

AMERICAN ARBITRATION ASSOCIATION

FOP, E.B. Jermyrn Lodge No, 2

AND

City of Scranton

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\* AAA Case No.  
\* 01-22-0004-0019  
\* (Act 111  
\* 12-Hour Pilot)  
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BOARD OF ARBITRATION

Stephen J. Holroyd, Esq.  
*Holroyd Gelman, P.C.*  
FOP-appointed Arbitrator

Matthew Boyd, Esq.  
*Ufberg & Associates*  
City-appointed Arbitrator

Samantha E. Tower, Esq.  
Neutral Arbitrator and Board Chair

FOREWARD

The FOP, E.B. Jermyrn Lodge No. 2 (Union) and the City of Scranton (City) are parties to a collective bargaining agreement which expired on December 31, 2021. The parties engaged in collective bargaining but were unable to reach agreement on a new contract.

The undersigned arbitrators were duly appointed as the Board of Arbitration pursuant to the provisions of Section 4(b) of the Act of June 24, 1968, P.L. 237, as amended, 43 P.S. §217.4(b) (Act 111) and the procedures of the American Arbitration Association. The Board issued its Act 111 decision on July 28, 2023, and retained jurisdiction related to the following provision:

17. Designated Hours of Work Pilot Program Discussion

The parties are directed to meet promptly and negotiate in good faith to create a 12-month, 12-hour shift pilot program within the Department. The parties shall make a good faith effort to create the parameters of the pilot program and to implement such pilot program in the first six (6) months of calendar year 2024. If the parties fail to negotiate the creation of the aforementioned pilot program within ninety (90) calendar days from the date of this Award, the terms and conditions of the pilot program shall be set by this Board of Arbitration, and for which this Board retains jurisdiction.

The parties were unable to reach an agreement during negotiations over the 12-Hour Pilot program for the Department and mutually requested a hearing before the Board. A hearing was held on November 1, 2024, at which time both parties had a full and fair opportunity to submit documentary and other evidence in support of their respective positions. Following a full and complete review of the evidence and arguments presented by the Union and the City, and executive sessions of the Board of Arbitration, the following Award on the 12-Hour Pilot was adopted by a majority of the Board. The arbitrators on the Board were not unanimous on each and every element of the 12-Hour Pilot Program, but the following Award represents the majority decision of the Board.

CITY OF SCRANTON and FOP, E.B. JERMYN LODGE NO. 2  
12-MONTH, 12-HOUR SHIFT PILOT PROGRAM

The parties' 12-month, 12-hour shift, Pilot Program (the "Pilot") will run from January 6, 2025 through December 31, 2025. The Pilot will implement the Pitman-based Schedule Model, as presented by the City during the arbitration hearings preceding this Award, for twenty (20) patrol officers and four (4) supervisors, integrated into the existing patrol structure. Those participating in the Pilot Program will work within the new 12-hour X-squads, which will overlap A Shift and B Shift, with the objective of trying the 12-hour model while maximizing Patrol staffing during the times which regularly have the highest calls for Patrol Service.

The rotation will separate those working the Pilot into two separate "X" squads. When X-1 is working, X-2 is on days off, and vice versa. The squads work 9am to 9pm with half of each on-shift squad working a two-hour backdrop from 7am to 7pm (in other words: 5 of the 10 officers in each Squad will work

7am to 7pm; the other 5 officers in that Squad will work from 9am to 9pm). This provides extended patrol coverage and offers an additional scheduling option. Each X squad will have a steady work schedule: *two shifts on; two shifts off; three shifts on; two shifts off; two shifts on; three shifts off*. This schedule will provide that each X-squad will have every other weekend off (in fact, a long weekend every other week). We attach a year-long schedule for X-1, enabling X-squad patrol officers working that shift to see their work schedule for an entire year.

The 2025 Bid Board will include ten X-1 patrol officer spots in the A-Shift, ten X-2 patrol officer spots in B-Shift, and modifications for those officers working 8-hour shifts to integrate with those working the 12-hour shifts. The days off for Highway Cars will be selected by bid, like other Patrol Division officers, and may be incorporated into an X-Squad. SROs (Note: officers must be SRO-certified by February 6, 2025 to work as an SRO and may not begin work as an SRO without receiving SRO-certification), Lieutenants, the Highway Corporal, and K-9 officers will remain on 8-hour schedules, and SROs will bid separately from the A-Shift. Supervisors on X-Squad will keep the same hours as their officers. A-Shift Sergeants can assign cars to the incoming X-Squad and give roll call. Because of the overlap, there is no operational need for the Supervisors on X-Squad to come in 1 hour prior to their officers as is currently the practice.

The same seniority-based Bid Board selection process that is currently utilized for the Department will be utilized, whereby the most senior officer selects shift and available days off by seniority. (Note: the number of positions on the Bid Board are equal to the number of officers on active duty in the Patrol Division.)

For purposes of, and for the duration of, this Pilot only:

- Time Off Conversion: For patrol officers who are regularly assigned to an X-Squad, all paid time off in the CBA (vacation, sick time, and TCs) shall be converted into hours rather than days.
  - o *For TCs only*: 16 TCs equals 128 hours. For Patrol Officers who are regularly assigned to X-Squad, 16 TC days shall equal 128 hours, i.e., now 10.67 shifts (10 full 12-hour shifts and an 8-hour overage). As a special provision of, and lasting only for the duration of this Pilot Program, (2025), Patrol officers assigned to X-shift will receive 11 TC days (i.e., 4 additional TC hours).
- Overtime: For patrol officers who are regularly assigned to an X-Squad, overtime will be defined and overtime pay will be calculated using the FLSA (84-hour, two-week standard) instead of the 40-hour overtime provision in the CBA.
- PTO Allowance: In determining, for approval and usage purposes, PTO allowances for all Patrol Division officers, will continue to be on a per shift basis. The City will continue to provide 3 TCs per shift, and 4 TCs are permitted, where feasible, but will factor in the overlap of X-Squads in this process. 1 TC will be reserved for

Officers working the A-Shift and 1 TC will be reserved for the B-Shift. The granting of additional TCs will continue to be at the Shift Lieutenant's discretion.

- Vacation Bidding: The X-1 squad members will bid vacations with the A-Shift. The X-2 squad members will bid vacations with the B-Shift. C-Shift will continue to bid vacations on its own.

The Panel recognizes that officers who bid or are assigned, by seniority, into the 2025 12-hour Pilot Program, who are scheduled on an X-1 or X-2 squad for 2025, will consequently have other contractual benefits affected during the year in which the Pilot Program runs. In recognition of these temporary impacts to their contractual benefits, including converting vacation, sick time, and TCs to hours instead of days and calculating overtime using the FLSA instead of the 40-hour overtime provision in the CBA, each officer who completes the Pilot Program in the X-1 or X-2 squad shall receive a one-time lump sum totaling One Thousand Dollars (\$1,000), made up of the following payments: five hundred dollars (\$500.00) in the first pay period after February 1, 2025, and a second equal payment in the first pay period after completion, on or after December 31, 2025. These lump-sum payments are non-precedential and limited only to those officers who participate in and complete the Pilot. There will be no pro-rata payment.

The 2025 Bid Board, which has been finalized by this Board of Arbitration and is attached to this Award as Attachment A, shall be posted the morning of November 27, 2024. (See, Attachment A)

Representatives from the Union and the Department shall meet at approximately 60 days, 90 days, and 180 days to discuss any potential issues that arise in the implementation of the 12-Hour Pilot Program.

#### CONCLUSION

It is understood that the Arbitrators' signatures attest to the fact that the contractual changes herein represent the majority opinion and Award on the 12-Hour Pilot by the members of the Arbitration Board. The Board shall retain jurisdiction on this limited issue for one hundred and twenty (120) calendar days for the sole purpose of resolving any disputes regarding the implementation of the 12-Hour Pilot.



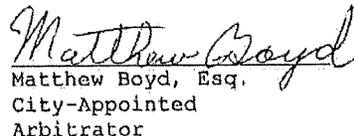
Samantha E. Tower

Neutral Arbitrator and Board Chair

Dated: 11-24-24

  
Stephen J. Holroyd, Esq.  
FOP-Appointed  
Arbitrator

SUPPLEMENTAL OPINION  
ATTACHED

  
Matthew Boyd, Esq.  
City-Appointed  
Arbitrator

With response to  
Supplemental Opinion

## SUPPLEMENTAL OPINION OF FOP-APPOINTED ARBITRATOR

In its interest arbitration award issued on July 28, 2023, this Panel included the following language at Paragraph 17:

The parties are directed to *meet promptly and negotiate in good faith* to create a 12-month, 12-hour shift *pilot program* within the Department. The parties shall make a good faith effort to create the parameters of the pilot program and to implement such pilot program in the first six (6) months of calendar year 2024. If the parties fail to negotiate the creation of the aforementioned pilot program within ninety (90) days from the date of this Award, the terms and conditions of the pilot program shall be made by this Board of Arbitration, and for which this Board retains jurisdiction.

(emphasis added)

From the start, there was very little communication between the City and the FOP on the subject. In any event, the parties agreed to extend the timeline to try to negotiate the parameters of the pilot program.

The FOP, for its part, put together a committee made up of members to design such a pilot program. Other than two perfunctory visits by the Chief—one at the beginning of the process and one at the end—the City made no attempt to participate in this process.

Ultimately, the FOP's committee devised a pilot program based on the Idaho model—not coincidentally, the model used by the only other city in the Commonwealth currently utilizing 12-hour shifts (Chester). This program was presented to the Chief in late August, well in advance of the parties' traditional date to commence the bidding process (November 1); at the same time, the FOP again expressed no real enthusiasm for a 12-hour shift schedule.

To be fair, the Chief then tried to address the FOP's concerns by presenting a modified schedule for 8-hour shifts. Because of the drastic changes to the *status quo*, however, the FOP demurred on his offer and awaited the City's thoughts on a 12-hour schedule. At some point, the City indicated it was proposing a Pitman-based schedule, but would not provide any details until the matter went to this Panel under its retained jurisdiction.

A pilot program is intended to be a small-scale, short-term experiment to allow an organization to learn how a large-scale project might work in practice. Admittedly, the program offered by the FOP would have involved *all* patrol officers; however, this was offered more to avoid disruption to the contractual *status quo* as far as seniority and bidding rights than in a desire to subject so many people to 12-hour shifts. Stated another way, if everyone remained similarly situated (i.e., the only real change was 12-hour shifts instead of eight), then the rest of the officers' work worlds could function normally.

Having rejected the FOP's approach, one would have expected to see the City recommend something more like a traditional pilot—one with limited impact on employees. Instead, what the

FOP saw for the first time at the hearing in this matter was nothing short of an attempt to reinvent the department. Not only would nearly half of the patrol division be subjected to 12-hour shifts, but the City would also attempt to impose the very modified 8-hour shift schedule the FOP had already rejected, the effects of which included summary elimination of availability for certain days off as well as requiring employees to work in excess of 40 hours a week without being paid the contractually-required overtime. Overall, it can be best summarized as follows: it was a program the FOP did not want but was being asked to make every sacrifice to implement.

At that point, it was the duty of this Panel to craft a *pilot program* in the spirit of what it intended when it issued its original decision. As this was not a program the FOP had any enthusiasm for, one would have hoped that, for the most part, its desires to "pick its own poison" would have been given some weight.

Instead, a majority of this Panel forgot the limited purpose of a pilot program. Rather than designing a small-scale "sample" of life under 12-hour shifts, a majority of the Panel here decided that it was time to reinvent the department. The Award itself makes it clear: this would be a program, "with the objective of trying the 12-hour model *while maximizing Patrol staffing during the times which regularly have the highest calls for Patrol Service.*" (emphasis added)

Simply put, that latter consideration *should have been of complete irrelevance to this Panel*—not because it is not a worthy issue, but, rather, because it is beyond the scope of what a *pilot program* is designed to achieve. Instead of being irrelevant, however, it became the primary focus of what a majority of this Panel wanted to achieve. Attempts to limit the impact of the Pilot Program by reducing the number of participants, limiting participation of supervisors to a volunteer basis, or changing some of the day off slots were consistently rejected with a decision of "that would not be optimal."

Further, the FOP had to expend capital pushing back against the modifications to the existing 8-hour schedule—an issue that should have *never even been on the table when discussing a 12-hour pilot program*. Again, however, the FOP was advised that modifying the existing 8-hour schedule would be more "optimal."

All this said, I do want to be fair: the Chair did hear some of the FOP's concerns and attempted to address them in this award. The officers participating in the program are at least receiving some recompense for having other contractual benefits effected by the pilot. While it should not have had to have been addressed at all, the issue with the 8-hour shift schedule was somewhat rectified—albeit with fewer RDO slots available to bid. The initial complement of participants was reduced by 30%. It is not in dispute that the Chief worked hard to change his original plan to comply with these directives. However, when push comes to shove, it appears that the Chief was only asked to go as far as *he* was willing to go, when it was *this Panel* that should made the determination on issues like the scope of the pilot, the need to force supervisors to participate, or the availability of days off slots.

During the initial Act 111 interest arbitration proceedings and during this process the City claimed over and over that, once a 12-hour shift was in place, the employees would learn to love it. If so, the City should have been made to put its money where its mouth is, and this program should have

been of limited duration, under terms more favorable to the FOP, to see if employees would, indeed, grow to love it. Instead, the lives of nearly half of the patrol officers are being needlessly disrupted, and the contractual benefits of over half the department—the half not even participating in the pilot—have been needlessly affected.

As noted, the FOP should not have been playing defense throughout the process. Nevertheless, I am appreciative of the efforts of both the Chair and the City-appointed arbitrator to address at least some of the employees' concerns. I am signing the Award in recognition of those efforts. But this is not the way to set up a pilot program, and I sincerely hope that the City's overreach here does not poison the well in such a way that 12-hour shifts are never given a fair chance by the men and women who are being asked to work them.

Stacy J. Nejo

**City Appointed Arbitrator's Response to  
Supplemental Opinion of FOP-Appointed Arbitrator**

Originally, I, as the City's appointed arbitrator on this issue, did not intend to add anything to the Award, which I felt – and feel - was appropriate and accurate as written (authored primarily by our neutral Arbitrator, Atty. Samantha Tower). However, upon reading the Supplemental Opinion of the FOP-Appointed Arbitrator, I am constrained to add this, really to reply to what was submitted by the FOP-appointed Arbitrator:

The FOP-appointed arbitrator has made certain fact statements and offered certain opinions in his Supplemental Opinion with which I – and the City – vehemently disagree as being factually or contextually inaccurate and/or exaggerated. The Award is well-thought-out and very carefully and well-written, the product of lengthy, intense, point-by-point debate between the parties, then by their designated arbitrator-representatives amongst themselves and with the neutral. I have no interest in engaging in further debate to counter the FOP Arbitrator's after-the-fact contentions which we believe inaccurately and unfairly tilt at the Award and the process which created it. While each side can no doubt take issue with aspects of the other's engagement, the process was ultimately thorough and fair, and I am, and the City of Scranton is, gratified to have mutually – with the stalwart assistance and at times prodding of Arbitrator Tower - realized this significant achievement for our Police Department, which we fully expect will produce marked operational improvement.

