

BEFORE ARBITRATOR STANLEY H. MICHELSTETTER

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In the Matter of the Arbitration of a Dispute Between

CITY OF SEATTLE,

And

PERC Case no. 135101-P22

SEATTLE POLICE OFFICERS' GUILD,

([REDACTED] Discharge)

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Appearances:

Vick, Julius, McClure. PS, Attorneys at Law, by Erica Shelley Nelson, appeared on behalf of the Guild.

Summit Law Group, PLLC, Attorneys at Law, by Shannon Phillips, appeared on behalf of the City.

SUPPLEMENTAL AWARD

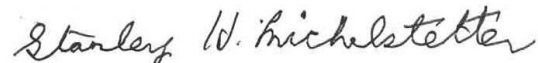
I issued an award in the above matter on November 29, 2023, requiring the City to “make Officer [REDACTED] whole for all lost wages and benefits, less interim earning(sic), from sixty calendar days from the date of her termination until paid.” [Emphasis supplied.] I reserved jurisdiction over issues arising from the specification of the remedy. The parties submitted a dispute thereunder based on the City’s position that the remedy of back pay should have been deemed to end at date Ofc. [REDACTED] was deemed by the arbitrator to be no longer interested in re-employment. The parties each submitted letter briefs. I held a video conference hearing on April 23, 2025, at which point the record was closed for that issue.

Based upon the entire record, NOW THEREFORE,

SUPPLEMENTAL AWARD

The City’s motion to restate the remedy is denied. The City shall pay Ms. [REDACTED] all lost wages and benefits less the sixty day offset as specified in the award.

Dated this 29<sup>th</sup> day of April 2025.



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Stanley H. Michelstetter, Arbitrator

## MEMORANDUM

### POISITIONS OF THE PARTIES

City:

The award of back pay should be limited to the date that Ofc. [REDACTED] was no longer seriously seeking reinstatement. As any factual information about the arbitrator's conclusion is that she likely would have moved on would be the last date of hearing which was June 16, 2023. The arbitrator failed to require the Guild to prove its claim for damages and reinstatement. Any award after that date could only be punitive. Alternatively, as other arbitrators have concluded, that any award of this type should only be temporary and not over-compensate the individual. Specifically, other arbitrators have held that where reinstatement is not practical, compensation should not be extended beyond the date that reinstatement was not practical. The only conclusion that one can draw is that the award is impermissibly punitive. This is inconsistent with the principle against rewarding officers who are found to have used excessive force stated in *City of Seattle, Seattle Police Dept. v. Seattle Police Officer's Guild*, 17 Wn App. 2<sup>d</sup> 21, 484 P. 3d 485 (2021), pp. 43-44. The City asks that the arbitrator modify the award to limit back pay to the last day of hearing to June 16, 2023.

Guild:

The arbitrator should affirm his original holding and direct back pay from the date of payment. The award is clear and unambiguous. There is no basis for deviation. Alternatively, the City is responsible for the delay in the award. Any other continuances were by mutual agreement of the parties. The City's decision was based upon an unreasonable interpretation of the *Shepard* decision.

The award is not punitive but represents the wages and benefits she would have received had the City not violated the just cause provision. Ms. [REDACTED] mitigated her damages and any income she received will offset. There is no evidence in the record as to whether Ms. [REDACTED] applied for any jobs in law enforcement or was rejected. The City appears to argue that because she did not return to work in law enforcement, her award should be limited. There are a variety of reasons why she may have chosen a different career path. She may have believed she was not likely to find another job in law enforcement given that she had a pending discharge for improper use of lethal force. She may have simply been disillusioned. There is no basis in the award or other arbitration cases to limit her remedy.

The award is based upon numbers and calculations rather than arbitrary. She was a police officer with 10 years' experience. The economic remedy flows from the terms of the collective bargaining agreement for a senior officer. The Guild requests that you deny the City's request.

## DISCUSSION

The remedy is within the remedial authority of the arbitrator because it puts Ms. [REDACTED] in the same position for the post-award environment that she would have been in, had reinstatement not been denied. The arbitrator has inherent broad remedial authority to fashion an appropriate remedy for disciplinary violations.<sup>1</sup> The hearing was conducted under the customary bi-furcation process in which liability and scope of remedy are decided first, and remaining issues decided later, if necessary. Once that is done the common practice is that the parties resolve all remaining issues including, but not limited to, whether a grievant will actually be reinstated.

The Guild sought the ordinary remedy of a make whole and reinstatement order. It never changed that position.

There was no evidence about Ms. [REDACTED]'s employment situation after she was discharged. There was no evidence about whether she ultimately would want reinstatement although she exhibited enthusiasm for being a patrol officer throughout her testimony.

The arbitrator's responsibility is to try to resolve the dispute before him/her. It was highly unlikely that reinstatement would ever occur. Six years has passed from her discharge by the time of the award. There was no reason to allow that aspect of the dispute to foster post-award litigation.<sup>2</sup>

However, the award does put her in the position that she would have been in after the award was issued. Had the City still engaged in post-award litigation her reputation and employment prospects would still have continued to be affected.

The award preserved the economic value of her choice about reinstatement in the post-award resolution process. The reinstatement issue is a valuable right. Parties often negotiate for separate benefits in lieu of reinstatement. In some cases, this may be as little as obtaining a positive reference from the former employer. In other situations, it may entail educational expenses, outplacement services, severance or front pay.<sup>3</sup> The award's remedy is supported by the remedy authority.

In any event, the City's improper penalty position improperly assumes no penalty may be assessed by the arbitrator. Article 3, Sec 3.5, H, 11 provides that the decision shall be final and binding. Anticipation of that is within the arbitrator's authority.

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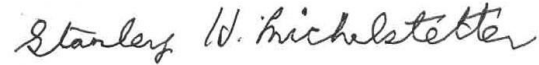
<sup>1</sup> St. Antione, The Common Law of the Workplace: The view of the Arbitrators, Sec's. 10.2, 10.6

<sup>2</sup> See, Common Law, Sec. 10.12 comment

<sup>3</sup> There is evidence in the record to support that the City treated her differently than her male counterpart in surmising that her motivation in the second phase was not motivated by defending her fellow officer.

It is premature to address the other aspect implicitly raised by the Guild as to whether pursuing this issue further would violate the final and binding provision. Specifically, I reserved jurisdiction for a period of sixty days over the issues arising from the remedy. The City did not raise that issue to me. Instead, it filed its appeal challenging the remedy within the sixty days. It does not appear that the City raised that issue to the Court. The City's position is without merit, the City's motion is properly denied.

Dated April 29<sup>th</sup>, 2025

A handwritten signature in cursive script, reading "Stanley H. Michelstetter".

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Stanley H. Michelstetter, Arbitrator