

now an adult, reported the sexual relationship to the Philadelphia Police Department, and it investigated.

Wiggins resigned his employment effective November 19, 2009, and began collecting a retirement pension benefit in the amount of \$3,004.84 per month. Shortly thereafter, the police arrested Wiggins for sexual assault of Student. In December 2010, a jury convicted Wiggins of Involuntary Deviate Sexual Intercourse – Forcible Compulsion (18 Pa. C.S. §3123), Aggravated Indecent Assault (18 Pa. C.S. §3125), Statutory Sexual Assault (18 Pa. C.S. §3122.1), and Corruption of a Minor (18 Pa. C.S. §6301). In March 2011, Wiggins was sentenced to a prison term of 17½ to 35 years.

On November 18, 2011, the City’s Inspector General notified the City Solicitor’s Office about Wiggins’ conviction and requested that “pension disqualification” be considered. Certified Record at 928 (C.R. ____). On November 30, 2011, the City Solicitor’s Office¹ sent a letter to the Pension Board recommending that it terminate Wiggins’ pension for the stated reason that Wiggins had committed “malfeasance in office or employment,” which rendered him ineligible for a pension under Section 22-1302(1)(a)(.5) of the Philadelphia Public Employees Retirement Code (Philadelphia Retirement Code).² The letter stated that Wiggins’ malfeasance related to his employment in several ways:

¹ Deputy City Solicitor Joshua Stein authored the letter to the Pension Board on behalf of the City Solicitor’s Office.

² It states as follows:

(1) Notwithstanding any other provision of this Title, no employee nor any beneficiary designated by or for any employee shall be entitled to receive any retirement or other benefit or payment of any kind except a return of contribution paid into the Retirement System, without interest, if such employee:

(a) pleads or is finally found guilty, or pleads no defense, in any court, to any of the following:

(Footnote continued on the next page . . .)

[U]sing his position to both control the victim, intimidate her family and others, and the use of City facilities to allow him time alone with his victim, during which some of the assaults took place.

C.R. 940. The Deputy City Solicitor advised the Pension Board to take the following actions:

The Board should first vote to suspend Tyrone Wiggin's [sic] pension in light of the information the Board has received regarding his convictions and sentencing in state court. The Board should then vote on whether Mr. Wiggins is subject to the permanent disqualification and termination of his retirement benefits. The Board should give Mr. Wiggins notice of the decision and an opportunity to be heard on this matter in accordance with the Board's standard appeals process, including advising Mr. Wiggins that if he declines the hearing, or does not respond to the Board's letter within a specified period (30 days, as provided in Paragraph 1.2 of the Board's Regulation No. 1), he will have forever waived his rights to a hearing on this issue. In order to provide Mr. Wiggins with an official adjudication in the event he wishes to appeal, this matter should be listed on the agenda of the next Board meeting for a vote by the full Board.

C.R. 941.

At its next meeting on December 8, 2011, the Pension Board voted to suspend Wiggins' ongoing pension benefits and to disqualify him from any further pension benefits. By letter dated December 12, 2011, the Pension Board informed Wiggins of its decision and advised him of his right to a hearing. The letter stated, in its entirety, as follows:

(continued . . .)

(.5) Malfeasance in office or employment[.]

PHILADELPHIA PUBLIC EMPLOYEES RETIREMENT CODE §22-1302(1)(a)(.5). Section 22-1302 is discussed in greater detail *infra*.

Dear Mr. Wiggins:

At its regular meeting held on December 8, 2011, the Philadelphia Board of Pensions and Retirement **approved to immediately suspend your pension benefits and permanently disqualify and terminate your pension eligibility.**

Should you wish to challenge the Board's decision, you have the right to a hearing before a panel of the Board, at which you may, if you wish, be represented by an attorney and present any relevant evidence, witness or argument you may have. To request a hearing, write to [the Pension Board's Executive Director] at the above address within thirty (30) days of the date of this letter. A Board hearing is an adjudication of a local agency and is conducted in accordance with the Local Agency Law, 2 Pa.C.S. §551 et seq.

C.R. 960 (emphasis in original).

Wiggins requested a hearing. On December 29, 2011, the Pension Board sent a letter to Wiggins stating that a hearing would be scheduled and instructing Wiggins to make an appointment "to review the case file prior to the hearing date." C.R. 962. On January 13, 2012, the Pension Board sent Wiggins a second letter that scheduled the hearing for February 22, 2012. Instructing Wiggins to "be fully prepared to proceed," the letter stated, in relevant part, as follows:

Enclosed is a copy of the Board of Pensions' Regulation No. 1, which pertains to hearing panels and a copy of Section 22-1302 of the Philadelphia Code which pertains to your specific issue. Please read the enclosed regulation and section of the code carefully.

Note especially that the record generally closes at the conclusion of the hearing so you should submit all evidence (whether documents ... and witness testimony) at least two (2) weeks prior to the hearing date. Also, note that the evidence in the Board's file is part of the record, and if you wish to review

the case file before the hearing date you must schedule an appointment ...[.]

C.R. 963. The hearing was continued to August 22, 2012, at which neither Wiggins nor his attorney appeared. However, Wiggins filed a brief.

In his brief, Wiggins pointed out that the Pension Board had never informed him why it voted to terminate his pension. He stated:

The Board did not issue a statement explaining why they were terminating Mr. Wiggins' Pension. As such, Mr. Wiggins is at a disadvantage for not having received proper notice of the basis of the termination.

C.R. 1000 n.3 (internal citation omitted). Wiggins' brief went on to state that the Pension Board "probably" terminated his pension in the belief that his crimes constituted "malfeasance in office or employment" under the Philadelphia Retirement Code. C.R. 1000. Wiggins argued that this was error because, *inter alia*, the crimes for which he was convicted were not committed "while in or related to his office or employment." *Id.* (emphasis in original). Wiggins also argued that there was never a finding nor was there any evidence that "the crimes related to his employment or whether they were even committed while on duty."

C.R. 995. Further, the malfeasance clause in the Retirement Code was unconstitutionally vague and overly broad because it could include any conceivable crime, such as speeding.

Wiggins' brief also pointed out that the Public Employee Pension Forfeiture Act³ (Pension Forfeiture Act) did not authorize a termination of Wiggins' pension. The Pension Forfeiture Act lists the specific criminal convictions that will cause the forfeiture of a pension, and the crimes for which

³ Act of July 8, 1978, P.L. 752, *as amended*, 43 P.S. §§1311-1315.

Wiggins was convicted do not appear in that list. Wiggins argued that the Pension Forfeiture Act was dispositive and preempted the Philadelphia Retirement Code to the extent there was a conflict.

By letter of December 21, 2012, the Pension Board informed Wiggins that his appeal was denied, without explanation. The Pension Board provided neither findings of fact nor conclusions of law. Its letter, in its entirety, stated as follows:

At its regular meeting held on December 20, 2012, the Philadelphia Board of Pensions and Retirement denied your client, Tyrone Wiggins, his appeal **and approved the suspension, disqualification and termination of pension eligibility.**

Should you wish to challenge the Board's decision, you have the right to file an appeal with the Court of Common Pleas of Philadelphia within thirty (30) days of the date of this letter. You are to file your appeal at the Office of the Prothonotary, Room 280 City Hall for the appeal at the Court of Common Pleas. There is a fee for that filing.

C.R. 1032 (emphasis in original).

After Wiggins appealed to the trial court, the Pension Board issued an adjudication with findings of fact and conclusions of law. The findings of fact recounted the procedural history of the case. The legal conclusion stated that Wiggins' criminal conduct constituted "malfeasance in office or employment" and, thus, warranted the termination of his pension under Section 22-1302(1)(a)(.5) of the Philadelphia Retirement Code. In doing so, the Pension Board reasoned that the

facts surrounding [Wiggins'] conviction show that he used his position as a police officer in furtherance of his crimes, including but not limited to, using his position to control and intimidate the victim and her family, using City facilities for some of the assaults, etc.

Pension Board Adjudication at 5; Conclusion of Law No. 7. In support, the Pension Board cited the Deputy City Solicitor's letter of November 30, 2011. The Pension Board conceded that the crimes for which Wiggins was convicted did not warrant a pension forfeiture under the Pension Forfeiture Act.

The trial court affirmed the Pension Board's December 21, 2012, adjudication, and Wiggins appealed. The trial court issued a PA. R.A.P. 1925(a) opinion holding that Wiggins had failed to preserve any issues for this Court's review. After this Court quashed Wiggins' appeal, he sought reconsideration, which we granted on January 7, 2014. This Court remanded the matter and directed Wiggins to file a Rule 1925(b) statement of errors complained of with the trial court *nunc pro tunc*. Wiggins did so, and the trial court issued a supplemental Rule 1925(a) opinion.

The trial court's Rule 1925(a) opinion begins with a recital of the "facts." Because there was no hearing before the Pension Board, it is presumed that this recital is based upon the record in Wiggins' criminal trial. The trial court's factual history follows.

Wiggins began employment as an officer with the Philadelphia Police Department on March 3, 1986, while he also taught karate classes at a local recreation center. In June 1995, through these classes, Wiggins met Student and developed a close relationship with her and her family, frequently hosting them at his home. The first incident of Student's sexual assault occurred in early 1997, when she was 12 years old. Wiggins brought Student and her brother to the 39th District Police Headquarters, where he was stationed. Wiggins took Student's brother to the weight room to use the equipment and told him that he and Student were going to the "female computer room." Supplemental 1925(a) op. at 2. Instead, Wiggins drove Student to Fairmount Park where they had a sexual encounter. Wiggins then drove Student back to his station where they picked up

her brother. Student told no one what happened.

Wiggins continued a sexual relationship with Student for the next eight and a half years. The encounters took place in Wiggins' home and van, in Student's home, and in hotel rooms. When Student got older, she and Wiggins got into physical altercations to which the police were called. When the police appeared, Wiggins produced his police badge and stated there was no reason for concern. They investigated no further.

When Student was 18 years old, Wiggins induced her to make an audio recording in which she stated that she had used drugs and was a drug dealer. In August 2005, Student applied for employment with the Philadelphia Police Department, and Wiggins recommended her for the position. In December 2005, Student tried to end their relationship, prompting Wiggins to attempt to sabotage her employment application by telling the personnel office about the audiotape.

The relationship between Wiggins and Student continued to deteriorate. On January 12, 2006, Wiggins choked her outside the Albert Einstein Hospital, where she was working as a security guard. This episode prompted Student to tell her supervisor about her relationship with Wiggins. She then gave statements to the Special Victims and Internal Affairs Units of the Philadelphia Police Department. The police arrested Wiggins, who was then convicted of involuntary deviate sexual intercourse, aggravated indecent assault, statutory sexual assault, and corruption of a minor.

The trial court rejected Wiggins' appeal of his pension forfeiture for several reasons. It concluded that: (1) the Pension Forfeiture Act does not preempt the Philadelphia Retirement Code; (2) the Pension Board did not deprive Wiggins of procedural due process; (3) the Philadelphia Retirement Code's malfeasance provision allowing for pension forfeiture was not unconstitutionally vague; and (4) the Pension Board's determination that Wiggins committed

malfeasance in office or employment was supported by substantial evidence. The matter is now before this Court for our review.⁴

On appeal, Wiggins raises two main issues. First, he argues that the Pension Board violated his right to due process by failing to provide him with the requisite notice and opportunity to be heard regarding the termination of his pension eligibility. Second, Wiggins asserts that the trial court erred by concluding that the Philadelphia Retirement Code does not impermissibly conflict with the Pension Forfeiture Act.⁵

We begin with a review of the law on pension forfeiture. Pension forfeiture is not favored and, thus, pension forfeiture statutes are strictly construed. *Mazzo v. Board of Pensions and Retirement of the City of Philadelphia*, 611 A.2d 193, 196-97 (Pa. 1992). Relevant to Wiggins' pension forfeiture is a state statute and a City of Philadelphia ordinance.

Section 3(a) of the Pension Forfeiture Act provides that a pension will be forfeited upon a conviction for "any crime related to public office or public employment." 43 P.S. §1313(a).⁶ Section 2 of the Pension Forfeiture Act

⁴ This Court's review is limited to determining whether the Pension Board violated Wiggins' constitutional rights, committed an error of law or whether necessary findings of fact are supported by substantial evidence. *Merlino v. Philadelphia Board of Pensions and Retirement*, 916 A.2d 1231, 1234 n.5 (Pa. Cmwlth. 2007).

⁵ For organizational purposes, we have reversed the order of Wiggins' issues.

⁶ Specifically, Section 3(a) states as follows:

- (a) Notwithstanding any other provision of law, no public official or public employee nor any beneficiary designated by such public official or public employee shall be entitled to receive any retirement or other benefit or payment of any kind except a return of the contribution paid into any pension fund without interest, if such public official or public employee is convicted or pleads guilty or no defense to any crime related to public office or public employment.

43 P.S. §1313(a).

identifies the specific crimes that may lead to a pension forfeiture. The listed crimes include, *inter alia*, 18 Pa. C.S. §3922 (theft by deception); 18 Pa. C.S. §4101 (forgery); 18 Pa. C.S. §4701 (bribery in official and political matters); 18 Pa. C.S. §4902 (perjury); 18 Pa. C.S. §4911 (tampering with public records or information); and all federal crimes “substantially the same as the crimes enumerated herein.” 43 P.S. §1312. Some of these crimes, such as bribery, can only be committed by one in public office or employment. Others, such as perjury, could be committed in a private context. However, only if the crime listed in Section 2 relates to public office or employment will it result in a loss of a pension.⁷

Philadelphia’s Retirement Code also provides for a pension forfeiture. As does the Pension Forfeiture Act, the Retirement Code focuses on crimes that relate to honesty and integrity. Section 22-1302, entitled “Disqualification,” states as follows:

(1) Notwithstanding any other provision of this Title, no employee nor any beneficiary designated by or for any employee shall be entitled to receive any retirement or other benefit or payment of any kind except a return of contribution paid into the Retirement System, without interest, if such employee:

(a) pleads or is finally found guilty, or pleads no defense, in any court, to any of the following:

(.1) Perjury committed in connection with the employee’s official duties or

⁷ Section 2 specifies that the enumerated crimes relate to public office or employment when committed by a public official or public employee through his public office or position or when his public employment places him in a position to commit the crime[.]

43 P.S. §1312.

in any affidavit or proceeding concerning the employee's official duties or conduct;

(.2) Acceptance of a bribe for the performance, or affecting the performance or for the non-performance of the employee's official duties, or the offering or giving of a bribe to any other City employee or employee of the Commonwealth or of the United States for the performance or affecting the performance or for the non-performance of the employee's official duties;

(.3) Engaging in graft or corruption incident to or in connection with the employee's office or employment constituting a violation of the laws of the Commonwealth or the United States;

(.4) Theft, embezzlement, willful misapplication, or other illegal taking of funds or property of the City, or those of any official agency of the City, or agency, engaged in performing any governmental function for the City or the Commonwealth;

(.5) *Malfeasance in office or employment;*

(.6) Any offense designated as a "listed offense" under the Pennsylvania Registration of Sexual Offenders Act (Megan's Law), 42 Pennsylvania Consolidated Statutes Annotated §9795.1 or its statutory equivalent in another jurisdiction, if committed incident to or in

connection with the employee's office or employment; 87.1

(.7) Engaging in a conspiracy to commit any of the foregoing.

PHILADELPHIA PUBLIC EMPLOYEES RETIREMENT CODE §22-1302 (emphasis added).⁸ As is the case with the Pension Forfeiture Act, the crime or “malfeasance” will not cause a pension forfeiture unless it occurs in the course of City employment.

The Pension Board held that Wiggins committed disqualifying malfeasance in office or employment under the City's ordinance. It agreed that the Pension Forfeiture Act did not authorize its decision to terminate Wiggins' pension.

In his first issue, Wiggins argues that the Pension Board violated his due process rights. In support, Wiggins points out that the Pension Board's December 12, 2011, letter informing him of his pension's termination and right to appeal did not state why his pension was terminated, what provision of law or what regulation authorized the pension forfeiture or what specific conduct constituted the disqualifying conduct.⁹

⁸ Section 22-1302(1)(a)(.6) dealing with listed offenses under Megan's Law was added after the Pension Board terminated Wiggins' pension eligibility and is not relevant to this appeal. Note 87.1 of the Philadelphia Code states that Section 22-1302(1)(a)(.6) was “[a]dded and subsequent subsection renumbered, Bill No. 110841 (approved December 21, 2011). Section 2 of Bill No. 110841 provides ‘Effective Date; Applicability. This Ordinance shall take effect immediately upon becoming law, provided that the amendments to §22-1302 of The Philadelphia Code, as set forth in Section 1, shall not be applied retroactively.’”

⁹ Wiggins also argues that the Pension Board violated his due process rights because it did not provide him with the required notice and opportunity to be heard *before* it terminated his pension. The Pension Board simply notified Wiggins on December 12, 2011, that it had already terminated his pension eligibility. The Pension Board responds that Wiggins waived his claim that he was entitled to a pre-deprivation hearing because he did not raise that issue with the **(Footnote continued on the next page . . .)**

Due process requires “the right to notice of the issues to be decided, and an opportunity to offer evidence in furtherance of such issues.” *Pennsylvania Bankers Association v. Pennsylvania Department of Banking*, 956 A.2d 956, 965 (Pa. 2008). A person who stands to lose a property right must be “informed with reasonable certainty of the nature of the accusation lodged against him.” *Gaudenzia, Inc. v. Zoning Board of Adjustment of City of Philadelphia*, 287 A.2d 698, 701 (Pa. Cmwlth. 1972). In order for notice to be adequate

it must at the very least contain a sufficient listing and explanation of any charges against the ‘accused’ so that he can know against what charges he must defend himself if he can.

Begis v. Industrial Board of the Department of Labor and Industry, 308 A.2d 643, 645 (Pa. Cmwlth. 1973).

In *Begis*, the Industrial Board of the Department of Labor and Industry sent Begis a letter instructing him to attend a hearing if he wished to retain his certificate of competency as an elevator inspector. No other information was

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Pension Board. Wiggins raised a due process issue in his appeal to the Pension Board, but he did not specify that due process required a pre-termination hearing. Notably, the Philadelphia Retirement Code requires the Pension Board to provide notice and an opportunity to be heard prior to determining eligibility for pension benefits. Specifically, Section 22-1202(1) of the Philadelphia Retirement Code states, in relevant part, that:

Eligibility for membership in the Retirement System or the entitlement of any member, or of any person claiming through such member, to benefits accrued or rights accorded under this Title shall be determined *after notice and opportunity to be heard*. Any member or other claimant shall have a right to appeal to the Board any decision or determination affecting such person’s claimed benefits or rights.

PHILADELPHIA PUBLIC EMPLOYEES RETIREMENT CODE §22-1202(1) (emphasis added).

Because we decide this case on other grounds, we need not address whether the Pension Board violated the Philadelphia Retirement Code or due process by not giving Wiggins a pre-termination hearing.

provided. Begis appeared at the hearing and was told that he was being charged with making or approving improper inspections but was not told that he had a right to cross-examine witnesses. Following the hearing, the Industrial Board revoked his commission as an elevator inspector, without explanation. This Court held that Begis had been denied due process. The notice of the hearing was inadequate because it “did not alert him to the exact charges against him nor did it inform him as to the basis for any such charges.” *Id.* Further, the termination adjudication was defective because it lacked findings of fact and conclusions of law. It “did not even indicate the reason for which Begis’ commission was revoked.” *Id.* at 645-46.

The Pension Board did not provide the notice to Wiggins that is required by due process, as was established in *Begis*. The Pension Board’s December 12, 2011, letter did not inform Wiggins of the legal authority for its forfeiture of his pension or the factual basis for its decision.¹⁰ In short, this letter lacked information sufficient to allow Wiggins to prepare his appeal.

The Pension Board contends that it complied with due process by scheduling a hearing and “immediately invit[ing] Mr. Wiggins to review the [Pension] Board’s file prior to the hearing, *giving Mr. Wiggins the opportunity to ascertain the basis for the [Pension] Board’s initial decision.*” Pension Board Brief at 3 (emphasis added). This is not a persuasive argument. It was the Pension Board’s responsibility to inform Wiggins of the legal basis for terminating his

¹⁰ The Pension Board’s January 13, 2012, letter to Wiggins informing him of the scheduled hearing date did mention “Section 22-1302 of the Philadelphia Code which pertains to your specific issue.” C.R. 963. However, Section 22-1302 is simply the general pension disqualification provision of the Philadelphia Retirement Code. The Pension Board did not specify which part of Section 22-1302 applied and offered no elucidation as to what Wiggins’ “specific issue” might be.

pension. It was not his responsibility to comb through the Pension Board's file and puzzle out the Pension Board's legal theory. The Pension Board did not cite the "malfeasance in office or employment" provision of the Philadelphia Retirement Code nor did it cite the Pension Forfeiture Act. Wiggins was left to guess. Only after Wiggins appealed to the trial court did the Pension Board issue findings of fact and conclusions of law.

The Pension Board also contends that because the facts in this case are undisputed, the process due Wiggins is minimal.¹¹ It is true that Wiggins' convictions are undisputed. However, what is lacking is a factual record that connects Wiggins' criminal conduct to "malfeasance in office or employment."

In sum, the Pension Board did not give Wiggins information sufficient to defend against his pension termination. Neither the specific conduct alleged to constitute malfeasance in office nor the applicable law was provided to him. The Local Agency Law provides that

[n]o adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.

2 Pa. C.S. §553. Because Wiggins was not given "reasonable notice," the Pension Board's adjudication terminating his pension is invalid. Accordingly, the matter will be remanded. *See Begis*, 308 A.2d at 646 ("Where, as here, an administrative body has not afforded a fair hearing or has made invalid or inadequate findings of

¹¹ The Pension Board relies upon *Horsley v. Philadelphia Board of Pensions and Retirement*, 510 A.2d 841 (Pa. Cmwlth. 1986). There, this Court excused the Pension Board's failure to issue formal findings of fact or provide a pre-termination hearing because the facts were undisputed. However, the Pension Board had advised the employee of the legal basis for its action, with reference to the specific section of the pension ordinance. Here, by contrast, the Pension Board did not offer the legal authority for its action or state the facts that related Wiggins' crimes to his employment. *Begis*, 308 A.2d at 645.

fact, a remand for further administrative action is necessary for the fulfillment of the administrative process.”). The Pension Board must inform Wiggins of the charges against him, the applicable law and, specifically, what conduct, albeit criminal, constituted “malfeasance in office or employment.”

Accordingly, the order of the trial court is vacated and the matter is remanded to the trial court with instructions to remand to the Pension Board for further proceedings in accordance with the foregoing opinion.¹²

MARY HANNAH LEAVITT, Judge

Judge Leadbetter dissents.

¹² Wiggins also argues that Section 22-1302(1)(a)(.5) of the Philadelphia Retirement Code is vague because it omits any statement about what conduct constitutes “malfeasance in office or employment” that will justify a pension termination. Wiggins posits that this could lead to uneven results depending on the personal bias of the individuals evaluating each situation, *i.e.*, some employees will lose their pensions for malfeasance while others will not. Given our disposition of the appeal, we need not address this issue at this time. Likewise, we need not decide the other main issue raised by Wiggins, *i.e.*, whether Section 22-1302(1)(a)(.5) of the Philadelphia Retirement Code is preempted by the Pension Forfeiture Act.

