



## **A M E N D E D   A R B I T R A T I O N   A W A R D**

PENNSYLVANIA GAME COMMISSION

AND

FRATERNAL ORDER OF POLICE, CONSERVATION POLICE OFFICERS' LODGE  
NO. 114

GRIEVANCE: WRITTEN REPRIMANDS – AMORY & WITHERITE  
Grievance Case No. CG-24-01 (Amory) & CG-24-02 (Witherite)  
FOP No. NW-021924-184359 (Amory)  
FOP No. SW-021524-152307 (Witherite)

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### **OPINION AND AWARD**

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#### **ADMINISTRATION**

By correspondence from the Pennsylvania Office of Administration, Bureau of Employee Relations, dated September 20, 2024, the undersigned was notified of his selection by the parties to hear and decide a matter in dispute between them. The hearing went forward at 10:00 AM on January 6, 2026, at the PA Game Commission (“PGC”) offices in Harrisburg, Pennsylvania where the parties were afforded the opportunity to present evidence and testimony and to participate in both direct and cross examination of witnesses in support of their respective positions. However, no witnesses were called to testify during the proceedings. The PGC offered a brief opening statement along with a stipulation regarding the issuance and withdrawal of written reprimands imposed upon the two Grievants. The FOP reserved its opening statement but did introduce three Joint Exhibits (“J-#”) which will be detailed later in this Award. The record was closed following the receipt of the FOP’s post-hearing brief on February 5, 2026, and the PGC’s

rebuttal brief on February 20, 2026. The matter in dispute relates to whether the Grievants, Jason Amory and Brian Witherite, were reprimanded for just cause when they drove their PGC assigned vehicles to the PGC's Ross Leffler School of Conservation (hereinafter "RLSC"), which serves as the PGC's school or academy, to instruct new cadets on January 29, 2024. Also, included in their written reprimands were their alleged offenses, on the same date, of wearing their PGC issued uniforms while participating in the training of new cadets on the Collective Bargaining Agreement (hereinafter "CBA") and Union enrollment.

Immediately following the initial cadet training on the CBA and Union enrollment, the two Grievants also participated with the PGC Labor Relations Coordinator, Delynn Steffen, on a joint instruction presentation for the cadets.

### **BACKGROUND**

During the hearing, the parties agreed upon the introduction and use of three (3) Joint Exhibits (J-#) as follows:

- (1) J-1: Grievance Packet of Sgt. Brian Witherite which is comprised of 175 pages of documents including the grievance, CBA articles and correspondence; witness statements; RLSC training class supporting documents; standby correspondence and documentation, PLRB Order, and Commonwealth Management Directives packet dated March 1, 2024.
- (2) J-2: Grievance Report of Jason Amory detailing his grievance and his Pre-Disciplinary Conference (hereinafter "PDC") letter from his supervisor, Jesse Bish, dated February 2, 2024.
- (3) J-3: The Written Reprimand letter, dated February 15, 2024, from Jesse Bish, reprimanding Amory for his inappropriate use of his assigned Commonwealth vehicle and inappropriate wearing of his Game Commission uniform at the January 29, 2024 training session of new cadets.

The Fraternal Order of Police, Conservation Police Officers' Lodge 114 ("FOP" or "Union") was represented by Attorney Anthony M. Caputo. Attorney Caputo reserved his opening statement and did not provide any additional testimony at the hearing. The essential issue is whether or not there was just cause for the written reprimands of the two

employees who were instructing cadets on January 29, 2024. The FOP post-hearing brief provides the FOP's position on the written reprimands.

The Pennsylvania Game Commission ("Commission" or "PGC") was represented by attorneys Anthony Holbert and Bryan Bartosik-Velez of the Office of Administration, Office of Chief Counsel, Human Resources Division. Attorney Holbert stipulated that on February 15, 2024, the PGC issued a written reprimand to Brian Witherite and on February 16, 2024, to Jason Amory, both for the infractions of using their PGC assigned vehicles to travel to and from Harrisburg to instruct at the RLSC cadet training session and for their wearing of PGC issued uniforms at the training session on January 29, 2024. Attorney Holbert continued management's stipulation advising that both reprimands were withdrawn from the grievants' respective files on March 5, 2025.

Attorney Holbert also made an opening statement advising that Article 3, Section 3 of the parties' CBA (pp. 4-9 of J-1 for applicable provisions) addresses wildlife conservation officer training and provides that FOP representatives will receive up to one day of administrative leave to assist in conducting the training. However, the CBA in the last sentence of Article 3, Section 3 states as follows:

*It is understood that the Union representative will not utilize a Commonwealth vehicle nor their Game Commission uniform for this session.*

Attorney Holbert emphasized that PGC vehicles are to be used for Commonwealth business and that such training in the CBA and Union enrollment is not Commonwealth business. He stated as a result of the Grievants violating this provision of the CBA, a pre-disciplinary conference (PDC) was held to give them the opportunity to explain their position and to give the PGC the chance to conclude their investigation before administering discipline, if appropriate. Following the two PDCs, the Grievants were issued written reprimands – Witherite on February 15, 2024, and Amory on February 16, 2024. – citing both the inappropriate use of PGC vehicles for non-PGC work and for

wearing their PGC uniforms during the training session. Attorney Holbert discussed the holding of the PDC to give the Grievants the opportunity to explain their actions and said that the PGC concluded that the reprimands were appropriate as they were the lowest level of discipline that could be imposed. He said the reprimands were given (1) to be corrective in nature so like infractions would not happen in the future and (2) were given to be consistent with like actions given to others for similar violations. He went on to say that the relationship between the FOP and the PGC had deteriorated, and that as part of the means to restoring a healthy relationship between the parties, that the new management leadership decided to withdraw the written reprimands prior to the end of the two-year period for which they were initially given. Hence, the written reprimands were withdrawn from Witherite and Amory's official personnel files on March 5, 2025.

Attorney Holbert then concluded his brief presentation by saying no witnesses or merit defense would be given since the written reprimands had been withdrawn but also mentioned that the PGC acknowledged that the reprimands may have done more harm than good in terms of the parties' relationship.

Both employees filed grievances – Witherite on February 15, 2024, and Amory on February 19, 2024, with both providing similar statements of what took place and the remedy being sought which was to rescind the written reprimands and to remove all records of the discipline and investigations from associated files – both hard copy and electronic. The FOP also sought to have the PGC cease issuing discipline without just cause and to also complete their investigation prior to holding a PDC. The FOP also seeks proper compensation, including benefits and overtime, for all losses suffered by the Grievants.

### **ISSUE**

The issue, as framed by Attorney Caputo, and accepted by both parties, is as follows:

*Did the Pennsylvania Game Commission have just cause for the issuance of a written reprimands to the Grievants, Jason Amory and Brian Witherite in February 2024? If not, what shall the remedy be?*

## **APPLICABLE CONTRACT AND REGULATORY PROVISIONS**

### **I. COLLECTIVE BARGAINING AGREEMENT<sup>1</sup>,**

#### **A. ARTICLE 3, UNION SECURITY**

1. Section 3. The Employer will permit a Union Representative to address Wildlife Conservation Officer Cadets near the end of their training period. The session shall not exceed one class period and may be monitored by the Employer. The Union representative may be granted up to one day of administrative leave for this purpose. It is understood that the Union Representative will not utilize a Commonwealth vehicle nor their Game Commission uniform for this session.

#### **B. ARTICLE 19, STANDBY TIME**

1. The Employer, at its discretion, may order officers to be on standby. An officer is on standby during the period when the officer is either required to remain at home or required to carry an electronic paging device and be available for emergencies. Only officers who are required to be on standby are entitled to the compensation hereafter set forth. . . . Officers shall be considered to be on standby time until officially released. . . .

#### **C. ARTICLE 24, DISCHARGE, DEMOTION, SUSPENSION AND DISCIPLINE**

1. Section 1. The Employer shall not demote, suspend, discharge or take any disciplinary action against an officer without just cause. . .

### **II. COMMONWEALTH FLEET PROCEDURES MANUAL<sup>2</sup>**

#### **A. SECTION 15, OPERATOR QUALIFICATIONS AND RESPONSIBILITIES**

1. Item 3. Except as otherwise provided in this policy, Commonwealth Fleet vehicles shall be operated only for the conduct of official Commonwealth business.
2. Item 4.f. Operators shall only use Commonwealth Fleet vehicles for official Commonwealth business; however, operators are authorized to use a Commonwealth Fleet vehicle for travel to meals or other necessities when away from their official domicile on official Commonwealth business.

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<sup>1</sup> Part of Joint Exhibit No. J-1. Applicable provisions of Agreement Between the Commonwealth of Pennsylvania, Pennsylvania Game Commission and the Fraternal Order of Police, Pennsylvania Conservation Police Officers' Lodge No. 114, effective July 1, 2021 to June 30, 2024.

<sup>2</sup> Part of J-1. Pennsylvania Manual 615.3, Commonwealth Fleet Procedures Manual, No. 615.3, dated November 10, 2011.

### **III. MANAGEMENT DIRECTIVE; SUBJECT: COMMONWEALTH FLEET POLICY<sup>3</sup>**

#### **A. ITEM 6. RESPONSIBILITIES**

1. Sub-item d. Operators of Commonwealth Fleet Vehicles shall comply with the Commonwealth Fleet Policy and procedures as outlined herein and in Manual 615.3, Commonwealth Fleet Procedures Manual. Failure to comply may result in the following:
  - (1) Any operator found to have operated Commonwealth Fleet vehicles in a careless manner or in violation of law or the Commonwealth Fleet Policy may be subject to disciplinary action and/or loss of operating privileges.

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### **IV. COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA GAME COMMISSION, STANDARD OPERATING PROCEDURE NO. 20.3<sup>4</sup>**

Personnel with a permanently assigned vehicle classified as “home” shall use it only in the performance of their official duties and shall retain the vehicle overnight and (on) weekends at their residence, or at a location approved by the appropriate Director. Any inappropriate use could result in discipline.

### **POSITION OF THE PARTIES**

**A. COMMONWEALTH or PGC POSITION.** The Commonwealth/PGC position is unchanged and very straightforward. The regulations that were violated had been in place for quite some time. The parties’ Collective Bargaining Agreement prohibits using a Commonwealth vehicle to drive to and from cadet training as it was not considered official business. The CBA also prohibits the wearing of a Game Commission uniform to cadet training on Union matters.<sup>5</sup> The current CBA had been in effect since July 1, 2021 – several years prior to the incident. Also, the Commonwealth Fleet Procedures Manual which asserted that Commonwealth vehicles could be used only for official business had been in effect since 2011. Management Directive, No. 615.16 states that operators found to have violated Commonwealth Fleet Policy may be subject to disciplinary action. It, also, had

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<sup>3</sup> Part of J-1. Commonwealth Management Directive No. 615.16, dated November 10, 2011.

<sup>4</sup> Part of J-1. Pennsylvania Game Commission Standard Operating Procedure, No. 20.3, Subject: Vehicle Assignment and Use, dated August 3, 2023.

<sup>5</sup> CBA, Article 3, Section 3 prohibits Union representatives from using a PGC vehicle to drive to and from Cadet training sessions and also prohibits the wearing of a PSG uniform for the session.

been in effect since 2011. Lastly, SOP No. 20, Subject: Vehicle Assignment, states that employees with permanently assigned Commonwealth vehicles shall only use them in the performance of official duties and that inappropriate use could result in discipline. This SOP is dated August 2023, approximately six months prior to the incidents in question.

The Commonwealth acknowledged, in its presentation, that there had been considerable friction between the PGC and its Union during the time of the incident and in the months afterwards. With a change in management leadership, to reduce the friction and enable a better working relationship, management decided to withdraw the two written reprimands in question on March 5, 2025 – approximately eleven (11) months before they were scheduled to expire as they had been issued in mid-February 2024 with a requirement that they remain in effect for a two-year period. Attorney Holbert commented that the PGC acknowledged that the reprimands may have done more harm than good in terms of the parties' relationship. However, the Commonwealth position remains that it had issued the reprimands to generate corrective action on the part of the Grievants and that the reprimands were issued consistent with the provisions of governing regulations, directives and SOPs. They were given for just cause at the time. It was only to hopefully improve relationships between the parties that they were withdrawn in March 2025. In conclusion, the written reprimands were issued for just cause at the time of issuance.

In its post-hearing brief, the PGC contends that during the January 29, 2024, Cadet training session, that the Grievants were acting in their official Union capacity and were on administrative leave granted by the PGC. Thus, the training assignment was not a work assignment from the PGC. It argues there was no basis for considering the assignment an official work assignment, and that per the provisions of the CBA, the Grievants were not authorized to drive their PGC vehicles and were not authorized to wear their PGC uniforms while providing the training according to the provisions of the CBA, Article 3, Section 3.

The PGC also claims that retaliation was not an issue in this matter as the reason for the written reprimands is that the Grievants violated the provisions of the CBA and the longstanding policy related to such driving to non-work-related functions. It strenuously rejects the Union's premise that there was a past practice in effect for years which barred

the PGC from enforcing the CBA provisions. The PGC claims there is no substantial evidence that the PGC acted in a knowing and intentional manner thereby waiving the CBA provisions and policy. The PGC contends there must be proof of intent in such matters and that there was certainly no proof that its actions were part of an accepted course of conduct regarding waiving the provisions of policy and the CBA provisions. Thus, it claims there was no past practice.

Regarding Witherite's claim that, after the cadet training session, he drove his PGC vehicle to the PGC warehouse to pick up any material or equipment remaining there to transport it to his Southwest Region. Witherite contends this should be considered official duty and warrant his using his PGC vehicle for the trip to the cadet training and return. The PGC avers that this was not an assigned duty and, in fact, that the PGC was unaware of his doing that at the time.

Witherite had also claimed that one of the cadets had been assigned to work at the Southwest Region. Witherite had previously emailed the Cadet in early January 2024 advising him that he would be at the cadet training session and that the two could talk more about the Cadet's assignment at that time. The Cadet and Witherite did talk at the training session about his transitioning to the Southwest Region and housing opportunities. The FOP contended this discussion was official duty meaning the drive to and from Harrisburg from the Southwest Region was properly done with his PGC assigned vehicle. The PCG argues that Witherite was on administrative leave, not official time, and that there was no basis for his driving a PGC vehicle to or from the cadet training.

The PGC avers there was just cause to issue the written reprimands to both Grievants, but that in an effort to assuage relations between the two parties, that it withdrew the reprimands on February 5, 2025. Thus, they are no longer in the personnel files of either Grievant and will not be utilized by the PGC for any reason or purpose. Accordingly, there is no longer any controversy, and the grievances should be dismissed as moot.

**B. FOP or UNION POSITION.** The FOP/Union challenges the written reprimands issued to the Grievants on February 15, 2024 (Witherite) and February 16, 2024 (Amory), for the offenses previously cited. The Union, in its post-hearing brief, provides detailed information causing it to aver that the two reprimands were issued as retaliation. Also, Witherite was assigned as a Standby Officer on January 28, 29, 30, and February 1 and 2, 2024 to respond to emergencies which would have required him to wear his uniform and drive his PGC vehicle if called to respond to an emergency. Third, there was obviously a past practice of officers driving their PGC vehicles to the cadet training and of them wearing their PGC uniforms to the training. Even if management desired to effect a change and found violations, there was much less severe action that could have been taken. Thus, the FOP concludes there was no just cause for the written reprimands to have been issued in February 2024.

1. Retaliation. The Union cites a January 27, 2024, meeting of the PGC Board of Commissioners attended by Jonathan Wyant (FOP past President) along with the two Grievants where they made public comments highly critical of the PGC and the then current leadership of the PGC, including the then-Executive Director Bryan Burhans. The following day, Sunday, January 28, 2024, Grievant Witherite received a text from Bryan Burhans questioning his integrity as a State Game Warden. Another day later, on Monday, January 29, 2024, Bryan Burhans sat in the back of the cadet classroom with the PGC Labor Relations Coordinator and the PGC Human Resources Director although Executive Director Burhans had never, to Witherite's knowledge, attended a cadet training session in the past. However, he sat there while Witherite and Amory lectured cadets, which the Union contends was perceived as a threat or warning to Witherite and Amory. According to the FOP, shortly thereafter, on February 5, 2024, Witherite attended a labor-management meeting in the PGC headquarters and was criticized by Bryan Burhans for "weaponizing" the prior ULP decision of the PLRB hearing officer which found the PGC to have committed an unfair labor practice earlier by its decision of September 2023. The hearing officer found the PGC had engaged in improper retaliation and ordered the PGC to offer FOP past President Wyant a promotion. While the PGC appealed the ruling, the PLRB issued a Final Order affirming the decision of the hearing officer.

Meanwhile, after the cadet training session on January 29, 2024, both Grievants were advised of the scheduling of a pre-disciplinary conference (PDC) to decide what, if any, disciplinary action would be issued as a result of the two Grievants using their PGC vehicle to drive to and from the cadet training session and for their wearing of the official PGC uniform to the cadet training session. Both were then issued written reprimands for their actions – Witherite on February 15, 2024, and Amory on February 16, 2024. Both filed grievances contesting the written reprimands.

2. Standby Duties of Conservation Police Officers. Article 19 of the parties' CBA is entitled "Standby Time" and addresses that the Employer, at its discretion, may order officers to be on standby - meaning they must either remain at home or carry an electronic paging device and be available for emergencies. When called to official duty, the officers must wear their PGC uniforms and are entitled to drive their PGC assigned vehicles to and from the emergency. The FOP argues that as such, Witherite was on standby time and could have been called to respond to an emergency call. Thus, his wearing of his official uniform on January 29, 2024, was entirely proper. Had he been called to respond while at the cadet training, he was already in uniform and had his car available to transport him to and from any emergency that may have required his attendance.

3. Past Practice. The FOP contends that regardless of the CBA, Article 3, prohibition on uniforms and use of PGC vehicles for driving to and from cadet training, a past practice was in effect which permitted such usage. The FOP, in its post-hearing brief, provided the following definition of a past practice.

*A custom or practice is not something which arises simply because a given course of conduct has been pursued by [m]anagement or the employees on one or more occasions. A custom or a practice is a usage evolved by men as a normal reaction to a recurring type of situation. It must be shown to be the accepted course of conduct characteristically repeated in response to the given set of underlying circumstances. This is not to say that the course of conduct must be accepted in the sense of both parties having agreed to it, but rather that it must be accepted in the sense of being regarded by the men involved as the normal and proper response to underlying circumstances presented.<sup>6</sup>*

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<sup>6</sup> From FOP Post-Hearing Brief making reference to County of Allegheny v. Allegheny County Prison Employees Indep. Union, 476 Pa. at 34, n.12, 381 A.2d 852, n.12 (1978).

To further substantiate its position, the FOP cites Ellwood City Police Wage and Policy Unit v. Ellwood City case where the Court upheld the definition of past practice requiring that the parties must develop a history of similar responses or reactions to a recurring set of circumstances.<sup>7</sup>

The FOP cites that Witherite and other Union officials had driven personal vehicles to and from cadet training sessions during at least four (the 31<sup>st</sup>, 32<sup>nd</sup>, 33<sup>rd</sup> and 34<sup>th</sup>) academy cadet training classes between 2019 and 2024 as shown in Joint Exhibit No. J-1, pp. 13-19. Further, former FOP President Frank Dooley provided a witness statement<sup>8</sup> stating it was a common practice during his tenure for Union officers to wear PGC uniforms and to drive their PGC vehicles to provide cadet instruction. Another former FOP President from 2016 to 2022, Jonathan Wyant, provided a witness statement, on February 28, 2024.<sup>9</sup> His statement advised that he witnessed Witherite wear his uniform and drive his PGC vehicle to attend cadet instruction during that time period without any issue from management. Further, the FOP claimed that Witherite was not attempting to be secretive about his use of the PGC vehicle for driving to and from cadet training as he had provided a Vehicle Monthly Report showing same for not only January 29, 2024, but also for cadet training in January 2023.<sup>10</sup>

The FOP also cites a number of PGC Human Resources Director guidance documents (J-1, pp. 68-77) which indicates when Union members may drive PGC vehicles when attending Union functions. However, the documents do not address the cadet training at the academy. However, the next page, p. 78, does address that PGC vehicles may NOT be used for any Union business unless approved by the Region/Bureau Director. However, this document was issued on February 28, 2024, approximately a month after the January 29, 2024, cadet training and just after the two Grievants were officially reprimanded.

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<sup>7</sup> Ellwood City Police Wage and Policy Unit v. Ellwood City, 29 PPER ¶29214 (Final Order, 1998), aff'd, 731 A.2d 670 (Pa Cmwlth. 1999).

<sup>8</sup> Joint Exhibit No. J-1, p.21

<sup>9</sup> Joint Exhibit No. J-1, pp. 22-23.

<sup>10</sup> Joint Exhibit No. J-1, pp. 41-45.

With regard to the wearing of PGC uniforms to cadet training, on January 18, 2022, Witherite was advised by the PGC Director of Training, Kyle Jury, that proper attire for classroom instruction of cadets was civilian attire or the dress uniform and that it was up to the officer.<sup>11</sup> Witherite continued to wear his PGC uniform and was never told it was improper until after the January 29, 2024 cadet training attended by top level HR and LR officials and then-Executive Director Bryan Burhans.

The FOP concludes that the two Grievants believed their conduct was appropriate in that it had been going on just exactly as what had occurred on January 29, 2024, for a number of prior years without any problem or comment from management. Thus, past practice permitted them to drive their PGC vehicle to the January 29, 2024 cadet training and to wear their PGC uniform while addressing the cadets.

4. Official Duty. The FOP also contends that after the cadet training, Witherite drove his PGC vehicle to the PGC warehouse to pick up any equipment or materials that needed to be brought back to the Southwest Region where he served. Witherite contended that he routinely performed his ancillary duty whenever he drove to Harrisburg for meetings and that this ancillary duty was considered official work making it official duty time for him and has always been a permissible use of official time. Additionally, Witherite spoke to a cadet, while at the cadet training on January 29, 2024. The cadet was being assigned to the Southwest Region. Witherite had emailed him previously on January 13, 2024, and advised that he would be at the cadet training and that they could discuss matters of interest to him at that time.<sup>12</sup> The FOP considers that this is official PGC business demonstrating that Witherite was on official business while at the cadet training session on January 29, 2024 which permits use of a PGC vehicle.

5. Just Cause and Level of Discipline. The FOP avers that based on all the above factors, there was no just cause for the official written reprimands in Witherite's and Amory's cases. The FOP contends that there was anti-union animus shown by prior actions against the other PGC employee whose reprimand was adjudged to be improper. Further

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<sup>11</sup> Joint Exhibit No. J-1, p. 48.

<sup>12</sup> Joint Exhibit No. J-1, pp. 117-119.

there was additional anti-union animus directed toward Witherite by then Executive Director Bryan Burhans, who one day after Witherite spoke at a labor-management meeting, delivered a text to him on Sunday questioning his integrity as a State Game Warden. Further, the FOP contends a solid past practice has been proven showing Witherite and other Union officials had been driving their PGC vehicles and wearing their PSG uniform to cadet training – all without incident. Now, all of the sudden, Witherite and Amory are given official written reprimands for something they had been doing for several years without any problem or comment from management. If discipline is warranted, there are lesser actions that could have, and should have, been instituted such as counseling or a verbal warning. There was no need to issue an official written reprimand for what had been a common practice in the past. Additionally, based on Witherite being on standby duty and also providing counseling to a cadet at the cadet training session coupled with his going to the warehouse after the cadet training to pick up and carry supplies and materials back to the Southwest Region, there is every reason to consider his work as official duties and to justify the wearing of his PGC uniform and to drive his PSG vehicle on January 29, 2024.

The FOP concludes that there should never have been a written reprimand issued for these alleged infractions. It believes the two Grievants were justified in the driving of their PGC vehicles to the cadet training and were also proper in wearing their official PGC uniforms to the training session. Accordingly, the reprimands should never have been imposed, and the Arbitrator should make such a finding to resolve the matter in the FOP's favor.

## DISCUSSION

The matter, at first glance, seems relatively minor – a grievance over a written reprimand that had been removed from both employees’ personnel files approximately ten (10) months before the hearing. However, the parties were resolute. Management averred that the written reprimands had been issued for just cause and were entirely proper and justified at the time of issuance. The Union was just as resolute in its contention that there was no just cause for the reprimand in the first place. It contends that the written reprimands should never have been issued and that other actions, at the time against Grievant Witherite, were retaliatory in nature and reflected anti-union animus. Both Witherite and Amory, at the time of issuance of the written reprimands were relatively high-level Union officials. Amory was the President of Local 114 and Witherite was Vice President. Were both properly given official written reprimands for their alleged offenses? It is important to examine the facts and the documentation to decide the issue. This will be done, in no particular order, as follows.

1. Standby Duties. The FOP raised the issue that Witherite was assigned standby duty on January 28, 29, 30 and February 1 and 2, 2024. As such, when called to an emergency he was entitled to use his PGC assigned vehicle and was required to be in uniform. As such, the Union argues, it was proper for him to have his PGC assigned vehicle with him at the cadet training and for him to be in uniform in case he was called to an emergency. The problem with this is that Witherite, as was customary for cadet training, was placed on administrative leave on January 29<sup>th</sup>, the day of the training, and was therefore not available during the training for an emergency call. I find that when a PGC employee is placed on administrative leave he is not on official duty. While he may have been on official duty for part of that day, he was not on official duty while attending the cadet training session.
  
2. Official Duty. The FOP also claimed that because of two separate factors, Witherite’s travel and cadet training on January 29, 2024, should have been considered official duty time. First, the FOP contended that Witherite, after his cadet training drove to the PGC

warehouse to pick up any material or equipment that was at the warehouse awaiting transit to the Southwest Region. The PGC argued that it knew of no such requirement imposed upon Witherite. Thus, there was no official duty given to Witherite to drive to the warehouse or to attempt to pick up materials or equipment there. The PGC contends that even if he did proceed to the warehouse, this does not invalidate the express language of the CBA that driving to and from cadet training is not an official duty. In fact, Witherite was on administrative leave at the time.

The second claim was that because Witherite had emailed one of the cadets who was being assigned to the Southwest Region where Witherite was supervisor over the group that the cadet was being assigned to. Witherite had advised the cadet in his email that when he and the cadet were at the cadet training session, they could discuss matters of interest to the cadet. At the session, the two discussed the cadet's transitioning to the Southwest Region, operations in the region, and housing opportunities. As such, they were discussing official business, and the entire trip should be considered official business.

I note that Witherite provided correspondence between himself and his regional director, dated November 29, 2023, wherein Witherite was to attend and co-chair/present at an Accelerated Grievance Procedure state committee meeting. He advised his regional director as follows:

*If there is a justification to utilize my assigned state vehicle to attend the meeting to assist our region by bringing any equipment or items back to the SW I gladly [will] do that while in HBG, however, I would need approval to do that. If approval is not granted for its use I will be traveling in my personal vehicle for the meeting.<sup>13</sup>*

There was no indication as to whether approval was granted or not. In the instant case, which is a cadet training issue, not a state committee meeting, there was no indication that Witherite asked for permission to use his PSG vehicle or was granted permission. In fact, the Employer claims it had no knowledge he was doing this. His claim was that he

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<sup>13</sup> Joint Exhibit No. J-1, p. 116

had driven to the warehouse in the past after the cadet training session, picked up materials and equipment, and escorted them back to the Southwest Region while driving his PGC vehicle. Regardless, the PGC claims Witherite was not assigned this duty or responsibility and that it did not qualify his drive to the warehouse as official duty. I concur with the PGC position that simply stopping by the warehouse did not qualify his drive to and from cadet training as official duty.

Likewise, Witherite's second claim for official duty was because one of the cadets was being assigned to the Southwest Region where Witherite would be his group supervisor. Witherite had advised the cadet they could talk "business" at the upcoming cadet training session which they did. I do not hold this brief conversation on housing and transitioning to be official business on January 29, 2004. Thus, in conclusion, I do not find that Witherite was, at any time, during the travel to and from Harrisburg or the time he spent conducting Union-related training on January 29, 2024, to the cadets to be official duty.

3. Wearing of the PGC Uniform. The reprimands, in this case, were issued due to two matters – driving the PGC vehicles to cadet training and the wearing of the PGC uniforms while conducting the Union-related training. This second issue is relatively straight forward. Yes, the CBA states that Game Commission uniforms will not be worn during cadet training sessions. However, Witherite had provided documentation that he had worn his uniform a number of times over the years for this training and was never questioned about it. His, and other witness statements, contended that over the years Union officials wore their PGC uniforms to the cadet training without comment or discipline. In fact, Witherite sent an email to the PGC Director of Training, Kyle Jury ("Jury"), how he should dress for the cadet training. Jury responded as follows:

*I'll let that up to you if you wear civilian attire or the uniform. If you are going to wear the uniform, we wear the dress uniform with tie for classroom instruction.*

Yes, the CBA states “It is understood . . . Union Representatives will not . . . utilize their . . . Game Commission uniform for that session.” Clearly, this was not “understood” by all; not even by the Director of Training who clearly permitted the Union Representative to do such. The witness statements of the two past FOP presidents clearly stipulated that PGC uniforms were regularly worn by Union instructors at cadet training for a number of years. Witherite’s witness statement and supporting documentation states likewise. Clearly, in this Arbitrator’s mind, there was a past practice of permitting the wearing of PGC uniforms by Union officials while conducting the cadet training. I do not uphold the PGC’s issuance of a written reprimand to either Witherite or Amory for their wearing a PGC uniform while conducting the training on January 29, 2024.

4. Past Practice. As per the witness statements of prior FOP presidents, Frank Dooley who was Lodge 114 President from 2006 until 2016 and Jonathan Wyant who was Lodge President from 2016 until 2022 both testified that it was common practice for Union employees participating in the cadet training to routinely drive their PGC vehicles to and from the training and would routinely wear their PGC issued uniforms during the training without Management raising any objection to either matter.<sup>14</sup> Further, Witherite provided his witness statement indicating that there was no incidence of a PDC or discipline being administered to any Union employee who drove his PGC vehicle to the cadet training and wore his PGC uniform at the training for the cadet training classes at RLSC in February 2008, 2011, 2013, or 2015.<sup>15</sup> Later, in the same witness statement (18), Witherite stipulated that during the period of time from 2019 through 2023, he drove his PGC vehicle to the cadet training and wore his PGC uniform, and that at no time during this period was he or any other Union official conducting the cadet training ever disciplined for either matter. Of course, this changed after the January 29, 2024, cadet training session when Management began investigating the matter and ultimately disciplined Amory and Witherite for their alleged infraction.

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<sup>14</sup> Joint Exhibit No. J-1, pp. 21-23.

<sup>15</sup> Joint Exhibit No. J-1, p. 15.

The PGC position on the issue is that the CBA language is clear and unambiguous. Again, Article 3, Section 3's last sentence states,

*It is understood that the Union representative will not utilize a Commonwealth vehicle nor their Game Commission uniform for this session.*

That language does seem clear and unambiguous to this Arbitrator. However, it is clear from the FOP witness statements that Management, over the years, has slept on its rights by permitting these practices. However, even if Management has not upheld the provision of the CBA in the past, it does have the right to police the agreement at any point. This is apparently what was being done by the PGC Labor Relations Coordinator, Delynn Steffen, as indicated below during a labor-management meeting on February 5, 2024.

*Ms. Steffen handed out the FOP Union Attendance guidelines that were updated as of April 2023. Union business is not official commonwealth business. Must use your own personal vehicle, you can claim mileage through the FOP. We would like to update the process in the event you would need to request permission to use commonwealth vehicle for a work-related reason in conjunction with also conducting union business (example, in Harrisburg to conduct union business, but have a work-related meeting directly following). This may be appropriate, if approval is received in advance. If attendance is solely to conduct union business, commonwealth vehicle is not permitted . . .<sup>16</sup>*

Thus, it appears that Management was now, on February 5, 2024, (just after the reprimands on Witherite and Amory were issued) now trying to reinforce and police the CBA provision in Article 3, Section 3. Based on the three witness statements previously cited, I find there was a past practice in effect during most of the period leading up to the January 29, 2024, cadet training incident. However, as of February 5, 2024, Management exercised its right to then police the matter and require compliance with the CBA.

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<sup>16</sup> Joint Exhibit No. J-1, pp. 82-94 with cited language coming from p. 87. There was also a labor-management meeting on April 18, 2023, but it was geared more toward using PGC vehicles to transport non-Commonwealth individuals, not toward cadet training and the use of vehicles for that purpose.

5. Retaliation. At the time of the written reprimands, Jason Amory was the sitting FOP President and Brian Witherite was the sitting Vice President. In 2022, prior to their reprimands, the Pennsylvania Labor Relations Board (“PLRB”) issued a Proposed Decision and Order finding the PGC had engaged in retaliation against the FOP’s past president. While the PGC appealed the decision, the PLRB issued a Final Order affirming the Hearing Officer’s original decision, and the then President of the FOP was promoted as a result. That past FOP President was also issued a written reprimand in 2022 for misuse of his PGC vehicle. This Arbitrator was assigned to hear the arbitration case as to whether just cause existed for the written reprimand which had been removed from his official personnel file. That decision was rendered in November 2024 finding no just cause for his written reprimand.

The Union posits the following information regarding its allegation that Management was retaliating against the FOP when it issued written reprimands to Amory and Witherite in the instant case. Below are the details resulting in the FOP’s judgement.

On January 27, 2024, two days prior to the cadet training, Witherite, Amory and past President Wyant attended a PGC Board of Commissioners meeting and made comments which the Union claims were critical of the PGC leadership, including then-Executive Director Bryan Burhans (“Burhans”). The following day, a Sunday, January 28, 2024, Burhans wrote a text to Witherite questioning his integrity as a State Game Warden. The very next day, Monday, January 29, 2024, as Amory and Witherite were ready to conduct the cadet training and found that the PGC Labor Relations Coordinator Delynn Steffen, PGC HR Director Christine Worley, and PGC Executive Director Burhans were sitting in the back of the classroom. Amory and Witherite considered this as a threat or warning as, to their knowledge, Burhans had never attended this training in the past. A day after the cadet training, on January 30, 2024, Witherite called the PGC Labor Relation Coordinator Steffen to discuss labor matters. At the conclusion of the discussion, Steffen notified Witherite that both he and Amory were observed wearing their PGC uniform while

providing the training the day before. It also came up that the two Union officials had also driven their PGC vehicles to the training – both items no longer permitted. It was after this meeting that a PDC was held with Amory and Witherite. Witherite advised Steffen that both the driving using a PGC vehicle and wearing a Game Commission uniform at training had never been brought up to him before. Then a week later, on February 5, 2024, Witherite attended a labor-management meeting, also attended by Burhans, who criticized Witherite for what he referred to as “weaponizing” the prior ULP decision referred to above. Thus, for the incidents occurring on January 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> and February 5<sup>th</sup>, the FOP believed the whole matter of the driving using a PGC vehicle and wearing a Game Commission uniform was symptomatic of retaliation against the FOP.

This Arbitrator finds the five incidents occurring just before the written reprimands were issued seems very much like a retaliatory act. The then-Executive Director Burhans criticized Witherite for his remarks made just before January 29<sup>th</sup>. He also claimed Witherite had “weaponized” the ULP incident – both comments seem to very much have bothered Burhans. Then, for the first time he appears at the cadet training, and afterwards a PDC is held and then the written reprimands issued. I consider the reprimands to be retaliatory in nature.

6. Just Cause and Level of Discipline. It is important to examine the specific language of CBA and the PGC policies. The CBA, Article 3, Section 3, as indicated above, states, that

*It is understood that Union representatives will not utilize a Commonwealth vehicle nor their Game Commission uniform for this session.*

On the surface this sounds clear and unambiguous. However, it is not understood by everyone involved. The past practice was that Union representatives had been permitted for years to drive their PGC vehicles to the cadet training and also to wear their Game Commission uniforms while conducting the training. All of the sudden, this came to a rapid conclusion with former-Executive Director Burhans criticizing Witherite for his comments at a labor-management meeting and then sitting in the rear of the cadet training

classroom for the first time. Shortly thereafter, both Witherite and Amory were reprimanded. It was the first time either had been advised of their transgressions.

When examining the policies and procedures the two Grievants were found to have violated, an examination was made of the Fleet Procedures Manual which allows the use of PGC vehicles for the conduct of Commonwealth business. It concludes with the investigation of alleged improper operations and with “. . .the operator may be subject to disciplinary action.” Not that he “will” be, but that he “may” be subject to disciplinary action. Next is the Commonwealth Fleet Policy stipulating again that Commonwealth vehicles are to be utilized to conduct official commonwealth business. Again, in Section 6.d., it reads that “operators found to be in violation of the Commonwealth Fleet Policy may be subject to disciplinary action.” Again, the wording is “may” not “will” be subject to disciplinary action. Both the Procedures Manual as well as the Fleet Policy were dated in 2011, and to the knowledge of the FOP, there were no disciplinary actions upheld since then citing these policies. The third policy was the PA Game Commission’s Standard Operating Procedure, dated August 2023, Subject: Vehicle Assignment and Use. It cites that PGC personnel with a permanently assigned PGC vehicle shall use it only in the performance of official duties and that any inappropriate use “could” result in discipline. It does not read “will” result in discipline but “could” result in discipline. Thus, of the three policies, none absolutely show that discipline will result from violations; only that it could or may result in discipline.

Also, the policies and procedures referenced above, discuss the possibility of discipline for violations of the policy, but typically couch the discipline in terms of “may result in discipline.” Thus, I find no requirement that discipline be imposed for violations. Clearly, discipline and the degree thereof, will be determined based on the egregiousness of the offense and other factors that could either mitigate or enhance the degree of discipline.

With regard to the issue of just cause, the PGC post-hearing brief maintained that there was no just cause in that the Grievants' actions were consistent with past actions both of themselves and others and that no discipline had been upheld on others for driving their PGC vehicle to cadet training and none were disciplined for wearing a PGC uniform to the training. The FOP, in its post-hearing brief, cites several of the seven tests in Arbitrator Carroll R. Daugherty's "Seven Tests of Just Cause."<sup>17</sup> An examination could be made of all seven and most would be found to have been met by management's actions. However, the last two – (a) applying rules, orders, and penalties evenhandedly and without discrimination and (b) insuring that the degree of discipline was reasonably related to (1) the serious of the offense and (2) the record of the employee in his service to the agency - are problematic.

I already found there was retaliation imposed by management toward the Grievants and that there was a past practice in effect whereas no other Union representative, to the Grievants' knowledge, had been disciplined for the noted offenses. The wearing of a Game Commission uniform was clearly permitted by the PGC Training Officer, and there were no known instances where employees had been disciplined despite their using their PGC vehicle to attend cadet training. Was the degree of discipline reasonably related to the seriousness of the offense? My finding is that for a first offense violation, there should have been a lesser penalty such as counseling or a verbal warning, but not an official written reprimand for a first offense, especially when others were doing the same thing without comment or discipline imposed by Management.

In conclusion, I find just cause was lacking for both Witherite's and Amory's written reprimands. I find that the written reprimands should not have been issued without the Grievants being either counseled or verbally warned instead of placing an official written reprimand on their record. Management had claimed that the written reprimand was issued as it was the lowest form of discipline. While a written reprimand may be the lowest form

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<sup>17</sup> *Enterprise Wire Co. and Enterprise Independent Union*, 46 LA 359 (Daugherty, 1966)

of official discipline, other methods such as counseling or a verbal warning are methods to provide corrective action short of an official personnel action. Also, with Amory being FOP Lodge 114 President and Witherite being Vice President and both having very good records, the most appropriate action to stop and correct their actions would have been counseling or a verbal warning. If that failed to stop their violations, then a written reprimand for a subsequent violation would have been appropriate.

With the written reprimands having been removed from Witherite's and Amory's official record, there is no further remedy for me to give at this time. However, for the record, I do find the two written reprimands to have been improperly administered by the PGC.

### **AWARD**

The grievances are both sustained. I find Grievant Witherite's and Grievant Amory's written reprimands to have been issued improperly and without just cause. I find the two written reprimands should never have been issued in the first place for the offenses identified.

*W. W. Lowe*

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William W. Lowe  
Arbitrator

Dated: March 27, 2026  
Red Lion, Pennsylvania