



The Denver Police Protective Association



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November 3, 2021

VIA ELECTRONIC TRANSMISSION AND FIRST-CLASS MAIL

Paul C. Pazen, Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204-2720

**RE: Article 16.2/Overtime
Step 2 Grievance**

Dear Chief Pazen:

As certainly you are aware, under date of October 11, 2021, the PPA initiated Step 1 of the Grievance Procedure in connection with the above-entitled matter. Thereafter, and on October 20, 2021, a Step 1 meeting was held. Subsequently and by letter dated October 29, 2021, Deputy Chief Archer issued her denial of this grievance. (A copy of her denial is provided.) With the denial, the PPA strenuously disagrees. As such, please accept this letter as a request for Step 2 of the Grievance Process as set forth in Article 30.4 of the Collective Bargaining Agreement.

In pertinent part, Deputy Chief Archer has denied this grievance primarily upon three separate bases. Specifically, Deputy Chief Archer suggests that the grievance is untimely; the subject grievance is denied because COVID-19 testing is not compensable work under either the Collective Bargaining Agreement or the Fair Labor Standards Act; and lastly, the grievance should be resolved with the U.S. Department of Labor and not through the CBA grievance process. The denial of this grievance upon these bases will be addressed separately.

First, the PPA's grievance is timely. The PPA seeks overtime payment for its impacted members under Article 16.2 of the Collective Bargaining Agreement. This claim became ripe when the City denied overtime to the named Grievants, either by denying submitted overtime or by removing overtime entries in the timekeeping system (Workday). Further, any timeliness defense by the City is negated by the "continuing violation" doctrine, under which each denied overtime payment gives rise to a new grievance claim. *See Elkouri & Elkouri, How Arbitration Works* at 218-19 (6th Ed. 2003).

Second, the PPA's grievance seeks overtime payment for "hours worked" under Article 16.2 of the Collective Bargaining Agreement to satisfy the City's requirement that those with approved medical or religious exemptions get COVID PCR tests every five days outside of their regular working hours and while on accrued leave. To the degree that FLSA standards help define the "hours worked" term under Article 16.2, the City's requirement is that members of the bargaining unit must – as a condition of ongoing employment – either get vaccinated *or have an accepted religious or medical exemption, in*

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which case they must comply with the City's periodic testing requirement. The City's assertion that "COVID-19 testing cannot be considered 'integral and indispensable'" to a PPA's members ongoing employment is completely contrary to the City's own vaccination mandate.

Third, a grievance is precisely the correct forum to remedy the City's violation of Article 16.2 of the Collective Bargaining Agreement.

Lastly, the City's threat to reconsider and potentially rescind already accepted religious exemptions because the PPA exercised its collective bargaining rights by filing a grievance is wholly unacceptable. Indeed, Article 30.3 specifically prohibits the City from "threaten[ing] or coerc[ing] any officer for filing a grievance under this Contract;" Charter Section 9.8.1 protects the PPA's right to "bargain collectively," which includes the right to file grievances; and Charter Section 9.8.17(D) protects an officer's right to be free from discrimination because of their participation in the PPA's grievance. Further, the anti-retaliation provisions of Title VII, at Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), prohibit the City from threatening members of the bargaining unit with materially adverse job actions. As a reminder, Charter Section 9.8.1 provides for "a system of collective bargaining to establish a *productive relationship* between the City and its Police Officers." Threats by the City run contrary to that fundamental policy.

The City has a clear and simple option for resolving the PPA's grievance. As the Police Department had done for a period of time, officers can be allowed the option to conduct PCR testing while on duty. Indeed, there would be no undue burden to the City in so allowing, as the Police Department was able to accommodate such on-duty testing before it unilaterally rescinded that option and left itself with no other option but to pay overtime to officers mandated to conduct off-duty PCR testing. If the Police Department reinstates the on-duty testing option, the City will have no overtime obligation and the PPA's grievance may be mooted.

Thank you in advance for your attention to this matter and we look forward to our resolving this matter at our Step 2 meeting. Should you have any questions, please do not hesitate to call.

Very truly yours,

DENVER POLICE PROTECTIVE ASSOCIATION



Nick Rogers, President

Enclosure (CHIEF ARCHER 10/29/21 STEP 1 DENIAL)