

# Adams County Legal Journal

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## DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN TO ALL persons interested or who may be affected, that ADAMS COUNTY SURVEYORS, INC., with its registered office at 776 Good Intent Road, Gettysburg, Pennsylvania, a business corporation, has elected, pursuant to Resolution duly proposed at a meeting of the Board of Directors and approved at a meeting of the Shareholders, to voluntarily dissolve the corporation and intends to file Articles of Dissolution with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania. The Board of Directors is now engaged in winding up and settling the affairs of said corporation so that its corporate existence shall be ended under the provisions of the Pennsylvania Business Corporation Law of 1988, as amended.

Harold A. Eastman, Jr.  
Puhl, Eastman & Thrasher  
220 Baltimore Street  
Gettysburg, PA 17325

NOTICE BY THE ADAMS COUNTY  
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, July 8, 2011 at 8:30 a.m.

**ROBERTS**—Orphan's Court Action Number OC-63-2011. The First and Final Account of H. Gene Fultz, Executor of the Estate of Frances Jane Howard, deceased, late of Oxford Township, Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

6/24 & 7/1

## CONEWAGO TWP. POLICE OFFICERS' ASSN. VS. CONEWAGO TWP.

1. The applicable scope of review of an Act 111 grievance arbitration award is "narrow certiorari" which permits this Court to consider (1) whether the arbitrator has jurisdiction to hear the dispute; (2) the regularity of the proceedings; (3) whether the award exceeded the arbitrator's powers and (4) whether there was a deprivation of constitutional rights.

2. This case raises the novel issue of whether the Pennsylvania Police Tenure Act (PTA) allows a Township subject to that Act to honorably discharge a police officer for a disability affecting that officer's ability to continue in service (no matter how temporary the disability may be) thereby allowing the Township to avoid its statutory duty to pay benefits during the duration of the officer's temporary disability, as required by the Pennsylvania Heart and Lung Act (HLA).

3. An officer wishing to challenge his suspension or removal under the PTA shall demand a public hearing with the appointing authority.

4. Importantly, the PTA does not provide the exclusive remedy for resolving disputes concerning the rules and regulations of the police department where there is a valid grievance clause in the Collective Bargaining Agreement. The doctrine of election of remedies is applicable where two remedies are available to a township police officer, a proceeding under the PTA and a collective bargaining grievance procedure, each being a different means of adjudicating the same issue.

5. Appellate authority generally recognizes that the PTA imposes liability upon second class townships to continue police officers in employment extending tenure to police forces unless certain specific conditions apply.

6. The PTA provides that one of the limited and specific circumstances in which an officer can be removed from duty is if the officer suffers a disability, in which case the officer shall be entitled to an honorable discharge.

7. The purpose of the HLA is to insure that police officers who are disabled in the course of their duties are guaranteed their full income until their return to duty is possible. HLA benefits can be terminated only when (1) claimant is able to return to work because his disability ceases; or (2) claimant's disability is determined to be permanent as opposed to only temporary.

8. Where a disability of a township officer is on indefinite duration and recovery is not projected in the foreseeable future, disability cannot be deemed temporary within the meaning of the HLA.

9. The employer must prove by substantial evidence a reasonable inference that the disability is of lasting or indefinite duration. A reasonable inference is not one based upon speculation or conjecture but rather is a logical consequence deduced from other proven facts. Although this inference must be reasoned from evidence presented, it need not be the only logical conclusion which a jury could reach.

10. The PTA and the HLA should be read and interpreted consistently with each other. The rules of statutory construction indicate that when two (2) different statutes relate to the same thing or the same class of people, the Court should read the statutes "in pari mariteri" construing them together, if possible. Further, even if it is argued that the HLA and the PTA are in irreconcilable conflict, then effect should be given to both statutes if possible.

11. Reading the two acts in conjunction with each other, it is apparent that the PTA must be interpreted to require an officer's inability to return to service be permanent before he might be honorably discharged.

12. Until such time as an officer's disability is permanent, the disability does not affect the officer's ability to eventually continue in service. Such an interpretation of the PTA requiring a municipality to prove that the officer's injury is permanent is consistent with the HLA, the purpose of which is to ensure that injured officers are fully compensated during the duration of the work related disabilities.

In the Court of Common Pleas of Adams County, Pennsylvania,  
Civil, No. 10-S-2126, CONEWAGO TOWNSHIP POLICE  
OFFICERS' ASSOCIATION VS. TOWNSHIP OF CONEWAGO.

Anthony M. Caputo, Esq., for Appellee  
P. Richard Wagner, Esq., for Appellant  
Campbell, J., February 16, 2011

### OPINION

Before the Court is the Petition of Township of Conewago (hereinafter "Township") to vacate the Grievance Arbitration Award of October 18, 2010. For the reasons set forth hereinbelow the Petition is denied and the decision of the Arbitrator is affirmed in its entirety.

### FACTUAL AND PROCEDURAL BACKGROUND

Appellant, Township of Conewago is a Second Class Township organized pursuant to the provisions of the Second Class Township Code. The Township maintains a police department whose officers are represented by Appellee, Conewago Township Police Officers' Association (hereinafter "Association"). The Township and Association are parties to a Collective Bargaining Agreement entered into pursuant to Act 111.

Since May of 1982, Officer John Aldridge has been employed by the Conewago Township Police Department, and he is a member of the Association. On April 7, 2009, Officer Aldridge sustained a right shoulder injury while performing his routine patrol duties. Eventually Officer Aldridge sought treatment for his injuries from Dr. Kilkelly, an orthopedic specialist, who remained the officer's treating physician through at least the date of the arbitration hearing. Officer Aldridge remained out of work as a result of his injury until August of 2009 when he returned to modified duty for a period of approximately one (1) month. The Township then terminated the modified duty when it became evident that modified duty work was no longer available to Officer Aldridge. But for the one (1) month period of modified duty assignment, Officer Aldridge has received benefits

pursuant to the Workers' Compensation Act and the Heart and Lung Act, 53 P.S. § 637 (hereinafter "HLA").

On August 31, 2009, at the request of the Township, Officer Aldridge was given an independent medical examination ("IME") by Dr. Chad Rutter. Dr. Rutter's report answered several questions asked by the Township as follows:

3. What are his work capabilities pertaining to his work injury?

At this time he has significant limitations on use of the right shoulder and biceps muscle. I believe he does need the work restrictions of limited use of the right arm at waist level. He is able to use his wrist and hand as well as his elbow for activities. I do not believe that he would be able to function as a patrol officer with regard to use of gun and/or possible altercations with others with regard to weakness of his left arm.

4. Is he capable of returning to his pre-injury duties?

I do not feel that he is able to return to pre-injury duties, and I do not feel that he is recovered from this work-related injury. I do not feel that he is at maximum medical improvement. I believe the maximum medical improvement would be 4/7/10, which is one (1) year following the work injury.

As a result of that medical report, on November 17, 2009, the Township notified Officer Aldridge that he was being honorably discharged from service as a police officer pursuant to the provisions of the Police Tenure Act 53 P.S. § 812, et seq. (hereinafter "PTA"). Two (2) days later, the Association filed a grievance on behalf of Officer Aldridge alleging that Officer Aldridge continued to be temporarily disabled from his service-connected injury as confirmed by the Township's own IME Report.

On March 15, 2010, four (4) months after the grievance was filed, Officer Aldridge underwent a second IME, performed by Dr. Rutter, at the request of the Township. The pertinent questions posed by the Township and responses of Dr. Rutter are as follows:

3. Is he capable of returning to work at this time and in what capacity?

...I do not feel that he is fully recovered from this injury, and an affidavit of recovery has not been completed...

4. Can it be expected that he will recovery [sic] from the work injury to the point that he will be able to return to full duty work?

At this time, I do not know the answer to this...

As noted by the arbitrator, Officer Aldridge also underwent two (2) electrodiagnostic tests performed by Dr. Tranchitella at the request of Officer Aldridge's treating physician, the second of which was performed on December 14, 2009. After that second test Dr. Tranchitella found:

Previous findings suggested an acute cervical radiculopathy. Today's findings suggest more of a subacute radiculopathy, with evidence suggesting attempts at partial reinnervation...

...He [Officer Aldridge] was advised that nerve regeneration/reinnervation may occur for a period of up to about eighteen months to two years.

As a result of the grievance filed by the Association on behalf of Officer Aldridge, an arbitrator was appointed and a hearing was held August 4, 2010. By decision entered October 18, 2010, the arbitrator sustained the grievance, rescinded the Township's decision to honorably discharge Officer Aldridge and directed the Township to continue paying HLA benefits or return him to work on modified duty until such time as Officer Aldridge is either fully recovered or his injury is properly determined to be permanent.

On November 16, 2010 the Township filed a timely petition to vacate the arbitration award. Briefs were submitted by the parties and argument was held on January 11, 2011. The matter is ripe for determination.

## DISCUSSION

The parties have not raised any factual disputes and the record is clear as to the underlying facts of this case.

The applicable scope of review of an Act 111 grievance arbitration award is "narrow certiorari" which permits this Court to consider (1) whether the arbitrator has jurisdiction to hear the dispute; (2) the regularity of the proceedings; (3) whether the award exceeded the arbitrator's powers and (4) whether there was a deprivation of constitutional rights. *City of Pittsburgh v. Fraternal Order of Police, Fort*

*Pitt Lodge #1*, 764 A.2d 101, 103 (Pa. Cmwlth. 2000) (citations omitted).

The Township asserts that the arbitrator's decision was improper because the arbitrator had no jurisdiction to review the action taken by the Township to honorably discharge Officer Aldridge and because the arbitrator exceeded the scope of his powers in finding the honorable discharge improper and directing payment of HLA benefits.

The Association counters by arguing that because the underlying issue involves Officer Aldridge's disability and affects his entitlement to HLA benefits, the matter was properly before the arbitrator in accordance with the Collective Bargaining Agreement and further that the arbitrator acted within his powers in entering the award in favor of the Association and against the Township.

The first and third elements of the narrow certiorari standard are implicated.

The issues presented by this case raise an interesting interplay between the PTA and the HLA, two separate and distinct statutes which affect how municipalities treat and deal with their police officers. Specifically this case raises the novel issue of whether the PTA allows a Township subject to that Act to honorably discharge a police officer for a disability affecting that officer's ability to continue in service (no matter how temporary the disability may be) thereby allowing the Township to avoid its statutory duty to pay benefits during the duration of the officer's temporary disability, as required by the HLA. This Court has been unable to find any authority specifically addressing the interplay between these two distinct acts, particularly within the context of the issues raised by this case.

The PTA provides, in pertinent part, that:

no person employed as a regular full time police officer in any Police Department of any Township of the second class... shall be suspended or removed or reduced in rank except for the following reasons: (1) physical or mental disability affecting his ability to continue in service, in which case the person shall receive an honorable discharge from service...

**53 P.S. § 812.**

An officer wishing to challenge his suspension or removal under the PTA shall demand a public hearing with the appointing authority. **53 P.S. § 814.** Here, in response to the November 17, 2009 notice of honorable discharge, Officer Aldridge did not make any demand for a public hearing to the Township. Rather the Association, on his behalf, filed a grievance pursuant to the provisions of the Collective Bargaining Agreement (hereinafter “Agreement”) suggesting that the honorable discharge violated Article 21 of the Agreement as it relates to the payment of disability benefits to the officer under the Heart and Lung Act.

The Agreement provides, in pertinent part, as follows:

Article 21 – Disability (work related)

In the event that an officer is temporarily or permanently disabled, as the case may be, as a result of an injury or illness sustained in the line of duty, such officer shall continue to receive his full salary and benefits for the duration of such disability pursuant to the Act of June 28, 1935, P.L. 477, as amended, (53 P.S. § 637). To the extent such officer’s disability becomes, or is determined to be, permanent, such officer shall be eligible to seek benefits pursuant to the Act of June 4, 1937, P.L. 1552, as amended (77 P.S. § 1). The foregoing shall not be deemed as a waiver of an officer’s statutory rights pursuant to [the Heart and Lung Act], or [the Worker’s Compensation Act].

The HLA provides, in relevant and pertinent part, that:

[a]ny policemen... of any city... who is injured in the performance of his duties... and by reason thereof is temporarily incapacitated from performing his duties,... shall be paid... by the municipality, by which he is employed, his full rate of salary, as fixed by ordinance or resolution, until the disability arising therefrom has ceased.

**53 P.S. § 637.**

The Agreement provisions addressing disability specifically incorporate the provisions of the HLA, but the Agreement is silent as to the application of the PTA and the PTA is not incorporated into the Agreement. The Agreement establishes procedures to be followed



“whenever an officer or the Association desires to contest or otherwise challenge the interpretation and/or *implementation* of any provision of this Agreement or any disciplinary action...” **Collective Bargaining Agreement - Article 43 – Grievances** (emphasis added). The Township does not suggest that Association has failed to follow any of the steps set forth in Article 43 of the Agreement. Instead, the Township argues that because the action it took was in accordance with the PTA, the Agreement, including the disability provisions and grievance procedures set forth therein, and the HLA are inapplicable.

Looking at the jurisdictional issue, essentially the Township argues that its action to honorably discharge Officer Aldridge was taken pursuant to the PTA, which action is not subject to the collective bargaining grievance procedures, and, therefore, the officer’s exclusive remedy was to demand a hearing before the appointing authority (Township itself) pursuant to the PTA. According to the Township because the Agreement does not incorporate the PTA, the grievance procedures, including grievance arbitration, as set forth in the Agreement are inapplicable to disputes pertaining to an officer’s honorable discharge under the PTA.

The Association counters by arguing that because the honorable discharge affects Officer Aldridge’s HLA benefits and thereby affects the implementation of Article 21 of the Agreement, the Agreement is implicated affording the Association the ability to pursue arbitration through normal grievance procedures.

Instantly, Article 21 of the Agreement incorporates the HLA as a benefit to which Officer Aldridge is contractually entitled as a result of his work-related disability. Although the statutorily stated procedure for challenging an officer’s removal under the PTA is to demand a hearing with the appointing authority, the honorable discharge of Officer Aldridge would affect the implementation of Article 21 of the Agreement by precluding Officer Aldridge from continuing to receive HLA benefits. While Township did not directly notify Officer Aldridge that it was terminating his HLA benefits, that is a collateral and practical result of his honorable discharge. The honorable discharge of Officer Aldridge under the PTA affected the implementation of Article 21 of the Agreement as it relates to Officer Aldridge’s receipt of HLA benefits.

While the Agreement does not necessarily confer on the Association or its officers the right to grieve an honorable discharge under the provisions of the PTA, it does specifically give them the right to “otherwise challenge” Township action affecting the “implementation” of contractual benefits, including HLA disability benefits, through grievance procedures.

Importantly, the PTA “does not provide the exclusive remedy for resolving disputes concerning the rules and regulations of the police department where there is a valid grievance arbitration clause in the Collective Bargaining Agreement.” *Lower Makefield Twp. v. Lower Makefield PBA*, 42 Pa. D & C.3d 485 (C.P. Bucks Oct. 28, 1986). The doctrine of election of remedies is applicable where two remedies are available to a township police officer, a proceeding under the PTA and a collective bargaining grievance procedure, each being a different means of adjudicating the same issue. *Twp. of Falls v. Whitney*, 730 A.2d 557, 561 (Pa. Cmwlth.), *appeal denied*, 747 A.2d 373 (Pa. 1999).

In summary, this Court finds that Township’s attempt to honorably discharge Officer Aldridge under the PTA had an effect on the implementation and provision of contractually and statutorily mandated HLA benefits to Officer Aldridge. Therefore, by the express language of the Agreement, the arbitration grievance procedures set forth in Article 43 of the Agreement were available to the Association. Under *Whitney* and *Lower Makefield Township* the collective bargaining grievance procedure was one of two remedies available to Officer Aldridge and the Association and the Association properly availed itself of the arbitration grievance procedures. Accordingly, this Court finds that the arbitrator had jurisdiction to decide the dispute.

The Township’s next argument is that the arbitrator exceeded his scope of authority in finding the honorable discharge was improper and directing the Township to continue paying HLA benefits.

The basic and essential purpose of the PTA is to ensure that officers in small police departments which are not otherwise subject to the civil service requirements have similar protections and job security as officers working within civil service departments. *See generally George v. Moore*, 147 A.2d 148 (Pa. 1959). Appellate authority generally recognizes that the PTA imposes liability upon second class townships to continue police officers in employment extending tenure to police forces unless certain specific conditions apply.

*McCandless Twp. v. Wylie*, 100 A.2d 590, 593 (Pa. 1953). The Act insures that a Township cannot remove officers from duty except in very limited, specific circumstances. **See 53 P.S. § 812**. The purpose in this regard is to ensure police tenure and protect officers from arbitrary removal from their assigned duties.

The PTA provides that one of the limited and specific circumstances in which an officer can be removed from duty is if the officer suffers a disability “*affecting his ability to return to service*” in which case the officer shall be entitled to an honorable discharge. **53 P.S. § 812** (emphasis added). The Police Civil Service Act provisions pertaining to suspension, removal, or reduction in rank contain identical language as it relates to disability and honorable discharge. **53 P.S. § 53270**. After careful review this Court has not been able to find any appellate authority defining or discussing when an officer’s physical or mental disability affects that officer’s ability to continue in service as contemplated by either the PTA or the Civil Service Act.

Similarly, the HLA is also intended to afford employment related protection to police officers. The purpose of the HLA is to insure that police officers who are disabled in the course of their duties are guaranteed their full income until their return to duty is possible. *Cunningham v. Pa. State Police*, 507 A.2d 40, 43 (Pa. 1986) (citations omitted). The language of the HLA is to be strictly construed. *Colyer v. Pa. State Police*, 644 A.2d 230, 233 (Pa. Cmwlth. 1994). Once an officer is in a heart and lung status, continued receipt of those benefits under the HLA is a constitutionally protected right. *See Lapotigvy v. Swatara Twp.*, 575 A.2d 675, 677 (Pa. Cmwlth. 1990); *Callahan v. Pa. State Police*, 431 A.2d 946 (Pa. 1981). Before a municipality may terminate HLA benefits, it must provide the officer with notice of the intended action, and an opportunity for a full due process hearing. *Lapotigvy*, 575 A.2d at 675; *Callahan*, 431 A.2d at 946. HLA benefits can be terminated only when (1) claimant is able to return to work because his disability ceases; or (2) claimant’s disability is determined to be permanent as opposed to only temporary. *Gwinn v. Pa. State Police*, 668 A.2d 611, 613 (Pa. Cmwlth. 1995) (internal citations omitted); *Williams v. Dept. of Corrs.*, 642 A.2d 608, 611 (Pa. Cmwlth. 1994). An officer is temporarily disabled, not permanently disabled, and therefore entitled to HLA benefits even though he cannot perform the full range of duties required of a trooper assigned to a field position, but he can perform essential

duties of a position held by and regularly assigned to troopers. *Durante v. Pa. State Police*, 809 A.2d 369, 373 (Pa. Super. 2002). But, where a disability of a township police officer is of indefinite duration and recovery is not projected in the foreseeable future, disability cannot be deemed temporary within the meaning of the HLA. *Gilotty v. Twp. of Moon*, 846 A.2d 195, 200 (Pa. Cmwlth.), *appeal denied*, 863 A.2d 1150 (Pa. 2004). The Township bears the burden of proving that the officer is no longer entitled to HLA benefits. *See Brant v. Pa. State Police*, 632 A.2d 986, 988 (Pa. Cmwlth. 1993).

The employer must prove by substantial evidence a “reasonable inference” that the disability is of lasting or indefinite duration. *Cunningham*, 507 A.2d at 45. A reasonable inference is not one based upon speculation or conjecture but rather is a logical consequence deducted from other proven facts. Although this inference must be reasoned from evidence presented, it need not be the only logical conclusion which a jury could reach. *Id.*

Importantly, the PTA and the HLA should be read and interpreted consistently with each other. The rules of statutory construction dictate that when two (2) different statutes relate to the same thing or the same class of people the Court should read the statutes “in pari materia” construing them together, if possible. *Fetty v. Com., Dept. of Transp., Bureau of Driver Licensing*, 784 A.2d 236, 241 (Pa. Cmwlth. 2001). Statutes are to be construed in harmony with the existing law and as a part of a general and uniform system of jurisprudence. *See In re: Peplinski’s Estate*, 39 A.2d 271, 274 (Pa. Super. 1944). Further, even if it is argued that the HLA and the PTA are in irreconcilable conflict, then effect should be given to both statutes if possible. *White v. Conestoga Title Ins. Co.*, 982 A.2d 997, 1005 (Pa. Super. 2009). When two (2) statutes deal with the same things, a particular provision in one will control when the other statute is silent as to that matter. *Borough of Millersville v. Lancaster Twp.*, 279 A.2d 349, 351 (Pa. Cmwlth. 1971), *aff’d and rem’d*, 290 A.2d 102 (Pa. 1972). Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail.

**1 Pa. C.S.A. § 1933.**

Both the PTA and HLA deal, in part, with disabled municipal police officers. Both also concern the duration or nature of that disability, and the rights and duties of a Township in dealing with a disabled officer. Both statutes are intended to protect municipal police officers from arbitrary municipal action. Reading both statutes in *pari materia* with an eye toward a consistent interpretation, it is apparent that both statutes anticipate an officer's return to work. The HLA requires payment of benefits during a temporary disability and the PTA does not allow for the removal of an officer unless the disability is one affecting his ability to continue in service (which necessarily implies a disability greater than one of temporary duration). While it is true that the PTA does not further define "disability" as being permanent or temporary, it also does not require that the officer must be able to return to the precise duties he was performing prior to the advent of his disability. Here the statutes are not in conflict. Accordingly, the statutes must be read together.

Reading the two acts in conjunction with each other it is apparent that the PTA must be interpreted to require an officer's inability to return to service be permanent before he might be honorably discharged. Under the HLA, benefits are to be paid for the duration of a temporary disability. If that disability becomes permanent the officer's right to HLA benefits ceases and he would be entitled only to worker's compensation benefits. If an officer's disability is temporary in nature, that presumes that he has the ability to "continue in service" at some point in the future. Likewise, if the officer's disability is permanent that would affect his ability to continue in service in a negative way. In essence until such time as an officer's disability is permanent the disability does not affect the officer's ability to eventually continue in service. Such an interpretation of the PTA requiring a municipality to prove that the officer's injury is permanent is consistent with the HLA, the purpose of which is to ensure that injured officers are fully compensated during the duration of the work-related disabilities.

According to the Township, because the PTA does not define the degree of disability as being partial or total, permanent or temporary, then the Township can honorably discharge the officer for any disability that affects his return to service in any way, even for partial or temporary disability. Such an interpretation would frustrate the

intent of the PTA, as it would allow the Township to honorably discharge an officer who receives a relatively minor injury affecting his ability to return to service for even the briefest period of time. For example, under the Township's argument when taken to the extreme, if an officer cuts his hand in an altercation and cannot finish his shift, he could be honorably discharged. Or, if an officer gets a concussion and is off work for one (1) or two (2) weeks, he could be honorably discharged as a result. Likewise, an officer who suffers a routine broken arm which would affect his ability to continue in service for perhaps six (6) weeks could likewise be honorably discharged. These are exactly the types of situations that the PTA, which is intended to protect officers in their employment against arbitrary dismissal, seeks to avoid.

Given the dangerous and serious nature of the work performed by police officers in carrying out their duty to protect the public from criminals with often unruly and violent intentions, it is possible and indeed likely that police officers could find themselves in situations that cause them injury. Adopting the Township's argument would frustrate not only the purpose of the PTA, but would subvert the application of the HLA and allow the Township to avoid its statutory and contractual duties under the HLA.

In contrast to the PTA's broad and general reference to "physical or mental disability affecting an officer's ability to continue in service," the HLA specifically applies to temporary disabilities. The HLA requires a municipality to pay benefits to a temporarily disabled police officer and then if the disability is later determined to be permanent the officer would be entitled to worker's compensation benefits.

While it is true, as the Township argues, that the legislature in enacting a PTA did not make any specific provision that the disability must be permanent, if the Court was to adopt the Township's interpretation that it may remove an officer regardless of the duration of the disability, as long as that disability affects, in any way, the officer's ability to continue in service, it would give a municipality the authority to avoid its contractual and statutory obligations to provide benefits to a temporarily disabled police officer. Thus, to adopt the Township's interpretation of the PTA would render the HLA meaningless. Such an interpretation is against the rules of

statutory construction and against sound public policy. It would lead to an absurd result which is directly contrary to the intent and purpose of the PTA and the HLA which is to protect police officers from arbitrary municipal action affecting the officer's employment or disability benefits. It would allow a municipality to honorably discharge an injured experienced veteran officer earning a higher salary to either reduce the police force in tough economic times or to replace a veteran with a younger (and cheaper) alternative whenever an officer is rendered disabled for any amount of time.

Instantly, the factual findings made by the arbitrator show that Officer Aldridge's return to duty is possible, particularly within eighteen (18) months to two (2) years from the date of the accident. That means, until April of 2011 it is too early to determine whether Officer Aldridge's disability is permanent. The IME report of Dr. Rutter dated August 31, 2009 is limited to Dr. Rutter's opinion at that particular point in time. Dr. Rutter also indicates that he did not feel that, *at that time*, Officer Aldridge had reached maximum medical improvement. He anticipated maximum medical improvement to be April of 2010. However, in November of 2009 Township took action to honorably discharge Officer Aldridge from employment based on that August 31, 2009 report.

Subsequent reports, which were presented to the arbitrator, suggest Officer Aldridge may continue to experience reinnervation for up to two (2) years after the date of injury (which is April of 2011). None of the medical reports classify Officer Aldridge's injury as permanent. None suggest that he will not be able to return to service in the foreseeable future, and honorable discharge under the PTA is improper. The Township did not meet its burden of proving permanent injury necessary to terminate HLA benefits. Accordingly, an honorable discharge which has the effect of terminating those benefits is improper. The reports cited by the arbitrator support the arbitrator's determination that it was premature for the Township to suggest that Officer Aldridge's injury was permanent.<sup>1</sup> In fact, the record shows that Officer Aldridge was able to continue in service

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<sup>1</sup> Although by the date of writing of this Opinion which is almost two (2) years post injury further medical testing may suggest that his injury has reached the point of permanency. However, that information is not presently before the Court for consideration.

and did continue in service in modified duty. The record is silent as to what that duty was and why it was no longer made available to Officer Aldridge by the Township. The arbitrator did not exceed the scope of his powers in finding that the Township failed to prove Officer Aldridge's disability is permanent or that he cannot continue in service in the foreseeable future.

### CONCLUSION

The Association had available to it two avenues of proceeding, the first being a demand for a hearing before the appointing authority pursuant to the provisions of the PTA, and the second being a grievance arbitration pursuant to Article 43 of the Collective Bargaining Agreement. The Association elected to pursue an available remedy per the Collective Bargaining Agreement. Accordingly, the arbitrator had jurisdiction to decide the dispute. Because the information presented at the time of that arbitration hearing did not suggest that the officer had suffered a permanent disability or was not able to continue in service in the foreseeable future, the arbitrator did not exceed the scope of his authority in rescinding the honorable discharge of Officer Aldridge, and directing the Township to continue paying Officer Aldridge HLA benefits to which he is constitutionally entitled, *See Callahan*, 431 A.2d at 946, or return him to work on modified duty, until such time as Officer Aldridge was either fully recovered or his injury was determined to be permanent.

For the reasons stated hereinabove, the Petition to Vacate the Arbitration Award of October 18, 2010 is denied.

### ORDER

AND NOW, this 16th day of February, 2011, it is hereby ORDERED that for the reasons stated in the attached Opinion, the Petition to Vacate the Arbitration Award of October 18, 2010 is denied.



**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN** that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

**FIRST PUBLICATION****ESTATE OF SHARON E. BOYD, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Stacey L. Myers, 30 Bowers Road, Littlestown, PA 17340

**ESTATE OF DONNA E. DUBS, DEC'D**

Late of the Borough of East Berlin, Adams County, Pennsylvania

Administrator: Peter J. Dubs, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

**ESTATE OF EDWARD J. JOHNSON, SR., DEC'D**

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Co-Administrators: Lisa Smith, 31 Fawn Avenue, New Oxford, PA 17350; Jessica Grim, 5510 Hanover Road, Hanover, PA 17331; Dawn Williamson, 989 Two Taverns Road, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF ROMAINE E. LONG a/k/a ROMAINE E. LONG-FIKE, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executrix: Beth Ann Wilson, 35 Squire Circle, McSherrystown, PA 17344

Attorney: Stonesifer & Kelley, P.C., 209 Broadway, Hanover, PA 17331

**ESTATE OF RICHARD T. SECREST, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Gloria L. Secrest, 375 Church Road, Orrtanna, PA 17353

Attorney: John J. Murphy III, Esq., Patrono & Associates, LLC, 28 West Middle Street, Gettysburg, PA 17325

**ESTATE OF SHAWN E. SHULTZ, DEC'D**

Late of Borough of Gettysburg, Adams County, Pennsylvania

Administratrix: Carole A. Shultz, 150 Clapsaddle Road, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF MARGARET M. STARNER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: William M. Starnier, 1907 Esther Drive, Carlisle, PA 17013

**ESTATE OF DENIS J. SULLIVAN, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Heather L. Gucwa, 4 Katherine St., Denville, NJ 07834

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF MARY K. THOMAS a/k/a MARY KING THOMAS a/k/a MARY RUTH THOMAS, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrices: Christine T. Armstrong, 1625 Carrolls Tract Road, Orrtanna, PA 17353; Beverly T. Sontheimer, 197 Woodcrest Drive, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF ELIZABETH J. WEITZEL, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: John Kenyon Weitzel, 974 Fairview Ave., Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

**SECOND PUBLICATION****ESTATE OF GLADYS V. HOBBS, DEC'D**

Late of Liberty Township, Adams County, Pennsylvania

Personal Representative: Andrew C. Keller, 521 Blacks Mountain Road, Waterfall, PA 16689

Attorney: Wertime & Guyer LLP, 35 North Carlisle Street, Suite A, Greencastle, PA 17225

**ESTATE OF ANTHONY MARTINO, DEC'D**

Late of Reading Township, Adams County, Pennsylvania

Executor: Robert Martino, 1955 South Easton Rd., Doylestown, PA 18901

Attorney: Clayton R. Wilcox, Esq., P.O. Box 176, Littlestown, PA 17340

**ESTATE OF HERTHAL C. RAI, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Barbara J. Byers, c/o David F. Spang, Esq., Walker, Connor and Spang, LLC, 247 Lincoln Way East, Chambersburg, PA 17201

Attorney: David F. Spang, Esq., Walker, Connor and Spang, LLC, 247 Lincoln Way East, Chambersburg, PA 17201

**THIRD PUBLICATION****ESTATE OF MARY IDA BROWN, DEC'D**

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executor: Michal E. Brown, c/o Craig A. Hatch, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043

Attorney: Craig A. Hatch, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043

**ESTATE OF LAWRENCE D. FOLKEMER, SR., DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: Lawrence D. Folkemer, Jr., 1399 Dodgeton Drive, Frisco, TX 75034

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

**ESTATE OF FABIAN GENAHL, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Monica Andacht, 1215 S.E. 27th St., Cape Coral, FL 33904

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

**ESTATE OF EDITH K. SHAFFER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Richard M. Shaffer, Jr., 230 Hirschmann Road, Biglerville, PA 17307; Carolyn N. Black, 54 Apple Lane, Biglerville, PA 17307; Gayle K. Ingle, 16 Sedgwick Drive, East Berlin, PA 17316

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore St., Gettysburg, PA 17325

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**THIRD PUBLICATION (CONTINUED)**

ESTATE OF JANE T. STAUB, DEC'D

Late of Oxford Township, Adams  
County, Pennsylvania

Executrix: Sue M. Bream, c/o Keith  
R. Nonemaker, Esq., Guthrie,  
Nonemaker, Yingst & Hart, LLP, 40  
York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq.,  
Guthrie, Nonemaker, Yingst & Hart,  
LLP, 40 York Street, Hanover, PA  
17331