
In the Matter of the Arbitration Between

CITY OF TROY,

Employer,

- and -

**PERB CASE NO.
A2024-201**

**TROY UNIFORMED FIREFIGHTERS
ASSOCIATION, LOCAL 86, IAFF, AFL-CIO
(ERIC WISHER)**

Employee Organization.

Before: Deborah A. Sabin, Esq., Hearing Officer

HEARING OFFICER'S OPINION AND AWARD

Appearances:

**RICHARD T. MORRISSEY, ESQ., Acting Corporation Counsel for City of
Troy**

**BLITMAN & KING, LLP, (NATHANIEL G. LAMBRIGHT, ESQ. of
counsel), for Employee Organization**

I. INTRODUCTION

The undersigned was duly designated as the Hearing Officer pursuant to the selection of the Parties and in accordance with the procedures set forth in their Collective Bargaining Agreement. Pursuant to Article VIII of the parties' Collective Bargaining Agreement (CBA) and Civil Service Law, §75, a hearing was conducted by me on February 25, and April 1, 2025, in Troy, New York. Appearing before me was Richard T. Morrissey, Esq., on behalf of the City of Troy (City), and Nathaniel G. Lambright, Esq., on behalf of Troy Uniformed Firefighters Association, Local 86, IAFF, AFL-CIO

(Union). The Parties were in all respects accorded a full and fair hearing, including the right to present oral argument, and oral and written evidence. Post-hearing briefs were filed by both parties on or before June 4, 2025, and received by me on or before June 5, 2025.¹

II. ISSUE

The issue presented to the Arbitrator in this arbitration is:

1. Was Firefighter Eric Wisher disciplined by the Employer for just cause for the incident on October 2, 2024?
2. If so, what shall the penalty be?

III. COLLECTIVE BARGAINING AGREEMENT RELEVANT PROVISIONS

The relevant provisions of the January 1, 2023 – December 31, 2024 collective bargaining agreement between the Employer and Union are set forth below.

Article VIII. GRIEVANCE PROCEDURE

C. POLICY GRIEVANCE

THIRD STAGE

If the Association is not satisfied with the Mayor's decision, it may, within twenty (20) days therefrom request Arbitration by the New York State Public Employment Relations Board (PERB). The arbitration shall proceed in accordance with the rules and procedures established by PERB. Fees and expenses of the Arbitrator shall be paid in full by the losing party, except as may be otherwise apportioned by the Arbitrator.

The decision of the Arbitrator shall be binding upon all parties.

Article XXIII MISCELLANEOUS PROVISIONS

11. (a) The Safety Committee of the Association shall be free to inspect any equipment used in the work of the Bureau and to advise the Chief, in writing, of any faulty equipment found. The Chief, or his/her designee, will as soon as possible, not to exceed twenty-four (24) hours, inspect the subject equipment and determine whether it shall remain in service. Any employee who believes that a piece of equipment is unsafe and dangerous to life and limb, may request the Safety Committee to examine the same. In

¹ Because of two extensions for the submission of briefs, granted by the Hearing Officer, the parties' agreed to an extension of time for the issuance of this Opinion and Award.

the event of dispute between the Safety Committee and the Chief's designee as to whether the continuance in service of the subject equipment constitutes a danger to life and limb of an employee, the subject equipment shall be recalled from service until a judgment is rendered by an Appellate Committee consisting of the Mayor, the President of the Association and the Chairman of the Safety Committee. Such Committee shall convene and render its decision within twenty-four (24) hours of the recall of the subject equipment. In the event the Association is dissatisfied with the decision of the Appellate Committee, the parties shall immediately and directly go to the Final Stage of Grievance as provided in Article VIII.

IV. BACKGROUND

Firefighter Eric Wisher was disciplined because on October 2, 2024, he disobeyed a direct order from the Troy Fire Chief Richard Cellucci to participate in a mask confidence training from September 30 through October 3, 2024, being conducted at the Troy Central Station by the New York State Office of Fire Prevention and Control (OFPC). Firefighter Wisher refused to follow the Chief's directive even after the Chief modified the order to accommodate Wisher's condition based upon his fear of being injured in the training maze. Firefighter Wisher maintained that OFPC could not safely conduct mask confidence training in Troy because training under their supervision is inherently unsafe. The Chief and Firefighter Wisher exchanged words about the Chief's order. Firefighter Wisher then reported to the training session, where he refused to participate, even under the modified procedure suggested by Chief Cellucci.

Firefighter Wisher was thereafter charged with Insubordination and suspended by the City for fifteen calendar days without pay. The Union thereafter contested the charges and filed a Demand for Arbitration with PERB, pursuant to the collective bargaining agreement and Civil Service Law, §75.

V. FACTS

The City called Richard Cellucci, Chief of the City of Troy Fire Department as its only witness. Chief Cellucci has been employed by City of Troy for thirty-one years, serving as a Firefighter, Lieutenant, Captain, Battalion Chief, Deputy Chief, Assistant Chief, until he was appointed as Chief in December 2022.

As Chief, he is responsible for the overall operation of the department, daily operations ranging from fire scenes and emergency medical scenes, training, fire investigations, fire prevention and code enforcement, financial planning, and planning for the department. He is also the designated Municipal Training Officer for the department, and as such is responsible for planning department-wide training, coming up with the standards, implementing how training is delivered, who delivers it, and who receives the training.

In the fall of 2024, for the third year in a row², the Chief, as MTO, decided to bring a New York State OFPC training trailer to Troy Fire Department to deliver mask confidence training to the members of the department.³ The trailer is regularly used by numerous fire departments in the state, and had been at Green Island, Watervliet, and Albany prior to coming to Troy. Multiple instructors staffed the trailer during the trainings, including NYS OFPC instructors but also firefighters from local professional departments, such as the Albany Fire Department, the Watervliet Arsenal, the Saratoga

² The Chief testified that this training was mandatory for all on-duty firefighters in 2022, but in 2023, only newly recruited firefighters were required to do the training.

³ The Chief testified that he calls the facility a mask confidence training trailer. But the trailer itself is labelled as a "Mobile Self-Contained Breathing Apparatus Safety Trainer."

Fire Department, and a Troy firefighter who also was a qualified state fire instructor.⁴ The Chief testified that the purpose of the training was to familiarize firefighters with their Self-Contained Breathing Apparatus (SCBA) equipment and to teach them proficiency in breathing consistently through the face piece while performing maneuvers to get through a restricted space or obstacle without ever removing the mask. The training was scheduled to be held at the Troy Fire Department Central Station from Monday, September 30 through Thursday, October 3, 2024. The Chief testified that he made the training mandatory for anyone working their regular shift that week.⁵ Members on leave were excused.

The Chief also testified that the minimum required level of participation for members in this course, in line with the minimum New York State training requirements, was for members “to put on their turnout gear, their self-contained breathing apparatus with their mask, and go in and breathe down their tank. That was the minimum requirement. Ideally, I would like them to try the trailer, try to advance as far as they could in the trailer. . . in the maze.” As the Chief opined, the value to the member or the department of having a member go in and just breathe his apparatus was not great – he wanted them to do more if possible - but it still reinforced familiarity with the equipment and qualified as donning and wearing toward the minimum training requirements of New

⁴ The Chief testified that at least four Troy firefighters are qualified to be an instructor on this training apparatus: Captain Ryan Handerhan, Lieutenant Chris Heinbach, Lieutenant Jarred Collins and Lieutenant Nick Higgins.

⁵ The members of the Troy Fire Department are divided into four platoons. Each platoon works a 24-hour shift from 8 a.m. to 8 a.m. in daily rotation. The training period of four days allowed each platoon to participate.

York State. Attendance records were to be sign-in sheets that did not record any member's level of participation or achievement.

Chief Cellucci further testified that the training was mandatory for all members who were scheduled to work during the training week and that he directly communicated this fact to the Battalion Chiefs and to multiple firefighters, including those who voiced safety concerns. The minimum training involved donning turnout gear, putting on an SCBA and facepiece, and breathing down the air tank, which are all requirements that fall under the "Personal Safety and Protective Equipment" category of mandated annual training under state standards. Chief Cellucci testified that he emphasized that firefighters were not required to complete the more advanced portions of the course, such as the maze or bailout simulation, unless they voluntarily chose to do so.

Chief Cellucci testified further that he was informed by Battalion Chief Bailey, when the training started on September 30, 2024, that three firefighters from Engine 3 were refusing to do the training. They were Captain Connors, Firefighter Eric Bonesteel, and Firefighter Willaim Blake. The Chief responded that training was mandatory. He then was contacted by Captain Connors who told the Chief that a Union representative had told him that the training was not mandatory. The Chief asked who had told him that and Captain Connors responded that the President of the Union, Eric Wisher, had so advised him. The Chief reiterated that he ran the Department and the training was mandatory.

Later that morning, the Chief attended a meeting at the New York State Office of Fire Prevention and Control, OFPC. It was an after-action meeting concerning a 2023 training exercise where several Troy firefighters were injured during the training.

President Eric Wisher was also in attendance. President Wisher questioned the Chief's decision to make the training mandatory. The Chief replied that it had always been mandatory, and a discussion ensued, wherein President Wisher stated that the trailer was unsafe. The Chief responded that the training was safe, but all he was requiring was that the firefighters enter the trailer and attempt to get through the maze; the bail-out feature was optional.

After the meeting, Chief Cellucci testified that he returned to his office and got a call from Assistant Chief Mike Kelleher, who advised him that Chief Bailey had told him that the three firefighters from Engine 3 had reported for the testing, signed the attendance sheet, refused to do the training and left. Chief Cellucci then left his office and encountered President Wisher outside of City Hall. He informed him of the actions of Captain Connors, Firefighter Blake and Firefighter Bonesteel and told him if the three did not return to the training site and complete the training before the OFPC staff left, he would bring all three up on charges of insubordination. President Wisher reiterated that the training was not safe, but said he would try to call the three firefighters and tell them what the Chief had said. He also stated that his training was scheduled for October 2, and he was not going to do the training. Thereafter, the Chief was advised that the three firefighters had completed the training on September 30, 2025.

Chief Cellucci further testified that on October 1, Battalion Chief Chris Garron came to his office with Firefighter Dan Riley. Chief Garron informed Chief Cellucci that Firefighter Riley did not want to do the training, to which Firefighter Riley added that the training was not safe, and he didn't want to get hurt. Chief Cellucci informed him that the training was mandatory, but, after noting his concerns, told Firefighter Riley that all he

had to do was complete the minimum requirements: entering the trailer with his gear on and breathing his air down. Firefighter Riley thereafter complied with the Chief's directive.

On October 2, Chief Cellucci testified, Captain Jeff Ward came to his office and told him he did not want to participate in the training. He had been one of the firefighters burned in the previous training exercise and he had issues with one of the instructors who was conducting the training in Troy because he had also been conducting the training that resulted in his injuries. The Chief responded that everybody has got a story, and he was not minimizing Captain Ward's story, but everyone had to do the training to the minimum standard, which was to go into the trailer wearing his turn-out gear, his air pack on, his face piece on, and breathe his air pack down. The Chief testified that Captain Ward was not happy about that, but he was respectful. Captain Ward then left and did the training.

Chief Cellucci also testified that another firefighter, Lieutenant Jon Monaghan had had an incident during the 2022 training and went home ill, not completing the training. On September 30, the Chief observed that Lieutenant Monaghan appeared anxious at the training site. The Chief left before he entered the training vehicle. When he saw Lieutenant Monaghan a few days later, he was told by the Lieutenant that he had done the training with the help of his crew and was glad that he had done so.

On October 2, 2024, Battalion Chief Kevin Kilgallon informed the Chief that Firefighter Wisner refused to do the training. Chief Cellucci proceeded to the Battalion Chief's office to speak with Firefighter Wisner, who was at that time, President of the Union. The Chief told him he had to do the training and Firefighter Wisner replied, "I am

not doing it, It's dangerous. I am going to be retiring in a few months and I am not getting hurt." The Chief reiterated that he had to complete the minimum requirements. Wisher continued to refuse, stating that it was dangerous. At that point, the Chief said, "Are you fucking kidding me?" Firefighter Wisher responded that it was a hostile work environment. The Chief ended the conversation and walked out of the office.

The Chief went to City Hall to meet with the Mayor, the Deputy Mayor, the Corporation Counsel and the Deputy Corporation Counsel and inform them about what had happened and that he was going to be bringing Firefighter Wisher up on charges. Thereafter, on October 3, the Chief testified that he drew up charges and requested that Firefighter Wisher come to headquarters to be presented with the charges. Firefighter Wisher refused to come. The Chief then went to City Hall to meet with the Mayor, Deputy Mayor, Assistant Chief Kelleher, the Corporation Counsel, the Assistant Corporation Counsel, Firefighter Dan Riley and Firefighter Eric Wisher, at a meeting scheduled by Firefighter Wisher. Firefighter Wisher repeated that he was not meeting with the Chief. The Chief attempted to give him the disciplinary charges and Firefighter Wisher refused to accept them. The Chief then advised him that he was being suspended for fifteen calendar days without pay and Firefighter Wisher left.

The Chief testified that he then charged Firefighter Wisher with misconduct, specifically insubordination for disobeying a direct order to complete the minimum requirements of the training. The City then rested.

The Union first called Sam Fresina, President for nine years of the New York State Professional Firefighters Association (NYSPFA), to testify. President Fresina represents 18,000 members, working in 110 fire departments, throughout New York

State. President Fresina was also a professional Firefighter, in the City of Albany, where was President of the union representing Albany firefighters for 14 years.

President Fresina testified that during his tenure with NYSPFA his experience with OFPC has not been very good. While there are good people at OFPC, there are several in the training department that have shown incompetence, very bad attitudes and are destructive. Although training is in a controlled environment, there are several instructors overseeing the training sessions. President Fresina also testified that over the past three or four years, people have died in training, people have been seriously injured, and he has seen a lack of concern from some of the instructors and inaction in the upper levels of OFPC. There have been meetings with OFPC about the death of a firefighter, serious burns on members of the Troy Fire Department, and broken bones and other injuries sustained by firefighters. OFPC promised investigations and corrective action and to date, the NYSPFA has not seen any of those actions taken. In addition, OFPC has circulated a document to defer legal liability from them to the people who are being trained or to the municipalities.

President Fresina further testified that mask competence training is when firefighters put on their protective gear, air pack and mask and crawl through a maze with difficult obstacles to simulate a situation a firefighter could find while fighting a fire. He testified that there have been incidents with this training over the past few years. A few years earlier, he recounted that a recruit went through mask confidence training at the OFPC training facility in Montour Falls, got stuck in a narrow passage where he was unable to remove his mask and suffocated when the air in his tank ran out. He had yelled for help and his pleas were “ignored” by instructors nearby.

President Fresina additionally testified that in the recent past, several Troy Firefighters were engaged in training to be trainers at the Colonie Training Center. The training tower did not have proper ventilation and communication between the firefighters inside the tower and the trainers monitoring the training was an issue. As a result of the lack of proper ventilation and the substances in the tower for the burn, the temperatures inside were at an unsafe level. When the firefighters tried to communicate with the OFPC trainers, they received no response. President Fresina testified that they eventually got free of the fire, after sustaining third-degree burns.⁶

Finally, President Fresina testified about the OFPC training trailer. He testified that he has absolutely no confidence in the OFPC trainers who are supervising the trainer. Word got around about the incidents he had referred to earlier in his testimony, he said, and he received numerous calls from people who were concerned about OFPC training. At subsequent meetings with individuals from the Governor's Office in OFPC, he was assured that there would be investigations and corrective measures taken. He heard nothing back from them in the following months or the following year, so he spoke about the issues at district meetings around the state and at NYSPFA's state conference, stating that the NYSPFA really had no confidence in OFPC training. As a result, he testified, several departments have ceased to use OFPC for their training. During this time, President Eric Wisher had also attended meetings, so he was aware of the NYSPFA's concerns with OFPC.

⁶ The injured firefighters testified later in the hearing that they had sustained second-degree burns.

President Fresina went on to testify that it was his understanding, having been a professional firefighter for many years, that when an order is given in a para-military organization, such as a fire department, if a firefighter's life is in danger, the firefighter has the right to object and refuse to follow the order. He clarified that when a firefighter is given an order to do something dangerous on the job, such as crawling down a hallway to look for a victim in a fire situation, he or she is expected to obey that order. However, in a training situation, if a firefighter believes that his or her life is in danger, they have the right to refuse.

When asked about Eric Wisher's situation, President Fresina testified that he probably would have refused the order. Eric Wisher was on the verge of retirement; there was nothing to be gained by going through the training and at least one of the OFPC trainers had also been involved in the earlier training where several Troy firefighters suffered serious burns.

On cross-examination, President Fresina testified that the NYSPFA had issued no written advisories to fire department against using OFPC's training trailer for mask confidence training, but had issued verbal warnings. He testified further that the trailer was not essentially unsafe but many of the OFPC trainers were, especially the ones who were not from professional fire departments. He referenced the incident where a firefighter had suffocated at the Montour Falls training facility for which he blamed the trainers, not the facility.

He also testified that while he knew several departments had refused to sign OSPC's waiver of liability agreement, he did not know how many or who they were.

President Fresina then testified that he did not see much danger to a firefighter standing inside the training trailer, breathing down his air bottle, though such training would be ineffective. He further testified that he took exception to a firefighter being ordered to enter the training trailer, wearing his mask and gear, and breathe down his bottle, then sign a form that stated he had participated in mask confidence training. He further testified that if that was all the President Wisner had been ordered to do, there could have been no risk. He then clarified that if a firefighter was asked to do so while being overseen by an OFPC trainer, based on some irrational behavior in the past involving the trainers, you would not know what they might do or say, and that could pose a risk to the firefighter.

President Fresina finally testified that it was his understanding that the City of Troy declined to sign a waiver agreement proposed by OFPC that would have shifted liability for injuries to municipalities.

The Union then called Captain Jeffrey Ward to testify. Captain Ward has been employed by the Troy Fire Department for sixteen years and is currently a Captain assigned to Engine 1 in Lansingburgh, New York. As a captain, he is in charge of the crew and the rigs of the firehouse to which he is assigned, as well as making decisions on calls that come in and handling paperwork and in-house training. Captain Ward became President of the Union in December 2024.

Captain Ward testified that there is basic training to complete to become a firefighter: understanding of protective gear, understanding fire chemistry, how fire reacts. There is also skills training, involving putting up a ladder, stretching lines, understanding the culture of the fire service and the skills necessary to accomplish the

goal of protecting lives and property. Basic fire training consists of 226 hours of training, after that, 100 hours annually of in-service fire-fighting training. The training takes place basically on the company level and is overseen by the Captain or Lieutenant, who implement the training, determine the objective and document the training. Sometimes the training is outside, at headquarters.

Captain Ward further testified that training to become a firefighter takes place at a fire academy and such training has taken place in Rensselaer, Utica, and Colonie. OFPC conducts the training. Some of the trainers are professional firefighters and some are volunteer firefighters. Captain Ward is, himself, a Municipal Fire Instructor who teaches basic firefighter, interior firefighter, and he is also trained in live firefighting.

Captain Ward further testified that he learned at the Fire Academy to put on his gear, put on his mask, make sure no skin was exposed, test his air and breathe from the bottle. It is something that is done everyday you are on duty in the fire house and again if you are called out for a fire, until it basically becomes muscle memory. Also, he testified every day, you check your SCBA to ensure it is in good working condition, the electrical parts are functioning properly and then you breathe a couple of breaths to make sure the SCBA is working. Then you fill-out a document confirming what you did.

Captain Ward also testified that they do periodic training on skills that they don't use every day, such as rope training and tying knots. He has had such specialized training conducted by OFPC before. OFPC does an instruction on the skills to be performed, makes sure the trainees know what is expected of them and then the trainees do the skills. There may be several skills covered. OFPC then puts all the skills together in one evolution. At the conclusion, OFPC does a de-briefing.

Captain Ward thereafter testified to his negative training experiences with OFPC. In September 2023, Captain Ward and four other Troy firefighters attended a fire training session conducted by OFPC to become authorized as fire instructors for municipal fire instruction. The training was to involve the firefighters going into a concrete and metal structure, in full turn-out gear with their charged hose line, where a fire had been started by OFPC, with an OFPC trainer to guide them through and educate them on how to implement the training. Captain Ward testified that the interior of the structure was already pretty warm when they entered. An OFPC instructor was with them, explaining what they would teach their students in this evolution. The building got extremely hot and one firefighter's PASS device went off. A PASS device is an electronic emergency device that is affixed to their Air-Paks that emits a loud noise, if a firefighter has not moved for thirty seconds or there's a high heat. It is an alarm that something is wrong and a firefighter needs to be rescued. The OFPC instructor was checking everyone's devices and Captain Ward testified that the instructor got distracted. The fire raged a little bit out of control and the Troy firefighters concluded that it was time to put out the fire and get out of the building. Once outside, Captain Ward testified that when he took off his turn-out gear, he realized that the skin had melted off his shoulders. The other four fire fighters also suffered severe burns.

Captain Ward testified that at no point was the OFPC trainer giving them any instruction. All five Troy firefighters had significant time on the job actually fighting fires and they had decided to put out the fire and leave the building. He concluded from that experience that OFPC was not safe. They lost control of the situation and provided no instruction on how to proceed. Later, after he and the other Troy firefighters were

transported to the hospital by ambulance, he learned that one of the OFPC instructors said to those remaining at the site, words to the effect that “the fire fighters had nothing more than a sunburn.”

Captain Ward testified that he suffered excruciating pain for several weeks, visiting plastic surgeons and dealing with his injuries.

He then testified that in September 2024, he saw the OFPC training trailer was at headquarters, but he didn't know who was conducting the training. He suffered some anxiety because he did not know if OFPC would be conducting the training. He learned on the day he and his crew were scheduled for the training, that it was mandatory and was being conducted by OFPC trainers; he saw one of the OFPC trainers that had been doing the training at Colonie the day he was burned. He confronted the instructor and said “Are you kidding? The last time I saw you, I got burned pretty bad.” The instructor responded, “Are you really going to do this?” and Captain Ward said “Yes, I am.” He testified that he felt extremely anxious.

Captain Ward testified that mask competency training in the trailer was valuable because you learned to keep your mask on as you extricated yourself from obstacles. But, he testified that he knew of prior similar training where Troy firefighters were injured and, on another occasion, where Albany firefighters suffered injuries. He also testified to the incident at the Montour Falls State Fire Academy where Peyton Morse was doing the mask confidence training in a building, with OFPC instructors nearby, when he got stuck in part of the course. When he called out for help, the instructors told him to push through, he'd make it with no problem, but he did not and eventually suffocated and died.

Captain Ward testified that when he learned the mask confidence training was mandatory and at least one of the instructors was the OFPC instructor present at the training where he was severely burned, he asked President Wisler, who was also there, if he could go talk to the Chief about the situation. President Wisler told him he had no objection.

Captain Ward then testified that he went up to the Chief's office and explained why he was so worked up, just having recovered from burns he got while undergoing training with OFPC. The Chief told him that "everyone has a story." He then said he couldn't excuse Captain Ward when he had told everyone else they had to do the training, but that he could just go inside the trailer, blow off his bottle and do his best. Captain Ward testified that understood the order to be to just go in the trailer and do the best he could.

Captain Ward testified that he still believed it would be unsafe to go into the trailer with an OFPC trainer, in the dark, behind a closed door, basically under the control of an OFPC trainer. But, he testified, that he did it even though he was under duress because he believed if he refused, he would be found to be insubordinate and be subject to disciplinary actions, including termination. He further testified that he donned his gear, put on his Air-Pak, went on air, entered the trailer, made it to the first evolution, consumed some air then told the instructor he was done. He left the trailer and apologized to some instructors that he couldn't complete the training; the burn incident was still too present in his mind. One of the instructors replied that "it wasn't me who burned you and it wasn't this trailer that burned you. I don't know why you have a problem with it." Captain Ward responded, "You don't know my situation. You don't know what happened

to me. I don't think you have grounds to talk to me about this." The instructor snapped at him, "You know, being in shape is part of this job, too."

Captain Ward testified that this was not the first bad experience he had with trainers from OFPC. He further testified that he was unaware if the Chief had communicated his modified order to the OFPC trainers. He also testified that there was no overview of what the training would be, no demonstration, no walk-through and no debrief afterwards, except the caustic remarks by the OFPC trainer outside the trailer. He testified that he had learned nothing from the training, except one more reason to distrust trainers from OFPC. He then testified that the trailer was at Troy headquarters for one more week, but the training, firefighter removal training, was conducted by a Captain of the Troy Fire Department.

On cross examination, Captain Ward testified that when he gave orders to members of the Troy Fire Department with inferior rank, he expected those orders to be followed. He also testified that when he was burned at the OFPC training in Colonie, four other Troy firefighters were also burned. They were Michael DeForge, Daniel Riley, Ryan Handrehan and George Genther. Of the four other firefighters, Captain Ward testified that he thought only Michael DeForge had not done the mask confidence training in the OFPC trailer in 2024. He further testified that all five firefighters had brought an action against New York State due to injuries sustained at the fire training in Colonie.

Captain Ward also testified that several Troy firefighters are authorized instructors on the mask confidence trailer and he believed one of them, Jared Collins, was a trainer for the mask confidence training in 2024, though he was not present on the day

Captain Ward did the training. He testified that Billy Childs is an OFPC instructor that was present at the training in Colonie in 2023 where he and the other four firefighters were burned and at the mask confidence training in Troy in 2024. He testified that Mr. Childs and maybe one other of the OFPC instructors were professional firefighters.

Captain Ward further testified that when he went to the Chief with his concerns, he was not offered an option to not do the training, but he was told “to do the best he could.” Captain Ward, therefore, entered the training trailer, with his gear on and proceeded to the first obstacle, though he was worked up by being in a closed environment with OFPC instructors he did not trust. He noted that not all Troy firefighters had the same anxiety that he had, though all were aware of the burn incident. He also testified that mask confidence training had little value because donning gear and blowing down the bottle were actions taken every day, though doing so under stressful conditions had some benefit. He testified that it is the MTO’s responsibility to ensure that the department is at a particular standard of training.

Chief Ward then testified that he did not believe all OFPC instructors were unsafe and not to be trusted, but the majority of them were. He testified that although the training in Colonie was in a building and the training in Troy was in a trailer, the safety concerns were the same in that you were in a room, with the door closed, and under the direction of an OFPC instructor. He further testified that the trailer was not inherently unsafe, but being inside, behind closed doors, with a OFPC instructor, was. Captain Ward testified that although the Battalion Chief and other firefighters were outside the trailer, if he had called for help, there is no guarantee they would have heard him. He concluded

that it is not the trailer that is inherently unsafe, it is being under the control of an OFPC instructor that is unsafe, because you cannot trust them.

Captain Ward finally testified that if a firefighter came to him with safety concerns about an order he had given, he would consider the order and confirm whether it was safe or unsafe. If the firefighter raised a concern he thought was legitimate, he would consider adjusting his order. He stated that when Chief Cellucci finally understood his situation, he allowed him to just do what he had to do.

The Union then called Daniel Riley to testify. Mr. Riley was a Troy firefighter for twenty years, having retired just prior to the day he testified. While he was with the Department, Mr. Riley served as a trustee and then vice-president of the Union.

Mr. Riley testified that he had received training conducted by OFPC and that he did not trust them. He had been injured in one of their prior trainings and since then has had zero faith in their training. He referred to the 2023 training conducted by OFPC, to train firefighters to be trainers in a live burn training. He testified that they entered the building and immediately realized it was too hot. Then a firefighter's PASS went off and while the instructor was trying to ascertain who it was and why it was happening, the firefighters realized it was getting pretty hot. They decided amongst themselves to put out the fire and get out of the building. As they started removing their gear outside, they realized that they had all been pretty badly burned. No instructors offered them any assistance. There were no EMS supplies at hand and no EMS on standby. The firefighters and their paramedics treated themselves. Eventually, ambulances arrived and the injured firefighters were taken to two area hospitals. Mr. Riley later learned that one of the instructors made disparaging remarks about the firefighters having only "sunburns" and

further remarks about that. Later, after they were healed, they learned that the individual who made the remarks was no longer going to be allowed to come back to training.

Mr. Riley further testified that at their next training, the 2024 mask competence training, the OFPC trainer who had made the remarks was present as an instructor. He felt that illustrated that OFPC trainers thought it was a joke and had zero care for them. He testified that the training trailer had stickers on it, one saying “207A 4 life” and “The red flu is coming.” He explained that 207-a was a reference to §207-a disability retirement, and that “red flu” meant if you entered the trailer, you were going to get sick or injured. Mr. Riley reiterated that he felt the signs reinforced his belief that OFPC thought training was a “big joke”.

He went on to testify that he did not believe that OFPC had ambulances standing by at the training session where Firefighter Morse was killed. Also, he testified that he knows of other firefighters who had been injured in the maze, including Captain Tidings, who was injured in the 2022 training in the trailer, conducted by OFPC in Troy. Captain Tidings required surgery and was out-of-work for months. Additionally, Firefighter Molesky was also injured in the trailer, having hurt his shoulder, and in 2024, a firefighter in Albany had been injured as well. Mr. Riley testified that he learned from the OFPC training, where he was severely burned, that OFPC could not be trusted.

When he realized in 2024 that there was to be mask confidence training in the OFPC trailer, he went down to the trailer and told his battalion chief, Chief Garron, that he did not feel comfortable and he did not want to do the training. Chief Garron accompanied him to Chief Cellucci’s office, where Chief Kelleher was also present. Mr. Riley expressed his concerns to Chief Cellucci and told him he did not feel safe, he had

been burned, and he repeated the remarks the OFPC instructor had made. The Chief responded that he just needed to show proficiency, he just needed to show he could go in the trailer. Mr. Riley said he was still uncomfortable, but he would do the mask confidence training anywhere else, he would go down to the basement in full gear and do the training. The Chief once again told him he needed to go in the trailer.

Mr. Riley thereafter went down to the trailer, donned his turnout gear, but on his Scott Pak, and went through the door to the trailer, where he breathed down the bottle for 10-15 seconds and exited the trailer. The OFPC trainers said nothing to him as he went through the evolution. He underwent the training under duress, afraid that if he disobeyed the order, he would be disciplined and suspended or terminated, which he could not risk as he had a family to feed. Mr. Riley testified that Chief Cellucci could have had the mask confidence training conducted at the Wynantskill training facility, utilizing trainers from the Troy Fire Department, and he would have felt safe under those conditions.

Mr. Riley testified on cross-examination that he felt anxious and unsafe with any training conducted by OFPC. He further testified that the Chief told him he had to show proficiency, he needed him to put on his gear and his pack and go in the trailer, The training was mandatory. He further testified that he was injured going into the trailer, not physically but mentally. He finally testified that he would feel more safe going into a burning building than going into the trailer with OFPC trainers.

The Union then called Captain Paul Connors, who has been employed by the Troy Fire Department for fourteen years. He was previously a Trustee in the Union and is now Sergeant-at-Arms. Captain Connors testified that he had previously received training by

OFPC at the Academy and his experience led him to conclude that the instructors are unsafe, not professional, and did not take the safety of the firefighters into concern.

He further testified that mask confidence training is being confident with your gear, your mask, while going through the obstacle. He testified that in prior training exercises conducted by OFPC, the obstacle course was blacked out, sometimes the trainers turned off your air bottle, and sometimes you had to change out your bottle.

As to the mask confidence training held in Troy in 2024, Captain Connors testified that he saw the trailer the weekend before but was unaware who would be giving the training. Monday morning his Battalion Chief called him and gave him the time for his training. He explained that OFPC would be conducting the training. Captain Connors testified that he told his Battalion Chief that he and his crew, Firefighter Eric Bonesteel and Firefighter Willaim Blake, did not want to do training conducted by OFPC. The Battalion Chief told him the training was not optional and he responded that it had never been mandatory before. The Battalion Chief said he would check and get back to him.

Captain Connors further testified that he was called back shortly thereafter and informed the training was mandatory. He responded that it had never been mandatory before and that he had spoken with Union officials who informed him that the training shouldn't be mandatory. The Battalion Chief said Captain Connors would have to take it up with Chief Cellucci. Captain Connors reiterated that he and his crew were refusing to do the training because it was unsafe. He testified that he knew that some Troy firefighters had been burned in a training conducted by OFPC and that one firefighter had died at Montour Falls while doing mask confidence training under their supervision. He also testified that Captain Tidings, a Troy firefighter, had injured his back, resulting in

back surgery and that Firefighter Molesky had also been injured in training conducted by OFPC. Captain Connors testified further that just before the 2024 training in Troy, an Albany firefighter had been hurt in the trailer.

Chief Cellucci called him a short time later, Captain Connors testified, to ask him who he had spoken to at the Union. He replied he had spoken to President Eric Wisher and the Chief then asked him, "Does he run the department?" Captain Connors replied that Chief Cellucci ran the department. Before he could say anything else, Chief Cellucci told him that he was doing the training and that was an order.

Before he and his crew reported in the time slot that had been assigned to them, Captain Connors testified that he spoke with Union Vice-President Danny Riley. He told Captain Connors that the training shouldn't be mandatory and he if and his crew thought the training was unsafe, they should sign the attendance sheet, indicating they were refusing due to safety concerns. That is what they did. He observed that at the trailer, no training was being given. Firefighters just went into the trailer.

He then indicated to the Battalion Chief what he and his men had done and was told to get out of there. Captain Connors went down to the basement to get some equipment and passed Chief Cellucci. When the Chief asked him what was going on, he responded that he and his crew had signed that they refused the training. The Chief chuckled and walked away. Captain Connors and his crew left to perform other duties. Later they were called back down to switch back into their rig. During that time, Captain Connors testified, he received a call from President Eric Wisher, who told him he had spoken to Chief Cellucci and the Chief informed him that if the crew refused to do the training, they were going to be brought up on charges. President Wisher told him further

that the Chief had said that all they had to do was blow down their bottles. Then President Wisher told him to talk to his crew and see what they were comfortable doing.

Captain Connors then testified that he called Chief Cellucci and said he had spoken with President Wisher and he was not trying to be an asshole, it wasn't personal with the chiefs, but he and his crew didn't want to get hurt and were concerned for their safety. Chief Cellucci responded that he was not asking anyone to move mountains and to "just do the best you can." Captain Connors testified that the Chief never told him they just had to blow down their bottles, but just do the best they can. Captain Connors took that to mean that they should go into the maze and do the best they could. He reiterated to the Chief that he didn't have a problem with training, just with the lack of control he had when OFPC was conducting the training. The Chief replied that "The Union is asking for guys to do more training and now we have guys refusing to do the training." Captain Connors told him that they would go in and do the training to the best of their ability.

Captain Connors and his crew reported for training. He testified that they donned their gear and waited for instructions from the OFPC trainers, but no instructions were given. They then basically went inside the trailer and "were let loose in a mousetrap maze." Captain Connors made it through the first obstacle in the blacked-out trailer. At the second obstacle, Captain Connors testified, he got caught up in the ropes. He backed out and tried again. He was tangled again and the OFPC instructor told him he was still good and to keep going. Captain Connors replied that he was not good, he was stuck. Once again, the instructor told him he wasn't stuck and to keep going. Captain Connors tried again to no avail, although the instructor kept telling him he should be good. At the point, Captain Connors said "Okay, this is it. I'm done." He then removed his mask and

pack and realized that there was rope stuck between his bottle and the SCBA harness. He had to physically take the entire thing off just to remove it, as they were not allowed to cut the ropes. The instructor was inside the trailer with him the whole time, but on the other side of removable partitions.

Captain Connors testified that he thought the training was unsafe, but he did it under duress because he thought he might lose his job or be suspended if he refused. He further testified that there was no value to the training because there was no training given, they were just let loose inside the maze. After the exercise, there was no follow-up given by the OFPC trainers. He stated that given his service in the Marine Corps and his years with the Troy Fire Department, he knew how to follow orders, and he also had a good perception of what was safe or unsafe, and the training given by OFPC was inherently unsafe.

Captain Connors testified on cross-examination, that he had done mask confidence training several times while at the Academy and one time at the Troy Fire Department in 2022 in the OFPC trailer, though that training was not conducted by OFPC. He testified that no instruction was given in 2022, but it was the events that occurred between then and the 2024 mask confidence training that made him believe that such training was inherently unsafe. He pointed to the death of a firefighter during mask confidence training conducted by OFPC in 2022 and the burns sustained by Troy firefighters at the OFPC training in 2023 and the way they were treated by OFPC instructors, as the reasons he believed training conducted by OFPC and equipment maintained by OFPC were inherently unsafe. He also testified that while he was not injured in the 2024 training, Patrick Kuhn, another Troy firefighter suffered an

aggravation to a prior hip injury for which he was waiting for surgery. He finally testified that his experience in the trailer in 2024, where he was stuck and the OFPC instructor just kept telling him to keep going, confirmed that OFPC did not give safe training. He felt it was reminiscent of the OFPC training exercise in 2022 when a firefighter was killed during mask confidence training, after his repeated calls for help were not answered by the OFPC trainers.

Eric Wisher was the last witness called by the Union to testify. He worked as a Firefighter for the Troy Fire Department for thirty and one-half years, retiring on January 10, 2025. He held several positions in Union leadership, concluding with being President from 2018 to December 2024.

Mr. Wisher testified that mask confidence training involves putting on your turnout gear, your SCBA, and your mask, and depending on the particular evolution, your mask could be blacked out or the training site could be blacked out. Then you are required to make your way through the maze, dealing with ropes and other obstacles, simulating what a firefighter might encounter while fighting a fire. He further testified that he had undergone such training several times, starting at the Fire Academy, and then at various times throughout his career.

Mr. Wisher also testified that the 2022 mask confidence training was not mandatory, having seen several firefighters simply sitting there and watching. As for 2024, firefighters who were not on duty when their crew was scheduled for training were not required to do the training sometime later in the session, so the training was not really mandatory because firefighters who were absent on their scheduled tour were not required to make it up.

As President of the Union, he testified, he went to all district meetings of the NYSPFA, all the conferences, the conventions and any workshops they set up. When asked if he had an opinion of the efficacy of OFPC, he testified that, through his experience, it had not been very safe for members of the fire department because “they basically, killed a guy in Montour Falls in mask confidence course...” and he “experienced our own guys, five of them, plus other professional firefighters getting burnt at a training evolution to be an instructor at the Town of Colonie.” He testified that he knew of incidents throughout the state, serious enough that several fire departments no longer used OFPC for training and OFPC had even tried to get fire departments to sign a form, releasing OFPC from any liability when they were doing training.

Mr. Wisher testified that he knew about the OFPC’s trailer, though he had never done mask confidence training inside it. He believed the trailer was only used for training professional firefighters.

In the beginning of October 2024, Mr. Wisher testified, he was made aware that the OFPC trailer was in the main firehouse, he had seen it, and understood it was to be used for mandatory mask confidence training. He had received a call from Captain Connors that the training was to be mandatory. He testified he said that would be a change in working conditions and he then called the Union’s lawyer, who confirmed that such mandatory training would be a change in working conditions. Thereafter, Mr. Wisher was attending at OFPC an after-action meeting concerning the five Troy firefighters who had been seriously burned at an OFPC training session. He saw Chief Cellucci and brought up that Captain Connors had called him and said that the training was a mandatory subject of negotiations. The Chief did not agree, saying that the training

was mandatory and if guys didn't do it, they were going to be brought up on charges. Mr. Wisher then said to the Chief that guys didn't feel safe with OFPC, that he didn't feel safe with OFPC and he was not going to do the training. They thereafter attended the meeting where President Wisher made clear that firefighters around the State were concerned about the burn incident and he reiterated President Fresina's position that guys shouldn't be getting hurt or killed at training. OFPC did admit that they had made some errors in the live burn training and made assurances that it wouldn't happen again. Mr. Wisher testified that at that point, he didn't believe the guys had faith in OFPC.

Mr. Wisher testified that he thereafter returned to the firehouse; after assuring the Chief he would speak to Captain Connors and his crew. The Chief called him and asked him if he had spoken to Captain Connors and he told him that he was not at the firehouse. He then called Captain Connors and told him what the chief had said. Captain Connors replied that they were not going to do the training and were going to sign the attendance sheet stating that they didn't feel safe and were refusing the training.

A short while later, President Wisher ran into Chief Cellucci in front of City Hall and the Chief reiterated that if Captain Connors and his crew did not do the training by then end of the day, he was going to bring them up on charges. Thereafter, President Wisher got hold of Captain Connors and suggested he reach out to the Chief. President Wisher told Captain Connors that the Chief had said they only had to do the training to the best of their ability, even if that was only blowing out their bottle in their gear in the trailer. He then suggested that Captain Connors call the Chief.

Captain Connors called President Wisher, he testified, sometime later and told them that they did their training to the best of their ability, going inside the trailer with

their gear on and blowing out their bottles. After that call, Mr. Wisner ran into the Chief again and the Chief reiterated that if Captain Connors and his crew did not do the training, they would be disciplined.

Mr. Wisner then testified that on the day his shift worked, he was at the training and watching firefighters getting ready to do the training and he was approached by Captain Ward. Captain Ward told him that because of his past dealings with OFPC, getting burned and the potential pending litigation, he wasn't confident in OFPC and didn't want to do the training. He asked President Wisner if he could speak with Chief Cellucci and President Wisner agreed he could.

Thereafter, Mr. Wisner spoke with Captain Connors who told him that one of the trainers who had been at the Colonie training where he and other Troy firefighters had been burned, was also one of the trainers at the mask confidence training in Troy.

Mr. Wisner further testified that all the firefighters who had initially refused to the mask confidence training were firefighters he had worked with for several years. They were all experienced firefighters, and he absolutely trusted them "to run into a fire and save his mother." They were not, he testified, just trying to get out of a job but had serious concerns about their safety. He also testified that other firefighters had approached him with concerns about the safety of the mask confidence training to be conducted by OFPC and that they had done the training as best they could.

Mr. Wisner then testified that on the day scheduled for his crew's training, he went to the training and watched. His Captain never gave him an order to do the training, but Battalion Chief Kevin Kilgallon was there and asked him if he was doing the training. He replied that he was not, he didn't feel safe. The Battalion Chief asked him if he was

doing no part of the training and Mr. Wisher replied he was not. The Battalion Chief walked away.

Mr. Wisher further testified that several minutes later, Chief Cellucci came down and brought him into the Battalion Chief's office. There was a discussion about the training with Mr. Wisher stating: "I'm not doing it. I don't feel safe. I don't like these guys. I don't like their trailers." Chief Cellucci ordered him to do the training and Mr. Wisher said he was not doing it. The conversation continued, with the Chief telling him to do the training to the best of his ability and Mr. Wisher refusing. The conversation went back and forth and became heated. Chief Cellucci then said to just go in the trailer with his gear and blow down his bottle.

Mr. Wisher testified that when he refused the order, he refused it as firefighter, and he refused it as the Union President. He did not feel safe personally. He further testified that the training was being dumbed down to donning and doffing and that was not training. Even though the Chief testified that he told people they could just do the minimum, Mr. Wisher testified that was not told, was not broadcast, to members. Also, at the training, there was no overview given by OFPC and no walk-through, even though OFPC training documents require a walk-through orientation as to what the training objectives are and a talk about the trailer itself. He testified that this was not training. When asked, he testified that he had donned his gear, put on his mask and put on his SCBA and breathed it down thousands of times, that it was done before fire calls, car accidents, HAZMAT, confined spaces, gas calls, carbon monoxide calls, and elevator calls, every day.

Mr. Wisher then testified during his discussion with Chief Cellucci, the Chief yelled at him using foul language. Mr. Wisher was told he was being ridiculous, and he stated it felt like a hostile work environment. He tried to explain his safety issues; he had seen what OFPC had done to members of the Troy Fire Department and other departments, and he was aware what OFPC's response had been to these incidents, and he didn't feel safe. He further testified that OFPC doesn't have any real-life training, and they don't recognize safety issues when they occur, like Captain Connors being tangled in rope or when Peyton Morse got trapped in a tube in Hoosick Falls and said he couldn't breathe and OFPC just kept saying to keep going until he finally died.

Mr. Wisher testified that he didn't believe he was being insubordinate when he refused to go in the trailer because he had brought forth safety issues. He testified that firefighting is a dangerous profession and if he was called to run into a burning building to pull someone out, he would do so because that is his job. Dealing with unsafe training is not part of his job. He further testified that he did not do the training and risk getting hurt because he was at the end of his career and getting injured and having to take a §207-a disability retirement would be a substantial risk for him. He further testified that he was disciplined for his refusal by being suspended for fifteen days without pay. That cost him a substantial sum of money and still does because retirement is calculated on your final salary and his final salary was reduced by the suspension without pay, thereby reducing his retirement benefit.

Mr. Wisher finally testified that he had received a proclamation from the Mayor of Troy on his last day of work, despite his disciplinary charge. He also testified that he had argued with the Chief that his order dealt with a mandatory subject of bargaining. An

improper practice charge formalizing that allegation was thereafter filed by the Union with PERB and is still pending.

Mr. Wisher was then cross-examined by the City and testified as follows. He had never previously refused an order from a superior officer, but he refused the Chief's order because he didn't feel it was safe, and he had seen the practices of OFPC in the past and did not want to become another one of their victims. He further testified that the Chief told him he could go into the trailer and breathe down his bottle, but that wasn't an order. President Wisher said he did not do so because, as a union official, he did not believe it was safe to do something then sign a document stating you had done something else. The document was an attendance record, but it was an attendance record for doing mask confidence training, which was not what the Chief told him he could do.

Mr. Wisher also testified that he had expressed concerns about going through the maze and the Chief suggested he could just go in the trailer and breathe down his bottle. He further testified that the Chief's suggestion did not quash his fears because going into the closed trailer with an OFPC trainer was inherently dangerous. He testified that "you're in a darkened trailer, you don't know what OFPC would do if you had an emergency, or someone could shut your bottle off, someone could entangle your hands; you have no idea what the OFPC trainer might do," based on past local events and his knowledge of other incidents in the State where injuries to firefighters occurred in OFPC training. He reiterated several times his fear of OFPC trainers and their methods and his belief that the training they were conducting in the trailer was inherently dangerous because recent events had shown that they could not be trusted and that they had little concern for the safety of professional firefighters.

President Wisher finally testified that the Union had not filed a safety grievance because it would not be resolved in time to halt the training. The Union had decided to file the improper practice charge with PERB about the mandatory nature of the training and also to let NYSPFA continue to address the safety issues with OFPC on their behalf and other locals throughout the State.

V. ARGUMENTS

A. EMPLOYER'S POSITION

The City argues that Firefighter Eric Wisher willfully and deliberately disobeyed a direct lawful order from Fire Chief Richard Cellucci to participate in a scheduled mask confidence training to be conducted in an OFPC training trailer, under the supervision of OFPC trainers. The City argues the disobedience was planned and announced two days prior to the training and was an affront to the good order and paramilitary discipline of the Troy Fire Department.

The City further argues that while Firefighter Wisher repeatedly claimed the training was unsafe, he never articulated any rational belief that he could be injured by simply entering the trailer and breathing down his air bottle. He could have obeyed the order and done the minimum required without detriment or any risk of injury to himself or any other person. Firefighter Wisher had been doing mask confidence training for years and for two years in an OFPC training trailer supervised by OFPC trainers. The Chief had removed any element of danger by modifying his order to accommodate firefighters who feared being injured or trapped in the maze with OFPC instructors in charge.

The City also argues that Firefighter Wisner simply disagreed with the Chief's decision to utilize OFPC instructors to supervise the mask confidence training, even if the supervision was limited to one of them watching him breathe down his air bottle. The City asserts that Firefighter Wisner was not attempting to protect himself from a rationally perceived harm, but that he was attempting to override the Chief's judgment as to who should deliver mandatory in-service training to members of the Troy Fire Department and what elements should be present in the training.

The City finally argues that Firefighter Wisner was given the opportunity to perform an abbreviated training exercise in lieu of entering the maze. To find him not guilty of refusing to obey a direct order would not be fair to the Chief who bent over backward to accommodate his misgivings, and it would not be fair to the 96 firefighters who obeyed the order despite any misgivings they had and who performed to the best of their ability.

The City concludes its argument by asserting that the penalty, fifteen days suspension without pay, is not so disproportionate as to be shocking to one's sense of fairness, given the high stakes of the firefighting profession, the limited margin for error in the performance of duty, the reasonable accommodation offered by the Chief, and the participation of 96 other firefighters in the training. Finally, the City argues that Firefighter Wisner willfully disobeyed a direct and lawful order regarding a critical safety training exercise, despite his full awareness of the limited nature of the required participation and the existence of proper contractual channels to challenge the directive. As such, the penalty imposed is proportionate and necessary to preserve command

authority and operational integrity within a paramilitary organization such as the Troy Fire Department.

B. EMPLOYEE ORGANIZATION'S POSITION

The Union asserts that the City contends that President Wisher's discipline should be sustained because he was insubordinate for refusing to go through the training in the trailer overseen by the OFPC trainers.

The Union asserts that to sustain discipline, the City has the burden of showing by "clear and convincing evidence" that President Wisher was disciplined for just cause and that a key element of just cause is that it requires the degree of discipline be proportionate to the alleged offense.

As a general matter, the Union argues that it is considered insubordination for an employee to refuse to follow management directives. However, the Union further argues that it is well-settled that an employee is not required to perform duties or follow orders that the employee reasonably believes would pose an imminent threat to their health or safety.

The Union further posits that most arbitrators utilize a reasonable person standard to determine whether an employee had just cause to disobey an order. The employee must establish by a preponderance of the evidence that (i) the health threat was "imminent and serious," (ii) that his assessment of the risk was objectively reasonable, and (iii) it was the actual reason for his conduct. The Union asserts, that here, President Wisher's safety concerns were imminent and serious, his risk assessment was objectively reasonable, and there can be no dispute that this was the actual reason for his conduct. The Union points to President Wisher telling the Chief that he was refusing to perform

the training because of his safety concerns. The Union further asserts that the record establishes the existence of a legitimate safety concern being present when undergoing training overseen by OFPC trainers, as evidenced by the testimony of President Fresina, Firefighter Riley and Captains Connors and Ward, as well as Mr. Wisher.

Additionally, the Union argues that this was the first time any Troy firefighters refused training for safety reasons and that Firefighter Riley, Captain Ward and Captain Connors and his crew only did the training finally because they were afraid of losing their jobs. Further, President Wisher's past record of over 30 years of service to Troy was exemplary, with no past discipline or insubordination.

The Union also argues that President Wisher never told other firefighters that they should not do the training but instead acted as an advocate to voice their safety concerns. President Wisher did not cause any work stoppage as a result of his refusal, and he did not jeopardize the safety of other firefighters or the public based on his refusal.

Finally, the Union asserts that the City's argument that the Chief could have been reasoned with had the Union filed a grievance under Article XXIII must be dismissed. The Article allows challenging the usage of unsafe equipment, not unsafe instructors. Clearly, the Article does not deal with complaints to safety based on outside OFPC trainers. In other words, the issue was with the OFPC trainers who were overseeing the trailer, not the trailer itself.

VI. DISCUSSION

It is a well-established rule that employees must obey management's orders and carry out their job assignments, even if believed to violate the agreement, then turn to the grievance procedure for relief. An exception to this "obey now-grieve later" doctrine exists where obedience would involve an unusual or abnormal safety or health hazard. But this exception has been held inapplicable where the hazard is inherent in the employee's

job. Moreover, when the exception is invoked, the union must show that a safety or health hazard was the real reason for the employee's refusal.⁷

Here, President Wisner disobeyed an order issued by Chief Cellucci to participate in a mandatory mask confidence training to be conducted at the Department's Central Station, in an OFPC training trailer supervised by OFPC trainers. President Wisner stated he refused the order and its later modifications because he feared for his safety and his life if he was in a darkened and closed space with a trainer from OFPC.

It is well settled that disobedience of orders, arising in the context of the paramilitary structure of the Fire Department, cannot be taken lightly. *Driscoll v. Dep't of Fire of City of Syracuse*, 89 A.D.2d 1056, 454 N.Y.S.2d 562 (4th Dep't 1982). Firefighters may not pick and choose their job assignments at will. See *Fire Dep't v. Donofrio*, OATH Index No. 364/85 (May 13, 1986), modified, *Donofrio v. Spinnato*, 144 A.D.2d 672, 534 N.Y.S.2d 705 (2d Dep't 1988).⁸

But, “[a]n employee need not obey an unlawful order, an order that is beyond the scope of a supervisor’s authority, or an order that poses an imminent threat to health or safety.”⁹ The employee “must establish by a preponderance of the evidence that (i) the ‘health threat was ‘imminent and serious,’”(ii) that his assessment of the risk was objectively reasonable, and (iii) it was the actual reason for his conduct.¹⁰

Most arbitrators take “some form of the ‘reasonable person’ approach i.e., an approach that attempts to ascertain whether the facts and circumstances known to the

⁷ Elkouri & Elkouri, *How Arbitration Works*, 5th Ed., p.977 (Volz and Goggin, 1997).

⁸ *Fire Dep't v. Mayo*, OATH Index No. 129/05 at 10 (May 10, 2005).

⁹ See *Reisig v. Kirby*, 62 Misc.2d 632 (Sup. Ct. Suffolk Co. 1968), aff'd, 31 AD2d 1008 (2d Dep't 1969).

¹⁰ *Fire Dep't v. Anonymous*, OATH Index No. 1273/80, at 11-12 (Jun. 12, 2008); see *Dep't of Transp. v. Hines*, OATH Index No. 790/07, at 4 (Feb. 9, 2007).

employee at the time of the incident would have caused a ‘reasonable person’ to fear for his or her safety or health¹¹

Here, the Union argues that President Wisner’s safety concerns were imminent and serious, his risk assessment was objectively reasonable and that was the actual reason for his refusal to obey Chief Cellucci’s order.

Two days of testimony were taken at the hearing in this matter. President Wisner, as well as Firefighter Riley and Captains Ward and Connors, testified at great length why they believed that training in the OFPC training trailer, under the supervision of OFPC trainers, was inherently dangerous.

Captain Ward testified that in 2022, there had been a mask confidence training conducted by OFPC at the Hoosick Falls training facility where a firefighter, Peyton Morse, had been inside the maze and became unable to breathe. He called out for help but the several OFPC trainers on site did not respond. Peyton Morse suffered asphyxiation and died. Captain Connor, Firefighter Riley and President Wisner all testified to the same incident. No resolution of OFPC’s responsibilities or changes in training techniques has yet been reached.

Captain Ward also testified about a training session conducted by OFPC in Colonie in 2023, where he and four other Troy Firefighters were severely burned in fire burn training session, due to inadequate preparation of the site by OFPC and inexperience or lack of attention by the OFPC trainer who was inside the burning structure with them. Captain Ward and Firefighter Riley testified that they had to take the situation in hand, extinguish the fire and exit the training building. Once they were outside and started to

¹¹ Elkouri & Elkouri, *How Arbitration Works*, 5th Ed., p.980 (Volz and Goggin, 1997).

remove their clothing, skin peeled off their arms, faces, and chests. No assistance was offered to them by OFPC, no ambulances were present and had to be called to transport them to local hospitals, where they were treated for second degree burns. Later, they learned that a OFPC trainer at the burn site, made derogatory remarks about their injuries. That trainer was also present at the masked confidence training in Troy that is the subject of this case, even though the Troy firefighters had been informed that that instructor would no longer be supervising any training.

President Wisher, as well as the other firefighters called by the Union, testified that there had been other instances over the past few years where firefighters were injured while undergoing training under the supervision of OFPC trainers. Some were Troy firefighters, and some were hurt during training in the OFPC trailer. There was also testimony that an Albany firefighter was injured the week before in a mask confidence training conducted by OFPC trainers and in the OFPC trailer and also that a Troy firefighter was injured at the 2024 mask confidence training in Troy.

All four of the firefighters who testified before me have been firefighters in the Troy Fire Department for years, some for decades, and all have exemplary records. None have ever disobeyed a direct order. None have any disciplinary charges on their records, save for the one against President Wisher that is before me. Yet each of these firefighters testified at length about their fears and anxiety when confronted with mask confidence training to be conducted by OFPC. Each firefighter initially refused the order to participate in the mask certification training, then Firefighter Riley and Captains Ward and Connors agreed to do the training “to the best of their ability”, after Chief Cellucci modified the original order. Each also testified that they did so out of fear of being

charged, based upon statements of Chief Cellucci, with insubordination and perhaps losing their jobs, because “they had families to feed.”

Each of the firefighters called as witnesses, testified to their fears and anxiety caused by the actions of OFPC in training sessions. I found their testimony to be sincere and compelling, especially Mr. Wisher’s, based on their demeanor on the stand and the substance of their testimony.

The principle...is that an employee may refuse to carry out a particular work assignment if, at the time he is given the work assignment, he reasonably believes that by carrying out such work assignment he will endanger his safety or health. In such an instance the employee has the duty, not only of stating that he believes there is a risk to his safety or health, and the reason for believing so, but he also has the burden, if called upon, of showing by appropriate evidence that he had a reasonable basis for his belief. In the case of dispute, as is the case here, the question to be decided is not whether he actually would have suffered injury but whether he had a reasonable basis for believing so.¹²

Here, President Wisher stated to the Chief, his sincere belief, based upon his past experiences with OFPC, the experiences of the firefighters he represented, and other NYS firefighters, and the information he had gained by attending meetings with NYSPFA and OFPC, that OFPC training sites and OFPC trainers could not be trusted, that some were not appropriately trained, or lacked respect for professional firefighters, or were hostile to professional firefighters, and that his health and safety were at imminent risk if he were to participate in OFPC training, at an OPFC training site or in their trailer. President Wisher gave numerous examples, many also referenced in the testimony of the other Union witnesses, of firefighters who had been injured or killed, not because of the danger inherent in the training, citing as an example the 2023 burning incident, but by the

¹² Elkouri & Elkouri, *How Arbitration Works*, 5th Ed., p.980, note 74, and cases cited therein. (Volz and Goggin, 1997).

training, attitude and lack of professionalism of several OFPC trainers. As President Wisher testified, it wasn't the training or the trailer, that caused him to fear for his health and safety, but the unreliability, disrespect and negligence of OFPC trainers.

On the record before me, especially the testimony of Mr. Wisher, I find that Mr. Wisher articulated a reasonable belief that he would suffer injury or harm if he entered the darkened OFPC trailer, fully geared, under the supervision and control of an OFPC trainer.

No standards exist to aid an arbitrator in finding a conclusive answer ... and, therefore, perhaps the best he can do is to decide what reasonable men, mindful for the customs and habits of industrial life and of the standards of justice and fair dealing in the community, ought to have done under similar circumstances and in that light decide whether the conduct of the discharged employee was defensible and the disciplinary penalty just.¹³

I find and conclude, on the record before me, that a reasonable firefighter could conclude that participation in confidence mask training, while in full gear and alone in a darkened OFPC trailer, under the supervision of an OFPC trainer, was inherently dangerous to his or her health and well-being, and would be justified in refusing an order to do so.

In reaching this conclusion, I make no finding that OFPC, its trainers or equipment, is inadequate, negligent, or deliberately hostile to the Troy firefighters or professional firefighters, in general. That matter will likely be decided in a case already pending in another forum. The case before me requires me to determine whether President Wisher had a reasonable basis for believing he would suffer serious injury. I find and conclude,

¹³ *Riley Stoker Corp*, 7 Lab Arb Rep (BNA) 764, 767 (Platt 1947).

based upon the testimony of the Union witnesses, especially President Wisher, that a reasonable basis for President Wisher's belief has been established by a preponderance of the evidence.

In making this finding, I reiterate that disobeying an order given by a superior officer in a para-military operation is a serious offense and cannot be taken lightly.¹⁴ On the testimony and evidence before me, I find that President Wisher did not take Chief Cellucci's orders lightly, but after consideration of all the elements present in the order, he had a reasonable basis to believe that if he followed the Chief's orders, he would sustain serious injury or harm.

“Just cause...requires ‘reasonable proportionality between the offense and the penalty’ and consideration of any mitigating factors or extenuating circumstances that are reflected in the record, such as employee’s length of service, performance, and prior disciplinary history....”¹⁵

President Wisher was a Troy firefighter for over thirty years, with an exemplary record and with no prior disciplinary charges. He received a Proclamation from the City of Troy's Mayor upon his retirement. He never in his thirty plus years as a Troy firefighter disobeyed a direct order. I have considered these facts, also, in reaching my decision.

Therefore, I find and conclude, based upon the preponderance of the evidence, that Firefighter Eric Wisher was not insubordinate for refusing a direct order from Chief Cellucci on October 2, 2024, that he participate in mask confidence training in an OFPC training trailer under the supervision of OFPC trainers because he reasonable believed that he would suffer serious injury or harm if he did so.

¹⁴ *Supra*, note 7.

¹⁵ Brand and Biren, *Discipline and Discharge in Arbitration*, 3rd Edition (2015), at 2-41.

Additionally, I find and conclude on the record before me that the City did not establish that it had just cause to order Eric Wisher's fifteen-day suspension without pay for insubordination.

VII. REMEDY

The disciplinary grievance filed by the Union in the matter of Eric Wisher's fifteen-day suspension without pay for insubordination by the City of Troy, Case No. A2024-201, is sustained.

The disciplinary charges for insubordination dated October 3, 2024, against Firefighter Eric Wisher, are to be withdrawn from his personnel and employments files.

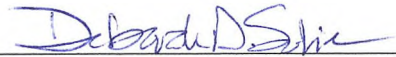
Eric Wisher is to be made whole by the City of Troy, with interest at the maximum legal rate, for any loss of salary and benefits resulting from his fifteen-day suspension for insubordination.

VIII. AWARD

I find and conclude that the disciplinary grievance, Case No. A2024-201, in the Firefighter Eric Wisher matter is sustained.

I further find and conclude that the disciplinary charges for insubordination, dated October 3, 2024, against Firefighter Eric Wisher are to be withdrawn from his personnel and employment files.

I further find and conclude that Firefighter Eric Wisher is to be made whole by the City of Troy, with interest at the maximum legal rate, for any loss of salary and benefits resulting from his fifteen-day suspension without pay for insubordination.




Deborah A. Sabin, Esq.

Dated: July 25, 2025
Clifton Park, NY

AFFIRMATION

I, Deborah A. Sabin, do hereby affirm upon my oath as Arbitrator, that I am the individual described herein and who executed this instrument, which is my Award.



Deborah A. Sabin, Esq.

Dated: July 25, 2025
Clifton Park, NY