NEW YORK CITY OFFICE OF COLLECTIVE BARGAINING

In the Matter of the Arbitration	)
between	)
UNIFORMED PROBATION OFFICERS ASSOCIATION,	)
Union,	)
and	)
THE CITY OF NEW YORK, and NEW YORK CITY DEPARTMENT OF PROBATION	)
Employer.	)
OCB Docket No. A-16146-25	)

OPINION AND AWARD

Pursuant to the terms of the collective bargaining agreement, the undersigned Arbitrator was selected in accordance with the rules of the New York City Office of Collective Bargaining to hear and decide the instant dispute. A hearing was held via the Zoom virtual platform on October 28, 2025. Post-hearing briefs were received on December 8, 2025, at which time the record was deemed closed. The Union was represented by Daniel Doeschner, Esq., of Greenburg, Burzichelli & Greenburg, P.C., and the Employer was represented by RosAnn Piccolo, Esq., Executive Agency Counsel, of the Office of Labor Relations

Each party had full opportunity to present witnesses, to examine and cross-examine the witnesses and to present exhibits and arguments to the Arbitrator. Based on the evidence presented and arguments made, the Arbitrator renders this Opinion and Award.

ISSUE

At the outset of the hearing, the parties submitted their respective statements of the issue.

The Union proposed:

> Did the City and the DOP violate the 2020-2026 Memorandum of Agreement with the UPOA when they (1) failed to place employees on a new Step Pay Plan on November 28, 2024, and (2) failed to pay the general wage increases as set forth in the MOA as soon as practicable after ratification?
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> If so, what shall be the remedy?

The City proposed:

> Whether the City of New York and the New York City Department of Probation violated the 2020-2026 Memorandum of Agreement ("MOA") between the UPOA and the City of New York when it did not place employees in the new Step Pay Plan and pay general wage increases by November 28, 2024. If so, what shall be the remedy?

The parties agreed to allow the arbitrator to frame the statement of the issue. I note that the issue as set forth by the City comports with the statement of the grievance to be arbitrated as set forth by the Union in the Request for Arbitration. However, based upon the parties' proposals and the evidence and argument submitted at the hearing, as well as the language contained in the collective bargaining agreement, I determine the issues to be those proposed by the Union:

> Did the City and the DOP violate the 2020-2026 Memorandum of Agreement with the UPOA when they (1) failed to place employees on a new Step Pay Plan on November 28, 2024, and (2) failed to pay the general wage increases as set forth in the MOA as soon as practicable after ratification?
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> If so, what shall be the remedy?

BACKGROUND

On or about January 9, 2025, the Union filed a Step III grievance in which it claimed that the City violated of the collective bargaining agreement by failing to pay bargaining unit members their correct pay under the terms of the 202-2026 Memorandum of Agreement. Specifically, the Union claimed that on or about December 20, 2024, the City issued paychecks for the pay period 12/01/24 to 12/14/24 which reflected the removal of the several pay additions under the MOA, but did not reflect the placement of employees on the new Step Pay Plan, and did not include the general wage increase provided in the MOA. As a remedy the Union sought payment of statutory interest of 9% per annum on the difference between the wages that employees should have received as of November 28, 2024, and what they actually received, running from November 28, 2024, through the date the City and DOP correctly paid employees in accordance with the Pay Step Plan; and payment of interest of 3% per annum on the sum of general wage increases predating August 15, 2024 (i.e. the increases for 2021, 2022, 2023), commencing on December 13, 2024 and running through date of actual payment of those wage increases as set forth in Article IX, Section 10(a) of the Citywide Agreement.

Thereafter, the Union filed a Request for Arbitration on or about March 19, 2025. (Joint Exhibit 3)

RELEVANT CONTRACT PROVISIONS

2020-2026 Memorandum of Agreement
United Probation Officers Association ("UPOA") and the City if New York ("City")

2. a. General Wage Increases

	Effective Date	General Wage Increase
i.	May 28, 2021	3.00%
ii.	April 2, 2022	3.00% compounded
iii.	November 28, 2022	3.00% compounded
iv.	November 28, 2023	3.00% compounded
v.	November 28, 2024	3.24% compounded

4. Conditions of Payment

ii. The general wage increases pursuant to 2a. (i), (ii), (iii) and (iv) of this MOA shall be payable as soon as practicable upon the ratification of the 2020-2026 MOA.

5. Step Pay Plan

Effective November 28, 2024, the parties agree that the existing new hire, incumbent minimum and maximum salary ranges for Probation Officers and Supervising Probation Officers shall be eliminated and replaced with the below step pay plans...

7. Salary Increments

Effective November 28, 2024, the salary increments contained in Article III Section 7(a), (b) and (c) of the parties existing collective bargaining agreement shall be eliminated. The parties acknowledge that the funding from the elimination was used to create the 11-year Step Pay plans set forth in Section 5.

8. Service Increment

Effective November 28, 2024, the service increments contained in Article III Section 7(d) of the parties existing collective bargaining agreement shall be eliminated. The parties acknowledge that the funding from the elimination was used to create the 11-year Step Pay plans set forth in Section 5.

9. Longevity Increment

Effective November 28, 2024, the longevity increment contained in Article III Section 7(e) of the parties existing collective bargaining agreement shall be eliminated. The parties acknowledge that the funding from the elimination was used to create the 11-year Step Pay plans set forth in Section 5.

10. Longevity Differential

Effective November 28, 2024, the longevity differential contained in Article III Section 7(f) of the parties existing collective bargaining agreement shall be eliminated. The parties acknowledge that the funding from the elimination was used to create the 11-year Step Pay plans set forth in Section 5.

11. Gainsharing Agreement

Effective November 28, 2024, the gain sharing agreement and payment contained in a side-letter to the parties existing collective bargaining agreement shall be eliminated. The parties acknowledge that the funding from the elimination was used to create the 11-year Step Pay plans set forth in Section 5.

12. Advancement Increases

Effective November 28, 2024, as a result of the creation of the 11-year Step Pay Plan in section 5 above, the Advancement Increase language in Article III section 6 of the parties collective bargaining agreement shall be eliminated.

13. Annual Leave

Effective November 28, 2024, the parties agree that the annual leave accrual schedule for all employees shall be reduced by two (2) days.

14. Retiree Welfare Fund

Effective November 28, 2024, the parties agree that the annual retiree welfare fund contribution of $1,698 per annum shall be reduced by $60 per year, for a new annual contribution of $1,638 per annum.

15. Annuity

Effective November 28, 2024, the parties agree that newly hired employees shall not receive an annuity payment for the first five (5) years of service.
Joint Exhibit 2c

The 2002-2021 Citywide Agreement

ARTICLE IX

Section 10 a. Interest on wage increases shall accrue at the rate of three percent (3%) per annum from one hundred-twenty (120) days after execution of the applicable agreement or one hundred-twenty (120) days after the effective date of the increase, which ever is later, to the date of actual payment.
c. Interest accrued under subsections 10(a) or 10(b) shall be payable only if the amount of interest due to an individual employee exceeds five dollars ($5.00).
Joint Exhibit 1.

FACTS

This grievance concerns whether the City violated the 2020-2026 Memorandum of Agreement by failing to implement the general wage increases and a new Step Pay Plan in a timely manner. The Union called UPOA President Dalvanie Powell who has worked for the Department of Probation since 1987, and holds the title of Supervisor. She has been the President of the Union since 2016, holding a variety of positions with the Union prior to assuming that role. Among her duties as president of the union is collective bargaining negotiations and contract enforcement.

She testified that during the 2020-2026 round of bargaining, the Union sought to institute a step pay plan in order to address salary issues. At the time, the titles covered by the collective bargaining agreement had a minimum and maximum range, but the Union found that the employees never neared the maximum of the range. Employees also received "additions to gross" ("ATGs"). These were various sums of money paid in the form of service increments, longevity increases, advancement increases and gainsharing. Despite these additions, employees still did not reach the maximum salary rate.

Ultimately, the parties came to an agreement by which the ATGs would be rolled into the salary to create a step pay plan. Pursuant to the terms of the parties Memorandum of Agreement, the new plan would take effect November 28, 2024. The Union believed that members would see in the increase in their pay in the next check following November 28, 2024. When the employees were issued the paycheck for the period covering December 1 through December 14, they found that the addition to gross payments were taken out, but the increase was not instituted. The same occurred in the following paycheck. Union Exhibits1, c and d. Salaries increased in the paycheck for the period December 29 through January 17. Wages and retroactive pay was included in this check. Notably, when the amounts of retroactive pay for 2021, 2022 and 2023 were analyzed, Ms. Powell realized that several months of retroactive pay were missing. Union Exhibit 2. Ultimately, she received the missing payments on February 14, 2025. Joint Exhibit 9.

Ms. Powell noted that even as of the date of the hearing, problems with the adjustment of some members' salary are still being fixed. She stated that the Probation Officers classes which graduated in April and September, 2024 just recently received the retroactive payment to which they are entitled.

Ms. Powell also testified as to the efforts she made with the City to get her members paid. She met with the Office of Labor Relations and the Office of Payroll Administration. After several meeting, the parties put together a communication to the members outlining when they would be paid. This communication, attached to a January 13, 2025 e-mail from Matthew Quigley of OLR to Ms. Powell stated:

Per the terms of the 2020-2026 UPOA Memorandum of Agreement that was signed on August 15, 2024, additions to gross ("ATG""), which include longevity differentials, service increments, etc., were ceased on November 28, 2024, in order to fund the Step Pay Plan. Unfortunately, we were not able to slot employees in to the Step Pay Plan at the same time the ATGs were ceased, therefore, only your base salary has been included on the last two paychecks. We regret that this had resulted in employees seeing a decrease in their paychecks, especially during the holiday season.

Below is a schedule of coming paychecks and what they will include.

- January 17, 2025- Each employee will receive their base salary plus the contractual general wage increases (3%, 3%, 3%, 3%, and 3.25%) agreed to in the 2020-2026 UPOA Memorandum of Agreement as well as corresponding retroactive payment.
- January 31, 2025- Employees will receive their base salary including the contractual general wage increases. Additionally, approximately 174 employees will receive a small retro payment taking into account a pro-rated amount of the gainsharing increment.
- On February 14, 2025- Each employee will be slotted into their appropriate step of the new Step Pay Plan. Employees who would earn above the applicable step based on the general wage increases and the ATGs they had been earning prior to their expiration will earn that total amount pursuant to section 5(e) of the memorandum of agreement. This payment will be retroactive to November 28, 2024, the effective date of the Step Pay Plan.
- February 28, 2025 – Each employee will receive their appropriate salary going forward… Joint Exhibit 6B.

Ms. Powell also pointed out that a September, 2024 e-mail she received from Matthew Campese did not indicate that there would be any issues regarding implementation of the agreement.

On cross examination, Ms. Powell admitted that it was explained to her that the general wage increases would be implemented in January. On December 2, 2024, she sent an e-mail to the agency, with a copy to other representatives from the agency and the Office of Labor Relations which read as follows:

> Good morning,
> We are following up to ensure the collective bargaining monies due to our members will be paid on schedule as follows:
>
> The uniform monies along with the one time $500 uniform money should be paid the second check in December. I believe the additional $50 will be prorated to 11/28/24.
>
> The January (1/17/2025) paydate will include retro and the rate increases which will include the first 4 three percent gwi increases. After that, employees will need to be manually slotted into the new Step Pay plan. Then the last 3.25% is currently scheduled to be paid on 2/14/25, which will include retro back to 11/28/24.
> Thank you.
> City Exhibit 1.

Irrespective of this e-mail, Ms. Powell testified that when the agreement was ratified in August, the Union had anticipated receiving payment on November 28. She also noted that staff from OPA and OLR participated in a citywide zoom meeting to explain why payments were not made.

Ms. Powell averred that she received e-mails and phone calls from her members, and upon analyzing paystubs, realized that there was money missing from members checks. This caused a particular hardship during the holiday season. She noted that her members' salaries are low and some live paycheck to paycheck. Members could not pay their bills.

Two UPOA members testified as to the effect not receiving their increase in a timely manner had on them. Roxanne Pabon, a Supervising Probation Officer who has worked for the Department since 2014 testified that her service increment was removed, and even though employees were supposed to receive an increase, they did not. Consequently, the amount of pay she brought home was lower and this made paying bills more difficult. She noted that she was late for rent on three occasions- the problems lasting through January, February and March. She stated that she received a penalty for late payment of rent. Her pay was ultimately corrected in April, 2025, noting that she made a request for a payroll audit, based on the suspicion she was not receiving the correct amount, on February 20, 2025. The audit corrected the payroll issue.

Karen Childs began her employment with the Department in 2001. She holds the title of Supervising Probation Officer. She testified, and demonstrated through her pay stubs, that ATGs which she had been receiving were omitted from her pay in the check covering December 1 through December 14, 2025. The following pay period, her pay remained the same. Her pay was increased with a retroactive payment in the check covering the pay period December 29, 2025 through January 17, 2025. She testified that the loss of the ATG in December and January decreased her salary. She had medical expenses and bills that had to be paid, and consequently dipped into her savings to pay her daughter's tuition and rent, as well as her mortgage. She would not have had to draw down savings if the payment had been made in a timely fashion. The lack of funds interfered with her holiday plans and gift giving.

The City's Case

Daniel Pollak has worked for the New York City Office of Labor Relations since 2012 and has been the agency's First Deputy Commissioner since January, 2022. His duties include oversite of the agency's operations, and participating in negotiations with the City's unions both directly and by overseeing other negotiators. He also works with City agencies concerning issues related to unions and collective bargaining.

He averred that the most recent round of bargaining between the City and UPOA was handled by Matthew Campese, who retired in 2024. It was at that point that Mr. Pollak became involved. He noted that the 2020-2026 Memorandum of Agreement between the UPOA and the City was executed on August 15, 2024 and ratified by the UPOA membership on August 28, 2024. Generally after ratification, OLR staff will send pay authorizations to FISA/OPA[1]. OLR works with FISA/OPA to get pay dates for the unions at issue. OLR will work out how to implement payments if the agreement is more complicated. A pay date will be determined, and OLR will communicate with the agency in order to get the payments implemented. Generally, this process takes between sixty and ninety days after ratification, but it can take longer.

Occasions will arise when implementation takes more than one hundred and twenty days. Challenges to implementation may arise in various circumstances. For example, if the agency has many pay increases to process, the union which has settled later may experience some delay. If the increase is complex, requiring manual work looking at individual employees, that circumstance will result in delay. He noted that, from the City's perspective, "as soon as practicable" means that the City will try its best to implement payment as soon as it can, but there is no set date. "Effective" means the date of the change in the payroll system. An "effective" date may be in the past, for which an employee would receive retroactive payment.

The Memorandum of Agreement with the UPOA called for five wage increases, consistent with the pattern, having various effective dates. He noted that the general wage increases were to be paid as soon as practicable after ratification. In this case, the increases were paid in mid to late January. Mr. Pollak testified that anyone who departed the agency prior to November 28, 2024 would not receive retroactive payments, so the agency could not begin implementation until the universe to whom the rate and retro would be paid was settled. Mr. Pollak testified that the City met all three deadlines for payment that were outlined in Joint Exhibit 6B (the attachment to Mr. Quigley's January 13, 2025 e-mail). He admitted on cross examination that there may have been some mistakes, but the deadlines were largely met. He would not be surprised if there were still outstanding issues, but they have not been brought to his attention. He became aware in September that the general wage increase would not be paid until January.

Mr. Pollak further testified that the parties did not want anyone adversely affected by the new contract. Consequently, if an employee's salary, accounting for the salary and ATGs was greater than what they would receive under the Step Pay Plan, the higher salary remained. For most people the ATGs were eliminated and rolled into the Step Pay Plan. In December, the City ceased paying the ATGs, but unfortunately was unable to implement the Step Pay Plan, and employees saw a reduction of their pay. UPOA members were placed in their appropriate step on February 14, 2025.

Mr. Pollak stated that the City worked very hard to get the contract implemented. It had to look at over seven hundred probation officers to determine the appropriate payment. The City never wants to see people lose money – especially during the holidays.

POSITIONS OF THE PARTIES

The Union argues that there is no dispute that the City and the DOP failed to implement the new Step Pay Plan on November 28, 2024, as required by the MOA. It notes that while the City effectuated the elimination of the ATGs and Gainsharing as of November 28, it failed to implement the Plan, which constitutes a material breach of the terms of the parties' agreement. Irrespective of the retroactive

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[1] The Financial Information Services Agency and the Office of Payroll Administration.

payment made to employees in February, 2025, UPOA-represented employees were still damaged by the two month delay in receiving their pay. Employees lost their ATGs and had to suffer reduced regular pay right before the holidays. The Union points to the testimony of President Powell who stated that she had members who struggled to pay their bills during this time, as well as the other Union witnesses who incurred late fees or who could not celebrate the holidays as they intended.

The Union maintains that the City has no excuse for its failure to perform under the MOA. It was able to effectuate the removal of ATGs and Gainsharing payments by November 28, 2024, as well as the removal of two annual leave days. However, nobody alerted the UPOA that there would be an issue effectuating the Step Pay Plan by November 28th. As a result, the City was unjustly enriched by the two months it held onto money that should have been paid.

The Union further asserts that the undue delay in implementing the Step Pay Plan warrants an award of nine percent statutory interest on the underpayment of wages. Referencing the oft-cited decision of the Supreme Court in the *Enterprise Wheel* case, the Union reminds us that arbitrators have flexibility in crafting awards so that they may remediate a wide variety of situations, "so long as it draws its essence from the collective bargaining agreement." Elkouri notes that if a collective bargaining agreement lacks language limiting the scope of a remedy, then an arbitrator has broad discretion to fashion an appropriate remedy, including adequate monetary relief, even if not specifically authorized in the agreement. The Union contends that an arbitrator may award a make whole remedy in the form of a monetary award which includes compensatory monetary damages and interest to compensate for the lost use of funds withheld by the employer. *Civil Service Bar Ass'n v. New York City*, Case No. A-11134-05, 10 (La Rue, OCB 2010). While interest awards do not require a finding of bad faith or wrongdoing as they are not meant to be punitive, bad faith, egregious conduct or undue delay by the employer are elements which have been considered to justify an award of interest. *Ba-Cee Division, Local Union No. 3 v. N.Y.C. Department of Environmental Protection*, Case No. A-12095-06, 9-10 (Biren, OCB 2008). UPOA-represented employees lost at least eight weeks of their wages' time value when the City failed to place them on the new Step Pay Plan as of November 28, 2024. Further, in the estimation of the Union, elements of bad faith, egregious conduct, or undue delay are present in the instant case. The City spent at least two months manually slotting employees into the Step Pay Plan after the December 20th debacle (when the Union expected, but did not see, the new pay rates appear in members' paychecks). Yet they had all the information required to slot those employees as of August 15, 2024 – the date they executed the MOA. It appears to the Union that the City took no action to implement the Plan until after its effective date, nor did FISA-OPA alert the Union about the delay. The Union submits that this constitutes both egregious conduct and undue delay and consequently warrants an award of interest at 9% statutory interest per annum (see CPLR § 5004) on the underpayment of affected employees' wages for 73 days (running from November 28, 2024, the effective date of the Step Pay Plan, to February 8, 2025, the last day in the pay period paid on February 14, 2025).

The Union also argues that the City must pay three percent interest on the retroactive general wage increases in accordance with the Citywide Agreement. It takes exception to the City's argument that because the four retroactive general wage increases were paid "as soon as practicable" upon ratification of the Agreement, the increases were timely paid. According to the City, it was impractical to pay the increases earlier because it had to determine which employees separated from service prior to November 28, 2024. The City had all the information it needed to calculate the general wages increases prior to that date, but it took the City more than three full pay periods (December 1-14, 2024, December 15-28, 2024, and December 29, 2024 – January 11, 2025) to finally pay the increases on January 17, 2025. That – according to the Union - is not "as soon as practicable."

Irrespective as to whether the City paid the retroactive general wage increases as soon as practicable or not, it must still pay interest on it pursuant to the Citywide Agreement. The UPOA's CBA is subject to the Citywide Agreement which, in Article IX, Section 10.a mandates that interest at the rate of 3% per annum accrue on wage increases "one hundred-twenty (120) days after execution of the applicable agreement or one hundred-twenty (120) days after the effective date of the increase, whichever is later, to the date of actual payment." The parties executed the MOA on August 15, 2024, but Respondents did not pay the four retroactive general wage increases until January 17, 2025 – 155 days after execution. Therefore, employees entitled to those general wage increases are also entitled to at least 35 days' worth of interest at 3% per annum on them as well. The Union rejects the City's anticipated argument that this provision of the Citywide is not applicable because the increases were paid as soon as practicable upon ratification as set forth in the parties' MOA. The Union maintains that this reading ignores long-standing rules of contract interpretation. Citing Arbitrator Viani in *Uniformed Fire Officers Association v City of New York,* Case No. A-11658-06, it notes that "one of the most basic rules of contract interpretation is that the various provisions of the contract must be construed in a manner which gives effect to all of them." This viewpoint was endorsed by Arbitrator Gandel when she wrote: "[W]hen interpreting contract language, an arbitrator cannot read one sentence or one paragraph in a vacuum. The entire contract must be read as a whole to reflect the intent of the parties." *Local 420, DC 37 AFSCME v. City of New York,* Case No. A-8963-01. The Union also cites Elkouri, which notes that it is axiomatic in contract construction that an interpretation that tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect. The MOA does not specifically exclude Article IX, Section 10.a of the Citywide Agreement from its terms, but specifically provides that the terms of the predecessor separate unit agreement shall be continued except as modified pursuant to the 2020-26 MOA. Those terms include the Citywide Agreement.

The Union also submits that its interpretation makes sense, noting that permitting the City to pay the general wage increases as soon as practicable without any end date opens the possibility of continuous delay of the payments. Article IX, Section 10.a of the Citywide Agreement balances the City's need for time to effectuate payments with employees' interest in receiving those payments. The three percent interest provides motivation for the City to pay wage increases within 120 days and provides consideration to employees who must wait longer than that to receive their wages. The City should not be permitted to read this fair balance out of the MOA. As the MOA continued the terms of the UPOA's CBA, including Citywide Agreement Article IX, Section 10.a. bargaining unit members are entitled to 3%

interest starting 120 days after the Agreement's execution and ending upon payment – i.e., from December 13, 2024, to at least January 17, 2025 (a minimum of 35 days).

The City argues that under the clear and unambiguous language of the parties' agreement the general wage increases were paid as soon as practicable and the implementation of the new Step Pay Plan was timely and retroactive to the "effective" November 28, 2024 date, in full compliance with the parties' agreement. When contractual language is clear and unambiguous, as it is in the parties' 2020-2026 MOA, it must be given full effect. The City highlights that arbitrators have repeatedly held that contract language, when clear and unambiguous, must be given its unequivocal application and not be modified by the arbitrator, citing Arbitrator Feldman's decision in *Peabody Coal Co. v. United Mine Workers of America, Local 1148*, 99 Lab. Arb. Rep. (BNA) 390 (1992) and Arbitrator Gavin's decision in *DC 37, Local 436 and Department of Health & Mental Hygiene*, OCB No. A-9570-02, (2005) in which she found that "a fundamental principle in contract interpretation is contract language that is clear and unequivocal shall be given effect." Finally, the City also turns to Elkouri which states that there is no need for interpretation of a contract's language unless the agreement is ambiguous. The City cites another decision of Arbitrator Gavin, *District Council 37, Locals 2507 & 3621 v. Fire Department of the City of New York*, OCB Case No. A-12054-06 (2007), which involved the application of a contractual pay procedure set forth in the parties' collective bargaining agreement, Arbitrator Gavin wrote that an arbitrator has no authority to superimpose his/her interpretation of a provision over language needing no further clarification.

The City also references the well-established precept, in this case contained in the parties' collective bargaining agreement, that an arbitrator has no authority to add to, subtract from or modify the Agreement. That same analysis for clear contract language should be applied here. The 2020-2026 MOA is clear and unequivocal; specifically, it states in no uncertain terms that the general wage increases "shall be payable as soon as practicable upon the ratification" and that effective November 28, 2024, new Step Pay Plans would replace the minimum and maximum salary ranges for bargaining unit members. The

MOA includes no language that the general wage increases and/or the new Step Pay Plan are to be implemented on November 28, 2024.

The City cites First Deputy Commissioner Pollak's undisputed testimony that, based on his collective bargaining and contract drafting experience, "as soon as practicable", as written in the MOA, typically means "as soon as we can" or "as soon as possible, but with no set time limit." Pollak also explained how, as it pertains to economic contract terms, "effective" by a particular date, as written in the MOA, generally means "as of" that date or the date that a contract term will essentially take effect in an employee's paycheck – which can mean it will be applied retroactively to that specified date in the City payroll system.

The City also asserts that the record reflects that the implementation of the general wage increases was done as soon as practicable because the City had to wait until November 28, 2024 before it could determine who would be eligible under the MOA. Thus, any argument that the City could have implemented the agreement earlier is ignoring the facts.

The City submits that the Union's argument that the MOA required the City to place UPOA members into the new Step Pay Plan on November 28, 2024, and to pay the general wage increases by that date, is disingenuous and improper. The MOA includes no language setting forth this requirement and nothing on the record supports that claim. However, the record does prove that the general wage increases were paid as soon as practicable by the City and that when UPOA members were slotted into their respective steps the effective date was November 28, 2024. Because the slotting-in process was a labor intensive, manual one in order to determine which employees would be "grandfathered" based on the salary they would have earned with all the increases, there was no feasible way to actually slot them in on November 28, 2024. Thus, the Union's argument that the City was required to pay general wages increases and place UPOA members in the new Step Pay Plan on November 28, 2024, is of no moment as it would serve to add a provision to the agreement.

The City concedes that there is very little factual dispute in this matter. It does not deny that it implemented the agreed upon general wage increases in January 2025, nor is it denying that it implemented the new Step Pay Plan in February 2025, retroactive to the effective date of November 28, 2024. Therefore, the issue here is narrow - whether the City violated the MOA by not paying the general wage increases and implementing the new Step Pay Plan on November 28, 2024.

In the City's view, the record demonstrates that the City complied with the plain and relevant language of the 2020-2026 MOA. It implemented the agreed upon general wage increases in January 2025, specifically by UPOA members' January 17, 2025 paychecks. This implementation was "as soon as practicable" given the complexity of the MOA's terms and the fact that the roster for those entitled to the general wage increases could not even be determined until after November 28, 2024. The City highlights that Campese's September 9, 2024, email to Powell and Union counsel indicating that the general wage increases would not be implemented until January 24, 2025 went out less than two weeks after the MOA was ratified on August 28, 2024. Union President Powell confirmed that she was aware of the pay dates for general wage increase upon receipt of that email from Matthew Campese.

The City submits that the record also proves that the City timely implemented the new Step Pay Plan in February 2025, specifically by UPOA members' February 14, 2025 paychecks, which is well within 120 days of November 28, 2024, the earliest date the terms of the MOA could have been effectuated. There is no dispute that UPOA members were placed into the new Step Pay Plan and monies paid pursuant to said plan were reflected in UPOA members' February 14, 2025 paychecks retroactive to the effective November 28, 2024 date. Each Union witness confirmed the fact that they received their correct (prospective) reoccurring regular gross income by their February 14, 2025 paychecks. Moreover, Powell was aware UPOA members would not be placed into the new Step Pay Plan and receive further retroactive general wage increases until February 14, 2025, as evidenced by a December 2, 2024 email sent from Powell to Albert Culler of DOP. From the City's perspective, this email confirms that the Union was fully aware that the implementation timeline outlined by the City was in compliance with the MOA.

Any argument from the Union that City is violating the MOA of potential members who have still not received their retroactive adjustments is purely speculative because the Union failed to provide any evidence that even one member has not received their payments to date.

As to the Union's argument that the City violated the Citywide Agreement by failing to make payments within 120 days, the parties' 2020-2026 MOA supersedes that provision and requires the general wage increases to be paid "as soon as practicable." Nonetheless, even if that language in the Citywide is not found to be superseded by the parties' agreement, the City implemented the new Step Pay Plan and all general wage increases by February 14, 2025, which is well within 120 days of November 28, 2024.

The City also argues that, even if a contractual violation were to be found, the remedy of statutory and contractual interest is wholly improper. The Union's argument that its members are entitled to statutory and contractual interest on the alleged "late" payments is an attempt to achieve a remedy not provided for in the parties' agreement and is essentially punitive in nature. Further, the requested 9% New York State statutory interest is inapplicable in these circumstances and outside the arbitrator's authority.

The City maintains that punitive remedies are wholly inconsistent with arbitration, citing Arbitrator Brown's decision in *SEIU, Local 246 and Department of Transportation*, OCB Case No. A-10490-04 (2005). The City asserts that since punitive awards go against the purpose of arbitration, as recognized by Arbitrator Brown, and are outside the authority of an arbitrator, this request is highly inappropriate. Interest is not generally awarded in this forum and, absent aggravating factors such as dilatory tactics that cause undue and substantial delay or egregious bad-faith conduct on the part of the City and/or employer, interest should not even be considered. In support of this argument, the City cites Arbitrator Biren's decision in *Ba-Cee Division, Local Union No. 3, International Brotherhood of Electrical Workers*, OCB Case No. A-12095-06 (2008) (Arb. Biren), where Arbitrator Biren refused to award interest on backpay to a grievant in the absence of special circumstances on grounds that awarding interest is unusual in the collective bargaining context. The City also cites Arbitrator Imundo's decision in *Buffalo Board of Education*, 134 Lab. Arb. Rep. 69, finding that "unless an agreement specifically requires that interest must be awarded in all monetary awards," the arbitrator only awards interest "when he has determined an employer's actions have been egregious or outrageous or "when an employer has purposely delayed in complying with an award, or simply refused to comply with such and it required court action to get compliance. Here, according to the City, the 2020-2026 MOA does not include language requiring interest be awarded in all monetary awards, and the record supports that the City never engaged in dilatory tactics to cause any undue or substantial delay in effectuating the terms of the MOA.

The City maintains that the Union's claims of undue hardship to its members are questionable, and have no bearing or probative value on the issue before the arbitrator and should not be considered. It is a blatant attempt by the Union to try to garner sympathy where it clearly cannot meet its burden.

In so far as the only remaining remedy would be to award backpay, that remedy is moot as all monies pursuant to the parties' agreement have been implemented as soon as practicable and made effective to November 28, 2024. Therefore, the instant grievance must be denied

DISCUSSION

In this case, as in many contract interpretation cases, the facts are not in dispute. The parties agreed to institute a Step Pay Plan for bargaining unit members, funded by the elimination of certain "Addition to Gross" and gainsharing payments. This appears to have constituted a significant restructuring of the salaries of bargaining unit members.

The Agreement was reached on August 15, 2024, and the Union's members ratified the agreement on August 28, 2024. The agreement included four 3% wage increases which were effective on various dates between May, 2021 and November, 2023, as well as a 3.25% increase which was effective November 28, 2024. The Agreement also made the new Step Pay Plan effective November 28, 2024.

As an initial matter, I recognize that the Union's members had been waiting a number of years for an increase. It is wholly understandable that once an agreement is reached, the Union would not wish to see its members incur any further delay in payment. Ms. Powell's testimony made clear that the Union was cognizant of its members wishes, and was in regular communication with the agencies to get its members paid. To add more salt to the wound, the bargaining unit members saw their ATG payments removed from their paychecks just when they would have hoped to have been slotted into the Step Pay Plan and at perhaps the most inconvenient time possible – the start of the holiday season.

The Union urges a finding that because the agreement stated that the Step Pay Plan became *effective* November 28, 2024, that the City's failure to *implement* the Plan, i.e., slot the bargaining unit members into their correct step and have that new salary paid in the next paycheck following November 28, 2024, constitutes a violation of the Agreement. For the reasons set forth below, I find it does not.

First, the fact that the parties used the word "effective" to state the date when the minimum and maximum ranges would be eliminated and the step plan commence does not equate to a statement as to when the bargaining unit members would be paid. In the context of agreement, the terms "effective" or "effective date" are used a number of times. It designates when the increase becomes operative, and thus establishes the date of the members' entitlement to the increase. "Effective" does not *ipso facto* mean when an increase will be *implemented* – i.e. paid out. The distinctions in meaning are evident from the contract itself – four of the general wage increases had effective dates which well preceded November 28, 2024.

Moreover, the City provided credible testimony as to how the implementation of a plan such as this one can require additional manual work, and thus logically require more time. This was not a situation where an across the board increase could easily be implemented because it was uniform for all members of the bargaining unit. In addition, consideration had to be given to those employees who would not be slotted into the Step Pay Plan because to do so would have caused them to lose money. Further, given the agreement's provision that employees who separated from service other than for retirement prior to November 28, 2024, would not be entitled to retroactive payments, it is understandable, though in hindsight regrettable, that more work was not done in advance of the November date.

I note that the City was able to remove the ATGs from salaries on the effective date. The Union submits this as proof that the Step Pay Plan could have been implemented on that date. While the Union's argument is understandable, I do not find that the City's ability to delete an ATG payment across the board the equivalent of slotting individual employees into the Step Pay Plan.

The bargaining unit members had not been paid at the time the Union filed the Step Three grievance in January, 2025. The Step Pay Plan was implemented in February. While the City views the grievance as now moot as the employees have been paid, the Union seeks a "make whole" remedy of interest at the statutory rate of nine percent for its failure to implement the plan on November 28, 2024. In so far as I do not find that the City violated the collective bargaining agreement by not implementing the Step Pay Plan on November 28, 2024 (or the first paycheck thereafter), no remedy is due.

Next, the question is whether the City violated the agreement by failing to pay the general wage increases "as soon as practicable." The City argues that the language in the Memorandum that increases shall be paid "as soon as practicable" controls, and it has demonstrated that the bargaining unit members were paid as quickly as possible.

The situation as to the four general wage increases which pre-date November 28, 2024 is different than that of the Step Pay Plan. The agreement was executed in August, and there has been no showing as to why the four general wage increases could not have been calculated and paid prior to January 17, 2025. Thus, as to the four general wage increases effective May 28, 2021, April 2, 2022, November 28, 2022 and November 28, 2023, the City violated the MOA by not paying them as soon as practicable. While there was evidence in the record that the Union was aware that the retroactive payments for the general wage increases would be paid in January, there was no showing that its awareness constituted acquiescence, or a waiver of the Union's right to file a grievance.

The question is then what, if any, remedy is necessary insofar as the retroactive monies have been paid. Although no grievance was filed under the Citywide Agreement, the Union cites Article IX, Section 10a of that agreement which provides that interest accrues on general wage increases if they are not paid within one hundred and twenty days from execution of the agreement. In this case, there were four increases which were effective between May, 2021 and November, 2023. Thus the operative date is the execution of the agreement on August 15, 2024.

From my reading of the plain language, the provision in the MOA and the provision in the Citywide are not inconsistent or mutually exclusive, but work in tandem. The City may be under an obligation to pay "as soon as practicable," but in any event, if that time exceeds one hundred and twenty days, interest will accrue. While not finding a violation of the Citywide Agreement (an issue with which I was not charged), but using the language as a guide, I find that the relief requested by the Union – payment of three percent per annum for the period of December 13, 2024 (120 days after the execution of the agreement) through January 17, 2025 to be appropriate. I am mindful that in most instances, labor arbitrators do not find an award of interest appropriate in the context of labor relations. I also note that there is absolutely no evidence of dilatory, bad faith or egregious conduct on the part of the City. However, as evidenced by the plain language of the Citywide Agreement, interest begins to accrue after one hundred and twenty days after execution or effective date. No other reason is required.

Again, using the language of the Citywide agreement as a guide, if the amount of interest for any individual employee would be less than five dollars, no interest is due.

I have considered all of the parties' arguments and authorities, even if not specifically mentioned herein.

Consistent with the foregoing, I find and issue the following

AWARD

The grievance is sustained in part and denied in part.

The City did not violate the collective bargaining agreement by failing to implement the Step Pay Plan for bargaining unit employees on November 28, 2024.

The City violated the collective bargaining agreement when it failed to pay bargaining unit members the general wage increases effective May 28, 2021, April 2, 2022, November 28, 2022 and November 28, 2023 as soon as practicable.

As remedy, the City shall pay bargaining unit members who received the aforementioned general wage increases interest in the amount of 3 percent per annum for the period December 13, 2024 through January 17, 2025. No payment shall be made for amounts less than five dollars.

The arbitrator retains jurisdiction for ninety (90) should any issues arise concerning implementation of this award.

Queens, New York
January 5, 2026

Mary J. O'Connell

Mary J. O'Connell

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

I, Mary J. O'Connell, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

January 5, 2026

Mary J. O'Connell

Mary J. O'Connell