

In the Matter of Arbitration Between:

**AFSCME DISTRICT COUNCIL 33,
LOCAL 159 AND LOCAL 1637**

and

CITY OF PHILADELPHIA

Act 195 Interest Arbitration

*Hearing Dates: 1/31/22, 2/14/22, 2/18/22,
3/8/22, 3/15/22, 3/22/22, 3/30/22*

Decision Date: 8/12/22

Arbitration Panel:

Richard G. Poulson, Esq.
WILLIG WILLIAMS & DAVIDSON
Union-appointed Arbitrator

Shannon Farmer, Esq.
BALLARD SPAHR
City-appointed Arbitrator

Walt De Treux
Neutral Arbitrator and Panel Chair

Appearances

For the Union:

Thomas M. Gribbin, Jr., Esq.
James Glowacki, Esq.
WILLIG WILLIAMS & DAVIDSON

Samuel L. Spear, Esq.
Vlad Kachka, Esq.
SPEAR WILDERMAN

For the City:

Elliot Imani Griffin, Esq.
Catharine Lubin, Esq.
BALLARD SPAHR

Aleena Sorathia, Esq.
AHMAD ZAFFERESE

Cara Leheny, Esq.
Frank Wehr, Esq.
CITY OF PHILADELPHIA LAW DEPARTMENT

FOREWARD

The undersigned arbitrators were duly appointed as the Arbitration Panel pursuant to the provisions of Section 806(2) of the Public Employees Relations Act of July 23, 1970, P.L. 563, No. 195, as amended, 43 P.S. §§1101.101 et seq. (Act 195). The Panel acknowledges that the parties agreed to waive any time limits under Act 195. On January 31, 2022, the Panel took a walking tour of the Philadelphia Department of Prisons (PDP) complex on State Road. Hearings in this matter were held on February 14 and 18, 2022 and March 8, 15, 22, and 30, 2022 at the Sheraton Hotel in Center City Philadelphia, at which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions.

These Act 195 interest arbitration proceedings take place during a time of crisis for the PDP and its employees. The COVID-19 pandemic “caused unpredictable and unprecedented challenges for the PDP and for the Correctional Officers who work 24/7 to enable the PDP to fulfill its mission. While the parties disagree over the source of the problem, recent understaffing at the PDP has posed tremendous challenges and has caused PDP to devise safety measures to protect both its staff and the inmates. Over the past two years PDP’s Correctional Officers too often have had to work extraordinary long hours each day and week so that the PDP could fulfill its primary purpose of care, custody, and control of the inmate population.

In crafting this Award, the Panel remained cognizant of the need to reward officers for their dedicated service and to increase compensation levels to recruit and retain individuals who perform an inherently dangerous job as an integral part of the City’s public safety apparatus. At the same time, the Panel also focused on the City’s need for operational changes

that promise to improve the efficiency of the Department and its adaptability in responding to crises such as the pandemic and staffing shortages.

During the Panel's deliberation, former Pennsylvania Secretary of Corrections John Wetzel was retained by the City to assist the PDP in developing a plan for a return to normal operations. In recognition of their efforts, and to empower the women and men working as Correctional Officers in the PDP, the Panel has ordered that such plan be developed with the full participation of the Union. In response to this development, the Panel opted to issue this Interim Award that includes well-deserved improvements in compensation for the bargaining unit, provides for a joint committee to address certain operational issues, and provides for the reconvening of the Panel to finalize certain items in the Interim Award after that joint committee has issued its report.

Following Executive Sessions of the Arbitration Panel, the Panel adopted the following Award. All proposals of the parties not included in the Award are denied.

Interim Award

1. Term: July 1, 2021 through June 30, 2024.
2. Wages:
 - a. 2.75% effective 7/1/21
 - b. 3.25% effective 7/1/22
 - c. 3.25% effective 7/1/23
3. Bonuses:
 - a. Retention Bonus: Two retention bonuses of \$1300 each to all covered employees who were employed as of April 20, 2022 and remain employed as of the date the bonus is paid. Bonuses to be paid 30 days after issuance of the

Award and June 30, 2023. All bonuses to be paid consistent with City standard rules for payment of bonuses.

- b. Hiring Bonus: \$2000 retention bonus for employees hired as Correctional Officer Trainees and Juvenile Detention Counselor Trainees on or after April 20, 2022 payable as follows:

i. Correctional Officer Trainees

- A. \$1000 to be paid upon hire, \$500 upon graduation from the training academy, and the other \$500 to be paid after one year as a Correctional Officer (one year from graduation from the training academy)

ii. Juvenile Detention Counselor Trainees

- A. \$1000 to be paid upon hire, \$500 upon passing the six (6) month probationary period, and the other \$500 to be paid one year after hire

- iii. The City will have the right to discontinue the bonus for future recruits upon providing the Union with at least 30 days' advance notice.

- iv. Employees will be required to return the portion(s) of the bonus they have received if they separate from employment before qualifying for the final installment of the bonus payment.

- v. The bonus amount will be prorated for part-time employees.

- c. Attendance Bonus: Effective with the calendar quarter beginning on July 1, 2022 and ending on June 30, 2024, any bargaining unit employee who works for all their regularly scheduled shifts in a calendar quarter will receive an incentive bonus of \$500, which will be paid within sixty (60) days following the end of the quarter. All bonuses to be paid consistent with City standard rules for payment of bonuses.

4. Correctional Series Pay Steps: Effective July 1, 2021, the existing pay scales for the positions of Correctional Officer, Sergeant and Lieutenant respectively shall be replaced with the following:

<u>Grade</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
43 (Officer)	\$45,359	\$49,199	\$50,707	\$52,217	\$53,757
46 (Sgt.)	\$55,923	\$57,635	\$59,354	\$61,104	

49-A (Lt.)	\$63,068	\$64,999	\$66,937	\$68,912
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These scales already include the base wage increase to be effective on July 1, 2021 and shall not be adjusted further to reflect that increase. Thereafter, the scales will be adjusted based on increases to the base wages in accordance with existing civil service regulations.

5. Longevity: Effective July 1, 2021, covered employees shall receive longevity pay according to the following schedule, which shall be applied consistent with the existing civil service regulations governing longevity:

<u>Years of Service</u>	<u>Percent</u>
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 and above	6.8%

6. Residency Requirements: As an aid in recruiting and retaining corrections officers, and as provided in Paragraph 8(b), the residency requirement will be lifted effective January 1, 2023 for a designated group of bargaining unit members, based on years of service, and to be determined by the Panel no later than December 16, 2022.

7. PDP Staffing

- a. Staffing and Operational Review Committee

- i. Within 10 days after the issuance of the Award, the parties will convene a committee comprised of an equal number of members appointed by Local 159 and the City to review PDP staffing and operations and develop a plan for returning to normal operations using best practices and industry standards to determine the number of corrections officers needed to staff a given facility in a manner that provides for the safety and health of both inmates and correctional officers.
- ii. The Committee may appoint subcommittees for each facility, which will be comprised of an equal number of members appointed by Local 159 who work at the facility and members appointed by the City who are familiar with the operations of that facility.

- iii. The Committee will develop a staffing plan for each facility.
- iv. The Committee will also develop a plan for how staff shortages will be temporarily addressed by PDP if they occur, which may include moving staff between facilities when needed based on an established matrix.
- v. The Committee will develop its staffing and operational plan by no later than October 1, 2022.
- vi. If the Committee is unable to reach agreement on any aspects of the plan, either party may submit disputes to the Arbitration Panel for resolution. The Panel will conduct expedited proceedings as necessary and may seek the assistance of one or more experts to guide it in its deliberations. Any decision of the Arbitration Panel will be issued by no later than October 15, 2022.
- vii. The Committee will be dissolved no later than June 30, 2024 unless otherwise agreed to by the parties or ordered by the Panel, which will retain jurisdiction over any disputer regarding the operations of the Committee.

b. 12-Hour Shifts:

- i. From September through December 2022, the parties will conduct a 12-hour Shift Initiative consistent with Attachment A. The implementation of this Shift Initiative shall not be subject to the existing shift change language.
- ii. Employees assigned to a 12-hour shift schedule will be assigned to work seven (7) work shifts within each 14-day pay period, totaling 84 scheduled work hours per pay period.
- iii. Employees assigned to a 12-hour shift schedule will receive premium pay in the amount of 8 hours of pay per pay period paid at the applicable overtime rate.
- iv. Employees assigned to a 12-hour shift schedule will be paid at an overtime rate of time-and-a-half for any work performed outside of their regular shift, provided that their hours worked plus any paid time off, exclusive of sick time, totals at least 40 hours in that workweek.

- v. Employees assigned to a 12-hour shift schedule will be paid double time for working on their last RDO in the workweek (i.e., the 3rd RDO on a week in which the employee is scheduled to work four days and the 4th RDO on a week in which the employee is scheduled to work three days) in a manner otherwise consistent with existing contractual and civil service rules.
 - vi. Employees assigned to a 12-hour shift schedule may volunteer to work additional hours after their regularly-scheduled shift and may volunteer to work overtime on their scheduled days off.
 - vii. The use of leave or other hours-based benefits for employees assigned to a 12-hour shift schedule will follow the existing civil service regulations governing District Court 33-represented employees working alternative schedules.
 - viii. The Panel will retain jurisdiction over any disputes that arise regarding implementation of 12-hour shifts.
8. Further Action by the Panel: The Panel will conduct further proceedings in December 2022 to address the following issues:
- a. Staffing and Operational Plan. Following the Staffing and Operational Review Committee's development of a staffing and operational plan, the Panel will review, hold evidentiary hearings (if necessary), and issue a Final Award detailing the parameters of the City's ability to assign staff initially based on that plan and to move staff between facilities on an as needed basis, taking seniority into consideration as operations permit. The Panel's Final Award will issue no later than December 16, 2022.
 - b. Residency Requirement. Following the Staffing and Operational Review Committee's development of a staffing and operational plan, the Panel will review, hold evidentiary hearings (if necessary), and issue a Final Award detailing the parameters for the modification to the residency requirement. The Panel's Final Award will issue no later than December 16, 2022.
 - c. 12 Hour Shift Initiative. The Panel shall meet in December 2022 to consider the overall effectiveness of the 12 Hour Shift Initiative. Factors the Panel may consider include, but are not limited to, officer morale and retention, attendance, overtime, and officer and inmate safety. Either party may provide evidence and argument to the Panel regarding whether the Panel should extend,

modify, terminate or expand the Initiative. The Panel will retain jurisdiction to order the action it deems appropriate, if any, at that time.

9. PJJSC Schedule Change: PJJSC shall be permitted to move full-time staff to a fixed schedule where staff are assigned to one of three work weeks: Sunday-Thursday, Monday-Friday and Tuesday-Saturday. Staff will be provided at least 90 days' notice of the change and work schedules will be selected by staff by seniority. If the City does so, it shall not be subject to the existing shift change language, and there will be no exception for hardship.
10. Uniforms:
 - a. Uniform Allowance: The amount of the uniform allowance for Correction Officer classes shall be increased by \$150 annually, effective with the July 1, 2021 uniform allowance payment.
 - b. PJJSC Uniforms: Employees of the Juvenile Justice Services Center shall be required to wear a shirt issued by the Juvenile Justice Services Center. Long sleeve and short sleeve uniform shirts shall be distributed to each employee and replaced as necessary by the Juvenile Justice Services Center. The existing dress code policy shall apply and failure to comply will result in disciplinary action.
 - c. PDU Uniforms: Employees of the PDU will be provided with a new set of uniforms upon hire.
11. Holidays:
 - a. Effective June 2022, Juneteenth shall be added as a City-recognized holiday.
 - b. For purposes of the CBA, Columbus Day shall be known as National Columbus Day/Philadelphia Indigenous Peoples Day.
12. K-9 Officers: Officers who are assigned the K-9 unit and are required to care for an assigned dog off duty will be provided an additional two hours per week of compensatory time to compensate them for the time spent caring for the dog(s).
13. Civilianization: If, during the term of the Award, the City seeks to engage non-bargaining unit personnel to perform work that has been performed by the bargaining unit, in whole or in part, the City will provide the applicable Local with at least 30 days' advance notice of its intent to hire or utilize civilians or other individuals outside the bargaining unit to provide any such services or perform any such work in order to provide the parties an opportunity to review the proposed reallocation of work. Unless the time limits are extended by mutual agreement, either party may request interest arbitration

over the proposed reallocation of work within 30 days following the end of the 30-day notice period. If the applicable Local fails to do so, the City shall be permitted to move forward with its proposal. Any interest arbitration so convened shall not be considered a re-opening of the contract, but shall be limited to the dispute submitted and, in the event that work is reallocated or shared, whether any changes are necessary to the CBA to carry out that change in work and whether any economic changes for the bargaining unit represented by the applicable Local are warranted. The Panel shall retain jurisdiction to hear any request for interest arbitration under this paragraph.

14. Leave and Attendance:

- a. Parental Leave: Employees will be eligible for up to four (4) weeks of paid parental leave for the birth/adoption/formal assumption of custody of a child under the age of 18 occurring on or after July 1, 2021. Parental leave shall be used in continuous days during the 12-month period immediately following the birth or the arrival of the adoptive or foster child. Parental leave may be used on an intermittent basis only if approved in writing by the employee's chain-of-command. Parental leave may not be used in increments of less than a day under any circumstance. An employee may only receive one period of parental leave for the care of any given child. An employee may not use more than four weeks of paid parental leave in any 12 month period. Any parental leave taken shall be concurrent with, and not in addition to, leave allowable under the FMLA. Use of paid parental leave shall not require use of any accrued leave; paid parental leave may be used in addition to any accrued leave. Any paid parental leave not used by the employee before the end of the 12-month period to which it relates shall be forfeited and may not be accumulated for any subsequent use.
- b. Vacation Sell Back: Employees shall be permitted to sell back up to ten (10) vacation days per year. Employees must have a vacation balance of at least 40 days to sell back vacation. Vacation sell backs can only occur during the timeframes established by the Finance Department.
- c. Family Leave: Employees may use up to five (5) sick days per year to care for a family member who is ill. The use of the days shall be subject to the same terms as in the DC 33 contract.
- d. Administrative Leave: Effective July 1, 2022, all bargaining unit members will receive one (1) additional administrative leave day.

15. Part-time Employees: If the City hires part-time employees to work at PJJSC up to twenty (20) hours per week to supplement the work force, no existing employees will have their regularly-scheduled hours reduced in order to give hours to part-time

employees. Part-time employees will be considered part of the bargaining unit but will not be eligible for health insurance benefits. Any leave benefits will be prorated based on their regularly scheduled hours. They may be assigned to work non-standard shifts and hours without regarding to existing shift bidding procedures. Establishing shifts for part-time employees shall not be considered a shift change under the CBA. The Panel notes that the inclusion of this provision does not limit the City's ability to hire part-time employees at any other location or any objections the Union might have if the City were to attempt to do so.

16. Discipline:
 - a. The City may, in its discretion, make disciplinary suspensions of five (5) days or less to administrative suspensions where the suspension will remain on the employee's record for purposes of their work record and progressive discipline, but the employee will not actually miss the days from work.
 - b. The PJJSC disciplinary procedures shall be amended to remove the preliminary hearing and reduce the number of formal hearing participants and panel members.
 - c. Within ninety (90) days after the issuance of this Award, the City and Local 159B shall convene a committee to review the existing PDP and PJJSC disciplinary matrices. The Panel shall retain jurisdiction to resolve disputes.
17. Probationary Period: Termination of employment within one (1) year of appointment shall not be subject to the grievance and arbitration provisions of the collective bargaining agreement and shall be considered to be with just cause.
18. Reinventing Government Initiative: The terms of the District Council 33 agreement regarding subcontracting and the Reinventing Government Initiative shall apply to work covered by this Award.
19. Retroactivity: Any provision of this Award which provides for payments to be made retroactive to a date prior to the issuance of the Award shall only apply to employees who are actively employed by the City in a position covered by this Award on the date the Award is issued.

It is understood that the signature of the Arbitrators attest to the fact that the contractual provisions awarded represent the majority opinion on each issue by the members of the Arbitration Panel. The Panel shall retain jurisdiction of this case for the purposes stated in the Award and for the purpose of resolving any disputes regarding the implementation of the Award.

Walt De Treux

WALT De TREUX
Neutral Arbitrator and Panel Chair
Dated: August 12, 2022



RICHARD G. POULSON, ESQ.
Union-appointed Arbitrator



SHANNON D. FARMER, ESQ.
City -Appointed Arbitrator

Attachment A
12-Hour Shift Initiative

Effective September 5, 2022 through December 11, 2022 unless modified by agreement of the parties or further order of the Act 195 Interest Arbitration Panel (“the Panel”), the City shall conduct a 12-Hour Shift Initiative (“Shift Initiative”) at Curran-Fromhold Correctional Facility (CFCF) subject to continuous monitoring and oversight by the Panel, and according to the following terms:

1. The dates of the Shift Initiative may be altered by agreement of the parties or further order of the Panel.
2. The Shift Initiative will not include bid posts, which will continue to operate on their existing schedule, unless otherwise agreed to by the parties or ordered by the Panel.
3. PDP will first provide employees assigned to CFCF the opportunity to volunteer for the Shift Initiative. Volunteers will be selected in order of seniority. If there are an insufficient number of volunteers from CFCF within 7 days of the request for volunteers, the PDP will give correctional officers at other facilities the opportunity to volunteer on a first-come, first-served basis until the number of staff needed is reached. If there are an insufficient number of volunteers from across PDP, staff at CFCF may be required to participate in reverse order of seniority. Any staff who are required to participate will be given at least 10 calendar days’ notice before being placed on the new shift.
4. Officers currently assigned to CFCF who are not participating in the Initiative may be reassigned to another facility for the duration of the Initiative by reverse order of seniority. At the conclusion of the Shift Initiative, officers from outside CFCF may request to return to their original facility or remain at CFCF. Such requests will be accommodated to the extent possible consistent with the staffing plans for the facilities.
5. Officers participating in the Initiative will be compensated in accordance with the terms of the Award.
6. The Initiative shall be subject to continuous monitoring and oversight by the Panel. The Panel shall resolve disputes between the parties during the Initiative on an expedited basis.
7. The PDP shall gather and compile data regarding the Initiative on a continuing basis, including, but not limited to, the following: attendance, call outs, overtime (voluntary and mandatory), injuries, officer complaints, as well as any other information requested by the Panel. The data shall be reported to the Panel on a monthly basis during the Initiative during the first weeks of October, November and December 2022.