision that declares that "[t]he City recognizes Lodge No. 5 of the Fraternal Order of Police as the exclusive collective bargaining representative of the bargaining unit covered by this Contract, pursuant to Act 111, including the following classes of full-time Civil Service Employees with permanent appointment..." and then lists all the bargaining unit positions described in paragraph 7 *infra*. (A true and correct copy of the current collective bargaining is attached to this Complaint as Exhibit "A.")

13. As the exclusive bargaining agent for the Police Officers, Lodge No. 5 has associational standing to assert constitutional claims on behalf of its bargaining unit

employees.

14. The Department, through a chain of command that is headed by Commissioner Ross, trains, directs, and disciplines the bargaining unit employees in the performance of their police duties. The Department governs its operations through a series of Directives, Police Commissioner Memoranda and General Messages.

15. The Department has the authority to discipline Police Officers, including issuing oral or written warnings, placing them on paid or unpaid administrative leave, as well as suspending or discharging them. Any such disciplinary action is subject to the just cause standard and the arbitration provisions of the CBA.

16. Additionally, pursuant to the collective bargaining agreement, the Police Board of Inquiry ("PBI") is vested with authority to originate discipline charges, conduct evidentiary hearings, and recommend disciplinary action in all cases of alleged misconduct in the performance of a Police Officer's job duties.

17. The Department keeps records of investigations of Police Officers conducted by Internal Affairs.

18. The Department keeps records of disciplinary investigations of Police Officers or discipline issued against them in their personnel files.

19. According to the Philadelphia Inquirer, by order of former District Attorney Seth Williams, in March 2017, the District Attorney's Office created a Police Misconduct Review Committee to identify Police Officers whose testimony should be avoided in criminal cases. Williams limited the review to those Police Officers who had committed serious misconduct as determined by the Police Board of Inquiry. See Mark Fazlollah, "Under Court Order, District Attorney Krasner Releases List of Tainted Police,"

Philadelphia Inquirer, March 6, 2018. (A true and correct copy of Fazlollah's newspaper article is attached to this Complaint as Exhibit "B.")

20. Through these efforts, Williams created a secret "Do Not Call List" of sixty-six (66) Police Officers whose testimony should be avoided. See Exhibit "B," Fazlollah's newspaper article.

21. Williams' "Do Not Call List" was available to prosecutors in the District Attorney's Office to guide their decisions about which Police Officers should not testify in criminal cases. Pursuant to Williams' policy, prosecutors were informed to seek permission from senior officials before selecting a Police Officer to testify who was on the secret list. See Exhibit "B," Fazlollah's newspaper article.

22. However, Williams did not inform defense counsel for criminal suspects facing trials of the names contained on the "Do Not Call List." See Exhibit "B," Fazlollah's newspaper article.

23. While Williams created a protocol detailing how Police Officers were placed on the secret list and how the Police Officers could be removed, the Department never received the protocol, and, therefore, Police Officers were never informed. See Exhibit "B," Fazlollah's newspaper article.

24. FOP Lodge No. 5 never received the protocol.

25. In November 2017, Krasner was elected District Attorney of the City.

26. Krasner is the first criminal defense and civil rights attorney to be elected the City's District Attorney.

27. Prior to his election, Krasner filed lawsuits against the Philadelphia Police Department in seventy-five (75) separate cases. See Allen Feuer, "He Sued Police 75

Times. Democrats Want Him as Philadelphia's Top Prosecutor," *New York Times*, June 17, 2017. (A true and correct copy of Feuer's newspaper article is attached to this Complaint as Exhibit "C.")

28. In an interview shortly after his election, Krasner stated: "I have ... been beating my head against the wall of the [District Attorney's] office and the [Philadelphia] police department for a long time because the [District Attorney's] office in Philly was not enforcing the law against police. Somebody had to do it." See Harrison Jacobs, "Civil Rights Attorney Larry Krasner Is Philly's Next District Attorney – Here's Why He Ran After 30 Years Suing Police," *Business Inside*, November 7, 2017. (A true and correct copy of Jacobs magazine article is attached to this Complaint as Exhibit "D.")

29. Krasner's December 2017 transition team included vocal opponents of law enforcement. Defense Attorney Michael Coard, a member of Krasner's transition team who had appeared in his campaign videos, published an expletive-laced post directed at the Fraternal Order of Police on social media. See Chris Palmer, "Controversial Cop Critic on Philly DA-elect's Transition Team," *PoliceOne.com*, December 4, 2017. (A true and correct copy of Palmer's online article is attached to this Complaint as Exhibit "E.")

30. During his first nine (9) months in office, District Attorney Krasner filed charges against eight (8) Police Officers for six (6) alleged on-duty incidents. See Max Marin, "Philly DA Larry Krasner Is Going After Police Officers for Illegal Stop-and-Frisks," *BillyPenn.com*, October 4, 2018. (A true and correct copy of Marin's online article is attached to this Complaint as Exhibit "F.")

31. District Attorney Krasner has publicly stated his animus towards the Philadelphia Police Department and the Fraternal Order of Police. See Jennifer

Gonnerman, "Larry Krasner's Campaign to End Mass Incarceration," *New Yorker*, October 29, 2018. (A true and correct copy of Gonnerman's magazine article is attached to this Complaint as Exhibit "G.")

32. District Attorney Krasner made clear that "[h]e was trying to obtain records from the police department's internal affairs division, in order to compile a more thorough [Do Not Call List]." He continued: "We're in the middle of a tug-of-war. If they don't collaborate, we'll sue them because we have to comply with our constitutional obligations—and we take that very seriously." See Exhibit "G," Gonnerman magazine article.

33. Under the U.S. Supreme Court's decision in Brady v. Maryland, criminal defendants have the right to receive exculpatory or impeaching information and evidence that is material to the guilt or innocence or to the punishment of a defendant. Such information includes exculpatory or impeaching information about the police officers who investigated the case. Brady does not, however, require prosecutors to disclose information about police officers to criminal defendants or the public, even if it is exculpatory or impeaching information, in a manner that violates the police officers' due process rights and their fundamental right to reputation.

34. District Attorney Krasner has voiced his frustration with Lodge No. 5's history of defending Police Officers who have been wrongfully punished by the City in violation of the CBA. District Attorney Krasner has publicly and wrongfully claimed that the Police Commissioner "has almost no capacity to discipline, to terminate, or even to move to another unit, because everything is overturned in the corrupt arbitration process." See Exhibit "G," Gonnerman magazine article.

35. In March 2018, District Attorney Krasner was ordered by this Court to release the “Do Not Call List” created by his predecessor.

36. Shortly thereafter, at least one newspaper in the City published the entire list of sixty-six (66) Police Officers’ names found on former District Attorney Williams’ “Do Not Call List.” The list included information about the purported misconduct that led to the Police Officer’s inclusion on the list.

37. On or about May 15, 2018, Lodge No. 5 learned that the Department was working with District Attorney Krasner to implement new and widespread limitations on court-assignments and related working conditions of Police Officers who purportedly had disciplinary misconduct in their personnel files.

38. On the same day, President McNesby wrote a letter to the Department to demand bargaining over the Police Department’s court-assignment limitations program and its impact on bargaining unit employees. (A true and correct copy of the May 15, 2018 letter from President McNesby to Commissioner Ross is attached to this Complaint as Exhibit “H.”)

39. On or about June 4, 2018, the Philadelphia Inquirer reported that the Police Department was actively working to develop and implement a police court-assignment limitation program that it described as unprecedented in scope in recent city history. See Mark Fazlollah and Chris Palmer, “Philly DA Larry Krasner Seeking to Develop Comprehensive List of Tainted Cops,” Philly.com, June 4, 2018. (A true and correct copy of Fazlollah and Palmer online article is attached to this Complaint as Exhibit “I.”)

40. The new “Do Not Call List” is expected to exceed the sixty-six (66) officers

placed on the list created by former District Attorney Williams. See Exhibit "I," Fazlollah and Palmer online article.

41. To create this new and much expanded "Do Not Call List," District Attorney Krasner has asked for numerous personnel files of Police Officers.

42. Upon information and belief, the Department is combing through Internal Affairs investigatory records and findings of the Police Board of Inquiry to create the new "Do Not Call List." District Attorney Krasner is also reviewing purported violations of Police Officers that are not part of the Department's disciplinary system, although the nature or source of such information has not been disclosed to Lodge No. 5. See Exhibit "I," Fazlollah and Palmer online article.

43. Upon information and belief, the Department already has handed over to District Attorney Krasner thousands of Police Officer's personnel files, or parts of their personnel files, and it is expected that thousands more will be provided.

44. Upon information and belief, each month District Attorney Krasner provides the Department a list of Police Officer names who were involved in investigations of criminal defendants facing trial the next month.

45. The Department then provides District Attorney Krasner with the personnel files, or parts of personnel files, of those Police Officers for its review.

46. Police Officers are not informed when the Department provides their personnel files, or parts of their personnel files, to District Attorney Krasner.

47. On June 19, 2018, President McNesby wrote to Commissioner Ross demanding interest arbitration to resolve the dispute after the Department never responded to its May 15, 2018 letter. (A true and correct copy of the June 19, 2018

letter from President McNesby to Commissioner Ross is attached to this Complaint as Exhibit "J.")

48. On June 22, 2018, President McNesby wrote to Mayor Kenney requesting interest arbitration over the unresolved dispute. (A true and correct copy of the June 22, 2018 letter from President McNesby to Mayor Kenney is attached to this Complaint as Exhibit "K.")

49. On the same day, Lodge No. 5 learned that some of its bargaining unit employees were informed orally and without advanced notice that their job duties were being restricted.

50. On June 23, 2018, President McNesby wrote to Commissioner Ross about restrictions placed on bargaining unit employees after a few bargaining unit employers were informed orally without any advanced notice that their "work duties were restricted by the Police Department." Lodge No. 5 requested the information concerning the incident, and threatened to file an unfair labor practice charge on the matter. (A true and correct copy of the June 23, 2018 letter from President McNesby to Mayor Kenney is attached to this Complaint as Exhibit "L.")

51. On June 27, 2018, Monica Marchetti-Brock, Director of the Mayor's Office of Labor Relations, informed Lodge No. 5 that the City did not believe that the matter was a mandatory subject of bargaining, and, therefore, refused to bargain on the release of information from Police Officers' personnel files and duty restrictions placed on some of those officers. (A true and correct copy of the June 27, 2018 letter is attached to this Complaint as Exhibit "M.")

52. On June 28, 2018, President McNesby sent a letter to Commissioner

Ross informing him that bargaining unit employees had their work duties restricted by the Department and demanded they be returned to regularly duty status. (A true and correct copy of the June 28, 2018 letter from President McNesby to Commissioner Ross is attached to this Complaint as Exhibit "N.").

53. On the same day, President McNesby sent a letter to Commissioner Ross demanding bargaining over "the proposed large-scale release of confidential personnel records of bargaining unit members to the Office of the District Attorney." (A true and correct copy of the June 28, 2018 letter from President McNesby to Commissioner Ross is attached to this Complaint as Exhibit "O.").

54. On or about July 27, 2018, President McNesby sent a letter to District Attorney Krasner challenging the creation of a secret "Do Not Call List." (A true and correct copy of the July 27, 2018 letter from President McNesby to Commissioner Ross is attached to this Complaint as Exhibit "P.")

55. On August 2, 2018, Lodge No. 5 filed an unfair labor practice charge with the Pennsylvania Labor Relations Board alleging that the City violated its obligations under Act 111 to engage in interest arbitration over the release of large-scale release of Police Officers' personnel records. (A true and correct copy of Lodge No. 5's unfair labor practice charge is attached to this Complaint as Exhibit "Q.")

56. On August 21, 2018, Patricia Cummings, Supervisor of the Conviction Integrity Unit of the District Attorney's Office, responded. Attached to her letter is a sample letter sent to Police Officers in the event District Attorney Krasner discovers misconduct information about the Police Officer as well as a two-page protocol of the types of Police Officer misconduct constitutes information that should be disclosed to

counsel for criminal defendants. (A true and correct copy of the August 21, 2018 letter is attached to this Complaint as Exhibit "R.")

57. The sample letter to the officer reads in relevant part:

Pursuant to the law and the [District Attorney's Office] policy regarding police misconduct disclosures, the misconduct will be disclosed to the defense in all cases where you may be called to testify as a witness and said disclosure may also be made if required in closed cases where you were a critical witness.

Also, if required by law, supporting documentation in our possession regarding the misconduct will be disclosed to the defense.

Please note, if you believe that our information is incorrect, feel free to communicate to us in writing through counsel.

See Exhibit "R," August 21, 2018 letter.

58. Based on information and belief, only after District Attorney Krasner reviews the personnel files, or parts of personnel files, of a Police Officer and decides in his sole discretion that the Police Officer should be placed on the new "Do Not Call List" or have information contained in his personnel file disclosed to defense counsel is the Police Officer notified by letter of that fact.

59. In the letter sent to the Police Officer, the District Attorney's Office informs the Police Officer of the date and nature of the misconduct which it will disclose to defense counsel in the event the Police Officer is called to testify at a criminal case.

60. District Attorney Krasner further informs Police Officers that he may disclose the same information in closed cases in which they were witnesses.

61. Finally, District Attorney Krasner tells Police Officers that it may provide defense counsel the underlying documentation regarding the purported misconduct.

62. While District Attorney Krasner allows Police Officers to write letters

challenging the accuracy of the information, it has no mechanism to ensure Police Officers are not erroneously and wrongly placed on District Attorney Krasner's "Do Not Call List" or have their names and personnel information improperly disclosed to defense counsel or the public.

63. District Attorney Krasner apparently believes that he may decide in his sole discretion whether a Police Officer's challenge of the accuracy of purported misconduct is grounds for not disclosing the information to defense counsel and removing the Police Officer's name from the "Do Not Call List."

64. Once placed on District Attorney Krasner's "Do Not Call List," a Police Officer loses opportunities to testify in criminal cases in which he or she served as an investigator, and sometimes is delegated to restrictive duty status. For such Police Officers, critical parts of the work performed by Police Officers are restricted, resulting in the lost wages, damage to reputation, and professional harm to those Police Officers.

65. Public disclosure of District Attorney Krasner's "Do Not Call List," as occurred with the disclosure of Williams' "Do Not Call List," will result in reputational harm to Police Officers, regardless of whether the information that led to placement on the list is erroneous or incorrect.

COUNT I

(DEPRIVATION OF REPUTATION WITHOUT DUE PROCESS IN VIOLATION OF THE PENNSYLVANIA CONSTITUTION—EQUITABLE RELIEF)

66. Averments 1 through 65 are incorporated herein as if fully set forth at length.

67. The Pennsylvania Supreme Court has long recognized a right to privacy. *Stenger v. Lehigh Valley Hosp. Ctr.*, 609 A.2d 796, 800 (Pa. 1992).

68. Our Supreme Court has further recognized that the right to privacy protects the reputations of Pennsylvanians against damaging disclosures of personal information by government. *R. v. Department of Public Welfare*, 535 Pa. 440, 636 A3d 142 (1994).

69. Our Supreme Court has located this fundamental right in reputation in Article I, Sections 1 and 11 of the Pennsylvania Constitution.

70. Article I, Section 1 of the Pennsylvania Constitution reads in its entirety:

All men are born equally free and independent and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

71. Article I, Section 11 of the Pennsylvania Constitution reads in its entirety:

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

72. The essential elements of due process under the Pennsylvania Constitution are adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal. *J.P. v. Dep't of Human Servs.*, 170 A.3d 575 (Pa. Cmwlth. 2017).

73. The creation of a “Do Not Call List” and the disclosure of the names on that list or the information supporting inclusion on that list constitutes a deprivation of the fundamental right to reputation protected by the Pennsylvania Constitution.

74. Neither the Mayor, District Attorney Krasner, Commissioner Ross, nor their agents, employees or assigns, may create a “Do Not Call List” or disclose the names on that list or the information supporting inclusion on that list without first providing Police Officers adequate notice, the opportunity to be heard, and the chance to defend themselves before a fair and impartial tribunal.

75. The Mayor, District Attorney Krasner, and Commissioner Ross have failed to provide the constitutionally necessary due process protections before including Police Officers’ names on the new “Do Not Call List” or disclosing their names or the information supporting inclusion on that list to the public or defense counsel.

76. Effectively, the Police Officer is informed that his or her name is on the “Do Not Call List” and his personnel information will be disclosed to defense counsel after District Attorney Krasner makes his determination.

77. District Attorney Krasner then allows the Police Officer to write a letter challenging his inclusion on the “Do Not Call List,” but the District Attorney retains sole discretion to credit or not credit the Police Officer’s challenge. The Police Officer is not afforded a fair and impartial tribunal to consider the matter.

78. This procedure, which has been created by District Attorney Krasner, permitted by Mayor Kenney, and supported by Commissioner Ross, violates Police Officers’ fundamental right to reputation.

79. Therefore, Lodge No. 5, on behalf of its members, requests equitable relief in the form of a permanent injunction against the District Attorney Krasner, as well as his agents, employees, and assigns, from placing any Police Officers' name on the "Do Not Call List" or disclosing their identities or the information that resulted in their inclusion on the list unless and until adequate due process protections are established by his Office.

80. Furthermore, Lodge No 5, on behalf of its members, requests equitable relief in the form of a permanent injunction against Mayor Kenney and Commissioner Ross, as well as their agents, employees, and assigns, from assisting District Attorney Krasner in creating his "Do Not Call List" by providing personnel information or any other type of information about Police Officers unless and until adequate due process protections are established by District Attorney Krasner.

WHEREFORE, Plaintiffs respectfully pray that the Court order the following equitable relief:

a. Permanently enjoining District Attorney Krasner of the City of Philadelphia, as well as his agents, employees and assigns from creating a "Do Not Call List" or disclosing the Police Officers' names on that list or the information that resulted in their inclusion until adequate due process protections are established;

b. Permanently enjoining Mayor Kenney and Commissioner Ross of the City of Philadelphia, as well as their agents, employees and assigns from assisting District Attorney Krasner's creation of a "Do Not Call List" by providing personnel information or any other type of information about Police

Officers unless and until adequate due process protections are established by the District Attorney.

COUNT II

(DEPRIVATION OF REPUTATION WITHOUT DUE PROCESS IN VIOLATION OF THE PENNSYLVANIA CONSTITUTION—DECLARATORY RELIEF)

81. Averments 1 through 80 are incorporated herein as if fully set forth at length.

82. Mayor Kenney, District Attorney Krasner, and Commissioner Ross failed to create adequate due process procedures to prevent violations of the Police Officers' fundamental right to reputation as protected under Article 1, Sections 1 and 11 of the Pennsylvania Constitution.

83. Therefore, Lodge No. 5, on behalf of its members, requests a declaratory judgment that Mayor Kenney, District Attorney Krasner, and Commissioner Ross violated Police Officers' fundamental right to reputation by failing to create adequate due process protections for the Police Officers.

WHEREFORE, Plaintiffs pray this Court issue a declaratory judgment that Mayor Kenney, District Attorney Krasner, and Commissioner Ross violated Police Officers' fundamental right to reputation by failing to create adequate due process protections for the Police Officers.

Respectfully submitted,

WILLIG, WILLIAMS & DAVIDSON

BY: s/ Ralph J. Teti
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Attorneys for Fraternal Order of Police,
Lodge No. 5

Dated: November 13, 2018

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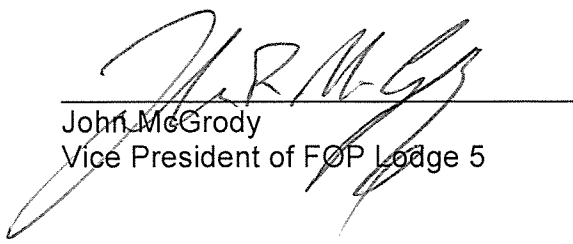
COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

TERM, 2018

NO.

VERIFICATION

I, John McGrody swear and affirm that the factual allegations contained in the
attached Complaint are true and correct to the best of my knowledge, information and
belief. This statement is made pursuant to the penalties provided under Pennsylvania
law for unsworn verifications to authorities.

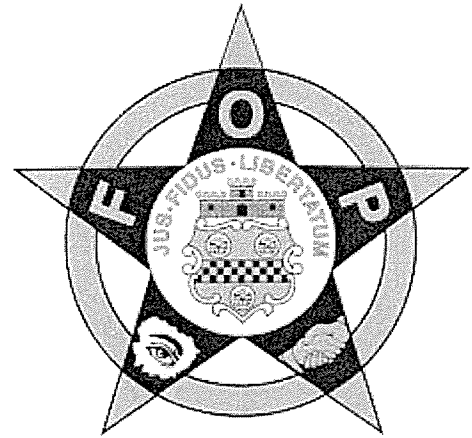

John McGrody
Vice President of FOP Lodge 5

Sworn to and subscribed before me
this 13th day of November, 2018


NOTARY

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JEAN C. ROGERS, Notary Public
City of Philadelphia, Phila. County
My Commission Expires December 26, 2018

Exhibit A



CONTRACT
BETWEEN
THE CITY OF
PHILADELPHIA
And
FRATERNAL ORDER OF
POLICE
LODGE NO. 5

FOR THE TERM
July 1, 2014 through June 30, 2017

Disclaimer:

The attached document is a working draft. It does not constitute a final agreement by either party. This document is provided as a guide to the cumulative amendments from year to year, by and between the City of Philadelphia and the Philadelphia Police Union, Fraternal Order of Police, Lodge 5, the Union.

The content of this document reflects the City's interpretation of the collective bargaining agreement between the parties to date. This document is a convenient way to identify key components, but it does not replace the individual memos of understanding for the periods covered.

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I. PREAMBLE

This Contract is entered into by and between the City of Philadelphia (hereinafter referred to as 'the City') and the Fraternal Order of Police, Lodge No. 5 (hereinafter referred to as 'the FOP').

II. SCOPE OF AGREEMENT

A. Recognition

The City recognizes Lodge No.5 of the Fraternal Order of Police as the exclusive collective bargaining representative of the bargaining unit covered by this Contract, pursuant to Act 111, including the following classes of full-time Civil Service employees with permanent appointments: Police Officer; Police Officer I; Police Corporal; Police Detective; Police Sergeant; Police Lieutenant; Police Captain; Police Staff Inspector; Police Inspector; Chief Police Inspector; Graphic Artist; Prosecution Detective I; Prosecution Detective II; Prosecution Detective Sergeant; Prosecution Detective Lieutenant; Prosecution Detective Captain; Deputy Chief Prosecution Detective; Criminal Prosecution Special Investigator in the Office of the District Attorney.

The parties have included herein certain provisions that have arisen by virtue of Act 111 Awards and negotiations and also provisions contained in current Civil Service Regulations that were not mandated by Act 111 Awards or negotiations. The inclusion of these Civil Service Regulations is for the purpose of providing a more complete and lucid document and is not intended to abridge in any way the right of the City under the Home Rule Charter to manage its employees and to effect changes in all personnel matters, including the right of the Civil Service Commission to amend any Civil Service Regulations consistent with the City's obligations under the requirement of the Act 111.

III. UNION RIGHTS, UNION MEMBERSHIP, AND DUES CHECKOFF

A. FOP Rights

1. The FOP shall be notified of all substantive changes or new rules and regulations applicable to the Police Department affecting members of the FOP bargaining unit at least ten (10) days before the effective date of such change, unless the change is occasioned by an emergency.
2. The eighteen (18) elected Executive Board members whose names have been submitted to the Police Commissioner and the Personnel Director shall be permitted to visit police districts to conduct necessary Union business. This provision shall not be construed to permit the conduct of Union meetings in police districts. Visits shall be preceded by reasonable notice of not less than one (1) hour.
3. The FOP may use Police facilities for the conduct of its elections. The FOP shall conduct these elections in such a fashion so as not to disrupt the operation of that facility.

B. Information to FOP

The City shall provide the following information to the FOP so that it may administer this contract:

1. Injury reports which are released by the individual employee;
2. Notification of employees on leaves of absences including maternity; and
3. Copies of disciplinary actions when employees are notified.
4. When back pay is awarded in a grievance arbitration, the City will provide the FOP

with a copy of the distribution sheet and will keep the FOP informed concerning compliance with the Award.

C. Agency Shop

1. Any employee who fails voluntarily to acquire and maintain membership in the FOP shall, as a condition of continued employment be required, beginning on the thirtieth day following the end of the initial probationary period, and thereafter, to pay to FOP a monthly service fee as a contribution toward the administration of this Contract. The monthly service fee shall be \$1.00 (one dollar less than the regular monthly dues of an FOP member. The aforementioned service fee shall be deducted by the City, bi-weekly from the pay of those employees who do not acquire and maintain FOP membership.
2. This obligation may be met by the dues check off procedure set forth in Section D below, or the individual may discharge this obligation by paying the FOP directly.

D. Dues Check off

1. The City shall deduct the dues and initiation fees of the FOP from the pay of those employees who individually request or authorize in writing that such deductions be made.
2. The amounts deducted from the pay of bargaining unit members as set forth in paragraph 1 above, shall be certified to the City by the FOP and the aggregate deductions of all members of the bargaining unit shall be remitted, together with an itemized statement to the FOP by the last day of the succeeding month after such deductions are made.
3. The FOP shall indemnify and hold the City harmless against any and all claims, suits, orders, damages or judgments brought or issued against the City as a result of any action taken or not taken by the City under the terms and conditions of this Contract as it relates to these deductions.

E. New Employees

The provisions of Section A. subsection 1. of this Article shall become and be effective for new employees after thirty (30) calendar days from completion of their initial probationary period; provided, however, that any police officer shall have the right to join the FOP on a voluntary basis at any time subsequent to their appointment and authorize dues check off in the manner prescribed in Section B of this Article.

IV. Management Rights

The city, consistent with sound discretion, possesses the right, in accordance with applicable laws, to manage all operations, including but not limited to the direction of the work force and the right to plan, direct and control the operation of all equipment and other property of the City, except as modified by this Award and those provisions of the agreement which are not inconsistent with or contrary to the exercise of such discretion.

Matters of inherent managerial policy are reserved exclusively to the City. Except as specifically addressed in this Award and the collective bargaining agreement, matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as civilianization of bargaining unit member positions, as addressed in the Award, the functions and programs of the City, standards of service, the overall budget and the organizational

structure of the Police Department, and the selection and direction of personnel.

When and if the City determines to amend a Civil Service Regulation not covered by this Award or the resulting agreement, the City shall first meet with the FOP and discuss the matter. In no event shall the City amend Civil Service Regulations in a manner inconsistent with the Home Rule Charter as presently constituted or as amended, or in a manner, which would alter wages or fringe benefits.

V. JOINT LABOR MANAGEMENT COMMITTEES

A. Designation of Committees

1. The parties hereby establish advisory committees on the following subjects:
 - a. practice and procedure;
 - b. equipment and standardization
 - c. advancement and training; and
 - d. medical benefits and treatment, for on-duty and off-duty injuries and illnesses.
2. The City and the FOP shall create a joint Labor-Management Committee to consider changes in policies and procedures to strengthen departmental ethics and accountability. Topics to be considered by the Committee shall include, but not be limited to:
 - a. the disciplinary code;
 - b. the grievance and arbitration process;
 - c. criteria for transfers; and
 - d. field training officers.

The Committee shall meet and discuss the topics listed above, and may create subcommittees as necessary. Nothing in this section shall be construed to abridge the rights of the City and the Police Department under XXI-R, Management Rights or the rights of the FOP under Act 111 or the collective bargaining agreement.

B. Composition of Committees

The Committees shall be comprised of six members, three of which shall be selected by the Police Commissioner and three by the FOP.

The three members appointed by the Police Commissioner to the Joint Labor-Management Committee shall be of a responsible rank so as to address the subject matter of the committee.

The City shall appoint a high-ranking member of its Personnel Department as a member of the Testing Committee.

C. Chairman

The parties agree to divide the responsibility of chairing the meeting equally. Thus, the City and the FOP shall each appoint a chairperson to two of the above referenced four committees from among their members on that committee.

D. Time and Conduct of Committee Meetings

Committee meetings shall be conducted not less than once every two months to consider topics raised by Committee Members, at which time members will have the opportunity to discuss and/or to present expert testimony on the issues before the Committee.

E. Committee Advisory Reports

Each committee shall issue an annual report detailing its findings and recommendations. The members shall be permitted to append additional concurring or dissenting reports to the findings of the Annual Report.

F. Effect of Report

The Committees and the Annual Reports of the Committees shall be advisory only and shall not constitute any limitation on the management prerogatives of the Police Commissioner and the City.

G. Work Schedules

Refer to Article VI, section K

H. Assignment of Permanent Midnight Shift

Refer to Article VI, section L

I. Civilianization

The City shall be entitled to consider the civilianization of those classifications and positions presently occupied by police officers enumerated in City Exhibit No. 133, subject to certain conditions. The City is entitled to consider changing the enumerated police officer positions to the civilian classifications of Clerk Typist I, Correctional Officer, Police Communications Dispatcher, and Criminal Evidence Specialist.

Prior to implementing civilianization of the above-enumerated classifications, the City shall meet with designated representatives of the FOP to discuss the jobs the City intends to civilianize and the reasons and need for such civilianization. If the parties, after sixty days subsequent to the initial meeting, are unable to agree upon the need for and conditions applicable to the civilianization of the jobs under discussion, then the City may implement the civilianization of such jobs and the FOP may submit the propriety of such civilianization to arbitration consistent with the provisions of the collective bargaining agreement.

The maximum number of jobs subject to civilianization shall be the 179 such positions referred to in City Exhibit No. 133.

No civilian shall supervise a sworn police officer at the first level.

J. Day Care

A joint committee with an equal number of representatives of labor and management shall be established to study the issue of daycare services for members of the bargaining unit and to make a recommendation thereon to the City within six (6) months of the date of this Award.

K. Bulletproof Vests

A joint committee with an equal number of representatives of labor and management shall be established to study industry practices and standards regarding replacement of bulletproof vests and to make recommendations thereon to the Police Commissioner.

L. Joint Testing and Examination Committee

The parties shall form a joint Testing and Examination Committee composed of three (3)

representatives of the FOP named by the President of the FOP and three (3) representatives of the City named by the Personnel Director, including one high-ranking member of the Personnel Department. The Testing and Examination Committee shall meet regularly and at least once before and after each examination and shall make non-binding recommendations to the City regarding the improvement of testing and examination procedures. The FOP representatives shall recuse themselves from any meeting for which the particular representative is a candidate.

M. Commanders

A six-member committee composed of three members selected by the City and three members selected by the FOP shall be formed for the purpose of determining unresolved issues regarding the ranks of Captain and above.

The Arbitration Panel shall retain jurisdiction, in the event the Committee is unable to reach agreement by October 31, 1998, the Panel shall reconvene and issue an appropriate award.

N. Pension Labor-Management Committee

1. The City and the FOP shall create a Joint Labor-Management Committee to consider changes in pension benefits such as development of a cost of living increase mechanism and the issue of extending health care coverage for future retirees.
2. The Committee shall be composed of six members; three selected by the City and three selected by the FOP and shall meet at least once a month.
3. The Committee shall issue a report of its finding by no later than June 30, 1999.

O. Transfers

A transfer committee comprised of equal numbers of representatives appointed by the Police Commissioner and the FOP shall address issues related to the transfer of employees including transfers of officers at the rank of lieutenant and above and an equitable system for transfers of officers out of specialized units for non-disciplinary reasons other than essential manpower requirements.

P. Catastrophic Leave Bank Committee

The City and the Union will establish a program to permit employees covered by this agreement to donate accrued vacation leave to a leave bank. The program shall be administered by a Joint Labor Management committee consisting of three (3) members appointed by the Union and three (3) members appointed by the City. The program shall be subject to the following rules:

1. Each year during the period of January 1 to March 31, employees may contribute accrued vacation leave to the leave bank.
2. Employees may only donate earned accrued vacation leave and must indicate such voluntary, irrevocable transfer in writing. Employees may contribute from one to five days in whole day increments only.
3. Eligibility for transfer of vacation leave shall be limited to employees who have donated a vacation day to the leave bank in the last contribution period. Only employees who can demonstrate a catastrophic medical condition and who are approaching exhaustion of all paid leave are eligible for a grant of leave time from the transfer of leave bank.

4. The committee shall have the sole authority to determine eligibility for a grant of leave. The committee shall review applications from employees for a grant of leave from the leave bank and determine the amount of leave to be granted. Grants of leave shall be limited to a maximum of thirty (30) leave days. Employees may apply for a maximum of two grants during a calendar year.
5. Employees receiving such transferred leave shall only be credited in accordance with the Civil Service Regulations governing maximum leave accrual.

If an employee who has received transferred leave separates from City service for any reason, there shall be no payment for unused transferred leave. Unused transferred leave shall be returned to the leave bank. No aspect of this benefit shall be subject to the grievance procedures

Q. Health Care Cooperation Committee

The City and the FOP with, if possible, the other City Unions will establish the Joint Labor-Management Healthcare Evaluation Committee ("Committee"). The attached Appendix describes the Committee's structure and goals and is incorporated into and shall be part of this Award. Appendix is listed as A.

R. Scheduling Officers for Court

A Committee comprised of two (2) representatives from the F.O.P. and the City shall meet monthly with a court liaison officer and a representative of the District Attorney in an effort to minimize the scheduling of officers for court at times other than a scheduled holiday and shift.

VI. HOURS OF WORK AND OVERTIME

A. Work Week

The normal work week for the employees covered by this contract shall be forty (40) hours, Monday through Sunday, inclusive.

B. Work Day

The normal work day for the employees covered by this contract shall be between eight (8) and eight and one-quarter (8.25) hours, which shall include a thirty (30) minute lunch period. Solely for the purpose of computing leave usage and accrual, an eight (8) hour day will be used.

C. Overtime

1. All employees below the rank of Captain shall receive compensation at the rate of one and one half times their regular rate of pay for all hours worked in excess of the normal work day.
2. Equalization of Overtime
Supplemental services hiring or scheduled absentee replacement that the Department makes available within each district/unit shall be offered on a rotating basis by seniority, within rank, within each district/unit among those who have volunteered in writing for such assignments. Employees on the Sick Abuse List shall not be eligible to participate in this rotation. An employee who declines an offered voluntary overtime assignment shall not be offered another voluntary overtime assignment until his/her name is reached again on the rotation.

D. Compensatory Time (In Lieu of Overtime)

1. Employees at the rank of Captain or above shall be granted compensatory time in lieu of overtime for all hours worked in excess of the normal work day. ~~Compensatory time shall be computed on an hour for hour basis, and may be accrued up to eleven hundred (1,100) hours maximum, effective July 1, 1998.~~ **Effective July 1, 2014, officers at the rank of Captain and above will be permitted to accumulate compensatory time on an hour for hour basis up to a cap of 1,300 hours subject to the existing rules and regulations.**
2. Upon the retirement of an employee holding the rank of Captain and above, the City shall purchase up to five hundred fifty (550) hours effective July 1, 1998 of the accumulated compensatory time.
3. An employee holding the rank of Captain and above shall have the right to take annually five (5) days of compensatory time consecutively, to be scheduled with the approval of the appointing authority.
4. The lump sum purchase of the three hundred twenty-five (325) and/or three hundred fifty (350) hours as of July 1, 1989 of accumulated unused compensatory time shall be in addition to the compensatory time that employees at the rank of Captain and above may presently take off prior to the effective date of their retirement, which is not to exceed one hundred twenty (120) hours. In no event, however, shall the run off and purchase of compensatory time exceed four hundred forty-five (445) hours effective July 1, 1989 and four hundred seventy (470) hours as of July 1, 1990.
5. Employees holding the rank of Captain or above may cash in two (2) weeks of accumulated, unused compensatory time per year, provided that all cashed-in compensatory time shall be deducted from an employee's balance of unused compensatory time.
 - A. **Effective July 1, 2014, officers at the rank of Captain and above will be permitted to sell back an additional 40 hours of compensatory time each year subject to the existing rules and regulations.**
6. ~~Effective July 1, 2011, officers at the rank of Captain and above will be permitted to accumulate compensatory time on an hour for hour basis up to a cap of 1200 hours.~~ **Effective July 1, 2014, officers at the rank of Captain and above will be permitted to accumulate compensatory time on an hour for hour basis up to a cap of 1,300 hours subject to the existing rules and regulations.**
These employees will be permitted to cash out up to 600 hours of compensatory time at retirement from the Department subject to the existing rules and regulations.

E. Call In Time on Scheduled Day Off

Any employee who is required to report for work on a non-scheduled work day shall be paid overtime for work performed on this call-in tour of duty for not less than eight (8) hours, except as set forth in Section G below.

F. Call Back After Completion of Shift

Any employee who is called back and required to work on any day after the completion of a regular tour of duty shall receive overtime pay for not less than two (2) hours of work; however, this shall not apply to the situation where an employee continues with work

immediately after his/her scheduled day's work, subject to interruption for meals.

G. Appearance Before Civil or Judicial Bodies

Any employee who, in the performance of official duties is required by the City to appear before designated Civil or Judicial Bodies shall be eligible for overtime pay as follows:

1. If required to appear on a scheduled work day at a time other than his/her regularly assigned shift, the employee shall receive not less than two (2) hours overtime pay, or, where such required appearance exceeds two (2) hours, any and all time beyond the minimum of two (2) hours shall be compensated at the overtime rate.
2. If an employee is required to appear before a Court of Record or Grand Jury and his/her normal duty tour is:
 - a. **From 12:00 midnight to 8:00 a.m., 8:00 p.m. to 4:00 p.m., or 4:00 p.m. to 12 midnight**, the employee shall be required to report to work as scheduled and shall have two (2) additional hours added to her/his earned but unused vacation time. An employee who has an earned but unused vacation leave balance of 70 days (560 hours) or more shall, in lieu of additional vacation leave, have two (2) additional hours added to his /her holiday compensatory time.
3. Employees required to appear on a scheduled day off may request to work a full tour of duty on that day (normally 8:00 a.m. to 4:00 p.m.) by:
 - a. reporting for work and performing work assignment;
 - b. appearing before the civil or judicial body;
 - c. after such appearance, return to his/her work assignment for the balance of the tour of duty; and,
 - d. any employee working as set forth in (a), (b), and (c) above, shall be paid eight (8) hours overtime in lieu of their day off.
4. When an employee is required to appear on a day off, but does not elect the option set forth in Section G, subsection 3 of this Article, he/she shall be guaranteed a minimum of four (4) hours pay at overtime rates. In the event that the four (4) hour period is exceeded, the employee shall be compensated at the overtime rate for all hours spent before the civil or judicial body.
5. For purpose of this Section, Civil or Judicial bodies shall include the following:
 - a. Bureau of Highway Safety;
 - b. Civil Service Commission;
 - c. Court(s) of Record;
 - d. Departmental Board of Inquiry;
 - e. Grand Jury;
 - f. Medical Examiner's Board;
 - g. Police Advisory Board;
 - h. Traffic Court;
 - i. Pennsylvania Liquor Control Board;
 - j. Workmen's Compensation Hearings;
 - k. A person authorized to take depositions for use before a civil or judicial body;
 - l. Any other civil or judicial offices as may be designated by the Personnel Director.

6. A Committee comprised of two (2) representatives from the F.O.P. and the City shall meet monthly with a court liaison officer and a representative of the District Attorney in an effort to minimize the scheduling of officers for court at times other than a scheduled holiday and shift.
 7. Effective January 1, 2010, officers who do not receive notice at least 48 hours in advance of the time they are directed to appear for a required court appearance, other than a preliminary hearing, scheduled for a date the officer is not scheduled to work, shall be paid a minimum of 4 hours of overtime at a rate of 2.5 times the employee's regular rate.
- H. Standby Time For Prosecution Detectives' Class
- Employees in these classes who, following their regular working hours, as well as on Saturdays, Sundays or holidays, when such employees are not normally expected to work, serve in a standby capacity by being available or subject to call for work in accordance with a pre-arranged weekly authorized schedule for such standby work, shall be entitled for such weekly standby duty to eight (8) hours of time off from work with pay (compensatory time), such time to be used at the authorization of the City.
- I. Appearance To Answer Charge Against Oneself
- If the appearance is required to answer charges preferred against the employee, no overtime pay shall be granted.
- J. Drop-Back Vacancy Assignments
- The Police Department may assign employees to fill vacancies on a drop-back shift caused by the absence of the employees who were scheduled to drop back. Volunteers will be given priority for this assignment. The assignment of employees to fill drop-back vacancies shall not be considered a schedule change under Paragraph 30 of the 1992-1996 Interest Arbitration Award {Section IV-H of this contract} or entitle the employees to any overtime Pay.
- K. Work Schedules
1. Shift Schedule
- Except as provided below, any proposal by the City to modify work schedules shall be submitted for discussion to a joint committee with an equal number of representatives of the FOP and the City. If no agreement is reached regarding the City's proposal, the disagreement shall be submitted to a mutually agreed upon neutral who shall be required to fully resolve the issues in dispute within ten (10) days of the date of the submission. The City may not implement any terms of its proposal until issuance, of the, neutral's decision. Any proposal by the FOP to modify work schedules also shall be submitted to the committee; however, no such proposal will be submitted to the neutral and will not be implemented unless the parties reach agreement.
2. Once during each calendar year the City shall have the right to change schedules within a recognized work unit without the requirement of a submission to a neutral, provided that affected bargaining unit members are given at least thirty (30) days notice of a change in schedule. A schedule change shall not result in a change of more than one day in an employee's work week, more than eight (8) hours going forward from the employee's regular shift, split shifts or more than two different starting times in a work week.

3. Bargaining unit members will be excused from the work schedule change for hardship, provided that this is consistent with the Police Department's operational needs.
4. The additional rights provided for in Section IV-H-4 above shall only be applicable if the Police Department establishes a fixed non-rotating "last-out" 4-2, 5-2 shift for the patrol districts and detectives, and will remain in effect only so long as the fixed, non-rotating "last-out" 4-2, 5-2 shift is in effect.
5. The Panel shall retain jurisdiction over the new provisions for ninety (90) days following the date of this Award. During this ninety (90) day period, the Panel reserves full authority to review these new provisions to ensure that they meet the needs of the parties. The Parties existing rights under the Work Schedule provision of the contract shall remain unchanged and the Panel shall have no authority to alter or diminish these rights.
6. The Panel recognizes that crime, particularly violent crime, is a significant problem in the City and that the new Administration has made reducing crime a top priority and is taking aggressive action to do so. In order to aid in those efforts, the Panel believes it is appropriate to give the Department additional flexibility to respond to crime patterns.
7.
 - a. The Department shall be entitled to adjust an employee's normal scheduled starting time by four (4) hours up to six (6) days per year without the payment of overtime. Employees will be given at least twenty-four (24) hours advance notice whenever practical.
 - b. The Department shall have the right to change the scheduled starting time of employees in the rank of detective by up to three (3) hours three (3) times per calendar year for an entire workweek without payment of additional overtime. Employees will be given at least seventy-two hours notice of the change.
 - c. The Department shall continue to have the right to change the scheduled starting time of employees in the Highway Patrol Unit and the Strike Force by up to three (3) hours without payment of additional overtime to respond to crime patterns. All changes shall be made in accordance with the requirements of the 2000 Award for similar changes to the work schedules of the tactical Five/Seven Squads.
 - d. **In order to respond to crime events, the Police Department shall be permitted to adjust the work schedules of employees by District up to three (3) times per calendar year by up to four (4) hours for not more than two (2) complete work weeks for each adjustment without incurring overtime liability as a result of the schedule change. Employees and the FOP will receive at least 24 hours' notice in advance of the schedule adjustment whenever practical.**
 - e. The City will provide the FOP with at least ninety (90) days written notice of its intent to change the work schedule for the entire bargaining unit.
8. Tactical Five/Seven Squads
 - a. Assignment of employees to the Tactical Five/Seven Squads in each of the 23 Police Patrol Districts shall be voluntary.

- b. In order to address crime patterns, the City shall have the right to change the scheduled starting time of employees assigned to tactical Five/Seven Squads in each of the 23 Police Patrol Districts by up to three (3) hours without payment of additional overtime, unless the change increases the employee's actual hours of work to a level requiring such payments. For purposes of this Section, "tactical" shall be defined to include employees assigned to Five/Seven Squads, with the exception of administrative employees and those assigned to foot patrol.
- c. Changes in starting times will be communicated to affected employees during the work week preceding the work week in which the change is to take effect and the new starting time shall be in effect for the entire work week.
- d. At no time shall the changes described in this Section result in an employee being scheduled for less than two (2) consecutive days off between tours without the payment of overtime.

L. Assignment of Permanent Midnight Shift

- 1. Assignment to the Permanent Midnight Shift shall be provided as set forth below:
 - a. The Commissioner shall designate the first fifty percent (50%).
 - b. The remaining fifty percent (50%) shall bid on openings in each District. The most senior Officer who bids shall be awarded the shift unless the Commissioner determines that the Officer is not qualified but shall state the reasons in writing for that determination. In the event that a sufficient number of Officers by rank do not bid for the shift, the Commissioner shall have the right to assign a sufficient number of less senior Officers by rank in inverse seniority within the District.
- 2. ~~As of January 1st of each year, All bidding~~ for assignment of the permanent Midnight Shift shall be opened **in October for the following calendar year** within each District or Division. The bidding process shall be completed by ~~January 31st~~ **December 31st**. **The first Monday of the new pay period in January will continue to be the transition day for the new "Last Out" assignments.**
- 3. At any time during the term of this contract, the Commissioner may assign a new Academy graduate to the Permanent Midnight Shift in the place of an Officer who has expressed a desire in writing for reassignment to another Platoon.

VII. HEALTH AND WELFARE

A. City Contribution

- 1. The FOP has selected a jointly administered plan ("Joint Program"). The FOP may elect to change its selection and accept the City managed care program ("City Administered Program") by written notice to the Mayor ninety (90) days before the start of any health plan year for the City Administered Program.
- 2. The City's contribution to the Joint Board (or "Fund") shall be as follows:
Effective July 1, 2008, the City's monthly dollar contribution to the Joint Board shall be \$1,165 per member per month.
- 3. The Monthly Payment required by Section A.2, shall be paid over to the Joint Program in twelve monthly installments as selected by the Director of Finance. All payments shall be made to the Treasurer of the Joint Program. A Monthly Payment shall be made

for each active employee and for each employee/retiree of the categories hereinafter listed:

- a.) Each employee receiving benefits under Regulation 32 in a secondary position or awaiting placement;
- b.) Each full time employee terminating his/her employment after ten (10) years of continuous service to immediately become pensioned under one of the City's pension plans.

B. Opt-Out

1. A bargaining unit member may chose to opt out of City financed health coverage during specified opt-out periods. Opt-out periods shall take place annually from November 1 to December 15, with an effective date of January 1. Any otherwise eligible participant (including employees who are affected by Paragraph D, Non-Duplication of Benefits, below) may waive all health benefit coverage, including dental, optical and prescription, upon presentation to the City on the provided form of proof of adequate alternative coverage.
2. Any employee who receives such a waiver shall be credited with a "buy- back payment" of \$120.00 per month for the waiver period, which payment shall be accumulated and paid to the employee at the end of each calendar year. This sum shall not be considered as part of a bargaining unit member's base salary. The City shall finance these "buy-back" payments in lieu of a requirement to contribute to the FOP Joint Trust on behalf of such employees.
3. Upon receiving such a waiver, the waiver shall remain in effect until the next opt-out period, unless the employee has a lifestyle change and elects to revoke the waiver. Lifestyle changes shall be defined as: marriage, divorce, birth or adoption of a child, death of a spouse or qualifying dependent, or starting or ending of a spouse's employment. In the event of divorce, the employee must drop the divorced spouse from all City health plans as part of the lifestyle change election.

C. Joint Program

1. The benefits and coverages for eligible employees, eligible former employees, and their eligible dependents shall be determined exclusively by the Board of Trustees for the Joint Program.
2. The City may appoint up to 20% of the Board of Trustees for the Joint Program ("Board of Trustees"). The Board of Trustees for the Joint Program shall be increased by one (1) member, which shall be appointed by the City.
3. The Joint Program shall keep and maintain (or cause to be kept and maintained) all books and records relating to its health and welfare programs, including any health/medical arrangement under FOP control which receives, directly or indirectly, any City financial contributions. City-appointed Trustees shall have full and complete access to all books and records relating to the Fund.
4. The Fund shall be subject to annual audit to be conducted by an independent certified public accounting (CPA) firm and/or a qualified employee benefits consulting firm selected by the Board of Trustees of the Fund. The City may also, at its own expense,

select an independent CPA firm and/or a qualified employee benefits consulting firm to conduct an annual audit of the Fund.

5. The Board of Trustees shall undertake serious analysis and consideration of cost containment strategies for the medical plans and dental, optical and prescription plans with the objective, among others, of identifying plan design and benefit structure modifications, which will lead to a reduction in City costs for providing health benefits. To achieve this objective, no less than two (2) meetings per year of the Board of Trustees shall include an in-depth discussion of alternative cost containment strategies.
6. On or about July 1 each year, the City shall contribute \$50,000 towards the cost of operation of the Joint Board.
7. All funds paid to the Joint Program by the City under this Agreement, and all funds held by the Joint Program shall be held in trust subject to normal fiduciary standards and shall be applied only for the purpose of providing health and welfare benefits to eligible employees, eligible former employees and, and their eligible dependents.

D. Non-Duplication of Benefits

The following non-duplication rules shall apply in the City Administered Program and the Joint Program. Where any current or former employee (or their dependents) is eligible for coverage under health insurance program (whether funded by City contributions or not), such current or former employee (or their dependents) shall not be eligible for coverage under the City Administered Program or the Joint Program, and the City shall not be obligated to make any contribution to the Joint Program on behalf of any such current or former employee.

E. Coordination of Benefits

The City and the Union shall administer the City Administered Program and the Joint Program (or shall cause each plan to be administered) to provide for maximum coordination of benefits, with the City Administered Program and/or the Joint Program to be the secondary coverage to the maximum extent possible. Steps taken to ensure maximum coordination of benefits shall include, but shall not be limited to, full disclosure by employees of eligibility for health medical benefits through other plans.

The coordination of benefits required pursuant to this paragraph shall not result in a reduction of the Monthly Payments to which the Joint Program is entitled pursuant to this Article.

F. Covered Retirees

Covered retirees shall be in one of the above described plans and subject to the provisions of Sections D and E.

G. National Health Insurance

The adoption of national health insurance or any other form of universal care may alter the fundamental underpinnings of this Article. If any such provision is enacted into law, either party may reopen this Article by serving written notice upon the other. If the parties have not reached agreement within 90 days after receipt of such notice, the dispute may be submitted by either party for final resolution pursuant to Pennsylvania Act 111 and any other applicable law.

H. Death in Active Status

1. In the event a bargaining unit member is killed in the line of duty. The City shall ~~pay all funeral expenses up to a maximum of fifteen thousand dollars (\$15,000)~~ **reimburse the FOP, upon submission of appropriate documentation, for reasonable and necessary funeral expenses up to a maximum of seventy-five thousand dollars (\$75,000).**
2. The City will provide psychological counseling to all family members of police officers killed in the line of duty, if so requested. The spouse, children and parents of such officer shall be eligible for such counseling, and the cost shall be borne by the City.
3. If an employee dies while in active City service and, at the time of death has ten (10) years of continuous service as a member of the bargaining unit, the City will continue to make contributions for health coverage for eligible dependents of the employee provided such dependents are receiving a survivor's pension, for a period of five (5) years from the date of the employee's death. The payments for the eligible surviving spouse and eligible dependents shall cease if the dependent becomes ineligible for a survivor's pension. Any such payments shall be made in accordance with the provisions governing health and welfare payments at the time the payment is due.

I. Health Care Cooperation Committee

The City and the FOP with, if possible, the other City Unions will establish the Joint Labor-Management Healthcare Evaluation Committee ("Committee"). The attached Appendix describes the Committee's structure and goals, is incorporated into, and shall be part of this Award.

J. Life Insurance

1. The City shall provide the FOP the sum of money that it would cost the City to provide life insurance in the amount of twenty-five thousand dollars (\$25,000) with double indemnity to each employee.
2. In addition to the foregoing life insurance benefits, the City shall provide all active, full-time employees covered by this Award with a \$25,000 accidental death and dismemberment policy without cost to the employee.
3. The City shall pay to the FOP Four Thousand Five Hundred Dollars (\$4,500.00) per month for administrative duties.
4. The City shall have the right to conduct an annual audit of the FOP Accident and Illness Fund.

K. Human Dignity

The safe and efficient operation of the offices and premises staffed by employees covered by this agreement has been described as a major concern to both the City and the FOP. The parties have recognized that a safe, healthful work environment and safe work practices are essential not only for the efficient management and operation of the Police Department, but also for the health, safety and morale of the members of the bargaining unit. Both parties have recognized that bargaining unit members and the public they serve are entitled to conditions

which reflect the highest standards of human dignity. The City shall make all necessary provisions for the health and safety of its employees while at work and will abide by applicable federal and state laws. The City will provide police officers with clean and sanitary bathroom facilities at all locations.

L. Legal Services

1. ~~Within sixty (60) days of the issuance of the Award, the City shall make a lump sum payment of two million (\$2 million) to the FOP Legal Services Fund.~~
Within sixty (60) days of the Award, the City shall make a one-time contribution to the FOP Legal Services Fund of Two Million Five Hundred Thousand Dollars (\$2.5 million).
2. ~~Effective July 1, 2009, the City's contribution to the FOP Legal Services Fund shall be increased by \$2 per member per month to \$26.00.~~
Effective July 1, 2014, the City shall increase the monthly contribution to the FOP Legal Services Fund by two dollars (\$2.00) per person.
3. **Effective July 1, 2015, the City shall increase the monthly contribution to the FOP Legal Services Fund by three dollars (\$3.00) per person.**
4. The City's contribution under this paragraph shall not be used for the institution of legal proceedings against the City of Philadelphia or its affiliated organizations, their agents, officers, employees or representatives. However, legal aid may apply to criminal, tort and labor matters with respect to the City.
5. The Legal Service Plans shall include that:
 - a. All decisions regarding the Legal Services Plan, its benefits and its operations shall be made solely and exclusively by the Trustees of the Plan that shall be no more than five (5) in number, whose decision shall be final and binding, and;
 - b. The Trustees as fiduciaries shall exercise their independent judgment in matters that come before them, and;
 - c. The Plan shall be amended to specifically define all benefits, including criminal defense benefits and employment-related benefits.

HEALTH AND WELFARE AS OF JULY 1, 2009

A. Monthly Contributory Requirement

1. Effective July 1, 2009 the City's monthly contributory requirement to the Joint Trust shall be \$1,165 per member per month.
2. Effective January 1, 2010 through and including June 30, 2010, the City's monthly contributory requirement to the Joint Trust shall be \$965 per member per month.

B. Health Benefits to Active and Retired Police Officers

1. Except as provided herein and except as may be determined by Law Enforcement Health Benefits, Inc ("LEHB"), the Plan of Benefits provided by LEHB on and in effect on June 30, 2009 for Active and Retired Police Officers and their families and eligible dependents shall remain unchanged for the duration of this Award. Notwithstanding the foregoing, if LEHB should determine to substantively improve

benefits during the term of the Award, the costs of such improvements shall not be reimbursed by the City and shall be specifically excluded from any obligation of the City to fund replacement of any reserves through creation of the escrow account provided for in this Award. The modification of benefits to achieve specific cost savings, such as a flu shot program, health fairs, etc, shall not be considered a substantive modification to those benefits. The cost of benefit changes mandated by federal or state law or regulations shall be reimbursed by the City.

C. Self-Insurance

1. Effective July 1, 2010 and until modified by a subsequent award or written agreement of the parties, LEHB shall provide to eligible active and retired police officers, their families and eligible dependents the level of benefits that was in effect as of June 30, 2009, except as modified pursuant to this Award, through a completely self-insured benefit program in strict accordance with the provisions of this Award.
2. LEHB shall be exclusively responsible for the administration of the self-insurance program for so long as authorized by the Joint Trust and shall prudently administer the program. This responsibility shall include, but is not limited to the selection of all providers (such as TPA/ASO, stop loss carriers, consultants, disease management and other services deemed necessary by LEHB currently and in the future to implement and maintain the modification to self insurance required by this Award. All contractual relationships regarding and arising from the self-insurance shall be exclusively between LEHB and the chosen providers. The City shall not have privity with those providers as a result of this Award.
3. LEHB shall, at least each calendar quarter, as soon as reasonably possible after the end of the quarter, provide the City with periodic reports of de-identified information regarding usage and experience in such detail as is reasonably necessary for the City to audit the claims being made and to demonstrate compliance with this Award. This information shall be considered highly confidential and shall be provided to a designated City representative. It shall be used solely to monitor LEHB's usage and experience under the self-insured program required by this Award.
4. Commencing with the first billing for medical, drug, dental and vision benefits received after July 1, 2010 from the selected providers as well as Related Expenses as defined below; LEHB shall transmit the bill thus received by the most expeditious means possible to the designated City official. Within three business days after presentation of the bill for prescription drug claims and within fifteen calendar days after presentation of the bills for other expenses provided for in this paragraph, the City shall transmit directly to LEHB by wire transfer or other agreed-upon method the entire amount necessary to pay the bill as presented in a timely and businesslike manner. LEHB shall be responsible to forward the money to the provider with proof of payment being made to the City. In that regard it is recognized that different vendors and providers might require different payment dates and cycles. LEHB shall be empowered to obtain such payment dates and cycles as it deems most desirable and advantageous in performing the requirements of this Award. Any objection that the City might raise to such billing shall be resolved independent of the obligation to make such payment and shall not under any circumstance be used to set off or otherwise delay payment.

5. As used herein, the term "Related Expenses" shall mean expenses directly attributable to provision of benefits, such as TPA/ASO, stop loss, disease management and bundled services. It shall not include day-to-day administrative expenses.
6. Prior to September 1, 2010 and prior to each September 1 thereafter, LEHB shall provide the City with a statement setting forth the actual costs of medical, drug, dental and vision benefits and projected incurred claims as well as Related Expenses for the plan year ended the prior June 30th and the trend to be applied for the plan year beginning the previous June 30th ("Budgeted Cost"). The trend shall be the average of the projected trend for this specific plan as determined by the Segal Company and a recognized benefits consulting firm designated by the City.
7. Within thirty (30) days before July 1, 2010 and each July 1st thereafter, LEHB shall present to the City a budget of projected administrative costs for the upcoming plan year. Commencing on July 1, 2010, and on the first day of each month thereafter, the City shall pay LEHB one-twelfth of the budgeted administrative costs. Within thirty (30) days of the end of the plan year, LEHB shall provide the City with a statement prepared by its auditor of actual administrative costs for the previous plan year. If the actual administrative costs are less than the budgeted administrative costs for that plan year, the City shall take a credit against the administrative costs payable in the current plan year. If the actual administrative costs are greater than the budgeted administrative for that plan year, the City shall make payment for those additional administrative costs within thirty (30) days. Any disputes about the reasonableness of the projected or actual administrative costs shall be resolved as set forth in this Award.
8. Within ninety (90) calendar days after October 1, 2011 and each October 1 thereafter, the parties shall compare the actual cost of benefits and Related Expenses as provided by LEHB and as determined by the LEHB's auditor, to the Budgeted Cost for the last completed plan year. If the actual cost is less than the Budgeted Cost for the last completed plan year, the City shall immediately pay LEHB one-half of the difference thus determined. If the actual cost is more than the Budgeted Cost for the last completed fiscal year, there shall be no additional payments for the last completed fiscal year.

D. Run Out Escrow Account

1. On or before December 31, 2010, the City shall establish, fund and thereafter maintain an escrow account in an amount equal to benefits incurred in three full months of benefit payments (hereinafter referred to as "run out"). The escrow account shall be subject to an escrow agreement between the City and LEHB prohibiting the City from withdrawing funds from the escrow account unilaterally, except as provided in this Award.
2. The purpose of the Run Out escrow shall be to fund and satisfy all incurred but unpaid claims for which LEHB is responsible under this Award if and when the self-insured structure is replaced by an insured structure as a result of future Act 111 proceedings between the parties.
3. To the extent, upon termination of the self-insured structure created herein for any reason, that the Run Out Escrow account should prove inadequate to cover such incurred but unclaimed program benefits, the City shall immediately pay all such

difference. If there are funds remaining in the Run Out Escrow account six months after termination of the self-insured structure, the City shall be entitled to an immediate return of those funds.

4. To the extent that interest earned on the account causes the account to exceed the three month limit described above, the City may withdraw such interest and utilize it for its own purposes.

E. Drug and Doctors' Visits Benefits

Effective July 1, 2010, the benefits provided by LEHB shall include prescription drug copayments and doctors' visits copayments in the following amounts.

1. Prescription Drug
 - a. Retail
 1. Generic - \$5.00
 2. Formulary Brand - \$10.00
 3. Non - Formulary Brand - \$15.00
 - b. 90 Day Mail Order
 1. Generic - \$10.00
 2. Formulary Brand - \$20.00
 3. Non-Formulary Brand - \$30
2. Doctors' Visits
 1. Doctor's Visits - \$15
 2. Specialist Visits - \$25

If LEHB should determine, in its discretion, to subsidize some or all of the increased costs to employees of these co-pays, the City shall bear no responsibility for the cost of the subsidy and any costs incurred by LEHB in providing the subsidy shall be credited against the three month reserve in paragraph F so that the City shall not be required to fund these costs in any way.

F. LEHB Reserves

1. On or before July 1, 2013, the City shall establish an escrow account in an amount equal to then prevailing cost of providing three full months of all health care benefits plus administration less the assets remaining in the reserves of LEHB and Joint Board not including realty. The escrow account shall be subject to an escrow agreement between the City and LEHB prohibiting the City from withdrawing funds from the escrow account unilaterally, except as provided in this Award.
2. The escrow fund shall be payable to LEHB in the event that the self-insurance funding is replaced during the term of this Award with any other funding mechanism to provide the benefits provided in this Award. If the self-insurance model remains in effect under the next award and the next award is of three years or greater duration, the City shall be entitled to reclaim the escrowed funds.
3. To the extent that interest earned on the account causes the account to exceed the amount described above, the City may withdraw such interest and utilize it for its own purposes.

G. Resolution of Issues

The neutral chairman of the Panel shall retain jurisdiction as a single arbitrator over this matter for the duration of this Award solely to resolve any disputes that might arise in the implementation of this Award. In that regard, the Chairman shall be empowered to hold emergency hearings within twenty-four (24) hours of notice by the parties of a dispute and to issue emergency injunctive relief enforceable in a court of appropriate jurisdiction to either party if he should deem it appropriate to do so. Such resolution shall be considered an arbitration award issued pursuant to the grievance and arbitration procedure otherwise set forth in the collective bargaining agreement.

VIII. SICK LEAVE

A. Allowance

Current bargaining unit members shall continue to accrue twenty (20) days of sick leave per year, which will be accrued, as they are at present, on a monthly basis, of one and two-thirds ($1 \frac{2}{3}$) working days. Bargaining unit members hired or rehired on or after the date of this Award (March 23, 1993) shall accrue fifteen (15) days per year, which will be accrued, as they are at present, on a monthly basis, at one and one-fourth ($1 \frac{1}{4}$) days.

1. Sick leave shall continue to be earned and accrued during any leave of absence with pay, period of authorized sick or vacation leave or absence due to a service connected disability (except as may be otherwise provided by Civil Service Regulation 32 in the case of service connected disability). (Civil Service Reg. 2 1.033 & 21.0331)
2. Utilization of sick leave shall be in conformity with the procedures set forth in Civil Service Regulation 21.

B. Sick Leave Policy

The document appended to this contract as Appendix D entitled "Police Department Sick Leave Policy" is incorporated into and shall be part of this agreement. The Appendix D following is different than Appendix D in the rear of this Contract Booklet.

APPENDIX D

POLICE DEPARTMENT SICK LEAVE POLICY

Sick leave is a benefit to protect employees from loss of wages due to injury or illness. Proper use of sick leave will protect employees from income loss while assuring continued program accomplishment for the City. It is the purpose of these rules and regulations to control and reduce, to the extent possible, the abuse of sick leave by employees which has had a detrimental effect upon the City.

It is further the purpose of these rules and regulations to provide a uniform procedure for the administration of sick leave as set forth in Civil Service Regulation 21, and to familiarize all employees with their responsibilities when they wish to obtain sick leave benefits. This policy supersedes all previous sick leave policies.

I. PAYMENT FOR ACCUMULATED SICK LEAVE UPON RETIREMENT

- A. An employee of the Police Department in a position represented by the Fraternal Order of Police, upon retirement, or in the event of the death of said employee — his/her beneficiary, will be paid for accumulated sick leave as follows:

Effective November 6, 2007, the following sick leave conversion formula will be in effect:

1. Sick hours accumulated up to 2499 hours can be sold or converted at 50% of accumulated time.
 2. Sick hours accumulated over 2500 hours can be sold or converted at 60% of accumulated time.
- B. At retirement, occurring on or after July 1, 2004, an employee who has retired may elect to use all or part of his or her accumulated sick leave to purchase an extension of the five (5) year period of retiree health, medical, dental, optical and prescription coverage in lieu of receiving a cash payment as provided in Appendix D of the 1990 Act III Interest Arbitration Award. For purposes of purchasing extended coverage, one hundred twenty (120) hours of accumulated sick leave will buy six (6) months of extended coverage. All such purchases must be in full blocks of one hundred twenty (120) hours.

The number of compensable sick leave hours for employees who have retired above the rank of police officer shall be determined by applying the cash payment formula as provided in Appendix D of the 1990 Act III Interest Arbitration Award. Those compensable hours may be used to purchase extended coverage, according to the following schedule:

Employee in Pay Ranges:	Hours of Post Formula Sick Leave Required to Purchase 6 (Six) months Of Additional Health Insurance
202, 203, 299	120
204	110
205	105
206	95
208	80

209	75
210	70
211	65

All such purchases must be in full blocks of the amount required to purchase six (6) months of extended coverage. Hours of compensable sick leave not exchanged for extended health care coverage, shall be compensated at the employee's rate of pay at the time of separation.

C. Deferred Sick Leave

Effective July 1, 2007: Members deferring coverage will be entitled to receive the same number of month's coverage, as the number of months they deferred.

II. SICK LEAVE CREDITS/CONVERSIONS

- A. If the average number of sick days used per employee in a department in a calendar year is 20% less than the average number of sick days used in the prior calendar year, then any employees in the department who use no sick leave will be eligible to receive two (2) additional Administrative Leave days; and any employee in the Department who used less than five (5) days of sick leave will be eligible to receive one (1) additional Administrative Leave day.

Administrative Leave days granted under this section must be used by June 30 of each year in accordance with applicable Civil Service Regulations.

- B. Any full-time employee with more than eighty (80) days accumulated sick leave to his/her credit may exchange annually up to ten (10) days of such sick leave at this rate of two (2) sick leave days for each day of said vacation leave. Such conversion shall be permitted up to a maximum of five (5) vacation days per year and must be converted as full vacation days. Employees converting earned but unused sick leave to vacation leave shall notify the Police Department's Personnel Office of this conversion between December 15 and January 15 of each year of this Contract. This conversion can only be accomplished during this time period. The scheduling of this vacation leave shall be in conformity with the provisions of Regulation 20 of the Civil Service Regulations.

An employee who chooses to convert sick leave to vacation leave shall reduce his/her accumulated sick leave balance accordingly, even if that sick leave balance is in excess of 225 days (1800 hours).

III. NOTIFICATION REQUIREMENTS

- A. A non-shift employee who is unable to report to work because of authorized sick leave as defined in Civil Service Regulations must contact the appropriate authority or designee no later than one (1) hour after the scheduled start of work. A shift worker is to contact his/her appointing authority or authorized delegate at least one-half (1/2) hour before the start of the shift.

An employee, who is unable to contact his /her office using the assigned departmental number, should call the special number designated for sick leave call-in.

- B. An employee on sick leave will be required to call in only on the first day of any absence, indicating the expected date of return, the reason for absence, and the address and telephone where confined if different from that on file in the department. If unable to return to work

on the date originally indicated, the employee must call in again indicating the new expected date of return.

- C. During the regular working hours, when an employee is home on sick leave, the employee must notify the appointing authority or designee when leaving home and upon return. An employee is to remain at home except to go to the doctor's office, the pharmacy, the polling place, a place of worship or a retail outlet which sells primarily food. Employees may leave home for other reasons with the approval of the Commanding Officer. The basis for the preceding is to allow employees who are unable to work because of illness or injury to leave their home for personal, illness or injury needs which are basic. Abuse of this procedure constitutes a violation of the policy and is subject to the penalties in Section VI.

An employee with 150 days (1200 hours) or more of credited sick leave will not be called or visited by a Sick Leave Investigator or be called or visited by any other personnel for the purpose of checking sick leave.

IV. EXCESSIVE USE OF SICK LEAVE LIST

- A. An employee, who in a calendar year used a total of eight (8) sick days without a medical certificate, will be placed on the "Excessive Use of Sick Leave List". The employee shall be notified after having used five (5) days that three (3) additional days of sick leave during calendar year will result in the employee being placed on the "Excessive Use of Sick Leave List."
- B. An employee who develops a pattern of taking sick leave may be placed on the "Excessive Use of Sick Leave List". A pattern of taking sick leave shall be defined to include but shall not be limited to:
 - 1. three or more occurrences of undocumented usage before or after regular days off or group days off;
 - 2. three or more occurrences of undocumented usage on any specific tour of duty;
 - 3. three or more occurrences of undocumented usage of a specific day of the week;
 - 4. two or more occurrences of usage of sick leave after being denied other leave.
- C. An employee shall remain on the "Excessive Use of Sick Leave List" for one (1) year for the date of being placed on the list. Repeated occurrences of being placed on this list may affect requests for transfers and eligibility for promotion.
 - 1. Effective July 1, 1993, any employee placed on the "excessive use of sick leave list" shall not be paid for the first day of sick leave for the next four (4) occasions or the next twelve (12) months, whichever is shorter.
- D. Any employee who has an earned sick leave balance of 800 hours or more will not be placed on the "Excessive Use of Sick Leave List" until a formal inquiry is held with the Commissioner of designee and an F.O.P. representative.
- E. The F.O.P. shall be notified on a monthly basis of all bargaining unit members placed on the "Excessive Use of Sick Leave List".

V. MEDICAL CERTIFICATION REQUIREMENTS

- A. A medical certificate is required for all absences of more than three (3) consecutive days, and must be submitted to the employee's appointing authority or designee within two (2)

working days after the employee returns to work. An employee has the option of voluntarily producing a medical certificate in order to avoid the day being charged to excessive sick leave. Notwithstanding the foregoing, an employee who has been placed on the Excessive Use of Sick Leave List as set forth in Section IV above shall be required to bring a medical certificate for all subsequent use of sick leave. In order to be compensated, an employee must be absent more than 10 work days must submit a medical certificate during each pay period, unless the employee's physician submits a written statement giving an estimated date of return to work which, covers the period in question.

B. A medical certificate must contain the following information:

1. the date and time the employee was treated:
2. if appropriate, the date of expected return to work:
3. the address and telephone number of the doctor or practitioner:
4. date and doctor's authorized signature.

VI. PENALTIES

A. An employee who violates any of the provisions of these rules and regulations under Sections III or V will not be paid for the days not worked and will be disciplined in accordance the following procedure.

First Occurrence — Written Warning

Second Occurrence — One (1) Day Suspension

Third Occurrence — Three (3) Day Suspension

The employee shall be counseled and advised, by the supervisor, when given the three (3) day suspension. Prior to the meeting on the suspension, an employee shall also be advised of the right to have a Union Representative present.

Fourth Occurrence — Ten (10) Day Suspension

The employee shall be counseled and advised by the Division Head or designee in the presence of a Union Representative, if requested by the employee, when given the ten (10) day suspension.

Fifth Occurrence — Maybe Discharged

An occurrence is a violation of any of the provisions under Sections III and V of these rules and regulations in a calendar year or for twelve (12) months after an employee is placed on the Excessive use of Sick Leave List.”

B. Use of Sick Leave for Maternity Related Absence

1. An employee who is incapacitated as a result of pregnancy will be permitted to use sick leave as follows:
 - a. An employee who, during the term of pregnancy. is incapacitated in any way as a result of the pregnancy will be considered eligible for sick leave in the same manner as any other incapacitating illness or injury;
 - b. In the period prior to delivery, sick leave may be used, with the approval of the appointing authority, upon the written recommendation of the employee's doctor that the employee can no longer work;
 - c. Without other justification. sick leave may be used from the time of delivery forward for four (4) calendar weeks:

- d. Additional sick leave may be utilized beyond the four (4) week postpartum period when:
 - (1) certified by the employee's physician, and
 - (2) recommended by the appointing authority, and
 - (3) approved by the Personnel Director.

C. Non-Service Connected Disability

Bargaining unit members who have been determined to be permanently disabled by the City with a non-service injury or illness may be separated from employment pursuant to the provisions of the Civil Service Regulation 17.07

IX. VACATION LEAVE

A. Allowance

Employees shall be entitled to paid vacations and shall earn these vacation days at the following rates:

1. An employee with five (5) full years or less of continuous service shall be entitled to ten (10) vacation days per annum earning these days at a rate of five-sixths ($5/6$) vacation day for each calendar month of service.
2. An employee with more than five (5) full years of continuous service, but less than nine (9) full years of continuous service shall be entitled to twelve (12) vacation days per annum, earning these days at a rate of one (1) vacation day for each calendar month of service.
3. An employee with nine (9) full years of continuous service but less than fourteen (14) full years of continuous service shall be entitled to seventeen (17) vacation days per annum, earning these days at a rate of one and five-twelfths ($1-5/12$) vacation days for each calendar month of service.
4. An employee with fourteen (14) or more full years of continuous service shall be entitled to twenty-two (22) vacation days per annum, earning these days at a rate of one and five-sixths ($1-5/6$) vacation days for each calendar month of service.
5. Vacation leave shall continue to accrue during leaves of absences with pay and during the time an employee is on authorized sick and vacation leave.
6. Utilization of vacation leave shall be in conformity with the provisions of Civil Service Regulation 20.

B. Accrual

Any vacation leave which is not used in any year may be accumulated: provided, however, that an employee may not have to their credit more than 560 hours of vacation time at the end of a calendar year.

C. Use of Vacation Leave Upon Expiration of Sick Leave

In the event an employee is on authorized sick leave and has insufficient sick leave credits to cover the period of his/her absence, the earned vacation leave may be used for this purpose if the employee so elects.

D. Payment of Accumulated Vacation Leave Upon Retirement

Any member of the bargaining unit who leaves the City's service in order to retire under the Municipal Retirement System has the option to receive a lump sum cash payment for the balance of his/her earned and unused vacation leave within thirty (30) days of retirement, payable at their daily rate of pay at the time of retirement or to exhaust this earned and unused vacation leave of retirement.

E. Payment of Accumulated Vacation for Employees Other than Retiring Employees

An employee who leaves the City's service for any reasons other than to retire under the Municipal Retirement System shall receive payment in a lump sum for the period representing the balance of his/her earned vacation leave, if any, and in lieu of such vacation leave.

F. Selection of Vacation During Designated Vacation Period

1. If any employees are otherwise equally qualified for paid vacation and should there be an impasse between two or more employees in the same class concerning the scheduling of a designated vacation period, the date that each employee entered the Police Academy shall be the determining factor and the employees shall then choose vacation periods with the employee having the earliest date since entering the Police Academy choosing first.
2. Employees hired on or after December 18, 2009, will be guaranteed only one (1) week of vacation during the period of the Summer Vacation Schedule from May 1 to September 30 annually during their first five (5) years of sworn employment in the Police Department.
3. **Employees hired on or after July 1, 2014, will not be guaranteed vacation during the period of the Summer Vacation Schedule from May 1 to September 30 annually during their first two (2) years of sworn employment in the Police Department (i.e. two (2) years from graduation from the Police Academy) and will be scheduled for vacation based on an even distribution of vacations during the calendar year. During their next three (3) years of sworn employment in the Police Department, these employees will be guaranteed one (1) week of vacation during the period of Summer Vacation Schedule.**

The dates of the summer vacation schedule are detailed in VIII-H.

G. Recession and Rescheduling of Vacation Periods

Should an employee's previously approved vacation leave be rescinded, the City shall make every good faith effort to reschedule the vacation leave as soon as possible with the employee who is being rescheduled receiving priority for requested dates if possible.

H. Vacation Scheduling

Effective with the vacation schedules for the summer of 1991, and thereafter the Summer Vacation Schedule shall be extended to include vacation period next following May 15th up to and including the week ending September 30th.

I. Vacation Purchase

The Police Department may offer to purchase vacation periods from employees in the classes of Police Officer and Detective who are scheduled for vacation. The Police Commissioner shall determine the number of tours to be purchased and the time period

covered. Employees shall receive full pay for the vacation period purchased and shall have their bank of vacation leave reduced accordingly. An employee whose vacation period has been purchased shall work during the period purchased. No other employee shall be permitted to utilize the vacation slot vacated by the employee whose vacation has been repurchased by the Department.

J. Request for Annual Vacation

Employees shall submit their vacation requests for the next calendar by December 15th of preceding year.

K. Disability - Payment of Accrued Vacation Benefits

Any officer retiring as a result of a work-related disability shall be entitled to payment for any accrued, unused vacation.

L. Catastrophic Leave Bank

Refer to Article V, section P

X. ANNUAL ADMINISTRATIVE LEAVE

An employee shall be granted four (4) days annual leave in the form of administrative leave. This leave shall be taken in conformity with the provisions of Regulation 19.0 18 of the Civil Service Regulations.

XI. HOLIDAY COMPENSATORY TIME

A. Holidays

1. The following are recognized holidays: New Year's Day, Martin Luther King's Birthday, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day (as of 1997), Columbus Day, Thanksgiving Day, and Christmas Day.

2. Birthday as Holiday

Effective with calendar year 2007, and for each year thereafter, each employee shall be entitled to his or her birthday as a holiday.

B. Holidays Compensatory Time

During the term of this agreement, Police Department employees shall receive, in lieu of the ten (12) holidays specified above, compensatory time off with pay on an hour for hour basis aggregating during a full calendar year, eighty (96) hours.

C. Payment / Accumulation of Holiday Compensatory Time

Each employee shall have the right to use holiday compensatory time at their convenience consistent with past practice, to be paid in cash for such time at the end of the fiscal year, or to accumulate this time without limit.

D. Payment of Accumulated Holiday Compensatory Time Upon Retirement

Each employee may, if he or she elects, receive a lump sum cash payment for all holiday time not utilized by the date of retirement payable at the salary rate in effect at the time of retirement.

E. Payment of Accumulated Holiday Compensatory Time for Employees for Other Than Retiring Employees

Each employee who leaves the City's service for a reason other than to retire under the

Municipal Retirement System shall receive payment in a lump sum for all unused holiday compensatory time not utilized by the date of separation, payable at the salary rate in effect at the time of separation.

XII. FUNERAL LEAVE

A. For Immediate Family

An employee shall be entitled to up to four (4) consecutive days off for the death of a member of his/her immediate family. The employee shall be paid for any such day which is a regularly scheduled work day.

B. For Family Member Other Than Member of Immediate Family

An employee shall be entitled to one (1) day off to be granted on the day of the funeral of a family member other than a member of the immediate family.

C. Immediate Family Members

For purposes of this Article; "Immediate family" shall include: wife, husband, children, parents, brother and sister.

An employee's mother-in-law, father-in-law, grandparent, and grandchild shall be included in the definition of immediate family for funeral leave purposes.

XIII. JURY DUTY AND COURT DUTY

A. Jury Duty

A leave of absence with pay shall be granted to an employee upon his/her request to perform jury duty, unless excused there from, provided however, that such employee waives or remits to the City his/her jury fee.

B. Witness for Personal or Non-City Matters

A leave of absence without pay shall be granted to an employee appearing under subpoena or on his/her own behalf in litigation involving personal or private matters.

XIV. MATERNITY/PATERNITY LEAVE

A. An employee shall be granted a maternity leave of absence without pay. The employee shall retain her same position if such leave does not exceed six (6) months duration.

B. The City will provide up to twelve (12) weeks of unpaid maternity/paternity leave each fiscal year (with continuation of City-paid health and welfare benefits). Upon the effective date of the Family and Medical Leave Act of 1993, P.L. 103-3, the provisions of the Act will apply, and this provision shall terminate.

XV. MILITARY LEAVE

Military Leave shall be governed by the provisions of Section 22.08 of the Civil Service regulations.

XVI. FOP LEAVE

A. Elected Officials

Any member of the bargaining unit who is serving as a full-time elected officer to FOP Lodge 5, shall, upon written application to his/her appointing authority, be granted a leave of absence without pay for the period of such service. This leave of absence shall be valid only for the period that the employee has been elected to serve as a full-time officer of the

organization. If the employee is re-elected as a full-time officer, the leave of absence without pay shall again be granted upon written application to the appointing authority. Notices of all leaves of absences granted under this section shall be filed with the Personnel Director. The seniority rights of all employees on FOP leave shall be protected and they shall accumulate during such employee's period of service with the FOP.

B. Appointed Officials

Any member of the bargaining unit who is serving as a full-time staff representative of FOP Lodge 5, shall, upon written application to his/her appointing authority and upon approval of the Personnel Director, be granted a leave of absence without pay for the period of such service. This leave of absence shall be valid only for the period of time requested, not to exceed three (3) years, or until termination of the appointment by the FOP, whichever occurs first. If an employee is re-appointed to this position, the leave of absence without pay shall be granted upon written application to the appointing authority and Personnel Director approval. Notices of all such leaves of absences shall be filed with the Personnel Director. The seniority rights of such employees shall be protected and they shall accumulate during such employee's service with the FOP.

C. Directors

All FOP Directors shall be permitted one hour per month of E-time to attend monthly FOP meetings.

XVII. COMPENSATION

A. Basic Salary

- ~~1. Effective January 1, 2009, there shall be an across the board wage increase in the Police pay schedule of 2%.~~
- ~~2. Effective July 1, 2009, there shall be no across the board wage increase in the Police pay schedule.~~
- ~~3. Effective July 1, 2010, there shall be a three percent (3%) across the board wage increase in the Police pay schedule.~~
- ~~4. Effective July 1, 2011, there shall be a three percent (3%) across the board wage increase in the Police pay schedule.~~
- ~~5. There shall be a reopener in 2012 before this Panel for the sole purpose of determining the amount of wages to be paid to members of the bargaining for the years beginning July 1, 2012 and July 1, 2013. During any hearing on the reopener, each party shall be limited to no more than two days of presentation and there shall be no more than one day of rebuttal for both parties combined. The Panel's award shall have an effective date of July 1, 2012.~~
1. Effective July 1, 2014, there shall be a three percent (3%) across the-board wage increase in the Police pay schedule.
2. Effective July 1, 2015, there shall be a three percent (3.25%) across the-board wage increase in the Police pay schedule.
3. Effective July 1, 2016, there shall be a three percent (3.25%) across the-board wage increase in the Police pay schedule.
- ~~4.6. A salary differential of fourteen (14%) percent between police officer and sergeant, sergeant and lieutenant, captain and inspector, and chief inspector, shall be established and maintained.
{2000-2002 AAA Award changed by item #4}~~
- 5.7. A salary differential or ten (10%) percent shall be maintained between police officer

and corporal or detective, and between Captain and Staff Inspector.
6.8. The existing pay range differential between police captain and police lieutenant shall be increased from fourteen percent (14%) to sixteen percent (16%).

B. Stress Differential

1. All members of the bargaining unit who are regularly assigned to rotating shift work shall be paid in addition to their regular base pay a shift differential of four (4%) percent of their regular straight time hourly rate for all hours worked or on vacation, holiday, or other authorized paid leave. There shall be no pyramiding of the shift differential and overtime premium pay. The differential shall continue to be paid to employees temporarily assigned to non-shift duties. Effective July 1, 2003, the four percent (4%) stress pay currently received by bargaining unit members shall be included in pension calculations, sick leave, vacation pay, holiday, and other AL leave.
2. Effective July 1, 2010, the stress differential shall be increased to five percent (5%). The five percent (5%) stress differential shall be included in pension calculations, sick leave, vacation pay, holiday, and other AL leave.

C. Longevity

Effective January 1, 2009, each bargaining unit member shall be entitled to longevity based upon the following schedule, computed on the base salary plus stress differential for the respective rank:

Years:	Percentage
1-2	0
3-4	3.3%
5-9	3.8%
10-14	4.5%
15-19	5.2%
20-24	5.7%
25-29	6.3%
30-35	6.8%

D. Clothing Allowance and Clothing Maintenance

1. Effective July 1, 2008, employees shall receive a uniform allowance of Five Hundred Dollars (\$500.00) per year.
 - a) **Effective July 1, 2014, the clothing allowance shall be increased by \$100 per bargaining unit member.**
2. Effective July 1, 2008, employees shall receive a uniform maintenance allowance of Five Hundred Dollars (\$500.00) per year
3. Clothing Issue for New hires
Newly appointed employees shall be supplied all clothing requirements at the City's cost.
4. Special Units Clothing:
An employee who is transferred to a special unit (this does not include an employee who is detailed into a special unit for a limited period of time during which special clothing or equipment is not required) for which the City requires individual uniform clothing or, equipment that is unique to that unit, in addition to the maintenance

allowance otherwise described herein, shall be provided with the first issue of each item of clothing or equipment so required provided that the employee has not received such individual uniform clothing or, equipment in a previous unit. Such items shall be provided as soon as feasible, after the employee is transferred to the unit provided that the employee continues to actively work in the unit when the item becomes available. Regular street clothing such as casual or business attire is not included in this provision.

E. Meal Allowance

1. For each meal required as a result of overtime work, an employee shall receive the actual cost of the meal up to Seven Dollars (\$7.00).
2. To receive this allowance, the employee must work in excess of three (3) or more overtime hours.

F. Work in a Higher Rated Classification

An employee working in a higher rated classification shall receive the rate of pay of the first step of the higher class for all hours worked.

G. Manner of Payment

All paychecks shall indicate the exact amount of overtime to the half hour that an employee has worked and shall be shown for the most recent pay period as practicable.

H. Bomb Squad

Police Officers assigned to the Bomb Squad shall receive a pay increase of three percent (3%) as a differential for the hazardous nature of their work. This differential is limited to Bomb Squad personnel, and the Panel's granting of this in no way established a precedent. Individuals assigned to the bomb squad shall receive their pay differential after transferring into the squad and obtaining certification as a Hazardous Device Technician and shall cease receiving the differential on transfer or separation from the squad. There shall be no options to these conditions. The establishing of a pay differential for the Bomb Squad in no way alters or limits the Police Department's ability to transfer employees into or out of the Bomb Squad.

I. District Commander's Compensation

1. Effective July 1, 1998 ~~2014~~, each Captain, while assigned as a District Commander, **Detective Division Captain, Captain of Homicide and/or Captain of the Special Victims Unit** ~~to a district designated by the Police Commissioner as an "A" district,~~ shall earn an additional 8% of his/her base pay. ~~Also effective July 1, 1998, each Captain, while assigned as a District Commander to a district designated by the Police Commissioner as a "B" district, shall earn an additional 4% of his/her base pay.~~
2. In the event a Captain should be reassigned out of an assignment described above ~~to or from such "A" or "B" districts, the 8%, or 4% to be received by reason of such assignment shall cease accordingly.~~ In the event that a Captain should be reassigned to a position described above, ~~from such "A" or "B" districts the 8% or 4% shall be reinstated accordingly.~~
3. The transfer of Police Captains and the classification of Police Districts shall not be subjects to the grievance and arbitration provisions of this contract. The additional pay provided for above shall not be the basis for pension benefits.

J. Commanders

1. Effective July 1, 2008, officers at the rank of Captain and above shall receive straight time pay for all hours worked on the following four occasions: Mummers' Parade, Fourth of July, Greek Picnic, and Bike Race.
2. Effective July 1, 2010, Commanders shall receive straight time pay for all hours worked at the Puerto Rican Day parade.
3. Effective July 1, 2011, Commanders shall receive straight time pay for working one weekend per year in Weekend Command. There shall be no pay for any stand-by time.
4. ~~Effective July 1, 2011, officers at the rank of Captain and above will be permitted to accumulate compensatory time on an hour for hour basis up to a cap of 1200 hours.~~ **Effective July 1, 2014, officers at the rank of Captain and above will be permitted to accumulate compensatory time on an hour for hour basis up to a cap of 1,300 hours** subject to the existing rules and regulations. These employees will be permitted to cash out up to 600 hours of compensatory time at retirement from the Department subject to the existing rules and regulations.

K. Accreditation Bonus

Within thirty (30) days of being advised that the City of Philadelphia Police Department has been accredited by the Pennsylvania Chiefs of Police, and no later than September 30, 2015, each bargaining unit member shall receive a one-time cash bonus of One Thousand Five Hundred Dollars (\$1,500). The Department and FOP will use best efforts to ensure that this occurs as expeditiously as possible.

XVIII. PENSION

A. General

Employees in the bargaining unit shall be entitled to pension benefits as set forth in the Municipal Employees Retirement Ordinance. All employees hired on or after July 1, 1988, shall have pension benefits as defined in Plan 87.

B. Fringe Benefits Upon Normal Retirement

1. Medical Coverage:

An employee who terminates his or her employment to immediately become pensioned on or after July 1, 2000 under the City Pension Plan with ten (10) or more years of credited service, shall have his or her health, medical, dental, optical and prescription payments continued for five (5) years following retirement, as provided for in Civil Service Regulation 27.0111 to 27.01151. In the event a retired employee dies within this five-year period, benefits for his/her spouse and dependent children shall continue for the entire five-year period.

2. Deferred Medical Coverage:

Employees who separate from City service after July 1, 1998, and who are otherwise eligible for the covered medical coverage period of post-retirement City contributions for health medical coverage may elect to defer receipt of the covered medical coverage period and the contribution the City would otherwise make on the employee's behalf. Deferred coverage shall be for a continuous five year period. The election must be made in writing to the City on a form and in conformance with a procedure to be

established by the City. A retiree's election to begin deferred coverage must be exercised during the open enrollment period of the relevant health insurance plans and may not be exercised during any year in which the City had made contributions on the employee's behalf for health medical coverage. The contribution amount shall be fixed at the rates in effect for the covered period at the time the employee separates from City service to immediately become pensioned, and shall not be subject to any increases beyond those occurring in the covered period. Deferred payments shall be subject to all eligibility requirements which apply to City contributions for employees who do not elect a deferral of such contributions. No City contributions shall be used for any purpose other than to provide health medical coverage consisted with the terms of the Trust Agreement establishing the Joint Fund.

3. Purchased of Additional Medical Coverage with Accumulated Sick Leave
At retirement, an employee may elect to use all or part of his or her accumulated sick leave to purchase an extension of the five (5) year period of retiree health, medical, dental, optical and prescription coverage in lieu of receiving a cash payment as provided in Appendix D of the 1990 Act 111 Interest Arbitration Award. For purposes of purchasing extended coverage, one hundred twenty (120) hours of accumulated sick leave will buy six (6) months of extended coverage. All such purchases must be in full blocks of one hundred twenty (120) hours.

(Refer to VII-B-Appendix D)

C. Retiree Joint Trust Fund

The Board of Trustees, who shall determine the benefits and coverages for eligible former employees and their eligible dependents, shall be made up of one-third representation by City Trustees and two-thirds representation by FOP Trustees. The City-appointed Trustees shall have full and complete access to all books and records relating to the Joint Retiree Trust Fund. The Joint Retiree Trust Fund also shall be subject to an annual audit to be conducted by an independent CPA firm selected by the Board of Trustees. The City may also, at its own expense, select an independent CPA firm to conduct an annual audit of the Joint Retiree Trust Fund.

- ~~1. Within sixty (60) days of the issuance of the Award, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.~~
- ~~2. On or before July 1, 2010, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.~~
- ~~3. On or before July 1, 2011, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.~~
- ~~4. On or before July 1, 2012, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.~~
- ~~5. On or before July 1, 2013, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.~~
1. Within sixty (60) days of the issuance of the Award, the City shall make a lump sum payment of four million five hundred thousand dollars (\$4.5 million) to the Retiree Joint Trust Fund.
2. On or before July 1, 2015, the City shall make a lump sum payment of four million five hundred thousand dollars (\$4.5 million) to the Retiree Joint Trust Fund.
3. On or before July 1, 2016, the City shall make a lump sum payment of four million five hundred thousand dollars (\$4.5 million) to the Retiree Joint Trust Fund.

D. Hires After January 1, 2010 (Plan 09)

At the time of hire, all employees hired on or after January 1, 2010 shall make a one-time, irrevocable election between participating in Plan B (also known as Plan 87) as defined in the Philadelphia Retirement Code, as modified below, or participating in Plan 09, which shall be made part of the Retirement Code. The FOP will be given a reasonable opportunity to address any newly-hired employees before employees are asked to submit their election.

Employees who elect to participate in Plan B shall be subject to all the terms of Plan B as set by the Retirement Code, except that they shall be required to make an employee contribution in the amount of 6% of their pensionable earnings.

Plan 09 shall provide for both a defined benefit plan with an employee contribution, and a defined contribution plan, where an employee shall have the option of contributing into said plan up to a specified percentage of pensionable earnings. The terms of this Plan 09 shall be designed to reduce the cost to the City by at least the same level of cost reduction to the City resulting from the increase in employee contribution from 5% to 6% for Plan B.

The parties shall meet over the next 30 days to attempt to reach an agreement on the specific terms of Plan 09. If the parties do not reach such an agreement, this Act 111 Panel shall issue a supplemental award no later than March 1, 2010, effective immediately upon issuance, setting forth the terms of Plan 09. Refer to Appendix K for the supplemental award.

Between the date of this Award and March 1, 2010, any new hires shall enroll in Plan B and contribute 6% of their pensionable earnings. When Plan 09 becomes effective, any such new hires shall be afforded a onetime option of switching to Plan 09.

E. Addition of Option Four for Plan 87/Pension Calculated at Next Higher Rank if Killed in the Line of Duty

a. Effective July 1, 2008, the City will revise Police Plan 87 by adding the unreduced, 50% Survivor Benefit Option ("Option 4") that is contained in Police Plan 67.

b. Any member of the bargaining unit who is killed in the line of duty as an immediate result of the violent conduct of a third party that was directed towards the officer or a member of the public or an immediate result of performing other heroic action in an emergency situation in the line of duty on or after January 1, 2006 shall have his or her pension calculated as if the officer retired at the next rank, excluding corporal, above the rank held by the officer at the time of his or her death (e.g. Officer to Sergeant). This section shall not cover death resulting from vehicular accidents.

XIV. DISABILITY PROGRAM

The Panel finds that, by reforming the disability program for employees represented by the FOP in the same manner as provided in the agreements negotiated between the City and the AFSCME unions, the City may achieve substantial savings without significantly disrupting the basic benefits available to employees who incur injuries or illnesses. These reforms are intended to reduce the amount of disability pay to a level commensurate with an employee's pre-injury net salary and to eliminate abuses of the present system. The City shall amend Civil Service Regulation 32 and the Pension Ordinance to conform to this Award.

A. General

The Civil Service Commission shall continue to have sole jurisdiction as to the resolution of disputes pertaining to the entitlement to benefits provided by Civil Service Regulation 32. Employees shall be required to cooperate with and accept all reasonable and appropriate medical care, treatment, testing, therapies and established corrective surgical procedures. In the case of such corrective surgical procedures, the City shall allow an employee to obtain a second opinion from his/her private physician at City expense and shall provide for a neutral third determinative opinion in disputed cases. This shall not change the current requirement that employees are otherwise required to treat with City physicians in order to be eligible for benefits under Regulation 32.

Employees receiving any disability benefit shall be required to report and verify any outside earned income, in such manner as the City may determine, including but not limited to the provision of federal tax returns. The City shall retain the right to terminate a disability benefit if an employee fails to comply with any requirement of the City's disability program.

B. Temporary Service Connected Disability

Employees shall be compensated at a rate of 75% of base pay (which shall exclude overtime, shift differential, paid hours, holiday pay and out-of-class pay) at the time of injury or recurrence. Such employees shall not accrue vacation time and shall accept medically appropriate limited duty assignments. Without modifying the current career limit (3 years), I.O.D. no duty time shall be limited to one year for each work-related incident causing work-related injuries.

C. Permanent Service Connected Disability

1. Partial Disability: A partially disabled employee must be available for and cooperate with placement by the City in a secondary position and shall provide the City with reports from his/her physician regarding any medical restrictions. Pending such placement, disability pay shall be calculated in accordance with paragraph B above. If the employee has not been so placed within six months from the date of determination of permanent disability (extendible to 12 months in the City's sole discretion), he/she shall be separated from employment with the City and may apply for a service connected disability retirement benefit. The benefit amount shall be reduced by one dollar for each two dollars of outside income earned by an employee receiving such benefit (a "2-for-1 offset").
2. Total Disability: An employee determined to be totally disabled shall be separated immediately from employment with the City and may apply for a service connected disability retirement benefit. If the employee earns any outside income, he/she shall be reclassified as partially disabled and shall become subject to the 2-for-1 offset set forth above.
3. Elimination of the "2-for-1 offset" for outside income earned by those bargaining unit members who become partially and permanently disabled as
 - a. an immediate result of the violent conduct of a third party that was directed toward the officer or a member of the public; or
 - b. an immediate result of performing other heroic action in an emergency situation in the line of duty.

The determination of eligibility for elimination of the "2-for-1 offset" shall be made by the Pension Board in its sole discretion.

4. Effective July 1, 2004, the dollar setoff applied to outside income, affecting those individuals with permanent service-connected disabilities, shall not be applied to the first \$25,000 in outside income. Effective July 1, 2007, the dollar setoff will be completely eliminated if it is not applied to firefighters at that time.

D. Duplication of Benefits

It shall be within the Pension Board's sole discretion to determine for which disability retirement benefit an applicant is eligible. The Pension Board may in its sole discretion meet the City's obligation under any workers' compensation award by issuing a City service connected disability retirement benefit when appropriate. If an employee receives an award of a workers' compensation benefit for a period for which he/she received sick time, the City shall receive a work-for-week credit against the award for each week of sick time provided. An employee receiving any City disability benefit who also receives a workers' compensation specific loss of use benefit shall have his/her benefit offset on a dollar-for-dollar basis by the amount of the workers' compensation benefit if the two awards are for injuries arising from the same work-related incident.

E. Ordinary Disability Retirement Benefits

Ordinary disability retirement benefits shall not be awarded for service connected injuries. Any employee who receives an award of workers' compensation shall cease to be eligible for an ordinary disability benefit and shall have such benefit terminated. An employee receiving an ordinary disability benefit who has not yet reached minimum retirement age (as defined in the applicable pension plan) shall be subject to the 2-for-1 offset set forth above.

F. 100% Paid for Heroic Action

1. Effective August 11, 1998, a police officer who is injured on duty as (1) an immediate result of the violent conduct of a third party that was directed towards the officer or a member of the public, or (2) an immediate result of performing other heroic action in an emergency situation in the line of duty, shall receive IOD pay at 100% (as opposed to 80%) of the officer's pre-injury pay, including longevity. This section shall not cover injuries resulting from vehicular accidents in which the injured officer is a vehicular occupant at the time of the injury.
2. The determination of eligibility for the 100% (as opposed to 80%) pre-injury pay benefit shall be made by the Police Commissioner in his sole discretion, and shall not be subject to the grievance and arbitration provisions of the contract.

G. Catastrophically Disabled Police Officers:

1. An employee who is eligible for a periodic adjustment under Section 401 (5) of the Public Employees Retirement Code and who actually receives the first of such adjustments shall in addition receive a one-time lump sum payment equivalent to the amount of that adjustment for the period from the commencement of eligible pension benefits until the effective date of the first periodic adjustment. In no event shall this one time lump sum exceed the amount of the adjustment times seven years of eligibility.

2. This provision applies to all employees who have received a pension benefit which qualifies for the periodic adjustment and who have not received such adjustment prior July 1, 2000. No provision of this article nor any benefit awarded shall be subject to review under the grievance and arbitration procedure contained in the collective bargaining agreement.
3. The parties shall meet and discuss compensation for Mrs. Mindy Marynowitz for the primary care she renders to her husband John Marynowitz in light of the specific evidence placed on the record regarding their circumstances.

H. Disability - Payment of Accrued Vacation Benefits

Any officer retiring as a result of a work-related disability shall be entitled to payment for any accrued, unused vacation.

I. Disability - Heart and Lung Benefits

1. Effective upon the issuance of this Award, a panel of non-party appointed specialists shall make independent medical examinations (IME) evaluations of officers who have made a claim to benefits under the Heart and Lung Act or whose continuation of benefits under the Act is contested by the City. The Panel shall be selected by the two neutral arbitrators assigned to hear the Heart and Lung cases as well as the partisan arbitrators designated by the parties in this proceeding. The decisions of those non-party appointed specialists shall thereafter be accorded substantial deference by the Heart and Lung Arbitrators.
2. Provided that the physician is contractually bound by the treatment costs and protocols imposed by the City's Risk Management Department on physicians in the panel of doctors who treat police officers pursuant to the Heart and Lung Act, an officer receiving medical treatment under the Heart and Lung Act may treat with a physician of his or her own choosing.
4. The Heart and Lung Arbitration Panels shall continue to have authority to issue whatever orders are necessary to achieve justice.
5. **Either party may, on the anniversary date of the Heart and Lung Procedure Agreement each year, strike one (1) of the designated neutral arbitrators. If the parties are unable to agree upon the identity of the replacement, either party can request the American Arbitration Association to provide the parties with a list of three (3) arbitrators from which a replacement shall be selected in accordance with the procedures utilized to select an Act 111 arbitrator, except that the parties shall alternate which party shall have the first strike of the list, starting with a coin toss to determine which party strikes first for the first such replacement arbitrator.**

XX. DISCIPLINE AND DISCHARGE

A. General

No employee shall be disciplined or discharged except as is consistent with the Home Rule Charter and the Regulations of the Civil Service Commission.

B. Police Board of Inquiry (PBI)

Employees appearing before the Police Board of Inquiry shall be given:

1. five days' notice of the scheduled hearing;
2. a copy of the notice of the hearing; and,
3. the right to a representative who shall be permitted to review the charges prior to the hearing.

C. Announcements of Disciplinary Actions

Announcements of disciplinary actions at roll calls shall be made without naming the employee receiving the discipline. This clause shall not apply to announcements of disciplinary actions in response to publicized incidents.

1. **Disciplinary Code: Based on its consideration of the record and the arguments made by both parties, the Panel directs as follows:**
 - a) **The 2014 Disciplinary Code shall be effective immediately for all infractions that are charged by the Department on or after the date that this Award (2014-2017) is issued, regardless of when the underlying conduct occurred.**
 - b) **The 2010 Disciplinary Code shall remain in full force and effect for any infractions that were charged by the Department before the issuance of this Award (2014-2017) and neither the Union nor any member of the bargaining unit shall have the right to challenge any discipline issued under the 2010 Award as being invalid on the basis of the proposed decision and order.**

D. Health / Medical Payments upon Suspension

The city shall continue to pay and provide health/medical payments to any employee under suspension except under suspension with intent to dismiss, until Civil Service and/or arbitration procedures have been exhausted.

E. Written Reprimands in Personnel File

Written reprimands in a personnel file shall be removed from the record after two (2) years if the employee receives no further written reprimands or further disciplinary action within that period.

F. Vacation Time Lieu of Suspension

The Police Commissioner may, in his sole discretion, charge a bargaining unit member's accumulated vacation bank in lieu of time off, for disciplinary suspensions, in all cases except those involving insubordination, charges of criminal misconduct, and refusal to submit to a drug or alcohol test.

G. Hair Testing

The Police Department shall have the right to include reasonable procedures for hair testing in its existing drug testing procedures.

H. Probationary Period

The probationary period for employees appointed after November 2, 2000 to the classification of Police Officer I shall be extended from six (6) months to one (1) year.

I. **Disciplinary Suspension Held in Abeyance**

At the Commissioner's sole discretion, a disciplinary suspension may be held in abeyance for a period of twelve (12) months from the date of imposition of the disciplinary penalty. If the employee does not receive any formal discipline during the

twelve (12) month period, the discipline held in abeyance will be removed from the employee's record and will be expunged from the officer's personnel record. If the employee commits any additional disciplinary offenses during that year, the employee will be required to serve the discipline held in abeyance, in addition to any new penalty imposed for the additional offenses. Suspensions placed in abeyance are not subject to the grievance procedure during the period held in abeyance or thereafter if ultimately removed from the officer's personnel file. If the suspension is removed from abeyance during the twelve (12) month period, the time limit for filing a grievance challenging the suspension shall begin to run on the date the employee and the Union are notified that the suspension will be imposed.

XXI. GRIEVANCE AND ARBITRATION PROCEDURE

A. Definition

1. Grievances as defined herein shall be limited to contract violations, disciplinary suspensions, demotions, and discharges.
2. The grievance and arbitration procedure set forth herein shall include within its subject matter only alleged violations of Act 111 Awards and this Contract.
3. Grievances involving contract violations other than suspensions, demotions or discharges may be initiated only by the FOP.
4. Grievances involving disciplinary suspensions, demotions, or discharges may be initiated by a permanent employee only.
5. In the event of an alleged violation of the contract, the Grievance and Arbitration Procedure shall be the exclusive remedy of the parties.
6. Discipline cases may be grieved or submitted to Civil Service at the election of the employee, to the extent that the Civil Service Commission has jurisdiction.

B. Step I

For members of the bargaining unit employed in the Police Department, the Police Commissioner, or his/her designee shall be the first step in the grievance procedure prior to binding arbitration. For members of the bargaining unit employed in the Office of the District Attorney, the Chief of the County Detectives or his/her designee shall be the first and final step in the grievance procedure prior to binding arbitration.

1. The Grievant/FOP must, within thirty (30) days of the occurrence giving rise to the grievance, or within thirty (30) days after the Grievant/FOP is notified of the suspension or discharge, submit the grievance in writing.
2. The Police Commissioner or his/her designee or the Chief of the County Detectives or his/her designee shall have four (4) weeks from the receipt of the grievance to receive evidence or argument thereon and render his decision, which shall be in writing. The time limits contained herein may be extended for a reasonable time by mutual agreement, if additional time is needed to provide for a full and complete presentation of the facts surrounding the grievance.

C. Step II

If there is no resolution of the grievance at the First Step hearing described herein, the Grievant/FOP shall file the grievance with the Director of Labor Relations. The Managing Director or designee shall establish a meeting date concerning the grievance within three (3) days of filing. Within ten (10) working days of the grievance meeting, the Director of Labor Relations or designee shall respond in writing.

D. Step III

Any appeal from the decision of the Managing Director must be taken to arbitration within thirty (30) days of the date of his decision or the date when his decision was due to the American Arbitration Association, pursuant to the rule for voluntary labor arbitration of the Association.

E. Election of Remedies

The remedy set forth herein is provided as an alternative to the procedures set forth in Civil Service Regulations and the Home Rule Charter. Should an employee elect an avenue of redress other than the procedure contained herein, he/she will waive the contractual right to pursue a grievance through this procedure, and in no event shall the matter be arbitrable. Should an employee elect to pursue the matter through the procedure contained herein, he/she shall waive the right to pursue the matter through the procedures provided by the Home Rule Charter. The decision of an arbitrator shall be final and binding on all parties and the employee and/or FOP shall not pursue any other avenue of redress.

F. Selection of Arbitrator

The selection of arbitrators and the conduct of hearings shall be in accordance with the Rules for Voluntary Labor Arbitration of the American Arbitration Association.

G. Costs and Fees

The costs and fees of arbitration shall be shared equally by the City and the FOP.

H. Authority of Arbitrator

The arbitrator selected shall have no authority to add to, subtract from or in any way alter the terms of this contract, Act 111 arbitration awards or the scale of wages set forth therein.

I. Effect of Decision

The decision of the arbitrator shall be final and binding upon the City, the FOP, and the employees covered by this Contract.

J. Back Pay

When back pay is awarded in a grievance arbitration, the City will provide the FOP with a copy of the distribution sheet and will keep the FOP informed of issues concerning compliance with the Award.

XXII. MISCELLANEOUS PROVISIONS

A. Performance Reports

The performance rating system shall provide satisfactory and unsatisfactory ratings only. In order to qualify for a promotional examination, a police officer will be required to have an overall satisfactory rating.

B. Buddy Days

A police officer shall have the right to trade shifts or other days off with another police officer in the same station house with the permission of the commanding officer of the station house.

C. Access to Personnel Files

All officers may inspect their personnel folders during working hours (9:00 a.m. to 5:00 p.m.) for any negative letters from outside the Department or comments from his/her commanding officer(s). The officer shall be permitted to respond in writing to those statements and request their withdrawal.

1. The parties shall be governed by the terms of Act of November 6, 1978, P.L. 1212, No. 286; 43 P.S. 1321 except that access may be denied to matters under current investigation.
2. In the event that any Employees file or its contents is subpoenaed by any City Department, Federal Agent or Agency, State Agent or Agency or Commission, the Employee and the FOP shall receive prompt notice thereof from the police department.

D. Badge Upon Retirement

Upon retirement each member of the bargaining unit shall be given his/her badge at no charge.

E. Examinations

1. The City shall be required to use its best effort' to publish the results of promotional tests as soon as is practical after the administration of such tests, with an earnest effort being made to achieve such publication within thirty (30) days of said test.
2. Effective for examinations announced after January 1, 1997, the City shall establish and publish a "source list" for each objective-type promotional examination. There shall be a "source list" for each rank. The City, in its sole discretion, shall have the right to change each "source list" from time to time, however:
 - a. the City shall provide reasonable notice of any such changes in advance of any examination that will be subject to the changed "source list"; and
 - b. in no event shall such modification of a "source list" take place less than one hundred twenty (120) days prior to the examination for the affected class.
 - c. A promotional examination shall be announced at least ninety (90) days prior to the date that it is given.
3. An employee shall be eligible to take a promotional examination upon having completed one (1) full year of service in their current rank with the year concluding upon the date of the promotional examination with the exception that a two (2) year requirement shall apply to Police Officers applying to take the Sergeants examination.
4. Educational Credits
For all promotional exams administered and eligibility lists established there from after the issuance of the 2000 Award, employees who otherwise achieve eligibility for promotion to a higher rank and have successfully completed a course of study at an accredited college or university will have .50 points added to their final score if the

highest degree received is an Associate's Degree, 1.0 points added to their final score if the highest degree received is a Bachelor's Degree and 1.5 points added to their final score if the highest degree received is a Master's Degree.

5. RULE OF TWO

In the case of a second certification of an eligible from a promotional list, the employee, if not selected, shall be provided with a statement of the reason for non-appointment and shall be granted, upon request, an interview with a responsible official regarding his/her non-appointment.

6. Selection of Officers

Effective January 1, 2015, the Police Commissioner shall be permitted to fill twenty percent (20%) of the personnel promoted from the ranks of Captain and above each calendar year through merit selection. The remaining positions will be filled through promotional examinations. To be eligible for merit selection, the candidate's promotion must be supported by that employee's current Commanding Officer, the candidate must have received ratings of satisfactory or above for the past two (2) evaluations and the candidate must not have committed a disciplinary infraction for which the candidate received a penalty of more than five (5) days within the reckoning period applicable for the offense. Merit selection will be based on criteria and process agreed upon between the Police Department and the FOP for each rank and a committee will be established to review each candidate under those criteria and make recommendations to the Police Commissioner. If the Police Department and the FOP are unable to agree on the criteria and governing procedures for the merit selection process by October 1, 2014, the unresolved issues shall be submitted to the interest arbitration Panel for resolution within sixty (60) days. Employees who are selected for a rank through merit selection shall still be eligible to test for higher ranks under applicable testing requirements.

F. Continuity

The parties have entered into the first written contract pursuant to the Arbitration Award covering the periods July 1, 1982 through June 30, 1984. In the event that there are any benefits still in effect which were obtained through previous Act 111 negotiations and arbitrations that are not addressed herein, they shall nonetheless be considered to be of full force and effect and incorporated herein by reference.

G. Charitable Solicitation

Charitable solicitation shall be permitted only with the joint agreement of the Police Commissioner and the FOP.

H. Clothing Board

A police officer designated by the FOP shall be assigned full time to the Clothing Board.

I. Bulletin Boards

The FOP shall be entitled to place a bulletin board in a prominent place chosen by the FOP in all districts and other employment locations. The purpose of such bulletin boards shall be to receive all official FOP notices and personal notices authorized by FOP.

- J. Cost of Printing Contract
The City will share in the cost of printing of the contract up to an amount of Five Thousand Dollars (\$5,000.00)
- K. Outside Employment
Approved outside employment may not exceed thirty-two (32) hours per work week.
- L. Transfers
1. Transfers shall be for the purpose of maintaining essential manpower requirements. Transfers may be part of the formal disciplinary system that is subject to the procedures contained in Article XIX. Transfers shall not be made on the basis of personal animus. All transfers shall be personally communicated by the transferred employee's commanding officer of the unit from which the employee was transferred.
 2. Transfers between the Police Department and District Attorney's Office shall not be unreasonably denied.
 3. **Effective January 1, 2015, in addition to transfers currently permitted for any other reason, the Department shall transfer, upon not less than thirty (30) days notice, any employee of any bargaining unit rank out of the Narcotics Bureau and Internal Affairs after the employee has been in that assignment for at least five (5) years. Any employee involuntarily transferred by reason of this provision shall be given a preference for reassignment to open positions, or those that become open after the employee's transfer, in one of three (3) employee-designated assignments that shall include at least one numbered district, provided that the assignment is consistent with operational needs. Such transfers shall not exceed twenty percent (20%) of the Bureau in all bargaining unit ranks in any given year. Employees shall be selected for transfer based on a non-discriminatory lottery system, the details of which shall be agreed to between both parties. All such transfers shall be reviewed by a Transfer Review Committee, which shall include an equal number of representatives of the FOP. Only the actual transfers themselves will not be subject to the grievance and arbitration procedure, as distinguished from compliance with the remaining portions of this provision. If the Police Department and the FOP are unable to agree on the lottery system for selection by October 1, 2014, the unresolved issues shall be submitted to the interest arbitration panel for resolution within sixty (60) days. The Department shall continue to have its existing right to transfer employees out of such assignments before five (5) years.**
- M. Service Connected Death
1. Funeral Expenses
In the event a bargaining unit member is killed in the line of duty. The City shall ~~pay all funeral expenses up to a maximum of fifteen thousand dollars (\$15,000)~~ **reimburse the FOP, upon submission of appropriate documentation, for reasonable and necessary funeral expenses up to a maximum of seventy-five thousand dollars (\$75,000).**

2. Psychological Counseling

The City will provide psychological counseling to all family members of police officers killed in the line of duty, if so requested. The spouse, children and parents of such officer shall be eligible for such counseling, and the cost shall be borne by the City.

3. Addition of Option Four for Plan 87/Pension Calculated at Next Higher Rank
If Killed in the Line of Duty

- a. Effective July 1, 2008, the City will revise Police Plan 87 by adding the unreduced, 50% Survivor Benefit Option ("Option 4") that is contained in Police Plan 67.
- b. Any member of the bargaining unit who is killed in the line of duty as an immediate result of the violent conduct of a third party that was directed towards the officer or a member of the public or an immediate result of performing other heroic action in an emergency situation in the line of duty on or after January 1, 2006 shall have his or her pension calculated as if the officer retired at the next rank, excluding corporal above the rank held by the officer at the time of his or her death (e.g. Officer to Sergeant). This section shall not cover death resulting from vehicular accidents.

N. Squad Schedule Cards

The cost of printing Squad Cards shall be paid for by the City.

O. Off-Duty Firearms Training

Any police officer who engages in familiarization ("plinking") for firearms training shall be provided two (2) boxes of ammunition by the Police Department.

P. Firearms

The City will supply a GLOCK 9MM automatic weapon to any police officer who requests such a weapon. ~~If a police officer has purchased a GLOCK 9MM revolver and produces either a receipt or proof of purchase including the cost of such weapon, the City shall reimburse the police officer for that cost.~~

Any weapon paid for by the City (either directly or through reimbursement to the police officer) shall be the property of the City.

- a. ~~The current Firearms provision shall be amended to remove the following: "If a police officer has purchased a GLOCK 9MM sidearm and produces either a receipt or proof of purchase including the cost of such weapon, the City shall reimburse the police officer for that cost."~~

Beginning July 1, 2010, employees who are qualified by the Department to do so shall, at the employee's request, be provided with an approved GLOCK 40 or 45 mm handgun and accompanying approved holster. Provided, however, that the number to be equipped in any year shall depend on the Department's training capacity, so long as any officer who so requests shall have the opportunity to receive the training by June 30, 2013. The FOP will be consulted by the Department regarding the order of training and distribution. Employees who purchased and were qualified by the Department on an approved GLOCK 40 mm or 45 mm handgun and who produce a receipt or other proof of purchase showing the cost paid for such weapon will be reimbursed by the Department for the cost of the weapon and approved holster by July 1, 2012.

Q. Pay Stubs

Effective July 1, 1993 the City will generate pay stubs each pay period for all employees showing the balances available for vacation, sick, holiday, and compensatory time.

R. Tuition Reimbursement

1. Effective July 1, 2008, the Department will adopt a program to provide tuition reimbursement at levels to be determined by the Department after discussion with the FOP to officers who successfully complete education courses approved by the Commissioner in advance in a field related to public safety or administration at an accredited college or university.

2. Educational Incentive

Effective July 1, 2010, the Department shall provide up to \$250,000 per year in tuition reimbursement to employees who satisfy the requirements set by the Department. This amount shall be prorated for the remainder of the current fiscal year, which ends on June 30, 2010.

S. Civilianization: Use of Deputy Sheriffs

The Department shall be permitted to use Deputy Sheriffs for transportation of prisoners that is currently performed by members of the Police Department.

T. Payment of Costs

In this proceeding, the City argued forcefully for a contract term of one year, while the FOP sought a three year term. The Panel has considered the arguments of both sides in support of their suggested term and has determined that it is appropriate to grant the Mayor the one year term he requested from the Panel in order to allow the City the time it needs to address the serious structural challenges it faces, including the cost of employee benefits.

The Panel recognizes, however, that a one year contract term imposes a significant burden on the FOP to engage in interest arbitration proceedings two years in a row if the parties are unable to reach agreement on the terms of a contract to begin on July 1, 2009. In light of these extraordinary circumstances, the Panel makes the following award, which shall not be considered to set a precedent for future awards:

Within sixty (60) days of the FOP presenting reasonable documentation supporting its expenditures, the City will reimburse the FOP for up to \$500,000 of legal expenses and expert fees incurred in this proceeding.

U. Residency

a. Effective July 1, 2010, employees who are eligible for or currently enrolled in the DROP will not be required to live in the City of Philadelphia.

b. Effective January 1, 2012, employees who have five (5) or more years of service as a police officer in the City of Philadelphia will not be required to live in the City of Philadelphia.

c. All employees will be required to reside in the Commonwealth of Pennsylvania.

V. Furloughs

A. Upon seven (7) days advance notice to the FOP and the affected employee(s) the City shall have the unrestricted right to temporarily furlough any employee or employees for a definite length of time, which shall not exceed thirty (30) days in any fiscal year. Time spent on furlough shall be unpaid and shall be treated as time spent on temporary layoff for purposes of accruing pension and service credits, but shall not be treated as a layoff for any other purpose and the City shall not be required to follow any contractual lay off procedure with regards to such furloughs. The City will continue to make health benefit contributions on behalf of the employee during the furlough period. Furloughs shall not be considered a separation from service for purposes of the DROP program. In the event of a temporary closing of a facility or work unit, all represented employees within the designated work unit shall be scheduled off on furlough for one or more days. Otherwise, the Department will issue a schedule of furlough days. In the event that not all employees in a job title are required to serve the same number of furlough days in accordance with the schedule generated by the Department, the most senior employees shall serve the smallest number of furlough days required by the schedule.

B. **During the course of the proceedings for this contract (2014-2017), the Panel has had the opportunity to review the testimony and evidence regarding the condition of the city over the last five years, which was the term of the previous award. The Panel notes that the City had the right to conduct furloughs over the past five years, but never made the choice to do so. The Panel notes that the Five Year Plans since the issuance of the 2009 Award, including the current Five Year Plan, do not assume any savings from furloughs of police personnel. Moreover, the Panel notes that over that time period, crime in the City has decreased. Finally, the Panel also notes that the number of sworn officers remains below ideal staffing levels. Accordingly, consistent with the City's recent negotiated contract with AFSCME District Council 47, the Panel has determined that in lieu of creating a separate mechanism for furloughs, as the previous award did, it is appropriate to remove practical barriers to the use of temporary layoffs from operation of the Deferred Retirement Option Program (DROP), should the City find it necessary to use its existing rights to layoffs when economic circumstances make such a drastic step necessary. The Panel therefore directs that for purposes of DROP, a layoff of fewer than fifteen (15) consecutive days will not be considered a separation from employment.**

W. Aviation Unit Training

Once an employee is selected for an assignment in the aviation unit, the City will pay for the reasonable and necessary cost of any required certifications obtained after the employee was hired by the Department to allow the employee to maintain his or her pilot's license. The City's maximum obligation to pay for required certifications already obtained by current members of the aviation unit in accordance with this paragraph shall be \$60,000.

X. The Existing Agreement

Except as modified by this Award, all other terms and conditions contained in the collective bargaining agreement between the City and the FOP in effect from July 1, 2008 to June 30, 2009 shall remain in effect. All other proposals and requests for change submitted by the City and the FOP to the Panel, which have not been specifically addressed in this Award, were considered and have not been awarded.

XXII. SEPARABILITY AND SAVINGS

The parties to this Contract believe that it complies with all City, State and Federal laws. Accordingly, it is agreed that nothing contained in this Contract shall require the FOP or the City to do anything which violates the law.

The parties agree that all the clauses of this contract shall be severable. Any clause which may be prohibited by, invalid under, or in contravention of any operable City, State, or Federal law shall be null and void, but in such event, the remaining clauses shall continue in full force and effect for the term of the contract and any renewal thereof. The parties agree in good faith to attempt to replace any such null and void clause with a clause which conforms with the law. The parties further agree that if during the term of this Contract, or any renewal thereof, any such null and void clause becomes legal or permissible by legislative enactment, a subsequent decision of the Courts or otherwise, such null and void clause shall automatically again become part of this Contract.

XXIII. TERM

This Award shall be effective for three (3) years, from July 1, 2014 through June 30, 2017.

Retention of Jurisdiction

In addition to the specific, limited retention of jurisdiction provided for in sections for “Selection of Officers” and “Transfers”, of the 2014-2017 Award, the Panel will retain jurisdiction solely to resolve any disputes directly related to the calculation of projected health care costs or the reconciliation of those costs as provided for in the post-2009 health care portion of the 2009-2014 contract. This specifically limited retention of jurisdiction shall not be interpreted or applied so as to permit the Panel to modify in any manner the existing language of the contract.

APPENDIX A: SHIFT SCHEDULE

AMERICAN ARBITRATION ASSOCIATION

In Re:

FRATERNAL ORDER OF
POLICE, LODGE NO. 5, PHILADELPHIA POLICE
DEPARTMENT

and

THE CITY OF PHILADELPHIA

AWARD

CASE NO.
14390026088W

The below-named arbitrators were designated by parties to comprise the Board of Arbitration for the of an "impasse" regarding a new work shift schedule in accordance with the collective bargaining agreement of July 1, 1988. Numerous days of hearings were held before the Board regarding the issues over which the impasse had occurred.

The Fraternal Order of Police and the City of Philadelphia both recognize that the present shift schedule is unsatisfactory. The Panel recognizes that any new schedule must balance the management prerogatives of the Police Department to insure its responsibility for the safety of the public as well as the legitimate bargaining concerns of the FOP for the well being of its members.

While there was common agreement that the current "6-2" shift structure is unsatisfactory, there were vast differences between the parties as to what type of shift structure should be adopted to replace it.

No shift, whether it be the 35th District Experimental Shift, the Lawley Schedule, or the Exhibit C-7 Schedule is flawless and will meet all of the objectives advanced by the parties. However, we view our function as attempting to structure a shift that will address the most fundamental interests and objectives advanced and will provide the citizens of Philadelphia with the most effective Police coverage in general and particularly during critical periods of need.

In that regard, we view the interests of the FOP to be in the implementation of a shift that rotates in a forward direction, contains a shorter work week with longer periods of time between rotation and that links regular days off into some type of meaningful and useful pattern that advances and fosters the understandable family interests of the Police Officer.

We view the interests of the Philadelphia Police Department, as articulated during the course of these hearings, to be in a shift schedule that provides significant administrative flexibility in the scheduling of Police Officers. This flexibility would permit the Department to schedule Officers in response to "high crime" or "high activity" periods of the day. In that regard, both parties agree that the day and evening shifts are such periods.

As stated above, no shift structure that is produced by this Panel will be flawless. Clearly, there are

numerous factual circumstances that are not and cannot be foreseen at the present time. Accordingly, any shift that would result from these proceedings must have within it a mechanism by which the unforeseen can be promptly and finally addressed.

After careful consideration, the Board of Arbitrators hereby enters its Award:

1. The new shift schedule to be adopted by the Police Department is the schedule referred to in the record as Exhibit C-7 which is attached hereto and marked Exhibit 1.
2. The Police Department is directed to implement the new shift schedule by January 8, 1990.
3. The Shift Change Study Committee established in Article IV, Paragraph G of the collective bargaining agreement between the parties shall be maintained for the purpose of resolving difficulties and disputes that may arise out of the implementation of the new shift.
4. Either the City or FOP may request the Chairman of this arbitration panel to assist as a neutral third party for mediation and resolution of differences that arise during the transition period.

H. Thomas Felix, II, Esq.
Arbitrator

Thomas J. DiLauro, Chair

Thomas J. Jennings, Esq.
Arbitrator

Nov. 21, 1989

APPENDIX B: EXTERNAL TRAINING

AGREEMENT
BY AND BETWEEN
CITY OF PHILADELPHIA POLICE DEPARTMENT
AND
LODGE NO.5 OF THE FRATERNAL ORDER OF POLICE
REGARDING EXTERNAL TRAINING

WHEREAS, Fraternal Order of Police Lodge No.5 ("Lodge 5") and the City of Philadelphia ("City") are parties to an effective collective bargaining agreement; and,

WHEREAS, Bargaining Unit Members are employed by the City of Philadelphia, and are members of the bargaining unit represented by Lodge 5, and are covered by the provisions of said agreement; and,

WHEREAS, Bargaining Unit Members volunteer periodically to attend external job related training, such as, but not limited to Northwestern University Staff and Command School, Harvard University, the F.B.I. National Academy, POLEX, and POSIT. This voluntary external training often necessitates a change in the scheduled hours of work and days off; and,

WHEREAS, The City and Lodge 5 realize the importance of providing employees with training opportunities;

NOW THEREFORE, It is hereby agreed by and between the City of Philadelphia Police Department and Lodge No.5 of the Fraternal Order of Police as follows:

1. The City shall publish the training schedule for the course or program it intends to make available, prior to accepting volunteers. Only employees volunteering to attend shall be subject to this Agreement. A copy of the training schedule will be posted and sent via teletype to all Units involved.
2. This agreement shall apply to all external voluntary training including, but not limited to: Northwestern University Staff and Command School, Harvard University, the F.B.I. National Academy, POLEX, and POSIT.
3. Bargaining Unit Members who voluntarily attend such training will not be paid overtime to attend said training. The hours of attendance of the volunteering employee shall not be considered a change of work schedule.
4. The parties agree that the terms of this agreement will not be used as precedent or evidence in any grievance, arbitration, lawsuit or other dispute, except as necessary to enforce the terms of this agreement.
5. This agreement shall remain in effect unless and until either party hereto provides the other with ninety-calendar days written notice of intent to terminate. Upon the expiration of the ninety-calendar days written notice, this agreement shall be null and void. However, any program or course that was scheduled prior to the notice to terminate shall, at the City's discretion, remain in effect.

CITY OF PHILADELPHIA
POLICE DEPARTMENT By:
By: Signed by the Police Commissioner
Date: 2/14/02

LODGE NO.5 OF THE FRATERNAL
ORDER OF POLICE
By: Signed by the President of Lodge #5
Date: 2/15/02

AGREEMENT
BETWEEN
CITY OF PHILADELPHIA POLICE DEPARTMENT
AND
LODGE NO.5 OF THE
FRATERNAL ORDER OF POLICE
REGARDING TRAINING OPPORTUNITIES

It is hereby agreed between the City of Philadelphia Police Department and Lodge No.5 of the Fraternal Order of Police as follows:

1. In order to provide the training opportunities set forth hereinafter, the Department may change the shift of bargaining unit members who are assigned to permanent midnight to 8 a.m. without the payment of overtime, under the circumstances set forth in this Agreement.

2. The training opportunities for bargaining unit members who are regularly scheduled to work from midnight to 8 a.m. that are covered by this Agreement are as follows:

a. Once each calendar year the hours of work of covered bargaining unit members may be changed to either 8 a.m. to 4 p.m., or 4 p.m. to midnight to attend mandated Municipal Police Officer Training for a period of three to four consecutive classroom days and one (1) range day, which may be separately scheduled. In the event that this continuous block of training is interrupted by the employee using any type of leave, the remaining training days may be rescheduled without any overtime being incurred.

b. On one occasion, the hours of work of covered bargaining unit members may be changed to either 8 a.m. to 4 p.m., or to 4 p.m. to midnight for three consecutive work days to attend Mobile Data Terminal (MDT) training.

c. On one occasion, the hours of work of covered bargaining unit members may be changed to either 8 a.m. to 4 p.m., or to 4 p.m. to midnight for three consecutive work days to attend PARS training.

d. On one occasion, the hours of work of covered bargaining unit members of the rank of Sergeant and/or Lieutenant may be changed to either 8 a.m. to 4 p.m., or 4 p.m. to midnight for one workday to attend Taser training.

e. On those occasions where it is necessary to train or retrain employees on the use of Department procedures, equipment and/or technology, the hours of work of the covered bargaining unit members may be changed to either 8 a.m. to 4 p.m., or 4 p.m. to midnight up to five days once a year to attend the training,

f. In addition to the foregoing, the hours of work of covered bargaining unit members in Special Units may be changed to either 8 a.m. to 4 p.m., or 4 p.m. to midnight to attend mandatory non-repeating training based on the written particularized need of the Special Unit. As used, herein, the term "Special Unit" shall mean any work unit, including NETS Units, other than a numbered Police District.

3. In order to be covered by this Agreement, notice of the training described above in paragraphs

2a, b, c, d, e, and f shall be provided to the affected employee in not less than thirty (30) calendar days prior to the date on which the training is to commence. However, the thirty (30) day notice shall not be required and no overtime shall be incurred in the following instances:

a. The hours of work of covered employees may be changed to either 8 a.m. to 4 p.m., or 4 p.m. to midnight to attend training for the discharge of firearm(s) – one full day of range training before returning to full duty.

b. The hours of work of covered employees may be changed to either 8 a.m. to 4 p.m., or 4 p.m. to midnight to attend training for Glock transition training consisting of three full days of training at the request of the employee.

c. The hours of work of covered employees may be changed to either 8 a.m. to 4 p.m., or 4 p.m. to midnight to attend promotional training, or;

d. The hours of work of covered employees may be changed to either 8 a.m. to 4 p.m., or 4 p.m. to midnight to attend emergency training or retraining, which would not include any training specified in above paragraphs 2a, b, c, d, e, and f. For the purpose of defining, "emergency training" or "emergency retraining" in this paragraph, it shall be training for the immediate safety of the employee(s), the public, or property that is unforeseen and/or of pressing necessity. This training shall include but is not limited to biochemical training and training necessitated by terroristic acts or terroristic threats.

4. The Department shall examine the court notice schedule of the affected officers, prior to issuing the notice described above. Upon the issuance of such notice, the Department shall cause the affected bargaining unit members to be blocked from court appearance during the training period. The exception to this clause will be final listing cases, which the officer must attend.

5. The Fraternal Order of Police shall place the grievances listed in schedule "A" attached hereto in suspense and shall take no action to pursue them to conclusion for so long as the current 4-2, 5-2, Steady Last Out Schedule remains in effect for Patrol Districts and Detective Divisions. No liability shall continue to accrue on said cases during the period of time the cases are in suspense.

6. This agreement shall remain in effect only so long as the current 4-2, 5-2, Steady Last Out Schedule remains in effect for Patrol Districts and Detective Divisions.

7. This agreement is without precedent or prejudice to the claims of either party regarding the propriety of schedule changes for training under the Collective Bargaining Unit and this agreement will not be used in future litigation in support of any such claim.

CITY OF PHILADELPHIA
POLICE DEPARTMENT
Signed by the Police Commissioner
Date: 2/14/02

LODGE NO. 5 OF THE
FRATERNAL ORDER OF POLICE
Signed by the President of Lodge No. 5
Date: 2/14/02 SCHEDULE "A"

TO THE

AGREEMENT
BY AND BETWEEN
CITY OF PHILADELPHIA POLICE DEPARTMENT
AND
LODGE NO. 5 OF THE
FRATERNAL ORDER OF POLICE
REGARDING TRAINING OPPORTUNITIES

The grievances referred to Paragraph 5 above are the following:

1. AAA Case No. 14 390 00383 96
2. AAA Case No. 14 390 00669 96
3. AAA Case No. 14 390 00233 99

APPENDIX C: UNIFORM CHANGE

IN THE MATTER OF:

FRATERNAL ORDER OF POLICE LODGE #5 AND CITY OF PHILADELPHIA

RE: UNIFORM CHANGE

RE: FOPGR08-012

*SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, Fraternal Order of Police Lodge No. 5 ("Lodge 5") and the City of Philadelphia ("City") are parties to an effective collective bargaining agreement; and,

WHEREAS, The Police Department is changing the color of uniform shirts for Sergeants from blue to white. The transition period for this change will be concluded on January 1, 2009. The Fraternal Order of Police has filed a grievance in this matter.

WHEREAS, The City and Lodge 5 desire to resolve this matter without further litigation;

NOW THEREFORE, The City, and Lodge 5 agree as follows:

1. The City shall issue a purchase order (to the vendor) in the amount of \$175 for current Sergeants to offset the cost of the above mentioned uniform change. This purchase order (credit) will be honored at American Uniform Sales Inc. 8348 State Road, Philadelphia, PA 19136. Sergeants will report to the above vendor, present their identification, and the shirts will be issued or ordered.
2. This credit plan may only be used to purchase white sergeants shirts. This procedure will be available to Sergeants until January 1, 2009.
3. In consideration for the foregoing, Lodge #5 agrees not to pursue any further remedies in this case.
4. This credit plan is a "one-time" agreement and shall not apply to future uniform payments.
5. This agreement shall be without precedent, and without prejudice to any claims, defenses or arguments, that any party hereto shall have in any other proceeding between or among them.
6. By entering into the Agreement, all parties acknowledge that they have read the Agreement, have had the opportunity to review its terms and conditions with their respective counsel, understand said terms and conditions enter into this agreement, and agree to be bound thereby.

WHEREFORE, The City, Lodge 5, intending to be legally bound hereby, enter into this agreement this day of, 2008.

FOR: The City of Philadelphia
Signed by a Deputy Commissioner
Date: 2/8/08

FOR: FOP Lodge #5
Signed by the President of Lodge #5
Date: 2/8/08

APPENDIX D: POLICE GOLF SHIRTS

TO : ALL DISTRICTS/UNITS

FROM: D/C ORGANIZATIONAL SUPPORT SERVICES

SUBJECT: POLICE GOLF SHIRTS

THE POLICE COMMISSIONER HAS APPROVED THE ELBECO GOLF SHIRT AS AN OPTIONAL SUMMER SHIRT FOR THE RANKS OF LIEUTENANT AND BELOW, STREET PERSONNEL ONLY. THEY ARE AVAILABLE IN BLUE FOR POLICE OFFICERS STYLE #K5103 AND WHITE FOR LIEUTENANTS AND SERGEANTS STYLE #5100.

THE ELBECO SHIRT WITH BADGE TAB MUST BE REQUESTED. BADGE AND NAMEPLATE MUST BE WORN WITH EITHER STYLE. EMBROIDERING IS NOT ACCEPTABLE.

JOHN J, GAITTENS

P/O WERNER #9795

D/C ORGANIZATIONAL SUPPORT SERVICES

APPENDIX E: HEALTH CARE REOPENER 2005-2007

HEALTH CARE REOPENER – 2005 – 2007 - SETTLEMENT AGREEMENT BY AND BETWEEN CITY OF PHILADELPHIA AND LODGE NO.5 OF THE FRATERNAL ORDER OF POLICE

It is hereby agreed by and between THE CITY OF PHILADELPHIA (“City”) and MICHAEL G. LUTZ LODGE NO. 5 OF THE FRATERNAL ORDER OF POLICE (“FOP”) as follows:

1. Effective July 1, 2005 through and including June 30, 2006 the City shall contribute \$1,039 per member per month to the Joint Trust on behalf of eligible active and retired bargaining unit members covered by the City’s collective bargaining agreements (Police and Sheriff) with the FOP.
2. Effective July 1, 2006 through and including June 30, 2007 the City shall contribute \$1,143 per member per month to the Joint Trust on behalf of eligible active and retired bargaining unit members covered by the City’s collective bargaining agreements (Police and Sheriff) with the FOP.
3. Effective July 1, 2007 through and including June 30, 2008 the City shall contribute \$1,303 per member per month to the Joint Trust on behalf of eligible active and retired bargaining unit members covered by the City’s collective bargaining agreements (Police and Sheriff) with the FOP.
4. As soon as possible, execution of this Agreement, the City shall make a payment to the Joint Trust equal to a lump sum payment of \$3,000,000 plus the difference between those fixed and additional payments previously made to the Joint Trust as of July 1, 2005 to the present and those provided above.
5. This agreement shall be in full satisfaction of the parties’ obligations under the January 15, 2006 Act 111 Award between the parties in AAA Case No. 14 L360 0357 04 and under the health insurance reopener provided between the parties as of July 1, 2007 for the period of July 1, 2007 to June 30, 2008 in the August 13, 2004 Award in AAA Case No. 14 L360 0357 04 between the parties.
6. This agreement shall be without prejudice to the rights of the parties to pursue to conclusion litigation currently pending between them in the Commonwealth Court and in the Pennsylvania Labor Relations Board.
7. Effective July 1, 2007 the collective bargaining agreement between the parties setting forth the wages and terms and conditions of employment of police officers shall be modified to provide as follows:

Retired members who elect to defer their retiree medical coverage on or after July 1, 2007 will be entitled to receive upon request the same months of coverage that they were entitled to at the time they deferred their coverage, regardless of the contribution rate in place at the time of the redemption.

APPENDIX F: MANPOWER IMPROVEMENT INITIATIVE

1. The Manpower Improvement Initiative will be overseen by a special joint labor management committee (the “Committee”) with four members appointed by the President of the FOP and four members appointed by the Mayor. The Committee will consider and review all reasonable considerations, consistent with the rights of both parties under the contract and the law, to maximize the levels of manpower in service to the public. The Committee will also review the procedures currently utilized by the parties in the administration of the Heart and Lung Act process in order to determine if modifications might be made thereto to expedite the return to service of recuperated police officers in a manner consistent with their rights under that process.
2. So as to maximize the full and frank discussion of the issues confronted by the Committee, neither party hereto shall rely upon the execution or existence of this agreement in any future proceeding between them.
3. The goal of the Manpower Improvement Initiative will be to improve and maintain attendance by a total of 60,000 hours per year, which is the equivalent of thirty (30) full time sworn police officers, measured by those in attendance as of the completion of the current and future fiscal years.
4. The Committee shall meet at least monthly to perform the functions of this Agreement including to track attendance issues, to identify problem areas, and to consider suggestions for programs to enhance attendance. Each six months, the Committee will issue a joint report to the Mayor and to the President of the FOP on attendance issues.
5. Commencing with employees who retire on or after the date of execution of this Agreement, the existing formula for payment of accumulated sick leave at retirement set forth in the parties’ collective bargaining agreement shall be amended as follows:
 - a. except as provided in paragraph b, employees shall be compensated at 50% of their accumulated sick leave at retirement.
 - b. lifetime attendance achievement — employees who have accumulated 2,500 or more of sick leave a retirement shall be compensated at 60% of all such time in lieu of the payment described in paragraph a.

APPENDIX G: JOINT LABOR-MANAGEMENT HEALTHCARE EVALUATION COMMITTEE

I. Introduction and Establishment

The City and its Unions (footnote 1) provide City employees with healthcare through a City controlled healthcare fund for non-union employees and through Union controlled healthcare funds for union employees, with the City supporting the Union administered funds through per-employee monthly contributions. The funds individually determine health benefits, plan terms, and cost allocation for their member employees, and control their own finances.

The City believes that the escalating expenses associated with personnel costs pose serious challenges to the City of Philadelphia's finances and threatens the City's ability to continue to fund employee healthcare benefits in their current form while maintaining a balanced five-year plan and making the necessary investments to ensure the City's growth. The Unions, on the other hand, believe that their members are entitled to receive these quality benefits as a part of their compensation package from the City and should not suffer any reduction in those benefits.

As a result, both the City and the Unions are interested in taking voluntary proactive measures to ensure that City employees continue to receive both high quality and cost-effective health benefits. To that end, the City and its Unions hereby establish the Joint Labor-Management Healthcare Evaluation Committee ("Committee").

II. Guiding Principles

The Committee's work will be guided by the following key principles:

Maximizing the quality of health benefits for City employees at an affordable cost-effective price is a shared responsibility of the City and the Unions.

All health plans should be administered according to mutually recognized industry best practices.

Decisions about changes in health plans must consider the short term and long-term impact on the quality and availability of employee healthcare benefits, the financial health of the funds and the financial health of the City, which supports the funds.

In order to attempt to ensure the quality and cost effectiveness of the healthcare benefits offered by the members of the Committee, the Committee will be open-minded in its approach, innovative in its thinking and comprehensive in the scope of its considerations.

III. Membership

Within ten (10) days of its execution of the Agreement, each of the City's Unions will appoint one (1) member to serve as the Union's representative on the Committee. Should any Union choose not to participate or to cease participation, the Committee will proceed without that Union's representative. Within fifteen (15) days of each Union's appointment of a representative, the City will appoint one (1) representative for each Union representative appointed, so that there is an equal number of Union representatives and City representatives on the Committee. All time limits may be changed by mutual agreement of the City and the Unions.

The Committee's representatives may delegate their powers to a substitute representative in the event of their absence from a meeting. Substitute representatives will participate fully and vote in the stead of the absent representative.

In addition to voting member(s), the City and each Union may bring one or more advisors, including experts or attorneys, at the party's own expense to advise the party's representative.

IV. Powers

In implementing the Committee, the City and the Unions will retain all rights provided by law, regulation, and their respective collective bargaining agreements or arbitration awards. Further, the Committee will not have the power, directly or indirectly, to alter or amend in any fashion the existing collective bargaining agreements or arbitration awards between the City and the Unions.

Any discrepancies in language implementing the Committee between the various Unions participating shall be resolved by the Committee. Resolution of such disputes shall be consistent with the immediately preceding paragraph and shall not delay the Committee from carrying out its duties or exercising its powers.

The Committee will have the power to issue non-binding findings regarding the current status of healthcare benefits for City employees and recommendations for maximizing the quality and competitiveness of employee healthcare benefits at an affordable cost.

In furtherance of its power to issue non-binding findings and recommendations, the Committee will have the power to request and receive from the City and Union healthcare funds any relevant information including: the plan's terms and conditions of benefits, other documents regarding plan design and benefit offerings, vendor agreements, utilization information, demographics, plan finances and accounting statements, valuations, fees, commissions or other forms of compensation paid directly or Indirectly to health benefit advisors, consultants and other professionals, etc. The City and the Union agree that the City and Union healthcare funds will promptly provide all information requested by the Committee, including taking all necessary steps to ensure that vendors or benefit providers promptly provide requested information in as much detail as the Committee requests (recognizing that the Committee will not request information on individual participants that has not been redacted to protect the privacy of the individual).

All information provided shall be subject to the Confidentiality provision in Section VI. Moreover, any information obtained as a result of participation in the activities of this Committee shall not be used for any purpose in any other proceeding or for any other purpose other than the activities of the Committee.

Appropriate arrangements shall be made by the Committee to insure mutuality of performance in terms of providing the records and information described herein. No party hereto shall be required to perform with any greater promptness or completeness than any other party.

In furtherance of its power to issue non-binding findings and recommendations, the Committee will have the power to spend such monies as are necessary in the advancement of its purpose. The Committee's costs thus incurred will be borne by the City.

In furtherance of its power to issue non-binding findings and recommendations, the Committee

will have the power to engage independent professionals such as actuaries, accountants, and consultants to assist the Committee in its review of the current healthcare plans and in considering and crafting its recommendations

V. Operation

The Committee shall convene its first meeting within fifteen (15) days of the City's appointment of its first representative, unless a different meeting schedule is set by mutual agreement of the City and the Unions, but in no event shall the Committee convene later than September 2, 2008. The Committee will meet regularly on at least a bi-weekly basis to conduct its business. The Committee will use all reasonable efforts to produce its findings and recommendations no later than November 1, 2008.

The City will appoint a co-chairperson and the Unions collectively will appoint a co-chairperson for the Committee. The co-chairs shall alternate leading the meetings of the Committee.

The Committee will appoint a secretary, who need not be a member of the Committee, who will be charged with keeping minutes of the Committee's meetings, circulating the minutes to the membership and scheduling Committee meetings.

The Committee will vote on any formal exercise of its powers. The formal exercise of powers is defined as the expenditure of funds, the engagement of professional services, the request for documents and information, and the making of nonbinding findings and recommendations as described in Section IV. Voting requires that a majority of members (including substitute) be present and that a majority of the members present vote in favor of the action.

VI. Confidentiality

It is recognized that in order to have the frank and open discussions that are essential to accomplish the purposes of this Committee, the absolute confidentiality of all aspects of the Committee's activities IS the essence of this Agreement. More specifically, any and all activities, discussions and deliberations of the Committee, including but not limited to any documents, meeting minutes, drafts, reports and recommendations created by or exchanged within the Committee, shall be strictly confidential and may not be publicly revealed voluntarily for any purpose by any member, party or representative of the party, nor offered for any purpose into the record in any interest arbitration proceeding, without the consent of all the Committee members. It is understood that members of the Committee will share information on the Committee's discussions, deliberations, analyses and recommendations with their respective parties, with the specific expectation that reasonable efforts will be taken by all parties to maintain the confidentiality of that information. The City and each of the Unions participating in the Committee agree that they will not subpoena any member of the Committee, any representative or employee thereof or any consultant or advisor hired by the Committee for the purpose of revealing any activity of the Committee that would otherwise be subject to this confidentiality provision. If any member of the Committee or party is subject to subpoena or other legal process initiated by any third party requiring that member or party to testify or produce documents related to the activities of the Committee, the member shall promptly notify the other members of the Committee.

VII. Objectives

The objective of the Committee is to fully review how the City and Union controlled healthcare funds are currently providing healthcare benefits to City employees, and to make nonbinding confidential recommendations on how to maximize both the quality and cost effectiveness of the healthcare benefits offered to all City employees. The determination as to which, if any, of those recommendations may Ultimately be adopted, in whole or in part, shall be left to the sound and exclusive discretion of each party hereto.

As an illustrative but by no means exhaustive list, the Committee is encouraged to consider the effect the following actions would have on both the quality and the cost of employee healthcare benefits:

Individual Health Management Programs

Individual health management program issues include evaluation of the cost and benefit of adopting or expanding upon such employee centric health management programs. These programs often provide such services as personalized: health status and health risk assessments, disease and care advice, management and monitoring, specialized assistance for smoking cessation or weight loss, personalized nutrition or exercise programs, and other important health services. These programs often create "win-win" scenarios, improving the health and quality of life for employees and reducing costs for the funds.

Plan Administration

Plan administration Issues includes vendor management practices, such as reviewing the negotiation process utilized by the funds and their vendors to establish the vendors' fees for providing the requested benefits to the funds' participants, and comparing the rates and fees offered by various vendors for similar healthcare benefits. competitive bidding for vendors, and vendor performance audits; investment strategies such as reviewing the past performance of the funds' investments as compared to similar investing entities and market performance generally, and analysis of alternative investment strategies that could yield greater or more consistent returns for the funds, potentially offsetting expenses or increasing reserves; and best practices such as eligibility audits and coordination of benefits.

Change In Plan Design

Plan design changes could include, consistent with the demographics and particularized needs of the various funds' membership, benefit changes, tiers for prescription drugs and mail order drug programs, changing in-network affiliations, creating an independent network and reassessing the healthcare system to be used as the vehicle for providing and managing the benefits [HMO, PPO, POS, etc.].

Consolidation

Consolidation could involve potential options for the integration, in whole or in part, of the City administered healthcare fund and the various Union administered healthcare funds into one or more centrally-administered fund(s). Efficient plan administration being a significant driver of cost savings, consolidating City employees into one or more well-managed unified healthcare plans could provide greater market leverage and purchasing power while also diffusing the risk of catastrophic injuries and high utilization rates. Consolidation into a well-managed fund also carries the potential for greater efficiencies and elimination or streamlining of overlapping and redundant administrative functions. However, it is recognized that consolidation cannot occur without the consent of all affected Unions.

Plan Funding

Nonbinding plan funding options to be discussed by the Committee could include changing the funding structure, fully self-insuring benefits, altering deductibles and co-payments, or changing coverage maximums. Such modifications need not necessarily be negative in nature in order to achieve cost effectiveness. Further, the Committee could consider the effectiveness of providing financial incentives to employees who utilize their benefits more efficiently such as by enrolling in a more appropriate healthcare system, actively participating in an individual health management program, utilizing mail-order prescription services, etc.

The Committee is encouraged to consider, in addition to the suggestions made above, any other approaches that might advance the Committee's goal of maximizing the quality and competitiveness of employee healthcare benefits at an affordable cost.

(1) The term "Unions" refers to: AFSCME District Council 33, AFSCME District Council 47, IAFF Local 22, FOP Lodge No.5, and the Deputy Sheriffs.

APPENDIX H: SHIFT CHANGE FOR 5 & 7 PLATOON

Memorandum of Understanding

SHIFT CHANGE FOR ALL 5 & 7 PLATOON TACTICAL PERSONNEL
PATROL BUREAU; ALL HIGHWAY PATROL PERSONNEL "LINE
SQUAD"; ALL STRIKE FORCE PERSONNEL "LINE SQUAD"
Dated: April 29, 2008

In accordance with the Collective Bargaining Agreement, specifically, Section IV-H Shift Schedules, the Philadelphia Police Department and the Fraternal Order of Police Lodge #5, agree to the following changes effective June 1, 2008:

1. All 5 and 7 platoon tactical personnel in the Patrol Bureau will have Sunday and Monday as their steady Regular Days Off.
2. All Highway Patrol "Line Squad" personnel will work the Patrol Bureau 5 platoon tactical schedule with Sunday and Monday as their steady Regular Days Off.
3. All Strike Force "Line Squad" personnel will work the Patrol Bureau 5 platoon tactical schedule with Sunday and Monday as their steady Regular Days Off.

The Patrol Bureau 5 Platoon Tactical Schedule shall be defined as follows: a rotating shift of one (1) week day work shift with a starting time between 8AM and 10AM; followed by two (2) weeks of evening shift with the starting time between 4PM and 6PM with steady Sunday and Monday regular days off.

While the Philadelphia Police Department and the Fraternal Order of Police Lodge #5 are in agreement on the above changes, it is understood that under the provisions of the current Collective Bargaining Agreement, the City has the right to change schedules within a recognized work unit without the requirement of a submission to a neutral, provided that affected bargaining unit members are given at least thirty (30) days notice of a change in schedule. This MOU shall serve as the official notice that the above-mentioned bargaining unit members' shift schedule change will take effect on June 1, 2008.

All parties agree that the subject matter of this MOU is not subject to arbitration under the current Collective Bargaining Agreement between the City of Philadelphia and the Fraternal Order of Police Lodge 5. This MOU shall be without precedent, and without prejudice to any claims, defenses or arguments, that any party hereto shall have in any other proceeding between or among them.

{This document was signed and dated by:

Charles H. Ramsey, Commissioner, Philadelphia Police Department

John McNesby, President, Fraternal Order of Police Lodge

APPENDIX I: BIDDING PROCESS FOR MIDNIGHT SHIFT

Settlement Agreement and Release

WHEREAS, Fraternal Order of Police Lodge No. 5 ("Lodge 5") and the City of Philadelphia ("City") are parties to an effective collective bargaining agreement; and,

WHEREAS, The police officers are employed by the City of Philadelphia, and are members of the bargaining unit represented by Lodge 5, and are covered by the provisions of said agreement; and, the current contract calls for midnight shift bidding to take place during the month of January;

WHEREAS, The City and Lodge 5 desire to resolve this matter without further litigation;

NOW THEREFORE, The City, and Lodge 5 agree as follows:

1. The bidding process for assignment to midnight shift for 2008 shall take place during the month of October, 2007. The first Monday of the new pay period in January will be the transition day for "Last Out".
2. This allows for all personnel to know their platoon assignment prior to the Annual Vacation selection process which must be submitted by December 15th of the preceding year. The general message for vacation selections will be sent out 30 days prior to December 15th.
3. In consideration for the foregoing, Lodge 5 agrees not to pursue any further remedies in this case.
4. By entering into the Agreement, all parties acknowledge that they have read the Agreement, have had the opportunity to review its terms and conditions with their respective counsel, understand said terms and conditions enter into this agreement, and agree to be bound thereby.

WHEREFORE, The City and Lodge 5, intending to be legally bound hereby, enter into this agreement this 2nd day of October, 2007.

For: FOP Lodge 5 – Signature of F.O.P. President

For: The City of Philadelphia –

Signature of Police Department's Deputy Commissioner

{In the Matter of: F.O.P. LODGE 5 AND THE CITY OF PHILADELPHIA
RE: DESIGNATION OF PERSONNEL TO THE STEADY 12x8 SHIFT}

APPENDIX J: CATASTROPHIC LEAVE BANK POLICY

Authority

The Agreement establishes a program that permits FOP represented employees to donate vacation time to a catastrophic leave bank. The authority is derived from the ACT 111 Arbitration Award.

Administration

The City and the Union shall jointly maintain administration of the program. The committee will consist of three (3) representatives of the Union and three (3) representatives of the City. The President of the FOP will serve as the chief spokesperson to the City for issues arising under this program.

Donation Period

January 1 through March 31st of each year, employees may contribute accrued vacation leave to the leave bank. (For calendar year 2010, this period shall be extended until April 30, 2010).

Donation/Grant Procedure

Employees donating accrued vacation leave must indicate this voluntary, irrevocable transfer in writing. Employees may contribute from one (1) to five (5) days in whole increments only. Donations must be verified by the Police Department.

- I. Employee Responsibilities- Each participating employee must submit a signed, dated authorization form (Authorization to Transfer Vacation Leave) to the Police Department's Personnel Unit, who then submits them to the Finance unit. All requests must be received between January 1 and March 31st of each calendar year. Employees will receive the authorization form from the FOP.
- II. Fiscal Officer's Responsibility- On receipt of an authorization form, the Fiscal Officer will:
 - a. Verify that each donor employee has a vacation balance of at least equal to the number of days being donated. Anticipated vacation days cannot be donated.
 - b. Forward signed and dated approval/disapproval to the employee and the Central Leave Bank in the Department of Human Resources within ten days of the determination.
 - c. Deduct donated leave from donor employee's leave balance no later than the next pay period from the date of verification of available leave balance or during the period provided by the payroll system after March 31st, (or April 31st for calendar year 2010), whichever comes first.
- III. Central Leave Bank Responsibilities-Department of Human Resources
 1. Maintain a central listing of employees who have contributed to the leave bank, along with number of days donated and the total balance of days available.
 2. On receipt of an approved authorization form, notify the President of the FOP, the Police Department's Personnel Unit and Leave Transfer Committee Members monthly of the names of donor employees, payroll number, number of days donated, and the total number of days in the

catastrophic leave bank.

3. Verify, upon receipt of approved leave request from the President of the FOP that the Central Bank has sufficient leave to honor a request.
 4. Notify the President of the FOP and the Police Department's Personnel Unit of the approval of each submitted request within ten working days of the request.
 5. Notify the President of the FOP and the Leave Transfer Committee members prior to each committee meeting of the total leave donated, the total leave granted to donor employees, and the amount of leave available.
- IV. Leave Transfer Committee Responsibilities - The committee has the sole authority to determine eligibility for a grant of leave.
1. Review written requests from eligible employees at the appropriate intervals or when needed. Eligible employees are limited to current FOP represented employees who:
 - a) Have contributed to the bank in the current year.
 - b) Have presented acceptable documentation of a catastrophic or life threatening non-service connected illness or injury as part of their leave transfer request.
 - c) Have not been placed on the Excessive Use of Sick Leave List in the past year.
 2. Approve/disapprove each request in a timely manner.
 3. Determine the appropriate amount of leave to transfer to each approved applicant. Grants of leave shall be limited to a maximum of thirty (30) leave days. Employees may apply for a maximum of two (2) grants during the calendar year.
 4. Notify the Central Leave Bank of action taken affecting leave bank balances and approve/authorize leave amounts to transfer.
- V. Applicant Employee Responsibilities
1. Submit to the President of the FOP a written request for transfer of leave from the Central Leave Bank. Employees may apply under the following conditions:
 - a) Current employee who is represented by the FOP
 - b) Has contributed to the bank a minimum of one (1) vacation day in the last contribution period. The contribution period is in the same year in which the donation was made.
 - c) Present documentation of a catastrophic life threatening illness or injury which is not service connected and approaching exhaustion of all paid leave. The documentation shall include certification from a recognized medical practitioner detailing:
 1. date treatment began

2. diagnosis
3. prognosis
4. expected length of absence from work

d) Has not been placed on the Excessive Use of Sick Leave List in the past year.

Use of Transferred Leave

Leave granted to individual employees is subject to the following limitations and rules:

1. Leave may only be granted for absences related to the catastrophic illness or injury detailed in the employee's application;
2. Employee's must comply with the City-Wide Sick Leave Policy;
3. Employees who separate from City Service for any reason shall receive no cash compensation or payment for unused transferred leave;
4. Any unused transferred leave shall be restored to the leave bank upon an employee's separation from City service, or upon cessation of the catastrophic illness or injury.

APPENDIX K: PENSION PLAN 09 SUPPLEMENTAL AWARD

**In the matter of Interest Arbitration
Pursuant to 43 P. S. 217.1, et seq.
Between**

CITY OF PHILADELPHIA and

**FRATERNAL ORDE OF POLICE,
MICHAEL LUTZ LODGE NO. 5**

Board of Arbitration
Thomas W. Jennings, Esq.
Arbitrator for the Lodge

Kenneth M. Jarin, Esq.
Arbitrator for the City

Ralph H. Colfiesh, Jr., Esq.
Neutral Arbitrator and Chair

Supplemental Award

WHEREAS the above named Board of Arbitration issued an Award in Interest Arbitration pursuant to 43 P. S. 217.1, et seq. ("Act 111") on December 18, 2009, governing terms and conditions of employment for police officers and superior officers employed by the City of Philadelphia and represented in collective bargaining by Fraternal Order of Police, Michael Lutz Lodge No. 5; and,

WHEREAS the said Award at page 18 made certain provisions for pensions for the said employees, including the adoption of a new pension plan, to be known as Plan 09, in which officers hired after the effective date of the said Plan would have the option of enrolling; and,

WHEREAS the Board deferred ruling on the terms of Plan 09 at the time the Award was issued but agreed to either reach a unanimous decision on the said terms or have a majority of the Board rule on those terms by no later than March 1, 2010; and,

WHEREAS the Board has been unable to reach unanimity on the terms of Plan 09;

NOW THEREFORE a majority of the Board, including the Neutral Arbitrator who concurs soely on the ground that Plan 09 is optional, issues this Supplemental Award, to wit:

Plan 09 shall be consistent with the following description:

The terms of Plan 09 referenced in Paragraph 5 of this Board's December 18, 2009 Interest Arbitration Award shall be as follows:

- The new pension plan shall be comprised of two elements: a defined benefit plan and a voluntary defined contribution plan (the "DC Plan").
- The defined benefit plan under Plan 09 shall contain the same terms as Plan B of the Philadelphia Retirement Code (also known as Plan 87) as modified by this Award as follows:
 - Average final compensation shall be the average of the employee's five (5) highest annual compensations calculated for either five (5) calendar years or five (5) anniversary years.
 - Service retirement benefits under Section 22-301(3) of the Philadelphia Retirement Code shall be calculated at one and three quarters percent (1.75%) of average final compensation multiplied by the member's years of credited service for the first twenty (20) years of credited service.
 - Employees who elect to participate in Plan 09 shall make member contributions in the amount of five and a half percent (5.5%) of compensation.
 - After twenty (20) years of credited service, employees will no longer earn credited service, will no longer make contributions to the pension fund and their average final compensation shall not increase.
 - The sum of any benefits under Plan '09 plus any benefits to which a member is entitled pursuant to prior membership in another Plan under the Philadelphia Retirement Code shall not exceed the member's average final compensation. No further benefits under a member's prior Plan shall accrue once a member joins Plan '09. Credited service under a member's prior Plan shall not count toward calculating benefits under Plan '09.
- Under the DC Plan, employees may make voluntary contributions to their accounts under the City's 457 Plan. For each fiscal year, the City shall make a contribution to the account of each employee equal to fifty percent (50%) of the employee's contribution to the 457 Plan for such year. The City's contribution will not exceed one-and-a-half percent (1.5%) of the employee's annual Compensation as defined by the Philadelphia Retirement Code. Employees may continue to contribute to the DC Plan

until retirement, up to the maximum specified by the Internal Revenue Code, subject to this limitation. Employees vest in the City-funded portion of the DC Plan after 5 years of service with the City.

The terms of Plan 09 set forth in this Award shall be implemented in accordance with the attached suggested ordinance.

APPENDIX L: PAY SCHEDULE

July 1, 2010

CITY OF PHILADELPHIA
SCHEDULE OF PAY RANGES IN ANNUAL AMOUNTS
POLICE AND PROSECUTION DETECTIVE CLASSES

Title	Salary Range	Step 1	Step 2	Step 3	Step 4	Step 5	Salary Range
Police Officer Recruit	201	41237					201
Police Officer 1	202	44097	48109	51544	54981	57271	202
Prosecution Detective 1	203	50360	54891	56078	57271		203
Prosecution Detective 2 & Police Corporal	204		60380	61686	62998		204
Police Graphic Artist, Police Sergeant, & Prosecution Detective Sergeant	205		62575	63929	65289		205
Police Lieutenant & Prosecution Detective Lieutenant	206		71336	72879	74430		206
	207		76334	77978	79639		207
Police Captain & Prosecution Detective Captain	208		82750	84540	86338		208
Police Staff Inspector	209		91025	92994	94972		209
Police Inspector & Deputy Chief Prosecution Detective	210		94335	96376	98426		210
Chief Police Detective	211		107542	109868	112205		211
	212		122597	125250	127914		212
	299	52624	54891	56078	57271		299

DIFFERENTIALS BETWEEN PAY RANGES

From Pay Range		To Pay Range		Percent Differential
203		204		10%
203		205		14%
205		206		14%
206		208		16%
208		209		10%
208		210		14%
210		211		14%
211		212		14%

Exhibit B



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The advertisement features a dark, textured background. On the right side, there is a small image of a smartphone displaying a news app with a 'Sports' section and a large number '51'. A white arrow points from the top right towards the main text area.

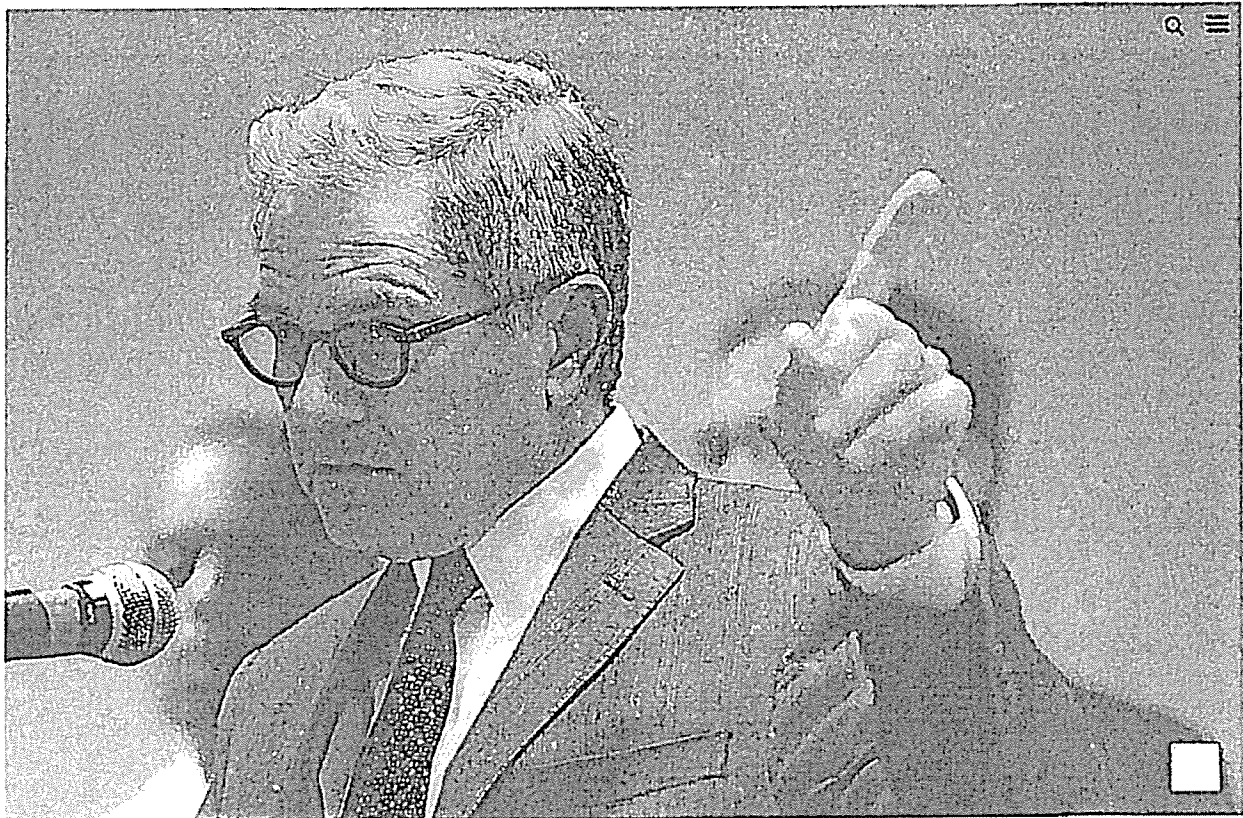
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NEWS

Under court order, District Attorney Krasner releases list of tainted police

by Mark Fazlollah, Craig R. McCoy and Julie Shaw, Posted: March 6, 2018



TIM TAI / STAFF PHOTOGRAPHER



Responding to a judge's order, the Philadelphia District Attorney's Office has released a secret list of current and former police officers whom prosecutors have sought to keep off the witness stand after a review determined they had a history of lying, racial bias, or brutality.

>> **THE LIST:** Here are the 29 Philly cops on the DA's 'do not call' list

RELATED STORIES

- Here are the 29 Philly cops on the DA's 'Do Not Call' list
- Philadelphia DA Larry Krasner faces political, policy test with reported list of problem cops

The names of the 29 officers were included among a larger roster of 66 provided to the Philadelphia Defender Association on Monday and obtained Tuesday by the Inquirer and Daily News. The full list combined two groupings — the officers whose serious misconduct rendered them problematic as witnesses and 37 officers who have been charged with lesser offenses or have been involved in other legal conflicts, often while off duty. Under prosecution policy, the second group can testify, but defense attorneys must be told of their legal issues.

In a detailed fact summary about each officer on the "Do Not Call" list, prosecutors said that the 29 former and current officers had engaged in a wide range of wrongdoing and had, as a result, often faced criminal charges or been found guilty by the department's internal Police Board of Inquiry. The offenses included numerous cases of lying to police investigators, filing false police reports, use of excessive force, drunken driving, burglary, and others.



The list included former Officer Ryan Pownall, 35, a 12-year veteran of the department who was fired last year after he fatally shot a man running away after a traffic stop in North Philadelphia; former Officer Emmanuel R. Folly, 26, a three-year veteran fired last year upon his arrest on pending charges of sexual abuse of children and dissemination of child pornography; and former Officer Stanley Davis, a narcotics officer who pleaded guilty last year to giving heroin to women in exchange for sex acts.

The roster also included Sgt. Michael Spicer, 50, who was acquitted in 2015 with five other narcotics officers in a heavily publicized federal corruption probe. He and other officers were later awarded their jobs back by an arbitrator. A source familiar with the list said he had been added because prosecutors deemed some of his recent arrests problematic. His attorney declined comment.

The 29 officers collectively made more than 800 arrests in the last five years, records show.

Common Pleas Court Judge Tracy Brandeis Roman last week ordered that the names, badge numbers, and background information of the officers be turned over to the public defenders office. The defenders demanded the list from District Attorney Larry Krasner after the Inquirer and Daily News revealed its existence last month.

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The list was drawn up by prosecutors in March 2017 at the order of former District Attorney Seth Williams. Before Williams pleaded guilty to corruption and resigned in June, he created a special Police Misconduct Review Committee to identify officers whose testimony might be problematic in criminal cases. In deciding whose testimony should be avoided, Williams limited the review, in large part, to those found by the Police Board of Inquiry, from the summer of 2016 on, to have committed serious misconduct.

Williams and his prosecutors did not reveal the existence of the list, treating it as an internal guide to determine when a potentially tainted officer's testimony could be used. Under the office's policy, frontline prosecutors were instructed to get top-level permission before calling such an officer as a witness in a criminal case.

The list was kept secret by Williams, prosecutors said, out of concern for the officers' privacy rights and the broad impact it might have on past convictions involving the officers. In the aftermath of previous scandals involving allegedly corrupt officers, the city has faced costly wrongful-arrest lawsuits and seen many previous convictions overturned.

The most recent such scandal unfolded when prosecutors charged seven narcotics officers with corruption. While one officer pleaded guilty and cooperated with the probe, the six others were acquitted. So far, prosecutors have thrown out 800 cases of those officers. About 300 defendants have sued the city after the dismissals. With less than a third of those suits resolved, the city has agreed to pay out more than \$2 million in settlements.

At last week's hearing before Brandeis Roman, Assistant District Attorney Andrew Wellbrock agreed that the list would be provided on Monday. Q ≡

Krasner, a former top defense lawyer who came into office promising to be uncompromising when it came to bad police officers, pledged at a public meeting last month that he would release the list and finally faced a judicial command that he do so.

In an interview Tuesday, Krasner said all assistant district attorneys have been instructed to tell opposing lawyers about officers on the list if it affected their cases. He said his staff had "moved quickly" to share the list after learning of it.

"It's a daunting task to reverse years of potential *Brady* violations," Krasner said, referring to a U.S. Supreme Court decision, *Brady v. Maryland*, requiring prosecutors to share evidence favorable to defendants with their lawyers.

×

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In a statement, DA spokesman Benjamin Waxman said: "As we have made clear on several occasions, this list was compiled and maintained by a previous administration. We do not endorse the legal or factual validity of the information contained in the document. We also do not endorse any positions taken in regard to disclosure or non-disclosure of information contained in the document."

Last week, in an interview, public defenders Bradley Bridge and Michael Mellon said the list was clearly covered by the 1963 *Brady* ruling.

Despite its existence, the list had never been used to bar an officer's testimony, officials said. Instead, prosecutors have simply been dismissing cases involving problem officers.

For decades, critics, including former Philadelphia Police Commissioner Charles Ramsey, have complained bitterly about the police disciplinary system, saying a sluggish Internal Affairs Division, a weak police inquiry board, and an officer-friendly arbitration system have prevented the force from firing bad cops.



Beyond officers deemed too suspect to put on the witness stand, the DA's Office had compiled a list of officers with their own legal cases pending. While those officers could still be called as witnesses, it was determined that defense lawyers needed to be told of their pending cases.

Of the 29 men and women on the more serious "Do not call" list, about half appear to be still on the force. The number includes a lieutenant, four sergeants, one corporal, and one detective.

The District Attorney's Office has also released the protocol detailing how officers were put on the list and how they could be removed.

Under the protocol, prosecutors left it to the Police Department to explain to officers on the list why they would not be called to testify in court.

A spokesman for Commissioner Richard Ross, Capt. Sekou Kinebrew, said the department "never received this protocol." As a result, officers were never told they were on the list, he said.

The Fraternal Order of Police, the city's police union, has said it also had never received the protocol. It had no further comment Tuesday.

While such lists of "rogue" police are unusual, they are not unprecedented.

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by Intel

In Seattle and 39 other towns in King County, Wash., with a total population of 2.5 million, prosecutors have made public such lists of officers for more than a decade. Mark Larson, a top King County prosecutor, said the public at any time can request a copy of its list, which contains the names of 214 former or current officers.

Staff writers Dylan Purcell and Michele Tranquilli contributed to this article.

Posted: March 6, 2018 - 2:05 PM

Mark Fazlollah

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Stephan Salisbury

Exhibit C

The New York Times

He Sued Police 75 Times. Democrats Want Him as Philadelphia's Top Prosecutor.

By Alan Feuer

June 17, 2017

PHILADELPHIA — Larry Krasner has sued the Philadelphia Police Department 75 times. He has promised not to seek the death penalty. He has even called law enforcement “systemically racist.”

Now, in a twist that would promote the gadfly to the top of the food chain, he is poised to become the district attorney of Philadelphia.

Mr. Krasner, a veteran civil rights lawyer, defeated six opponents — all of them with more crime-fighting chops — in a Democratic primary last month, winning nearly 40 percent of the vote and becoming the unexpected favorite in this heavily Democratic city.

Unlike most would-be top prosecutors, who run on promises of locking up the bad guys, Mr. Krasner campaigned against mass incarceration and what he described as the “failed culture” of the Philadelphia district attorney’s office.

On Monday, jury selection was set to begin in the trial of the current district attorney, Seth Williams, a Democrat, on charges that he sold his influence in exchange for lavish gifts and stole from his mother. And despite some recent overhauls, Philadelphia still has one of the highest incarceration rates of any urban center in the country.

Mr. Krasner also credited his victory in part to national politics, saying that Philadelphians had cast their votes against the Trump administration’s crackdown on illegal immigrants and signs of a rollback of federal oversight of police departments that routinely violate civil rights.

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“When you’re 56 and you see the worst president of your lifetime and the worst attorney general of your lifetime trying to reverse good things that date back to the ’60s,” Mr. Krasner said, “you might just have to do something about it.”

And so he has offered up a menu of initiatives aimed at fighting what he called “the criminalization of poverty.” He has promised to cut down on the prosecution of minor cases, divert drug addicts into treatment and ignore, where appropriate, what he described as draconian sentencing guidelines. He has also said he would abolish money bail — which often leads to the jailing of poor defendants while wealthier ones go free — and would decline to seek charges in any case he deemed to be based on an illegal stop and search.

This agenda has left an opening for his opponent in the November election, Beth Grossman, a career local prosecutor who was for years a Democrat before becoming the Republican nominee. Ms. Grossman, too, has promised to overhaul the city’s justice system by cutting back on the criminal prosecutions of small-time drug offenders. But she chided Mr. Krasner for going too far.

“We already have one public defenders’ office in Philadelphia,” she said. “We don’t need the district attorney to be a second.”

A slim, dapper man with a reputation for a cranky courtroom manner, Mr. Krasner ran an unconventional campaign from the start.

When he entered the race, he had no experience with politics or fighting crime, and only two paid staff members — both of whom had worked for Senator Bernie Sanders. But he eventually received support of more than \$1 million from an independent group that was funded by George Soros, a billionaire who has given assistance to a number of candidates in district attorney races across the country. The group flooded the airwaves with television ads on his behalf.

A few days before he won the primary, Mr. Krasner appeared onstage at a campaign event in a sober shirt and necktie and performed a cover of the Clash’s “Clampdown” with Sheer Mag, a local punk band. The anarchist anthem was meant to appeal to his base of grass-roots activists, who know him well from his highly visible representation of protest groups like Act Up, the AIDS awareness advocates, and Black Lives Matter in their confrontations with the police.

Mr. Krasner is so outside the mold of the typical district attorney that even though he eventually moved to the top of the polls, neither Mayor Jim Kenney nor Gov. Tom Wolf, both Democrats, endorsed him — or anyone else — in the primary race. But as he has entered the general election, several top Democrats in Philadelphia have announced their support for his campaign.

“Yeah, it’s ironic, but this is 2017,” said one of them, State Senator Vincent Hughes. “People have to feel that the system works correctly and for them. And that, I think, is what Larry’s going to do.”

The Working Families Party, another Krasner ally, chalks up his victory to “a sea change” in opinion on criminal justice, with the public increasingly frowning on capital punishment, harsh sentences, and the criminalization of mental illness and drug addiction.

But the city’s police officers have a different view.

Well before the primary, John McNesby, the president of Philadelphia’s police union, called Mr. Krasner’s candidacy “hilarious.” After some of Mr. Krasner’s supporters chanted anti-police slogans at his victory party, Mr. McNesby publicly referred to them as “parasites of the city.”

At the end of May, Mr. Krasner and Mr. McNesby sat down to discuss their simmering tensions. “A lot of positive things were said in that meeting, constructive things,” Mr. Krasner said, “and hopefully they turn out to be true.”

Mr. McNesby did not return calls requesting comment.

Mr. Krasner has also gotten criticism from some of the city’s former prosecutors, several of whom published a letter in *The Philadelphia Citizen* days before the primary calling him “a radical candidate with no experience prosecuting crime.” Mr. Krasner acknowledged that, if he was elected, some employees of the district attorney’s office would “have to go,” but he insisted that he would “get along famously with the rest.”

Though his positions have made him the latest liberal darling on the national stage, his campaign staff members were initially concerned that he might alienate Philadelphia voters by welcoming the spotlight too eagerly. But that seemed to change on Monday, when after a weekend of stumping at neighborhood events, he took a morning train to New York City to bask in the glow of his newfound attention.

He spent his visit glad-handing donors and meeting with editors of The Nation magazine. On Tuesday, he dropped in for a spot on the left-wing news show "Democracy Now!" and found time in the evening to share a beer with a like-minded comrade, Eric Gonzalez, Brooklyn's acting district attorney.

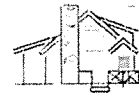
But as the train pulled out of 30th Street Station Monday morning, Mr. Krasner was talking, as he often does, about his struggles with the police: the time he won an acquittal for a black community activist who had been beaten by officers but was then accused of assaulting them, or the case in which he exposed how local detectives had made up a fictional informant.

"I don't think this makes me anti-law enforcement," he said. "I think sticking up for good cops by going after bad ones isn't adversarial. Every good cop I know hates bad cops. They demean the profession."

A version of this article appears in print on June 18, 2017, on Page A14 of the New York edition with the headline: A Thorn to Police Is One Step From Being Philadelphia's District Attorney

Exhibit D

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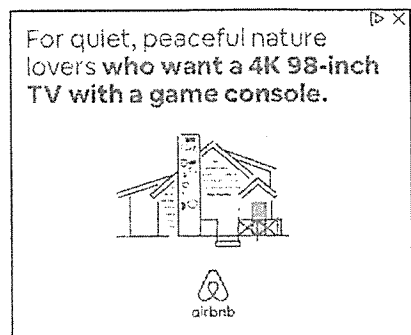


Civil rights attorney Larry Krasner is Philly's next district attorney — here's why he ran after 30 years suing police

Harrison Jacobs Nov. 7, 2017, 9:47 PM



Philadelphia Democratic district attorney candidate Larry Krasner speaks at a candidate forum at the Arch Street United Methodist Church, a landmark center of activism in Philadelphia, on October 21, 2017. Harrison Jacobs/Business Insider



- Civil rights attorney Larry Krasner won the race for district attorney in Philadelphia Tuesday in a blowout, taking approximately 75% of the vote.
- As a civil rights attorney, Krasner spent his career suing police for civil rights abuses, defending activists, and fighting to change the criminal justice system.

Krasner says he decided to run at 56 years old

Civil rights attorney Larry Krasner will be Philadelphia's next district attorney, after blowing out his Republican opponent Beth Grossman by nearly a 3:1 margin in Tuesday's election.

The DA is a powerful position in Philadelphia, a city with the highest rate of incarceration, the highest poverty rate, and the third highest violent crime rate of the US's 10 most populated cities.

Krasner was an atypical candidate for DA. At 56, he pursued elected office for the first time after a 30-year career defending radical activist groups like Black Lives Matter and Occupy Philadelphia. He's also sued police for civil rights violations more than 75 times.

His opponent, Republican Beth Grossman, had spent more than two decades in the DA's office and ran on her experience with the position.

While Krasner has been criticized by some for his lack of insider experience, he gained a rabid following in Philadelphia among the city's activists, liberals, and leftists. They all threw their support behind his campaign platform calling for the end of "mass incarceration," the constellation of state and federal policies that have put more than 2 million Americans behind bars.

Business Insider recently followed Krasner on the campaign trail during the waning weeks of his campaign.

One of our biggest questions was why, after a career fighting outside the system, he decided it was time to take it over.

Here's what Krasner said:

"I have — like a lot of civil rights lawyers, like a lot of activists — been beating my head against the wall of the DA's office and the [Philadelphia] police department for a long time because the DA's office in Philly was not enforcing the law against police. Somebody had to do it.

I'm not a fan of bullies, and a small portion of the police department were behaving like bullies. So I felt that somebody had to prosecute them, which is essentially what I did by filing civil rights lawsuits against them. I used the only tools in the toolbox to essentially be a private prosecutor against civil rights violations and corruption and brutality on the part of police. I've been doing that for a long time. And activists have been doing that for a long time and we've done some good.

But ultimately if you never break down the wall, you may have to go through the door, because there's stuff going on on the inside that is hard to fix from the outside.

So having been a criminal defense and civil rights lawyer for 30 years, I watched this election with my usual level of dismay because I didn't see any great candidates popping up ... And the rest of [the candidates during the primary] frankly were, at best, progressive-lite, more like faux-progressives who had not shown in their careers or in their dealings with me — and I dealt with a lot of them personally — who had not shown attention for reform ... I just figured this is ridiculous. Somebody real has got to get into this because these people aren't going to change anything."

Check out our deep dive into the final weeks of Larry Krasner's campaign here »

SEE ALSO: An inside look at most progressive candidate in a generation — who's poised to take on the most incarcerated major city in the US »

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Exhibit E

Controversial cop critic on Philly DA-elect's transition team

Defense attorney Michael Coard has compared police departments to slave patrols and represented people accused of killing cops

Dec 4, 2017

By Chris Palmer
Philly.com

PHILADELPHIA — Larry Krasner, Philadelphia's district attorney-elect, has drawn skepticism and even scorn from some corners of law enforcement for his promises to bring radical change to the office.

One member of his newly announced transition team is bound to add to the concern.

Michael Coard, an outspoken defense attorney, activist, and media pundit, will join at least 15 other elected officials, city power brokers, and attorneys in helping Krasner refine his goals and shape his priorities before he assumes office in January.

Coard – a vocal Krasner supporter during the campaign – has compared police departments to slave patrols, represented people accused of killing cops, and, the day after the election, posted an expletive-laden meme on his Facebook and Twitter accounts, directing it at groups including the police union and disgruntled assistant district attorneys.

"F— all of you!" it said, layered over a picture of Oprah Winfrey during a famous stunt in which she gave her audience members new cars.

Coard wrote that he was posting the message on his own behalf – and "not from newly elected DA Larry Krasner." He could not be reached for further comment Thursday.

Still, Coard's appointment is unlikely to soothe those in law enforcement who have expressed worry over – and even contempt for – Krasner's impending term as DA.

Earlier this month, some police officers said on their Facebook profiles that Krasner, a former civil rights attorney, was #notmyDA. John McNesby, president of Fraternal Order of Police Lodge 5, said Thursday that he was well aware of Coard's posts, which he called "not very professional, especially when we have to work together."

Krasner, shown a screenshot of the post during an interview at his law office Thursday, said he had not seen it before, but was not concerned with Coard expressing himself in "nonviolent, nonthreatening" ways.

The transition team, Krasner said, was designed to include a variety of perspectives. He pointed to the inclusion of Ronald Castille – former Philadelphia district attorney and chief justice of the Pennsylvania Supreme Court – as an example of a member whose views are not in lockstep with his.

Other notable team members include Marian B. Tasco, the former longtime city councilwoman; Michael DeBerardinis, managing director; Sylvester Johnson, former police commissioner; Maria Quinones-Sanchez, city councilwoman; and Chris Woods, a labor leader with District 1199C.

It does not include any current police, prosecutors, or public defenders – omissions Krasner said were intended to avoid sending signals of favoritism.

He said he thought the team consisted of people "who are all modern in their thinking in looking for creative solutions where traditional tactics have been less successful." He hopes they can help him identify ways to implement his goals, which include reducing incarceration, not seeking the death penalty, and ending civil asset forfeiture.

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McClatchy-Tribune News Service

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Exhibit F

News (https://billypenn.com/categories/news/) Power (https://billypenn.com/categories/power/) Neighborhoods (https://billypenn.com/categories/neighborhoods/) KRASNER'S DAO (HTTPS://BILLYPENN.COM/STORIES/KRASNERS-DAO/)

Philly DA Larry Krasner is going after police officers for illegal stop-and-frisks

He might be the country's first district attorney to do it.



JARED PIPER / PHL COUNCIL

Max Marin
Oct. 04, 2018, 8:30 a.m.

Philadelphia's District Attorney's Office last week quietly [pressed charges](http://www2.philly.com/philly/news/crime/2-philly-cops-arrested-charged-with-illegally-detaining-male-20180926.html) against two PPD officers in a stop-and-frisk case criminal justice experts say may be first of its kind in the nation.

DA Larry Krasner has made steady progress on his campaign promise to hold police accountable for alleged criminal misconduct. In his first nine months in office, his office has filed charges against eight city officers for six alleged on-duty incidents.

Most of the alleged incidents were violent in nature: There was the case against two ex-SEPTA Transit officers over the 2017 beating of an intoxicated man on an El platform in Frankford, which a [judge dismissed](https://billypenn.com/2018/08/22/philly-judge-tosses-beatdown-case-against-two-ex-septa-cops/) during a preliminary hearing last month for lack of evidence. Then there's the ongoing case against a former Kensington officer who was captured on cell phone video [body-slamming a handcuffed man](https://6abc.com/philly-officer-accused-of-slamming-handcuffed-man-charged/3160198/). And highest-profile among the eight charged officers, Krasner is pursuing a murder case against former PPD officer Ryan Pownall over the 2017 shooting of David Jones.

While those cases have dominated headlines, the stop-and-frisk charges could have lasting effects on the city's law enforcement agencies, regardless of the case's outcome.

Two officers stand accused of making a pedestrian stop-and-frisk, detaining a citizen without cause, and then lying about it on official paperwork. While the police department itself has been [sued over its rampant stop-and-frisk practices before](https://www.aclu.org/news/aclu-pa-and-civil-rights-firm-file-class-action-lawsuit-against-philadelphia-police-department), Philly officers have rarely, if ever, been taken to court over the department's long-sanctioned policy, which critics say amounts to "stop first, justify later."

"I don't know if I've ever seen it before," said David Rudovsky, one of the civil rights attorneys who has sued the department over

the practice, about last week's charges.

Such a case is unprecedented even on the national level, said Thomas Nolan, a Boston-based criminologist and a former senior policy analyst at the Department of Homeland Security.

"This will no doubt prove to be extremely unsettling to the police rank and file," Nolan said after being briefed on the charges. "Overt acts of criminality — such as robbing a drug dealer or shooting an unarmed fleeing suspect — were always at least potentially prosecutable. But it was almost an article of faith that the police would often engage in stops and create the justification for them after the fact."

Some experts dismiss the case as a lost cause. Some worry about it exacerbating the highly disputed "Ferguson effect" among city officers. Others call the charges necessary to ensure oversight in a police department entrenched in its own toxic culture. All agree: This is a strange, new ballgame for criminal justice.

'The citizen was fully compliant'

14th District Officers Matthew Walsh and Marvin Jones stand accused of illegally detaining a man in East Mount Airy last April.

Investigating a civilian complaint filed by the detainee, the department's Internal Affairs Bureau found video evidence that contradicted the officers' legal justification for the stop. In official paperwork, the officers alleged that their suspect was "apparently using narcotics."

Investigators determined that Walsh and Jones fabricated their cause for the frisk, which was that the man wouldn't remove his hands from his pockets. "The citizen was fully compliant at the time of the stop," police officials wrote in a [press release](https://twitter.com/MaxMMarin/status/1045354015767318529) (<https://twitter.com/MaxMMarin/status/1045354015767318529>) announcing both officers' arrest and impending dismissal.

Investigators said the officers detained the man for about 15 minutes, drove him around the block and released him. The detainee later filed a civilian complaint against the officers, triggering the Internal Affairs investigation that would result in their arrest.

Tweet from @MaxMMarin (<https://twitter.com/MaxMMarin/status/1045354015767318529>)

The charges approved by Krasner last week include one felony (obstructing the administration of law) as well as three misdemeanor counts (false imprisonment, tampering with records, and official oppression), court records show.

In recent years, allegations made against officers — even those far more violent in nature — have seldom [resulted in criminal charges](http://www.philadelphiaweekly.com/news/complaints-show-philly-police-escape-discipline-for-violent-misconduct/article_c283b3da-1bc6-11e8-bfbd-47e1758196fe.html) (http://www.philadelphiaweekly.com/news/complaints-show-philly-police-escape-discipline-for-violent-misconduct/article_c283b3da-1bc6-11e8-bfbd-47e1758196fe.html), let alone serious internal discipline. The DA's office said it was not involved with the police department's internal investigation prior to reviewing it for possible charging.

"This investigation almost entirely done by Internal Affairs and the Philadelphia Police Department," said DAO spokesperson Ben Waxman. "After the investigation, they came to us and said 'Hey, we think you need to take a look at this because we think a crime was committed here.'"



Waxman could not confirm if Krasner had previously asked Internal Affairs to pass this specific type of case to his office for review.

Regardless, this is not the only case in which the newly minted DA has gone after officers engaged in less overt acts of criminality. Last month, the DA's office alleged that a 24th District officer falsified paperwork for a 2017 DUI arrest (<http://www2.philly.com/philly/news/crime/philadelphia-police-officer-bryan-turner-arrested-charged-dismissed-falsifying-paperwork-20180831.html>) that could have allowed his partner to clock unearned overtime, according to the police department. Police sources said it is highly abnormal for such allegations against PPD officers to result in criminal charges.

Stop-and-frisk policing on trial

Justified or not, the vast majority of police stop-and-frisks do not result in personal injury — as was the case of with the 14th District detainment at the center of this case.

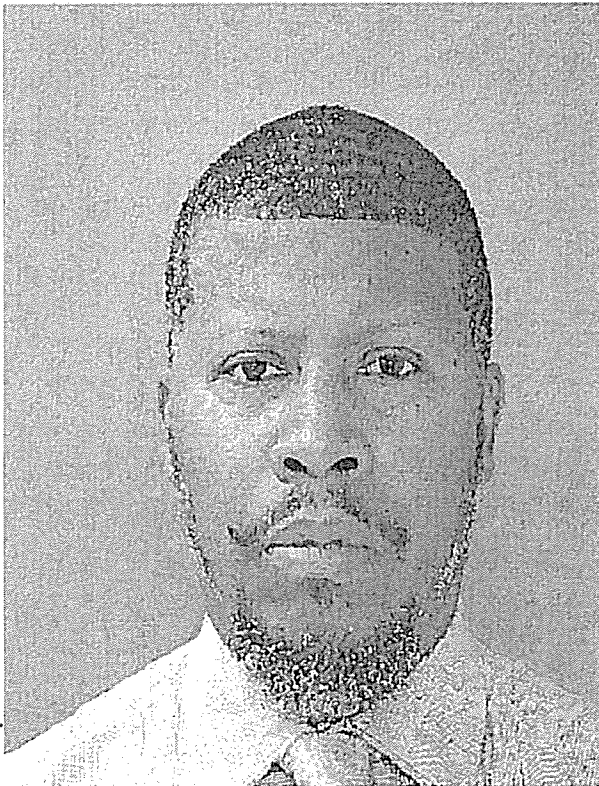
Traditionally, there are three routes for civilians to seek recourse over what they feel is an unjustified stop:

File a civilian complaint with the police department (which are overwhelmingly dismissed (http://www.philadelphiaweekly.com/news/complaints-show-philly-police-escape-discipline-for-violent-misconduct/article_c283b3da-1bc6-11e8-bfbd-47e1758196fe.html))

Go directly to the DA to seek criminal charges (which are rarely brought)

Seek a lawsuit for civil damages (an extremely complicated legal undertaking)

"Litigation is expensive," Rudovsky said. "You don't see it unless there's some physical injury or some kind of trauma."



(<https://a.spirited.media/wp-content/uploads/sites/2/2018/10/PhotoFunia-1538589152.jpg>)

14th District Officers Marvin Jones (left) and Matthew Walsh (right) PHILADELPHIA POLICE DEPARTMENT

Paul Hetznecker, a civil rights attorney in Philadelphia who has sued individual officers over misconduct, had never heard of a criminal case like this in the city, but he sees it as necessary corrective.

In his mind, officers who perjure themselves in police reports are likely to end up giving perjuring testimony in court. But whether or not a stop-and-frisk leads to a courtroom hearing, the damage is already done in communities of color, he said.

"If these cases aren't prosecuted then there's a significant loss of faith in the system – not just because the officers have committed a crime, but more importantly, because it sends a message to all other officers that this is the status quo," Hetznecker said.

"The pillar of the criminal justice system is the trust in officers, and the sanctioning of false testimony and false reports have continued to destroy this pillar."

Precedent-setting or 'overkill'?

Walter Signorelli (<https://www.jjay.cuny.edu/faculty/walter-signorelli>), a defense attorney in New York who worked with the NYPD for 30 years, says Krasner has built himself "a flimsy case."

"It seems to warrant a civilian complaint and some instruction for the officers to be a little more careful. To charge them seems like overkill," he said.

While video evidence against the officers has been made public, Signorelli notes the justification standards for so-called Terry stops (https://www.law.cornell.edu/wex/terry_stop_stop_and_frisk) always stands in the favor of police. In the case of the Mount Airy officers, he says that the charge is too subjective to hold up.

"How can you say what the guy saw or didn't see?" Signorelli asked. "[The officers] may be mistaken – but I don't think that's a crime. And they let the guy go."

As the U.S. Supreme Court ruled in a landmark 1968 case, Terry stop-and-frisks are not inherently unconstitutional. But since the 1990s, the practice has evolved into a dragnet tool for major police departments across the country. Its champions argue that such "law and order" policies are crime deterrents, even as urban crime rates have steadily declined nationwide. There is little evidence that widespread pedestrian and vehicle stops play a role in crime reduction (<https://crim.sas.upenn.edu/fact-check/does-stop-and-frisk-reduce-crime>). Numerous investigations have found that city officers have violated citizens' Fourth Amendment rights for stopping them based on their race, not on a reasonable suspicion.

Low-income African American and Latino neighborhoods in Philadelphia and other cities see disproportionate numbers of stops (<https://technical.ly/philly/2016/08/05/stop-and-frisk-data-police-department/>).

Years after the 2010 civil rights lawsuit against the PPD that galvanized public attention over stop-and-frisk policing, the department has made marked improvements – 35 percent fewer pedestrian stops occurred in 2016 (<http://www2.philly.com/philly/news/crime/Philly-Police-decreasing-use-of-stop-and-frisk-officials-say.html>) than the year prior. Still, Rudovsky contended that an unacceptable quarter of stops (upwards of 100 per day, citywide) did not involve unreasonable suspicion that same year.

Peter Moskos (<https://www.jjay.cuny.edu/faculty/peter-moskos>), a criminology professor at John Jay College of Criminal Justice and former Baltimore police officer, also reviewed Krasner's stop-and-frisk case at a reporter's request. He said that the case likely wouldn't go anywhere in a city where officers routinely walk free – and even return to the force – after far more heinous allegations go before a jury.

He also said, regardless of outcome, the case could have a negative effect within the department. He cited Baltimore, where homicides have skyrocketed in the wake of national policing scandals and residents have lamented a thinner police presence (<https://www.npr.org/2017/12/31/574824963/baltimore-residents-blame-record-high-murder-rate-on-lower-police-presence>) in high-crime sections of the city.

"If they're [filing criminal charges] carefully and picking off the bad cops, that's one thing," Moskos said. "But if you start sending a message to well-intentioned cops who do good police work, that's dangerous."

ELECTION 2018 ([HTTPS://BILLYPENN.COM/STORIES/ELECTION-2018/](https://billypenn.com/stories/election-2018/))

The procrastinator's guide to the November 2018 Pennsylvania general election
(<https://billypenn.com/2018/10/30/the-procrastinators-guide-to-the-november-2018-pennsylvania-general-election/>)

A cheat sheet for being informed on Election Day.


 (<https://billypenn.com/about/>) By Billy Penn Staff (<https://billypenn.com/about/>) · Today, 9:30 a.m.

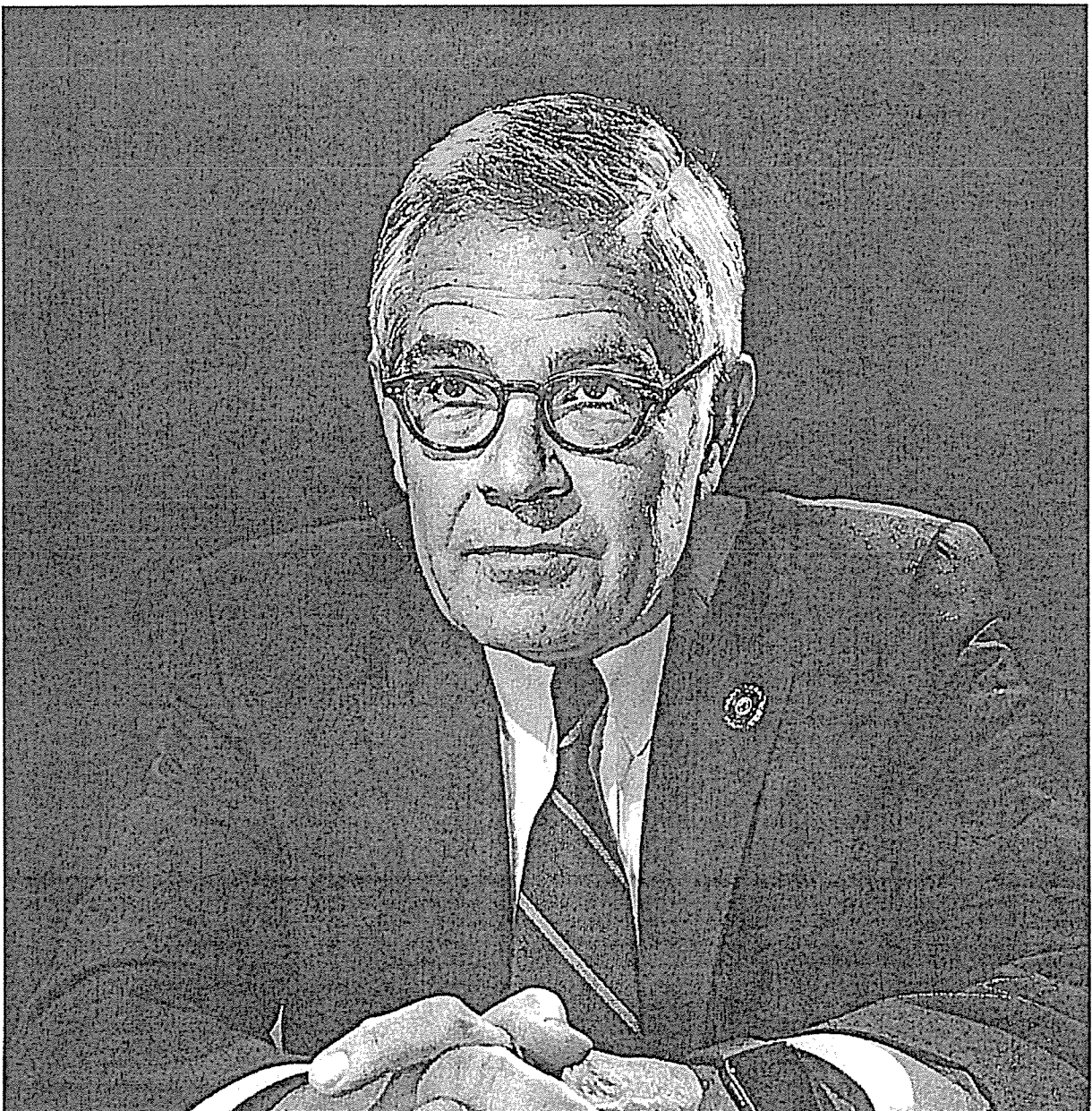
Exhibit G

THE
NEW YORKER
ANNALS OF JUSTICE OCTOBER 29, 2018 ISSUE

LARRY KRASNER'S CAMPAIGN TO END MASS INCARCERATION

Philadelphia's District Attorney reinvents the role of the modern prosecutor.

By Jennifer Gonnerman





Krasner asked his young prosecutors, "Who here has read Michelle Alexander?"

Photograph by Jeff Brown for The New Yorker

0:00 / 38:42

Audio: Listen to this article. To hear more, download the Audm iPhone app.

Until Larry Krasner entered the race for District Attorney of Philadelphia last year, he had never prosecuted a case. He began his career as a public defender, and spent three decades as a defense attorney. In the legal world, there is an image, however cartoonish, of prosecutors as conservative and unsparing, and of defense attorneys as righteous and perpetually outraged. Krasner, who had a long ponytail until he was forty, seemed to fit the mold. As he and his colleagues engaged in daily combat with the D.A.'s office, they routinely complained about prosecutors who, they believed, withheld evidence that they were legally required to give to the defense; about police who lied under oath on the witness stand; and about the D.A. Lynne Abraham, a Democrat whose successful prosecutions, over nearly twenty years, sent more people to death row than those of any other D.A. in modern Philadelphia history.

In 1993, Krasner opened his own law firm, and went on to file more than seventy-five lawsuits against the police, alleging brutality and misconduct. In 2013, he represented Askia Sabur, who had been charged with robbing and assaulting a police officer. A cell-phone video of the incident, which had gone viral, showed that it was the police who had beaten Sabur, on a West Philadelphia sidewalk. Daniel Denvir, a former criminal-justice reporter at the

Philadelphia *City Paper* and a friend of Krasner's, recalled that, at the trial, Krasner revealed the unreliability of the officers' testimony, "methodically unspooling their lies in front of the jury." In dealing with such cases, Denvir said, Krasner sought to illustrate "prosecutors' and judges' typical credulity with regard to anything that a police officer said, no matter how improbable." (Krasner later filed a civil lawsuit on Sabur's behalf, which was settled for eight hundred and fifty thousand dollars. The police officers were never charged with lying on the witness stand.)

In Krasner's spare time, he worked pro bono, representing members of ACT UP, Occupy Philadelphia, and Black Lives Matter. In 2001, his wife, Lisa Rau, decided to run for state-court judge. Krasner asked some of the activists he had represented, including Kate Sorensen, of ACT UP, for help. "We were involved with a whole community of anarchist activists—folks who generally don't vote," Sorensen said, "but we got hundreds and hundreds of lawn signs up all over the city." Rau won, and later earned a reputation for challenging questionable testimony from the police.

In early 2017, when Krasner told the six-person staff of his firm that he was running for D.A., they erupted in laughter. On February 8th, he announced his candidacy with a speech in which he attacked the culture of the D.A.'s office, accusing prosecutors of embracing "bigger, meaner mandatory sentencing." He accused the office, too, of casting a "very wide net," which had "brought black and brown people from less prosperous neighborhoods into the system when that was in fact unnecessary and destructive."

The president of the police union pronounced Krasner's candidacy "hilarious." Krasner received no mainstream-newspaper endorsements and, at first, was supported by only a few Democratic elected officials. He seemed to please almost no one in power—certainly not those in the office he hoped to lead, which has had its troubles in recent years. In 2017, the D.A. at the time, Seth Williams, was accused of accepting gifts, including a trip to a resort in Punta Cana, and later pleaded guilty to bribery, and was sent to federal prison. But

few people saw Krasner as the solution. Twelve former prosecutors, nearly all of whom had worked under Williams, wrote a letter that was published in the *Philadelphia Citizen*: “While it might be demoralizing to work for someone who is federally indicted, imagine working for someone who has openly demonized what you do every day,” it read. “Why work for someone that reviles a career you are passionate about?”

Krasner, who is fifty-seven, is a compact man with an intense, slightly mischievous demeanor. He likes to say that he wrote his campaign platform—eliminate cash bail, address police misconduct, end mass incarceration—on a napkin. “Some of us had been in court four and five days a week in Philadelphia County for thirty years,” he said. “We had watched this car crash happen in slow motion.” Krasner often talks about how, running as a defense attorney, his opponents, most of whom had worked as prosecutors in the D.A.’s office, frequently attacked him for having no experience. At one event, they were “beating the tar out of me because I have not been a prosecutor. ‘Oh, my God! He’s never been a prosecutor!’ ” But the line of attack worked to his advantage. “You could hear people saying, ‘that’s good!’ ” Brandon Evans, a thirty-five-year-old political organizer, said. “I remember people nodding profusely, rolling their eyes, and shrugging their shoulders.”

In 2015, Philadelphia had the highest incarceration rate of America’s ten largest cities. As its population grew more racially diverse and a new generation became politically active, its “tough on crime” policies fell further out of synch with its residents’ views. During Krasner’s campaign, hundreds of people—activists he had represented, supporters of Bernie Sanders, Black Lives Matter leaders, former prisoners—knocked on tens of thousands of doors on his behalf. Michael Coard, a left-wing critic of the city’s criminal-justice system, wrote in the *Philadelphia Tribune* that Krasner was the “blackest white guy I know.” The composer and musician John Legend, a University of Pennsylvania graduate, tweeted an endorsement. In the three weeks before the primary, a PAC funded by the liberal billionaire George Soros spent \$1.65 million on pro-Krasner mailers and television ads. Strangers

started recognizing him on the street. He trounced his six opponents in the primary, and went on to win the general election, on November 7, 2017, with seventy-five per cent of the vote. He was sworn in on January 1, 2018, by his wife.

In the past ten years, violent crime across the country has fallen, but, according to polls, many people continue to believe that it has increased. President Trump's campaign exploited the fear of "American carnage," and the criminal-justice system of the United States, which has the highest incarceration rate in the world, seems built on this misinformation. And yet, at a local level, there are signs of change. Krasner is one of about two dozen "progressive prosecutors," many of them backed by Soros, who have won recent district-attorney races. In 2016, Aramis Ayala got early support from Shaquille O'Neal and won a state's attorney race in Florida, and Mark Gonzalez, a defense attorney with "NOT GUILTY" tattooed on his chest, became the D.A. in Corpus Christi, Texas. Last month, Rachael Rollins, a former federal prosecutor, became the first African-American woman to win in a Democratic primary for D.A. in Suffolk County, Massachusetts, having promised to stop prosecuting drug possession, shoplifting, and driving with a suspended license, among other crimes. Instead, she said, she would handle the cases she didn't dismiss in other ways, by sending defendants to community-service or education programs, for example. On September 7th, President Barack Obama delivered a speech to students at the University of Illinois at Urbana-Champaign in which he referred to Krasner and Rollins: "If you are really concerned about how the criminal-justice system treats African-Americans, the best way to protest is to vote," he said. "Do what they just did in Philadelphia and Boston and elect state attorneys and district attorneys who are looking at issues in a new light."

VIDEO FROM THE NEW YORKER

The High Stakes of the Trump Midterms

Krasner now oversees five hundred and thirty-seven employees, including some three hundred prosecutors, and an annual budget of forty-two million dollars. With his tailored suits, well-trimmed silver hair, and square jaw, he could be mistaken for a Republican senator, but his speech is freewheeling and at times leaves his spokesperson, Ben Waxman, a thirty-three-year-old former journalist, looking anxious. At lunchtime each day, prosecutors returning from the courthouse stream through the doors of the D.A.'s office, pulling metal carts stacked with boxes of files, and ride an escalator to the mezzanine, then board an elevator to their offices.

When Krasner first arrived, he found, at the top of the escalator, a wall of portraits of his predecessors: Arlen Specter (1966-74), who was later elected to the U.S. Senate; Edward G. Rendell (1978-86), who went on to become the mayor of Philadelphia and the governor of Pennsylvania; Lynne Abraham (1991-2010), who ran, unsuccessfully, for mayor. It bothered Krasner that the wall did not feature portraits of the two former African-American D.A.s, Williams and the interim D.A., Kelley B. Hodge. But, Krasner admitted, "it's

a little hard to love putting up a picture of a D.A. who is currently doing five years in jail.” He took the portraits down.

Krasner often talks about his ambition to make Philadelphia the best progressive D.A.’s office in the country, but he knows that he faces an almost insurmountable challenge. Resistance comes not only from the lawyers he now supervises but also from some judges, many of whom are former prosecutors. “They are being forced to look back on their entire careers and say to themselves, Did I get it all wrong as a prosecutor? Have I gotten it all wrong as a judge? All these years coming down with twenty-five years when it should’ve been ten? And ten when it could’ve been two?” He went on, “It takes a pretty remarkable human being, who turned down big law firms, turned down big money, to do public service, to say, ‘Damn, I screwed up, I’ve been doing it wrong all this time, I think I’ll just fall into line with what it is these progressive prosecutors want to do.’ That’s hard.”

Krasner’s father was a freelance writer and an author of mystery novels. His mother was an evangelical preacher before she had children. When Krasner was eight, he moved with his parents and three brothers from St. Louis to a town outside Philadelphia. He attended the University of Chicago, where he majored in Spanish. After moving back home, while working as a carpenter he got called for jury duty and was assigned to a murder trial: an African-American handyman was accused of raping and strangling to death a seventy-six-year-old white woman in her home. One juror, an older man, “showed up with a cowboy hat,” Krasner recalled. “The first thing he said was something like, ‘We got to get this boy.’” After deliberation, Krasner and the other jurors voted to convict; the evidence of guilt was overwhelming. The defendant likely would have been sentenced to death had one juror not taken ill before a verdict was reached; the prosecutor agreed to a life sentence in order to avoid having to retry the case.

The experience inspired Krasner to apply to law school. He was accepted at Stanford Law, and, at a mixer on the third day, met his future wife, Rau. In

his third year at Stanford, he applied for a job at the office he now leads. He summed up the interviewer's stance as "Why aren't you in love with the death penalty? What the hell is wrong with you?" Krasner said, "It was very clear to me, about five sentences in, that this was not an office where I could ever work."

On the morning of September 13th, I watched Krasner greet thirty-eight young Assistant District Attorneys, known among the staff as "baby A.D.A.s," at the start of an eight-week training period. A new class of prosecutors arrives every fall, and this year's A.D.A.s could have been forgiven for thinking that they had mistakenly wandered into training for public defenders. "Who here has read Michelle Alexander?" Krasner asked, referring to the author of "The New Jim Crow," an influential analysis of mass incarceration. "Well, even if you haven't read it," he said, "open the flyleaf. Look at the stats. There are more people of color in jail, in prison, on probation and parole than there were in slavery at the beginning of the Civil War." He reminded the trainees that they represent "the commonwealth." "That means you represent people who are not victims of crime, people who are not defendants. You represent kids who are going to public schools, and they have too many kids in the class," he said. "You represent—because you are stewards of an enormous amount of social resources—what their lives can be in ten or fifteen years if resources are in those schools."

To assist with his office's training, Krasner had hired an organization called Prosecutor Impact, run by Adam Foss, a thirty-eight-year-old former prosecutor from Suffolk County, Massachusetts. In 2016, Foss, who has dreadlocks that fall below his waist, became a celebrity in social-justice circles after giving a TED talk in which he detailed how prosecutors are "judged internally and externally by our convictions and our trial wins, so prosecutors aren't really incentivized to be creative or to take risks on people we might not otherwise." Foss, wearing jeans and a button-down shirt, stepped forward and told the A.D.A.s about his first day as a prosecutor, in 2008. "All I was told was how great I was, and how great prosecutors were, and how great

everything that we did was,” he said. “Never once did I hear about the term ‘mass incarceration’ or trauma or poverty.”

For the A.D.A.s, Foss and his team had planned a visit to a prison, to talk to men who were given life sentences as teen-agers, and a sleepover at a homeless shelter. “We want people who are about to exercise their discretion and deal with the realities of homelessness and addiction and mental illness and danger, potentially, to have been in the vicinity of and to have spoken to some homeless people,” Krasner said. In his three decades as a defense attorney, he estimated that he had spent at least a year in prison, visiting clients. Six years ago, he and Rau bought a second-hand Lexus hard-top convertible, which Krasner drove with the roof down whenever he went to see imprisoned clients, as an antidote to the claustrophobia of prison.

Ten years ago, Krasner was attacked outside his office by two men, one of whom slashed his face with a razor blade. He rarely speaks about the incident, but when he does it is usually to make a point about how victims of crime often desire something other than what the criminal-justice system provides. He summarized the traditional approach to caring for victims as “We’re not going to have a robust form of therapy for you. We’re not going to have any aspect of this that could be restorative, where the person who harmed you will somehow make up for it,” and as “We’re going to put this person in a cell and that person really doesn’t have to do anything except not escape.”

Two weeks after the training, I visited Krasner at his eighteenth-floor office, which looks onto City Hall. On top of an empty bookshelf was a poster featuring two post-arrest photos, one of Martin Luther King, Jr., the other of Rosa Parks. “These are my kind of mug shots,” he said.

After Krasner’s primary victory, he sought advice from a few progressive prosecutors, including Kim Ogg, who, in 2016, became the first Democratic D.A. in Harris County, Texas, in nearly four decades. She told Krasner that, shortly before she took office, she sent letters to thirty-eight prosecutors,

informing them that she was planning to fire them. Within hours, she said, crime victims began contacting her to say that they'd been called by prosecutors, warning them that their cases would be compromised by the new D.A. She later discovered that relevant emails and documents had been deleted. At a press conference, she condemned the "lack of professionalism and the deliberate sabotage." (The prosecutors denied any wrongdoing.)

Krasner, too, had a list of prosecutors who he believed would resist his efforts to change the office; he had fought many of them in court. "Some of them may be absolutely great, hardworking attorneys who just believe that too much incarceration is not enough, and they're not capable of following orders, and they're always going to be undermining you," he said. "You've got to show them the door." But he didn't repeat Ogg's mistake of letting them know in advance. On Krasner's fourth day in office, a Friday, the office was closed, due to a snowstorm. Thirty-one employees received calls telling them to come in and reported to the office. One by one, they were asked to resign; if they didn't, they were told, they would be fired on Monday. The list included the first Assistant District Attorney, a Deputy District Attorney, twelve supervisors, and seven prosecutors in the Homicide Unit. Security escorted them out of the building, and soon there were TV cameras outside, filming them carrying their belongings in cardboard boxes. A former homicide prosecutor named Richard Sax, who had resigned in 2017, after thirty-seven years in the office, told the Philadelphia *Inquirer* that the firings were "personal and vindictive."

By February, Krasner had hired sixteen new lawyers, many of them former public defenders whom he knew. To help him run the office, he brought in Robert Listenbee, who had overseen juvenile-justice programs under Obama, and an eighty-three-year-old former judge named Carolyn Engel Temin, who had most recently been training judges in Bosnia. He also hired Movita Johnson-Harrell, an activist whose eighteen-year-old son was fatally shot seven years ago, to run the office's newly renamed Victim Witness Services and Restorative Justice division. Krasner's first initiative was to eliminate cash

bail for most nonviolent crimes. “We don’t imprison the poor in the United States for the so-called crime of poverty,” he said. In March, he sent a memo to his staff outlining his policies, which he described as “an effort to end mass incarceration and bring balance back to sentencing.” Few of the ideas were truly new—many progressive prosecutors have stopped prosecuting people for possessing small amounts of marijuana, for instance, or have increased the number of people diverted from prison into drug-rehab programs—but the memo caught on in criminal-justice circles, arguably because of one recommendation: each time a prosecutor wanted to send somebody to prison, he had to calculate the cost of that imprisonment (an estimated forty-two thousand dollars per inmate per year), state it aloud in court, and explain the “unique benefits” of the punishment. James Forman, Jr., the author of the Pulitzer Prize-winning study of race and criminal justice “Locking Up Our Own,” teaches at Yale Law School. He assigned the memo as reading in his criminal-law class. Krasner’s suggestion was powerful, Forman told me: “Nobody seems to ask the questions of prison that we ever ask of any other aspect of the system. Nobody says, ‘Well, if prison didn’t work last time, maybe we shouldn’t try it the next time.’ ”

MORE FROM THIS ISSUE

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ONWARD AND UPWARD WITH
THE ARTS

The Myth of Whiteness
in Classical Sculpture

By Margaret Talbot

THE ART WORLD

Berthe Morisot,
“Woman Impressionist,”
Emerges from the
Margins

By Peter Schjeldahl

BIRDERS DEPT.

Bird-Watching with the
Ravenmaster

By Sarah Larson



In Pennsylvania, unlike in New York and New Jersey, incarceration has increased in recent years. A 2018 report by Vincent Schiraldi, who used to oversee the Department of Probation in New York City and is now a research scientist at Columbia University, revealed that an extraordinary number of people in Pennsylvania are also under “mass supervision”—either by way of probation or parole. There are more parolees in the state than anywhere else in the country. One-third of the people in Pennsylvania’s prisons are there because they violated the rules of their probation or parole.

In February, Mark Fazlollah, a reporter from the *Inquirer*, called Ben Waxman, Krasner’s spokesperson, about a police officer named Reggie Graham. A decade earlier, Graham had arrested the rapper Meek Mill on gun and drug charges. He spent several months in prison before his release, and received probation, which was periodically extended, by the same judge, until 2017. That fall, the judge found that Meek Mill had violated the terms of his probation by, among other things, getting arrested for popping wheelies on a dirt bike. He was sentenced to two to four years.

The reporter wanted to know whether prosecutors were still calling on Graham to testify in court. Waxman asked around the office, and unearthed a “do not call” list, made by prosecutors during the previous regime, of sixty-six current and former police officers who had troubling histories, many of whom prosecutors had deemed insufficiently credible to call as witnesses in court. Graham was on the list. The list included the officers’ alleged transgressions:

aided and abetted his live-in
girlfriend in a prostitution/escort
business

deployed OC spray and kicked a
handcuffed prisoner

arrested and charged with sexual
abuse of children

drank alcohol then drove city car
on-duty, misused city time, and
accepted gifts from news reporters

physically assaulted his girlfriend

The *Inquirer* broke the news about the list, and the Defender Association of Philadelphia subpoenaed Krasner to obtain it. A judge ordered Krasner to hand it over. The *Inquirer* obtained and published it, including the officers' names. The story gave new momentum to Meek Mill's efforts to get out of prison; in April, he was released on bail.

"That list is a sliver of the information that we actually should provide," Krasner told me. He had recognized many of the names from his time as a defense attorney. "But there were a lot of missing ones, too," he said. He was trying to obtain records from the police department's internal-affairs division, in order to compile a more thorough document. "We're in the middle of a tug-of-war. If they don't collaborate, we'll sue them because we have to comply with our constitutional obligations—and we take that very seriously." The Defender Association filed petitions to reopen six thousand four hundred cases in which an officer on the list had been involved.

The Conviction Review Unit of the D.A.'s office was set up in 2014 to investigate claims of innocence. It had been run by a veteran prosecutor, who was among those asked to resign in January. Skeptical that anyone could impartially investigate his longtime colleagues, Krasner hired an outsider, Patricia Cummings, who had overseen the Conviction Integrity Unit in Dallas County, which was the first unit of its kind and gained national attention for its aggressive approach to investigating wrongful convictions. Andrew Wellbrock, whom Krasner kept on as the unit's second-in-command, explained that, under the previous D.A., "if we came to a case where we wanted to exonerate somebody, it had to go through a ridiculous chain of command that, depending on who was in charge on any given day last year, could have a different result." Krasner has expanded the unit to include five

attorneys, two paralegals, and an administrator, and the news about his willingness to investigate past convictions has spread. "There's a lot of people in jail with time on their hands who don't actually deserve to have their convictions overturned, but they're all going to write you letters," Krasner said. "So by being evenhanded and being fair, you make a lot more work for yourself. But, obviously, we need to be evenhanded and fair."

The Law Division handles appeals filed by prisoners. Its head is Nancy Winkelman, a former partner at Schnader Harrison Segal & Lewis, one of the biggest law firms in Philadelphia. In 2016, a friend suggested that she watch Foss's TED talk, after which, she said, "All of a sudden everything I started seeing and reading was about progressive prosecution. You know how that happens? All of a sudden it was everywhere. And then it was here in Philadelphia." Krasner hired her in January. Since then, much of her time is spent dealing with the appeals of men on Pennsylvania's death row, many of whom, she and Krasner have found, received especially poor legal representation. According to the Death Penalty Information Center, of the approximately two hundred death sentences handed down in Philadelphia since 1974, nearly a hundred and fifty have been overturned, often because of inadequate representation or prosecutors' misconduct.

To overhaul the Homicide Unit, Krasner hired Anthony Voci, who had served as a homicide prosecutor in the D.A.'s office, sometimes facing Krasner in court, before going to work as a defense attorney for twelve years. Last spring, Krasner and Voci reviewed the case of Dontia Patterson, who had been in prison since 2007, when he was seventeen, convicted of killing his friend. Krasner and Voci filed a motion in court that pointedly blamed their predecessors in the D.A.'s office for imprisoning Patterson for "a crime he did not commit, in all likelihood." Although two witnesses had identified somebody else as the assailant, prosecutors had failed to share this information with the defense attorney. Patterson was freed from prison, after eleven years.

On March 8th, former prosecutors held an event at the Fraternal Order of Police lodge to honor the thirty-one prosecutors whom Krasner had fired. “Please join us as we celebrate our former colleagues who worked tirelessly on behalf of crime victims and the citizens of the City of Philadelphia,” the invitation read. The attendees included former colleagues and police officers. The fired prosecutors lined up to receive commemorative plaques, and were honored for their “seven hundred seventy years’ worth of combined service.” Eight had worked in the D.A.’s office for at least three decades.

Edward McCann, who had retired in 2015 after twenty-six years, addressed the crowd. “Those of you who tried homicide cases—I saw the hours you put in,” he said. “When something like this happens, there is a natural reaction. . . . You say, ‘I gave everything to this job, to this work—sometimes too much—and this is my payoff?’ ” He went on, “If you’re feeling that, it’s completely natural, and I’m sure you aren’t alone. . . . The anger won’t pass and it shouldn’t. But questioning whether your commitment and talent and heart were wasted on this job—that will pass.” They had all “touched lives,” he said. “Whether you had the mother of a homicide victim crying on your shoulder and thanking you for getting justice for her son, or whether a victim of a car theft or a burglary said to themselves one random day after you handled their case, ‘That A.D.A. really cared about what happened to me.’ ”

The former A.D.A.s, aligned with the police and the victims, appeared to be at war with the newcomers, many of them former public defenders. A new employee told me that sometimes he stepped onto an elevator with longtime employees, and suddenly everyone would stop talking. Soon after Krasner took the job, someone who purported to be an employee began posting on Twitter as “Wen Baxman”—a play on the name of Krasner’s spokesperson—identifying himself as the office’s “Director of Unofficial Communications.” Krasner later described the tweets as “just a lot of carping about ‘We shouldn’t have fired these people,’ or ‘We shouldn’t have this policy,’ or ‘The city is burning,’ or whatever nonsense.” He didn’t bother

launching an investigation. “You go to war when you’ve got to,” he said. “Let them get their ya-yas out.”

In late June, the media learned that Krasner had offered a plea deal to the two brothers who had killed Sergeant Robert Wilson III while trying to rob a video-game shop in 2015. In exchange for pleading guilty, they would be sentenced to life in prison without parole, plus an additional fifty to a hundred years, rather than given the death penalty. The death penalty in Pennsylvania is now a relic—no one has been executed since 1999, and the governor instituted a moratorium on executions in 2015. But Wilson’s sister said that she was “disgusted” by the plea deal. Police officers packed the courtroom to honor the memory of their fellow-officer, and railed against Krasner on the police union’s Facebook page. One called him a “pathetic cop hating DA.”

In September, Krasner’s office enraged the union again, when it filed first-degree-murder charges against a former police officer named Ryan Pownall, who had shot a thirty-year-old man in the summer of 2017. The victim, David Jones, had been riding a dirt bike when Pownall stopped him, patted him down, and felt a gun. Jones bolted and dropped his weapon, but the officer fired at him anyway, striking him twice in the back and killing him. These were the first such charges in nearly twenty years brought against a Philadelphia cop for an on-duty shooting. The president of the city’s police union called Krasner’s decision an “absurd disgrace.” But it was the second time that Pownall, who is white, had shot an African-American man in the back while in uniform. The first shooting, seven years earlier, left the victim paralyzed.

Krasner is unfazed by the union’s ire. In his view, the union does not represent the will or the views of many of the sixty-three hundred officers on Philadelphia’s police force, who, he said, “want accountability, they want integrity.” Krasner has called the union “frankly racist and white-dominated,” and reminds people that it endorsed Trump for President “in a city where he got fifteen per cent of the vote.” The Guardian Civic League, which represents

two thousand African-American officers in Philadelphia, by contrast, endorsed Krasner's candidacy after he won the primary.

The union is so powerful, Krasner said, that, frequently, when the police commissioner fires someone, that officer is returned to the force. "He has almost no capacity to discipline, to terminate, or even to move to another unit, because everything is overturned in this corrupt arbitration process." In this context, Krasner suggested, the D.A. has a responsibility to stand firm against police misconduct. After Pownall shot Jones, the police commissioner, Richard Ross, fired him, and the union had been trying to get Pownall's job back ever since. When the D.A.'s office charged Pownall with murder, Krasner said, "it validated what the police commissioner did."

In the past, the Philadelphia D.A.'s office has drawn its prosecutors primarily from local law schools, many of them from Temple University's Beasley School of Law. Partly as a result, the office felt insular, Krasner said. He is looking for "every kind of diversity," and is particularly interested in "people who are willing to stand up to judges." This fall, he and his staff are visiting twenty-nine law schools, including Harvard, Yale, Howard, the University of Texas at Austin, Stanford, and N.Y.U., to recruit new prosecutors. One September afternoon, at N.Y.U. Law School, several dozen students had crowded into a classroom, reaching for sandwiches on a table, before Krasner, with two of his senior lawyers, Nancy Winkelman and Robert Listenbee, gave a presentation. "We are looking for raw talent, hard work, and a big old moral compass," he said. He explained that, in Philadelphia, "the people are actually pretty damn progressive, and the court system is stuck in 1954. While that is terrible, in a way, it's kind of wonderful if you're a young, civil-rights-type lawyer."

Krasner recounted his own experiences as a young public defender begging for mercy from prosecutors, many of whom were, in his view, "disinterested in the possibility of actual innocence." Wouldn't the criminal-justice system be more just, he asked, if the people who traditionally had become public defenders

decided to become prosecutors instead? If the students wanted to go into criminal law, they could be prosecutors or public defenders—or, he said, they could be progressive prosecutors. “Some people call them public defenders with power,” he joked.

An hour later, Krasner arrived at the Fordham University School of Law, on West Sixty-second Street in Manhattan. Outside the building, he changed his shirt and put on a new tie—his routine when he has three or four speaking events in a day. In a lecture hall, before some thirty students, he launched into another law-school stump speech. After he finished, several hands rose. He called on a young woman in the front row, who looked ready for court in a gray dress and black jacket. “I have two questions,” she said.

“You only get one,” Krasner said.

“Well, I’ll make it a really run-on one,” she said, cheerily. She asked how Krasner balanced the perspective of victims in his work. After he spoke, he turned back to her. “I know I was unkind when I said I wouldn’t answer another question, but do you have another question?”

“I do,” she said, and asked about his plan to address recidivism rates, especially for young people coming out of prison.

After finishing his presentation, Krasner lingered in the hall outside, fielding more questions. The young woman approached, a student named Dana Kai-el McBeth. “I was at E.J.I. this summer,” she said.

“You were at E.J.I.?” Krasner said. “That’s awesome.” There is stiff competition to get a summer position at the Equal Justice Initiative, the progressive legal organization run by Bryan Stevenson, in Alabama.

“I don’t have my résumé, but here is my business card,” she said. Twenty minutes later, Krasner, Listenbee, and Winkelman interviewed the student in an empty conference room. Halfway through, Winkelman sent Krasner a text

asking if he wanted to offer her a job on the spot. Krasner flipped over the business card the student had given him and scribbled a note to his first assistant: “Nancy thinks immediate offer. You agree/disagree?” Listenbee agreed. Krasner has rarely made a job offer to a candidate during an interview, but, he said, “She just seemed like a lot of talent, a lot of spunk. Either a perfect employee or a rebel. We’ll see.” ♦

This article appears in the print edition of the October 29, 2018, issue, with the headline “Acts of Conviction.”



Jennifer Gonnerman joined The New Yorker as a staff writer in 2015. She is the author of “Life on the Outside: The Prison Odyssey of Elaine Bartlett.” [Read more »](#)

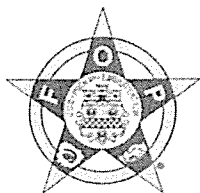
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Exhibit H



**PHILADELPHIA LODGE #5
FRATERNAL ORDER OF POLICE**

11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

John Hoyt, Recording Secretary

May 15, 2018

Police Commissioner Richard Ross
Philadelphia Police Department
Police Headquarters
750 Race St
Philadelphia Pa 19106-1509

Dear Commissioner Ross,

It is my understanding that the Police Department is contemplating the unprecedented release to an outside agency of confidential disciplinary records of hundreds of FOP Lodge 5 bargaining unit members. If true, such release would directly and adversely impact the employment terms and conditions of every affected police officer, and the function of the entire Police Department. On behalf of Lodge 5's members, I am demanding immediate bargaining over both the decision whether to implement this program, as well as the considerable impact that such release would have on the working conditions of our members.

We are available to meet with you at your earliest convenience to address this issue. In the meantime, I am requesting that the Police Department refrain from releasing any officer information pending the conclusion of bargaining. I look forward to your prompt response.

Respectfully Yours,

JOHN J. McNESBY
President
Fraternal Order of Police Lodge # 5

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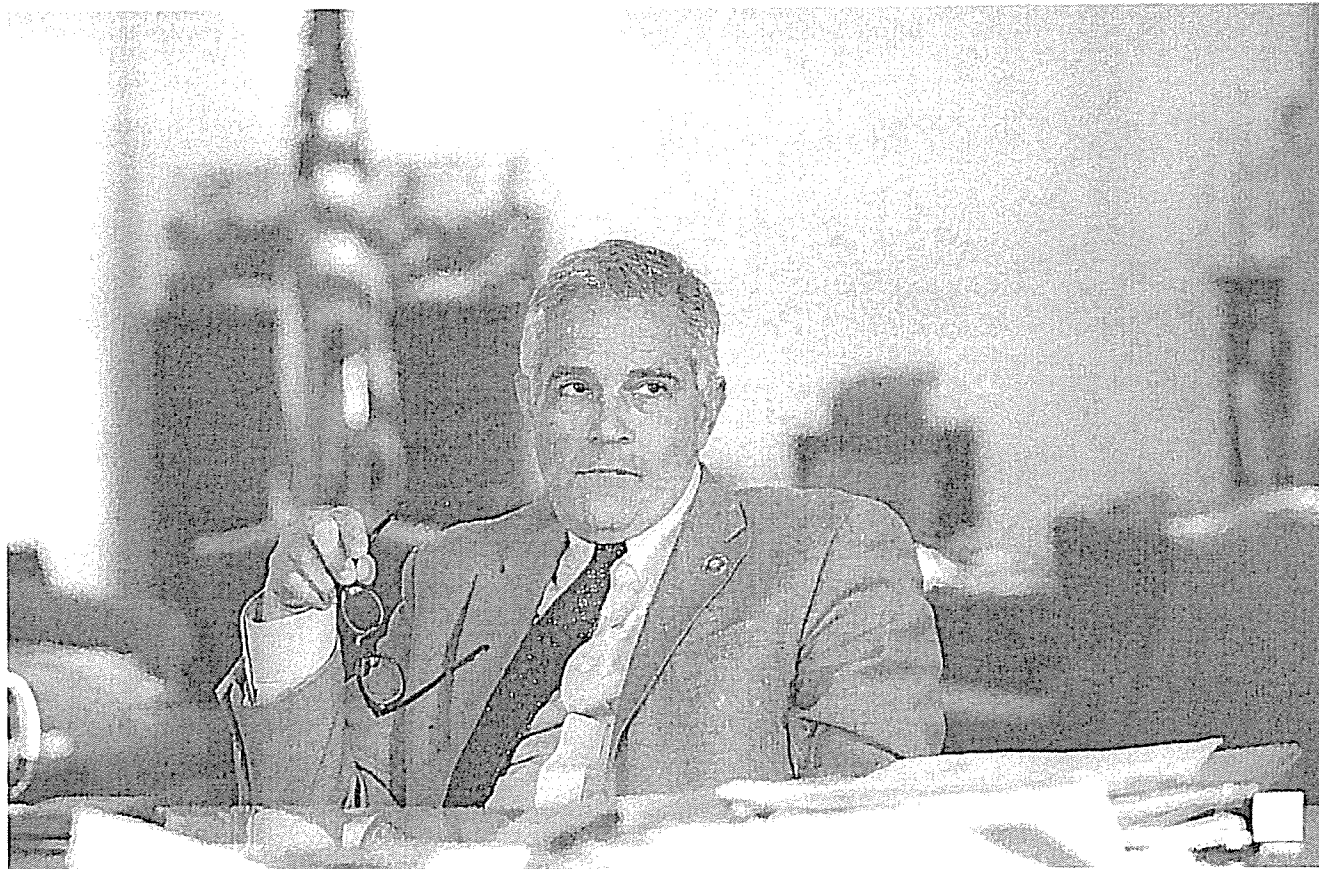


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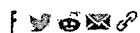
CRIME & JUSTICE

Philly DA Larry Krasner seeking to develop comprehensive list of tainted cops

by Mark Fazlollah and Chris Palmer, Posted: June 4, 2018



DAVID SWANSON / STAFF PHOTOGRAPHER



The Philadelphia District Attorney's Office has asked the city's Police Department for nearly a decade's accounting of serious violations by its officers. [Subscribe to read more!](#)

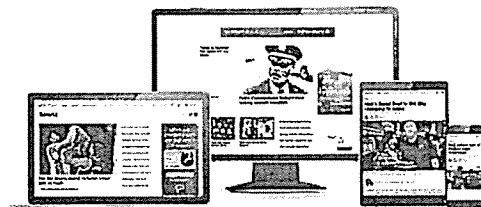
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Posted: June 4, 2018 - 3:50 PM

Mark Fazlollah

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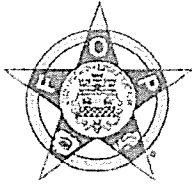
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**PHILADELPHIA LODGE #5
FRATERNAL ORDER OF POLICE**

11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

John Hoyt, Recording Secretary

June 19, 2018

Police Commissioner Richard Ross
750 Race Street
Room 314, Police Headquarters
Philadelphia, PA 19106

Dear Commissioner Ross,

On May 15 2018, I wrote to you on behalf of FOP Lodge 5 to commence bargaining with the Police Department over the proposed large-scale release of confidential personnel records of hundreds of FOP Lodge 5 bargaining unit members to the District Attorney's office. You did not respond to my letter, nor have you contacted me to discuss this issue. On June 4, 2018, the Philadelphia Inquirer reported that the Police Department was actively working to compile the personnel records for the DA's Office in response to a request it described as "unprecedented in scope in recent city history."

Your failure to respond to my communication, and the Department's reported cooperation with the DA's Office after my communication, makes plain that the Department does not intend to meet with Lodge 5 to resolve the dispute, leaving our bargaining at impasse. Thus, and in accordance with Act 111, FOP Lodge 5 demands interest arbitration to resolve our dispute over the proposed release of officer disciplinary records. We will instruct our legal counsel to notify Mayor Kenney and convene an Act 111 interest arbitration panel so that we may resolve this dispute without interruption of police services.

I remain available to meet with you to address this important issue. Thank you.

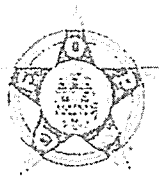
Fraternally,

John J. McNesby, President
Philadelphia, Lodge #5
Fraternal Order of Police

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Exhibit K



PHILADELPHIA LODGE #5
FRATERNAL ORDER OF POLICE

11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

John Hoyt, Recording Secretary

June 22, 2018

Mayor James Kenney
Office of the Mayor
City Hall Room 215
Philadelphia Pa 19107

Re: Request for Impasse Arbitration

Dear Mayor Kenney,

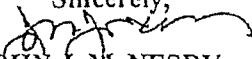
I am writing to demand impasse arbitration to resolve an unresolved bargaining dispute within the Police Department.

On May 15, 2018, Lodge 5 commenced bargaining with the Police Department over the pending large-scale release of personnel records of Lodge 5's bargaining unit members to the current District Attorney. The Police Department did not respond. On June 19, 2018, Lodge 5 again wrote the Department to follow-up on the unresolved issue and to confirm that the parties had by now reached statutory impasse. That letter is attached for your convenience.

Given that the parties have now reached impasse on the limited issue in dispute, and in accordance with Act 111 of 1968, FOP Lodge 5 demands final and binding interest arbitration of that dispute, and designates Ralph J. Teti, Esquire, as its representative on the Act 111 board of arbitrators. Please identify the City's designee within the 5 days afforded by Act 111, so that the parties may participate in statutory dispute resolution without any interruption of services.

I should also note that this demand is submitted to satisfy Act 111's procedural requirements, and that Lodge 5 remains willing to negotiate a mutually-acceptable resolution to this dispute.

Sincerely,


JOHN J. McNESBY
President

Fraternal Order of Police Lodge # 5

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Exhibit L



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11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

John Hoyt, Recording Secretary

June 23, 2018

Police Commissioner Richard Ross
Philadelphia Police Department
Police Headquarters
750 Race St
Philadelphia Pa 19106-1509

Dear Commissioner Ross,

I write regarding the notification of Bargaining Unit Members regarding their apparent presence on a "list" of police officers who are not permitted to testify in court. Despite several letters this week to yourself and Mayor Kenney regarding this subject, the FOP learned from our members yesterday that they were notified by superiors that their work duties were restricted by the Police Department. With no advance notice to the FOP, our members were notified verbally and received nothing in writing.

Accordingly, the FOP requests the following information:

- A copy of the "Do Not Testify" list
- The name, rank and payroll number of all bargaining unit personnel who were notified on June 22, 2018 that their work duties were notified
- The underlying reason for the presence of the above named individuals on the "Do Not Testify" list
- The exact job duties of the above individuals

As this information is readily available, I would hope that above information be proceed to the FOP within 48 hours. However, as this information is necessary for the enforcement of the Collective Bargaining Agreement, the FOP will be required to initiate an Unfair Labor Practice to compel the distribution of the required materials if it is not provided within 30 days.

Thank you for your attention to this matter.

Respectfully Yours,

JOHN R. MCGRODY
Vice-President

Fraternal Order of Police Lodge # 5

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Exhibit M



CITY OF PHILADELPHIA

MAYOR'S OFFICE OF LABOR RELATIONS

ONE PARKWAY – 16TH FLOOR
1515 ARCH STREET
PHILADELPHIA, PA 19102-1595

MONICA MARCHETTI-BROCK, DIRECTOR
(215) 683-5084

June 27, 2018

John McNesby, President
Philadelphia Lodge #5, Fraternal Order of Police
11630 Caroline Road
Philadelphia, PA 19154-2110

Re: June 22, 2018 Request for Impasse Arbitration

Dear Mr. McNesby:

We received your June 22, 2018 letter to Mayor Kenney requesting impasse arbitration to resolve what you described as a “pending large-scale release of personnel records of Lodge 5’s bargaining unit members to the current District Attorney.” The release of police officer records to the District Attorney’s Office as part of its constitutional obligations pursuant to *Brady v. Maryland* is not a mandatory subject of bargaining. Because the City has no obligation to engage in interest arbitration under Act 111 over non-mandatory subjects of bargaining, such as this one, the City declines to name an arbitrator.

Although the Police Department will, of course, continue to provide information to the District Attorney’s Office necessary to fulfill its *Brady* obligations as required by law, the Police Department would be happy to meet with you to discuss your concerns. Please contact Deputy Commissioner Christine Coulter if you would like to set up such a meeting.

Sincerely,

Monica Marchetti-Brock / DMJ

Monica Marchetti-Brock
Director, Mayor’s Office of Labor Relations

Cc: Rich Lazer, Deputy Mayor, Office of Labor

Exhibit N



**PHILADELPHIA LODGE #5
FRATERNAL ORDER OF POLICE**

11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

John Hoyt, Recording Secretary

June 28, 2018

Police Commissioner Richard Ross
Philadelphia Police Department
Police Headquarters
750 Race St
Philadelphia Pa 19106-1509

Dear Commissioner Ross,

As you know, the FOP learned from some of our members Friday that they were notified by superiors that their work duties were restricted by the Police Department. With no advance notice to the FOP, our members were notified verbally and received nothing in writing. This led to much confusion and no clear direction from the department as to what duties are to be performed. These members are NOT restricted in their ability to testify in court.

This morning, Deputy Commissioner Wimberly and Deputy Commissioner Coulter held a meeting with the impacted personnel from the Detective Bureau. Two representatives of the FOP observed this meeting. Unfortunately, at the conclusion of the meeting the confusion remains and there is no clarification of their duty and court status.

Accordingly, I hereby formally request that the detectives be placed back into the duty status and court status that there were prior to their notification by their Commanding Officers on Friday. I believe that a return to the status quo is in the best interests of the members and the Department.

Thank you for your attention to this matter.

Respectfully Yours,


JOHN J. McNESBY
President

Fraternal Order of Police Lodge # 5

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Exhibit O



**PHILADELPHIA LODGE #5
FRATERNAL ORDER OF POLICE**

11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 **website: www.fop5.org** **215-629-5736 (fax)**

John J. McNesby, President

John Hoyt, Recording Secretary

June 28, 2018

Police Commissioner Richard Ross
750 Race Street
Room 314, Police Headquarters
Philadelphia Pa 19106

Re: Fraternal Order of Police Lodge 5

Dear Commissioner:

On June 19, 2018, I wrote to you on behalf of Lodge 5 demanding bargaining over the proposed large-scale release of confidential personnel records of bargaining unit members to the Office of the District Attorney. Having never received the curtesy of a response or any indication of a willingness on the part of the Department or the City to fulfill their bargaining obligations to the FOP over this critical issue, I wrote to Mayor Kenney on June 22, 2018 to begin the statutory dispute resolution process under Act 111.

I am now informed that the situation relating to personnel files, and to so called Brady issues has been extended to the point of adversely affecting assignments, duties and responsibilities of bargaining unit members. I have learned that officers have been told that their assignments will be curtailed or otherwise limited because of their placement on a designated "don't call" list. Moreover, FOP has no information concerning the scope of such a list, how the list was established, what criteria were used to place officers on such a list, what actions, if any, officers might take to contest their placement on such list or to protest the curtailment of their assignments, functions and duties as sworn officers.

The Department's actions in placing members on secret lists which also limits their day to day functions, duties, assignments and responsibilities violates the most basic tenets of due process and strikes at the heart of the collective bargaining relationship between the Union and the Department.

Please consider this as a formal demand by the Union to immediately commence bargaining over these fundamental changes in Department practice and policy which adversely impact assignments, transfers, duties and responsibilities of bargaining unit members.

EXECUTIVE BOARD MEMBERS

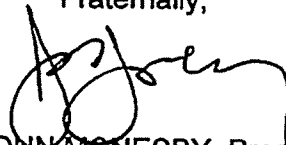
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Police Commissioner Richard Ross
June 28, 2018
Page 2

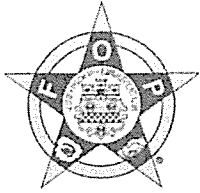
I am available to meet with you or your representatives to resolve these critical issues. Please note that FOP reserves the right to take any and all action necessary to preserve and protect the rights of its members while we endeavor to resolve these issues.

Fraternally,

A handwritten signature in black ink, appearing to read 'John McNesby', written over a circular stamp or seal.

JOHN MCNESBY, President
Philadelphia Lodge #5
Fraternal Order of Police

Exhibit P



**PHILADELPHIA LODGE #5
FRATERNAL ORDER OF POLICE**

11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

John Hoyt, Recording Secretary

July 27, 2018

DISTRICT ATTORNEY LAWRENCE S. KRASNER
City of Philadelphia
3 South Penn Square
Philadelphia Pa 19107

Re: Testimony Restrictions

Dear District Attorney Krasner,

It is my understanding that the Office of the District Attorney has implemented an unprecedented restriction on court activity by City of Philadelphia police officers as part of a change to your Office's longstanding approach to Brady disclosure. I would like to meet with you to review this new program and the significant and harmful impact it has had on FOP Lodge 5 members and their families.

Over the past months, the Police Department has notified a large number of officers that they are no longer permitted to testify in court cases stemming from their work in the field, per orders from the Office of the District Attorney. Just last week, another large group of officers were added to what we understand to be your Office's new "Do Not Call" list.

To date, the FOP has received no communication from your Office concerning the development of your "Do Not Call" list, how the list was established, what criteria were used to place officers on such a list, and what actions, if any, officers might take to contest their placement on such list or to protest the curtailment of their assignments, functions and duties as police officers. This has caused considerable confusion and alarm within the Police Department, and has in my view imposed a new instability on our city's criminal justice system.

The Office of the District Attorney's placement of experienced police officers on a secret list, which limits their day-to-day functions, duties, assignments and responsibilities, violates the most basic tenets of due process. Additionally, your Office's actions have interfered with the contractual bargaining relationship between FOP Lodge 5 and the City of Philadelphia, and have adversely affected the professional reputations, assignments, duties, of responsibilities and compensation of the FOP's members. The FOP has commenced bargaining with the City over the significant impact of these changes, but it is clear that the source of the *disruption* is your Office.

EXECUTIVE BOARD MEMBERS

Vice Presidents: Roosevelt L. Poplar, John R. McGrody, Steven J. Weiler, Nicholas DeNofa
Recording Secretary: John Hoyt Financial Secretary: Michael P. Trask Treasurer: John Ruane
Trustees: William Sierra, Austin A. Fraser, Terry D. Reid, Kenora D. Scott, John McLaughlin Conductor: Sharon Jonas
Guards: Peter Sweryda, Jason Hernandez Chaplain: Louis J. Campione



Case ID: 181101465

November 2, 2018

Page 2

I request to meet with you as soon as possible to discuss our concerns with your Brady initiative. So that we may conduct an effective review of the initiative and its impact on Lodge 5's members, I am requesting that you provide the following information to me in advance of our meeting:

- * Please identify all Philadelphia police officers whose court activity has been limited by your office since January 2018.

- * For each officer so limited, please identify the basis for the restriction, the person or persons who decided to implement those restrictions, the criteria utilized in determining whether to impose restrictions, and the estimated duration of the restrictions.

- * Please identify whether your office has established a procedure by which affected police officers may challenge the unilateral court-activity restrictions, and whether same has been communicated to any officer or to the Police Department.

I am available to meet with you to resolve these critical issues. And while I am confident that we can work together to develop a mutually-acceptable program that will fairly balance the obligations of your Office and the rights on the FOP's members, the FOP nonetheless reserves the right to take steps necessary to preserve and protect the rights of its members while we endeavor to resolve these issues.

If you should have any questions regarding the above, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. McNesby", written over a horizontal line.

JOHN J. McNESBY, President
Michael G. Lutz Lodge #5 Philadelphia
Fraternal Order of Police

EXHIBIT Q



**CHARGE OF UNFAIR LABOR PRACTICE(S)
UNDER THE PENNSYLVANIA
LABOR RELATIONS ACT AND ACT 111**

Fraternal Order of Police, Lodge No. 5

COMPLAINANT

v.

The City of Philadelphia

RESPONDENT

DO NOT WRITE IN THIS SPACE

CASE NO.

PF-C-18-83-E

DATE FILED

AUG - 2 2018

TO THE HONORABLE, THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD:

COMPLAINANT INFORMATION

Fraternal Order of Police, Lodge No. 5

Employee, Employee Organization or Employer

John R. Bielski, Esq., Willig, Williams & Davidson

Name of Person filing charge on behalf of Complainant

Title

1845 Walnut St., 24th Floor

Address

Philadelphia

PA

19103

City

State

Zip

(215) 656-3652

Telephone

HEREBY CHARGES THAT

RESPONDENT INFORMATION

The City of Philadelphia, C/O Monica Marchetti-Brock, Director of Labor Relations

Employer, Employee Organization or Employee alleged to have committed unfair labor practice(s)

1515 Arch Street, 16th Floor

Address

Philadelphia

PA

19102

City

State

Zip

(215) 683-5008

Telephone

**HAS ENGAGED IN UNFAIR LABOR PRACTICE(S) CONTRARY TO THE PROVISIONS OF THE
PENNSYLVANIA LABOR RELATIONS ACT, SECTION 6 AS FOLLOWS:**

Choose one:

☒ subsection (1)

☐ subsection (2)

Choose all that apply:

☒ clause (a)

☐ clause (b)

☐ clause (c)

☐ clause (d)

☒ clause (e)

☐ clause (f)

- ☐ Check here if more than one respondent and list on separate sheet.
- ☐ Check here if a grievance relating to this issue has been filed and enclose three (3) copies of the grievance and one (1) copy of the Collective Bargaining Agreement to assist in review of this charge.

FAILURE TO ENCLOSE THESE DOCUMENTS WILL CAUSE A DELAY IN PROCESSING.

SPECIFICATION OF CHARGES

Set forth all of the events alleged to constitute the unfair labor practice(s). Include specific facts, dates, names, addresses, place of occurrence, and other relevant facts. If additional space is needed, please continue on additional sheet(s).

See attached Appendix A.

WHEREFORE, the Complainant respectfully requests the Pennsylvania Labor Relations Board to enter the charge upon the Docket of the said Board and to issue and cause to be served upon the Respondent above named a Complaint stating the charge(s) of unfair labor practice(s).

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Philadelphia

SS

On this 30th day of July, 20 18, before me, a Notary Public, in and for said County and State, personally appeared JOHN R. Bielski who being duly sworn according to law, deposes and says that he/she is the person filing the foregoing CHARGE OF UNFAIR LABOR PRACTICE(S) and is aware of the contents hereof and that the matters and facts set forth herein are true and correct to the best of his or her knowledge, information and belief.

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

Jean C. Rogers
Signature of Notary

[Signature]
Signature of Complainant or Representative

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
JEAN C. ROGERS, Notary Public
City of Philadelphia, Phila. County
Commission Expires December 26, 2018

FAILURE TO FILE AN ORIGINAL AND THREE (3) COPIES OF THE CHARGE
AND ALL ACCOMPANYING EXHIBITS MAY DELAY PROCESSING.

Pennsylvania Labor Relations Board | 651 Boas Street, Room 418 | Harrisburg, PA 17121-0750
717.787.1991 | Fax 717.783.2974 | www.dli.state.pa.us

Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program

ATTACHMENT — Specification of Charge

1. The City of Philadelphia ("City") is a public employer and political subdivision under Act 111 of 1968, as read in pari materia with the Pennsylvania Labor Relations Act ("the Act").
2. Fraternal Order of Police, Philadelphia Lodge No. 5 ("FOP") is a labor organization under Act 111 of 1968, as read in pari materia with the Act.
3. On or about May 15, 2018, the FOP learned that the Police Department was working with the Philadelphia Office of the District Attorney to implement new and widespread limitations on court-assignments and related working conditions of police officers represented by the FOP.
4. On May 15, 2018, the FOP contacted the Police Department to demand bargaining over the Police Department's court-assignment limitations program and its impact on the FOP's members. The Police Department did not respond.
4. On or about June 4, 2018, the Philadelphia Inquirer reported that the Police Department was actively working to develop and implement a police court-assignment limitation program that it described as unprecedented in scope in recent city history.
5. On June 19, 2018, more than 30 days after the FOP commenced bargaining, the FOP contacted the Police Department to declare impasse in bargaining over the court-assignment limitation program, and to demand interest arbitration resolve the issues in dispute. (See Exhibit A.)
6. On June 22, 2018, the FOP notified the City of Philadelphia of its intent to proceed to interest arbitration to resolve disputes over the Police Department's court-assignment limitation program and its impact on the FOP's members. The FOP identified its party-arbitrator on the Act 111 board of arbitrators and asked the City to identify its arbitrator. (See Exhibit B.)
7. On June 23, 2018, the FOP contacted the Police Department to request information necessary to engage in bargaining over the court-assignment limitation program, including but not limited to the list of FOP members whose court assignments had been limited or were slated for new limitations, the reasons for the limitations, and the job duties of the affected members. The Police Department has not responded to this request. (See Exhibit C.)
8. On or about June 27, 2018, the City refused to identify an arbitrator on the Act 111 board of arbitrators, to participate in interest arbitration proceedings, or to bargain with the FOP over the Police Department's court-assignment limitations program and its impact on the FOP's members. (See Exhibit D)
9. The City's refusal to bargain with the FOP over its Police Department court-assignment limitations program and its impact on the FOP's members, and the City's refusal to respond to the FOP's request for information related to this program, violates Section 6(1)(e) of the Act and constitutes an independent and derivative violation of the Section 6(1)(a) of the Act.

EXHIBIT A



**PHILADELPHIA LODGE #5
FRATERNAL ORDER OF POLICE**

11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

John Hoyt, Recording Secretary

June 19, 2018

Police Commissioner Richard Ross
750 Race Street
Room 314, Police Headquarters
Philadelphia, PA 19106

Dear Commissioner Ross,

On May 15 2018, I wrote to you on behalf of FOP Lodge 5 to commence bargaining with the Police Department over the proposed large-scale release of confidential personnel records of hundreds of FOP Lodge 5 bargaining unit members to the District Attorney's office. You did not respond to my letter, nor have you contacted me to discuss this issue. On June 4, 2018, the Philadelphia Inquirer reported that the Police Department was actively working to compile the personnel records for the DA's Office in response to a request it described as "unprecedented in scope in recent city history."

Your failure to respond to my communication, and the Department's reported cooperation with the DA's Office after my communication, makes plain that the Department does not intend to meet with Lodge 5 to resolve the dispute, leaving our bargaining at impasse. Thus, and in accordance with Act 111, FOP Lodge 5 demands interest arbitration to resolve our dispute over the proposed release of officer disciplinary records. We will instruct our legal counsel to notify Mayor Kenney and convene an Act 111 interest arbitration panel so that we may resolve this dispute without interruption of police services.

I remain available to meet with you to address this important issue. Thank you.

Fraternally,

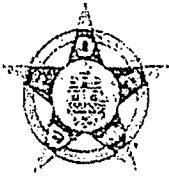
John J. McNesby, President
Philadelphia, Lodge #5
Fraternal Order of Police

EXECUTIVE BOARD MEMBERS

Vice Presidents: Roosevelt L. Poplar, John R. McGrody, Steven J. Welfer, Nicholas DeNofa
Recording Secretary: John Hoyt Financial Secretary: Michael F. Trask Treasurer: John Ruane
Trustees: William Sierra, Austin A. Fraser, Terry D. Reid, Kenora D. Scott, John McLaughlin Conductors: Sharon Jones
Guards: Peter Sweryda, Jason Hernandez Chaplain: Louis J. Camplone



EXHIBIT B



**PHILADELPHIA LODGE #5
FRATERNAL ORDER OF POLICE**

11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

John Hoyt, Recording Secretary

June 22, 2018

Mayor James Kenney
Office of the Mayor
City Hall Room 215
Philadelphia Pa 19107

Re: Request for Impasse Arbitration

Dear Mayor Kenney,

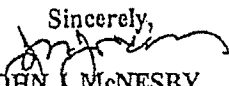
I am writing to demand impasse arbitration to resolve an unresolved bargaining dispute within the Police Department.

On May 15, 2018, Lodge 5 commenced bargaining with the Police Department over the pending large-scale release of personnel records of Lodge 5's bargaining unit members to the current District Attorney. The Police Department did not respond. On June 19, 2018, Lodge 5 again wrote the Department to follow-up on the unresolved issue and to confirm that the parties had by now reached statutory impasse. That letter is attached for your convenience.

Given that the parties have now reached impasse on the limited issue in dispute, and in accordance with Act 111 of 1968, FOP Lodge 5 demands final and binding interest arbitration of that dispute, and designates Ralph J. Teti, Esquire, as its representative on the Act 111 board of arbitrators. Please identify the City's designee within the 5 days afforded by Act 111, so that the parties may participate in statutory dispute resolution without any interruption of services.

I should also note that this demand is submitted to satisfy Act 111's procedural requirements, and that Lodge 5 remains willing to negotiate a mutually-acceptable resolution to this dispute.

Sincerely,


JOHN J. McNESBY

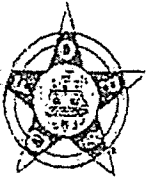
President

Fraternal Order of Police Lodge # 5

EXECUTIVE BOARD MEMBERS

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Guards: Peter Sweryda, Jason Hernandez Chaplain: Louis J. Campione

EXHIBIT C



**PHILADELPHIA LODGE #5
FRATERNAL ORDER OF POLICE**

11630 Caroline Road, Philadelphia, PA 19154-2110
215-629-3600 website: www.fop5.org 215-629-5736 (fax)

John J. McNesby, President

John Hoyt, Recording Secretary

June 23, 2018

Police Commissioner Richard Ross
Philadelphia Police Department
Police Headquarters
750 Race St
Philadelphia Pa 19106-1509

Dear Commissioner Ross,

I write regarding the notification of Bargaining Unit Members regarding their apparent presence on a "list" of police officers who are not permitted to testify in court. Despite several letters this week to yourself and Mayor Kenney regarding this subject, the FOP learned from our members yesterday that they were notified by superiors that their work duties were restricted by the Police Department. With no advance notice to the FOP, our members were notified verbally and received nothing in writing.

Accordingly, the FOP requests the following information:

- A copy of the "Do Not Testify" list
- The name, rank and payroll number of all bargaining unit personnel who were notified on June 22, 2018 that their work duties were notified
- The underlying reason for the presence of the above named individuals on the "Do Not Testify" list
- The exact job duties of the above individuals

As this information is readily available, I would hope that above information be proceed to the FOP within 48 hours. However, as this information is necessary for the enforcement of the Collective Bargaining Agreement, the FOP will be required to initiate an Unfair Labor Practice to compel the distribution of the required materials if it is not provided within 30 days.

Thank you for your attention to this matter.

Respectfully Yours,

JOHN R. MCGRODY
Vice-President

Fraternal Order of Police Lodge # 5

EXECUTIVE BOARD MEMBERS

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EXHIBIT D



CITY OF PHILADELPHIA

MAYOR'S OFFICE OF
LABOR RELATIONS

ONE PARKWAY - 16TH FLOOR
1515 ARCH STREET
PHILADELPHIA, PA 19102-1585

MONICA MARCHETTI-BROCK, DIRECTOR
(215) 683-5084

June 27, 2018

John McNesby, President
Philadelphia Lodge #5, Fraternal Order of Police
11630 Caroline Road
Philadelphia, PA 19154-2110

Re: June 22, 2018 Request for Impasse Arbitration

Dear Mr. McNesby:

We received your June 22, 2018 letter to Mayor Kenney requesting impasse arbitration to resolve what you described as a "pending large-scale release of personnel records of Lodge 5's bargaining unit members to the current District Attorney." The release of police officer records to the District Attorney's Office as part of its constitutional obligations pursuant to *Brady v. Maryland* is not a mandatory subject of bargaining. Because the City has no obligation to engage in interest arbitration under Act 111 over non-mandatory subjects of bargaining, such as this one, the City declines to name an arbitrator.

Although the Police Department will, of course, continue to provide information to the District Attorney's Office necessary to fulfill its *Brady* obligations as required by law, the Police Department would be happy to meet with you to discuss your concerns. Please contact Deputy Commissioner Christine Coulter if you would like to set up such a meeting.

Sincerely,

A handwritten signature in black ink that reads "Monica Marchetti-Brock" followed by a stylized flourish or initials in parentheses.

Monica Marchetti-Brock
Director, Mayor's Office of Labor Relations

Cc: Rich Lazer, Deputy Mayor, Office of Labor

EXHIBIT R



DISTRICT ATTORNEY'S OFFICE
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

August 21, 2018

John J. McNesby
President
Michael G. Lutz Lodge #5 Philadelphia
Fraternal Order of Police
11630 Caroline Road
Philadelphia, Pa 19154-2110
VIA CERTIFIED MAIL AND FASCIMILE (215-629-5736)

Re: Your July 27, 2018 Letter

Dear Mr. McNesby,

District Attorney Krasner received your letter referenced above. This letter is written in response to address various issues raised by you and to attempt to schedule a meeting with you pursuant to your request.

First and foremost, it is important to correct and/or clarify several assertions in your letter that are simply wrong. Contrary to the assertion contained in the third paragraph of your letter, DA Krasner personally met with you and discussed at length the issue of police misconduct disclosures. This meeting occurred several months ago after the media reported on the existence of the prior administration's "Do Not Call List." During that meeting, you offered input on the possible disclosure of the list and you specifically asked if the District Attorney's Office (DAO) would take steps necessary to protect/redact the payroll number and location of the officers named on the list should the list be disclosed and/or publicly released. As you are aware, not long after that meeting, the DAO was ordered by a judge to disclose a redacted copy of the list to defense counsel in a pending criminal case. The DAO did so, after successfully supporting in court your position that the payroll number and location of assignment should be redacted.

DA Krasner has also made it clear to the Philadelphia Police Department (PPD) and the public that he intends to create policies and systems for collecting, maintaining and disclosing police misconduct in accordance with a prosecutor's ethical obligations and constitutional duties. During the course of this endeavor, the DAO has provided information to the PPD and has solicited their

Mr. John McNesby
August 21, 2018
Page 2

input. Part of the information that has been provided includes individual notification to all officers who have been identified as having engaged in misconduct that constitutes *Giglio* information (see attached sample notification letter). In addition to the individual notification letters, the DAO has provided draft protocols to the PPD regarding the policy of requesting *Giglio* information from the PPD (see attached PPD Office of Professional Responsibility's "Summary *Giglio v. United States & Brady v. Maryland*").

As evidenced by the two referenced attachments to this letter, it is clear the DAO does not have a secret "do not call list" as you have alleged in your letter. Given that fact, combined with the extent of communications the DAO has had with the leadership at the PPD, it should be clear the DAO is committed to continuing to communicate with all of its partners in prosecution to ensure the city's criminal justice system works both effectively and fairly.

Finally, DA Krasner is available to discuss these matters during the week of Labor Day (September 4 -7, 2018). Please feel free to let me know your availability and I will be happy to help schedule the meeting.

Regards,



Patricia Cummings
Supervisor
Conviction Integrity Unit

PC/hd

Enclosed: Sample notification letter
PPD Office of Professional Responsibility's "Summary *Giglio v. United States & Brady v. Maryland*"

Cc: Francis Healy, Special Advisor to the Commissioner
Robin Wimberly, Deputy Commissioner
Chris Flacco, Chief Inspector, Internal Affairs Division



DISTRICT ATTORNEY'S OFFICE
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

DATE

PO «name_»
Philadelphia Police Department
750 Race Street
Philadelphia, PA 19106

Re: PO «name_» Payroll: «payroll number_»
(DAO Police Misconduct Disclosure Notification Letter)

Dear PO «name_»:

The DAO has received *Giglio* information regarding you as reflected in the summary below:

Date:

Source:

Summary:

Action:

Pursuant to the law and the DAO's policy regarding police misconduct disclosures, the misconduct will be disclosed to the defense in all cases where you may be called to testify as a witness and said disclosure may also be made if required in closed cases where you were a critical witness.

Also, if required by law, supporting documentation in our possession regarding the misconduct will be disclosed to the defense.

Please note, if you believe our information is incorrect, feel free to communicate to us in writing through counsel.

Thank you for your attention to this matter.

Respectfully,

Patricia Cummings
Assistant District Attorney

cc: Robin Wimberly, Deputy Commissioner

Revised: 6/21/2018

Summary – *Giglio v. United States & Brady v. Maryland*

In the 1963 case of *Brady v. Maryland* the U.S. Supreme Court placed upon prosecutors an affirmative obligation to disclose to the defense all exculpatory information, otherwise it amounts to a due process violation. The evidence to be disclosed includes statements of witnesses, physical evidence and any evidence that would impeach a prosecution witness.

In 1973, in the case of *Giglio v. United States*, the Supreme Court expanded the concept in the *Brady* case to include potential impeachment evidence with respect to government witnesses, including police officers. Therefore, under *Giglio*, investigative agencies must turn over to prosecutors, as early as possible in a criminal case, potential impeachment evidence with respect to the officers involved in the case.

So what is impeachment evidence?

Potential impeachment evidence has been generally defined as impeaching information that is material to the defense, as well as information that either casts a substantial doubt upon the accuracy of any evidence the prosecutor intends to rely on to prove an element of any crime, or that may have a significant bearing on the admissibility of the prosecution's evidence. This includes, but is not limited to, specific instances of the officer's conduct that may be used to attack his or her credibility or character for truthfulness; evidence in the form of opinion or reputation as to the officer's character for truthfulness; prior inconsistent statements; and information that may be used to suggest that an officer is biased.

Misconduct Defined and Law Enforcement Agency's Obligation to Notify the District Attorney's Office

The District Attorney's Office (DAO) will rely on the professional policing practices of our partners in law enforcement to notify us of any potentially qualifying misconduct by officers that should be disclosed to the defense. Each respective law enforcement agency must determine whether there are any instances, which fall into any of the categories listed below, and, if so, make those instances known to the DAO. The DAO is directing the custodian of records in each agency to examine current and future officers' personnel files and current and future officers' conduct and notify the DAO as soon as possible when:

1. An officer is named in a criminal complaint or indictment or is the subject of an ongoing criminal investigation for any crime by any agency other than a non-criminal traffic violation;
2. An officer has been charged with a felony or misdemeanor, other than a non-criminal traffic violation, resulting in a conviction or pretrial diversion;
3. An officer is the subject of a pending investigation, sustained finding, or conclusion by the law enforcement agency, at any administrative or disciplinary level, for any of the following:

- a. Misrepresentation or failure to disclose a material fact on the officer's employment application;
 - b. Untruthfulness or deception regarding facts in a report, statement, or testimony at a hearing or other official proceeding;
 - c. Conduct that would be a violation of an individual's constitutional rights;
 - d. Bias or prejudice to an individual, class, or group of persons;
 - e. Improper use of force against an individual; or
 - f. Altering, tampering, concealing, or use of evidence with the exception of legitimate manipulation in the normal scope of law enforcement business (such as amending a report to correct a typographical error);
4. An employee resigns, receives a demotion, or is subject to other disciplinary or employment related action when an investigation is imminent or pending involving any matter listed in subsection 1,2,3 (a) – (f) above, or in relation to 5 below;
5. In the case of an expert witness, the law enforcement agency has information related to the expert's performance deficiencies that affect the integrity of the expert's conclusion or opinions (such as crime lab employees who have corrective action regarding their work or who fail a competency test).