

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between
The CITY OF NIAGARA FALLS, NEW YORK (FIRE DEPARTMENT),

Employer,

-and-

THE NIAGARA FALLS UNIFORMED FIREFIGHTERS' ASSOCIATION,
LOCAL 714

Union.

OPINION

AND

AWARD

PERB CASE NO.

IA2009-006

M2008-340

Before the following Public Arbitration Panel:

Michael S. Lewandowski
Chairman

Joseph Pedula
Public Employee Organization Panel Member

Richard Rotella, Esq.
Public Employer Panel Member

Appearances: Christopher M. Mazur, Esq.
Deputy Corporation Counsel
For the City

Andrea L. Sammarco, Esq.
Sammarco, Mattacola & Sammarco, LLP
For the Association

On or about June 15, 2009, the Niagara Falls Uniformed Firefighters' Association, Local 714 ("Union") filed a petition for compulsory interest arbitration with the New York State Public Employment Relations Board ("PERB"). The City of Niagara

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

Falls, New York ("City") responded to the petition on June 30, 2009. The City and the Union had reached impasse in their negotiations for a successor Agreement to the Collective Bargaining Agreement ("Agreement") between the parties that expired on December 31, 2007. The unit is composed of 94 members holding the title of Firefighter.

In accordance with Section 209.4 of the Civil Service Law, the undersigned were designated as the Public Arbitration Panel members by letter dated August 14, 2009 from the New York State Public Employments Relations Board ("PERB"). The panel met and conducted a hearing in the City of Niagara Falls, New York on January 21, 2010. The panel held an Executive Session on June 11, 2010.

At the hearing, the parties were afforded a full opportunity to present relevant evidence in support of their positions. Each presented data collected concerning fire departments that they considered to be comparable to that of the City as well as data pertaining to the City's fiscal condition and past wage and benefits awards or agreements made by the City affecting other units of City employees.

The content of this opinion and award reflects the results of consideration of the evidence presented against the criteria contained in the Civil Service Law.

Specifically considered were the interests and welfare of the public and the financial ability of the City to pay any salary increase or benefit increases awarded; comparable wages of both comparable fire fighting units in other municipalities and comparable wages and increases granted other City employees, hours and conditions of employment provided employees involved in similar work or requiring similar skills (firefighters); comparison of peculiarities in regard to other professions such as hazards, physical qualifications, educational qualifications, mental qualifications and job training and skills. The panel also considered the terms of the collective bargaining agreement negotiated between the parties in the past. The final disposition of the issues is the result of the deliberations of the panel. The parties were split what should be the outcome with respect to the individual issues reviewed by the panel. The award contains the outcome as voted on by a majority of panel members. The panel rejected the majority of proposed issues after the panel reached the recognition that the proposals could not be resolved by even a majority vote. The expectation of the panel is that these issues will either be

addressed in future negotiations or withdrawn from consideration by the parties. In any event, the fate of these issues in the future lies with the parties and not this panel.

The evidence presented by the parties was considered against the criteria set forth in the Law including but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package that currently exists for the bargaining unit members.

DISCUSSION AND ANALYSIS

After extensive review of the significant amount of evidence presented at the arbitration, the panel reached agreement on the Award that follows. The Award is a product of the consideration of all the factors specified in the Civil Service Law. It modifies terms and conditions of employment in a manner which benefits both the Union and the City.

TERM. The parties were in agreement that the term of this award shall not exceed the two-year period expressed in Law as the maximum period for an interest arbitration award issued by such panel. The term of this award shall be for a two year period commencing on January 1, 2008 and expiring on December 31, 2009.

DIRECT COMPENSATION: The Union proposed increasing wages five percent (5%) in each year of a two-year award. The City proposed no increase in base wages during this period but instead advanced a position that the members of this unit should be given a \$500.00 bonus payment in each year of the award period.

Any review of proposed salary increases should begin with a review of the employer's ability to pay. The panel received into evidence a significant amount of data addressing this issue. Both the data presented by the Union and the data presented by the City showed that the City had the ability to pay an increase in compensation, be it an increase in base wages as the Union proposes or a bonus payment as the City proposes; the parties differed only on the amount of increase/bonus to be awarded although the amount to be paid differed greatly. The data also differs significantly as to the financial condition of the City. Each side vigorously asserted that its data represents the data upon which the panel should rely.

In the final analysis, the majority of the panel considered that the City's financial health is improving. On the positive side, the City saw an increase in its Ratio of Assets to Liabilities from a low in 2004 of 1.67:1 to a 2008 3.04:1 ratio. The data presented shows the City had \$57,990,000 in cash in 2008; a significant increase from prior years. The data also shows the City is relying less and less on the collection of real property tax revenue in that in 2006 the City obtained 37.1% of its total revenue from property taxes whereas in 2002, the City obtained 41.4% of its revenue from property taxes. The City actually

lowered its property tax rates from that which were assessed in 2006. The Mayor's proposed budget for 2010 seeks a reduction in the non-homestead tax rate and a marginal increase in the homestead tax rate. Additionally, the City's contribution costs for pension plans decreased by \$596,274.00 in 2008 from the 2006 contribution. The Annual Financial Report for the year ending December 31, 2008 shows the general fund reported unreserved, undesignated fund balance is approximately 5% of the annual expenditures of the general fund, a healthy amount. Fund balances for the period of 2006-2008 follow.

Year	Beginning Fund Balance	End of the Year Fund Balance
2006	\$ 6,310,968	\$15,090,022
2007	\$15,090,622	\$22,612,745
2008	\$22,612,745	\$25,623,507

While the City's financial health is improving the data also shows that there is reason to be cautious with regard to ability to pay here. The City 2008 Financial statements also show that the City (as well as every employer) needs to be concerned about the rising costs of health insurance. Additionally, the cost of employee pensions are expected to remain at levels high above the average for the past ten

years. Additionally, one of the most concerning factors (if not the most concerning factor) when assessing the City's ability to pay is the fact that State aide revenues are currently in a state of flux with all indications pointing to a potential dramatic decrease in such aide. As this award is being written, the State is delaying payment and there is every reason to believe that the State budget impasse will continue. The future for State aide payment is bleak as compared to past years.

When taken together, the positives and the negatives indicate that an increase in compensation is permissible but not at the level sought by the Union. The next step for the panel to consider is what level increase is appropriate, if any, given the fiscal picture of the employer. An employer is not obligated to pay increases sought simply because it has the ability to pay. A review of comparable salaries and benefits must be made as it was here.

The majority of the panel considered the data presented with respect to compensation when compared to similar work performed for comparable employers justified the increases adopted by this panel.

Each party proposed numerous municipalities that it considered comparable employers. Five (5) cities were on both lists; Lockport, Troy, Binghamton, Utica and Schenectady. The following tables show the base wages for each of the comparables as compared to the Niagara Falls Firefighters. The tables note the differences in compensation as well as the increases paid to firefighters employed by those municipalities for the period under review here.

FIREFIGHTER

Lockport 1/08	\$53,162.00
Troy 1/08	\$48,842.00
Binghamton 1/08	\$54,677.00
Utica 4/08	\$51,054.00
Schenectady 1/08	\$54,644.00
Average	\$52,475.80
Niagara Falls	\$46,106.00
Difference	\$6,672.80
% difference=	11.38%

Contract Wage Increases for 2009

Troy	3.50%
Binghamton	3.50%
Utica	2.00%
Schenectady	4.00%
Average for 2009	3.25%

The data clearly shows that the firefighters in this unit are paid below their peers in comparable municipalities. It also shows that average increase paid to those peers is more than what is adopted here. Among the many factors not contained in this raw data are differences in current contract benefits¹ and the fact that the wages shown and increases shown were enacted prior to the current financial situation involving the state budget as it affects state aide. I do note that the increases provided here do exceed the lowest increase shown in this data. The salary increase also exceeds the cost of living listed in the CPI, which was 2.3% for the one-year period ending March of 2010.

Significant weight was given to the fact that the Niagara Falls Police Captains' and Lieutenants' Association and the Niagara Falls Fire Officers' Association were recently awarded the same increases found appropriate here.

Considering all of the above, the panel determined the awarding of a 3% increase in base salaries in each year of the two-year award period should close this dispute.

¹ While these factors were reviewed the tables do not show the impact of them.

AWARD

SALARY AND OTHER COMPENSATION:

Effective January 1, 2008 -- increase 3%

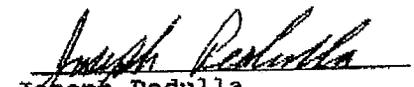
Effective January 1, 2009 -- increase 3%

As a part of the increase in compensation package adopted by this panel, the panel approves an increase of \$500 in the uniform allowance effective January 1, 2008. Also approved is an increase in the longevity increments as follows; \$250 at 15 years; \$300 at 20 years; \$350 at 25 years and \$450 at 30 years.

I concur/do not concur -- Date 8/30/10


Richard J. Rotella, Esq.
Public Employer Member

I concur/do not concur -- Date 8/19/10


Joseph Pedulla
Public Employee
Organization Member

Health Insurance:

The City proposed that new employees hired after the execution of this award, contribute (20%) towards the premium payments made by the City. The Union opposed the City proposal pointing to the need to submit such a proposal to the Labor Management Health Care Committee but also stating it opposed the creation of a two-

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tier benefit program. The recent awards affecting the Police "Brass" and the "Fire Brass" contain a provision that "any new member of the bargaining unit previously required in another City unit to pay co-pay for his/her health insurance premium will be required to continue to pay said co-pay for the same. Any prior section that is in conflict with this provision is null and void with respect to co-pay." In consideration of rising health care cost and the financial data submitted during this review, the majority of this panel elected to institute a premium contribution ("co-pay") of five (5%) percent towards premium of any firefighter hired after the execution of this award. The City did not seek to impose a health insurance contribution upon any currently employed firefighter nor is one awarded here.

I concur/do not concur - Date 8/30/10 
 Richard J. Rotella, Esq.
 Public Employer Member

I concur/do not concur - Date 8/19/12 
 Joseph Pedulla
 Public Employee
 Organization Member

In addition to the above items, the parties successfully negotiated a Light Duty Policy and a Procedure for the Administration of Section 207-a of the General Municipal Law for the Fire Department of the City of Niagara Fall, New York. In response to the mutual petition by the parties to have these

policies and procedures incorporated into this award, said policy and procedure is made apart of this award as attached hereto.

The above provisions contain the entire content of this award.

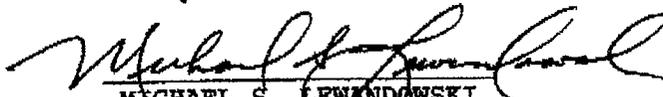
AFFIRMATION

COUNTY OF ERIE)

STATE OF NEW YORK)

We, the public arbitration panel identified above, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our award.

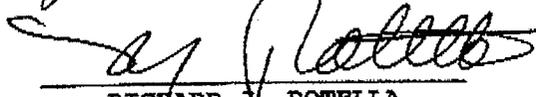
Date: 8/15/10


MICHAEL S. LEWANDOWSKI

Date: 8/19/10


JOSEPH PEDULLA

Date: 8/30/10


RICHARD J. ROTELLA

Light Duty

PURPOSE:

To establish policies and procedures of light duty

I. PREFACE

The Light duty Program is designed to keep an individual involved within the department by utilizing the skills of injured, ill, or other related conditions of uniformed personnel during rehabilitation. It will also allow the department to keep up with the demands placed upon a modern fire department by continuing to manage the diverse services expected by our citizens. Light duty assignments are available to employees with medical disabilities due to either job-related or non-job-related injuries or illnesses. The Light Duty Program may also be utilized for performance related issues and other temporary assignments.

Any employee on light duty shall report to the office of the Fire Chief. Physicians and therapists familiar with the employee's case as well as having the ability to define performance limitations and who are made aware of the job requirements of firefighters shall decide the functional capacities of uniformed personnel. The Office of the Fire Chief will work with the employee and the Occupational Health Center as well as the treating medical personnel to insure that all members are properly rehabilitated before returning to full duty.

During all aspects of the process confidentiality will be maintained and only information necessary for determining the type of work that may be performed will be released. Specific medical information is not to be released without a signed statement from the employee being treated granting such release.

II. POLICY

Permanent light duty assignments or accommodation agreements shall not be made. Any light duty assignment that is that is required of his/her position will be at the discretion of the Fire Chief and will not normally be for a period greater than 18 months from the beginning of the light duty assignment.

III. PROCEDURES FOR LIGHT DUTY ASSIGNMENTS

A. Occupational Injury/Illness

1. Any employee being treated for a job related injury shall notify his or her supervisor immediately when he or she is released to light duty by the treating physician. If the supervisor is unavailable, the employee shall notify the Office of the Fire Chief.
2. Any employee released to light duty shall report to the Office of the Fire Chief on the following 40-hour week (Monday – Friday) workday.
3. Assignments for light duty shall follow the treating physician's guidelines in conjunction with labor agreements, Public Employer Risk Management Association (PERMA), and the New York Compensation Laws.
4. At the conclusion of each medical appointment (including initial treatment and diagnosis) it is the employees' responsibility to see that the treating party completes the PERMA Work Capabilities Sheet. The Work Capabilities Sheet is to be delivered to the Office of the Fire Chief by close of business (COB) on the day that treatment is rendered. Exception to this requirement may be granted by the Fire Chief or his/her designee. In addition it is the employees' responsibility that copies of the Work Capabilities Sheet are forwarded to the appropriate parties.
5. It shall be the individual's responsibility to provide weekly medical status updates from the treating physician to the Fire Chief and PERMA if the next appointment is not indicated on the Work Capabilities Sheet.

B. Non-Job Related Injury/Illness

Individuals unable to work due to a non-job related injury/illness shall use a minimum of 96hrs of leave or leave without pay prior to submitting a request for light duty. When submitting a request for a light duty assignment, the following procedures shall apply.

1. The individual shall submit a written request for light duty to the Office of the Fire Chief. Included with this letter shall be a completed Work Capabilities Sheet including a statement from the physician addressing the expected duration of disability. Due to medical confidentiality, the cause of the disability for non-

occupational injuries does not need to be identified for light duty approval.

2. A determination for a light assignment is based on:
 - i. The types of jobs available
 - ii. The benefit to the Niagara Falls Fire Department and the citizens of Niagara Falls.
3. The Fire Department is not under any obligation to provide light duty assignments for individuals who have a non-job-related medical disability. Decisions may be appealed to the office of the City Administrator.
4. It shall be the individual's responsibility to provide weekly updates from his/her physician to the Office of the Fire Chief. The Fire Chief has the responsibility of keeping the Battalion Chief informed as to the status of any assigned members to his/her platoon.

IV PROCEDURES FOR PERSONNEL ASSIGNED TO LIGHT DUTY

- A. Personnel assigned to light duty shall report to the Office of the Fire Chief by 0800 hours each day. An exception to this may be made if the light duty assignment is at another work location (Apparatus Shop, Fire Hall, etc) and prior arrangements have been made. Individuals who have medical appointments prior to 0900 hours are exempt from reporting until the completion of their appointment.
- B. Personnel assigned to light duty shall wear the Niagara Falls Fire Department uniform.
- C. Individuals who are on job-related light duty are permitted to attend medical appointments and therapy sessions on city time. Individuals who are in a non-job-related light duty assignment must take leave for the time they are away from the work location to attend medical appointments or treatments.
- D. Individuals are required to provide a Work Capabilities Sheet following each physicians visit.
- E. Attendance at certification training required for an individuals position will be permitted when a person is in a light duty position provided that the training does not conflict with the physical limitations indicated on the Work Capability Sheet.

- F. Personnel assigned to light duty shall be relieved from duty by 1600 hrs each day. Some light duty assignments may require the employee to work a flexible schedule to accomplish the objectives of the position. Any overtime must have prior approval from the Fire Chief.
- G. Personnel assigned to light duty will not receive shift differential or other additional compensation above their hourly wage. They will continue to earn leave as stated in the negotiated agreements.
- H. Leave shall be granted as it is if on the line. Requests for leave will be submitted at least one day before the leave day(s) is requested. Any leave that has been granted prior to the light duty assignment shall be reported to the Fire Chief when the employee first reports for light duty.
- I. Personnel released from light duty to full and unrestricted duty shall immediately notify the Fire Chief and his/her respective Battalion Chief.

IV. PROCEDURES FOR REQUESTING LIGHT DUTY PERSONNEL

- A. Light duty assignments shall be based on the limitations/qualifications of the individual.
- B. Any supervisor within the Fire department may request assistance from individuals assigned to light duty. These requests are to be made in writing to the Fire Chief through the Battalion Chief. The request should contain the following information:
 - 1. Supervisor and work location
 - 2. Description of task to be performed
 - 3. Length of request: hour(s), day(s), week(s), month(s).
- C. Supervisors requesting light duty assistance must understand all procedures and requirements for personnel assigned to light duty.
- D. Granting such requests shall be based on the availability of personnel assigned to light duty, priority of the project, and time of receipt of the project. The Fire Chief shall review the continuation of extended light duty assignments on a monthly basis.

V. LIMITATIONS ON LIGHT DUTY ASSIGNMENTS

- A. Any light duty assignment that is required due to an employee's inability to perform the full field duties required of their position shall be limited to a maximum of 18 months on light duty. This limitation is for one compensable injury/illness, non-job-related injury, or other performance based issue. Employees who have exhausted the maximum time permitted

(or have been assigned to light duty for a period in excess of 12 month with a prognosis indicating that the employee will not be able to return to work in the 18 month time frame) will be offered the following options:

1. Referral to the appropriate agency for a determination for service (accidental or performance) connected disability.
2. Referral to the appropriate agency for a determination for a non-service connected disability.
3. Referral to city Human resources for assistance in securing appointment to another position in city government.
4. Resignation.
5. Retirement (if eligible)
6. Involuntary separation

B. Evaluation Criteria

To ensure that this policy is administered in an objective, consistent, and nondiscriminatory manner, the determination of an employee's fitness and/or ability to perform essential firefighter job functions must be based on objective job-related criteria. The primary criteria to be used for a fitness for duty determination shall include one or more of the following:

1. Results of a medical and/or psychological examination performed by a physician licensed to practice in the State of New York and approved by the city and PERMA with determination of fitness for duty based upon the established "Medical Guidelines for Firefighters", the firefighter's job description, and a list of essential job tasks.
2. An official report, training record, administrative investigation, performance evaluation, or request for accommodation.

VI. DISPUTE RESOLUTION

In the event of any dispute arising under the terms of this policy, the employee or the City may appeal same by service of a Demand for Arbitration, pursuant to PERB's Rules of Procedure. In the event that the city denies an application for Section 207-A benefits, seeks to discontinue section 207-A benefits, or there is a dispute about the capability of the employee to perform a specific light duty assignment, the matter will be submitted directly to arbitration pursuant to the rules of the Public Employment Relations Board. The determination of the arbitrator shall be final and binding on the city and the employee, but shall not preclude further review at a subsequent date based upon new or supplemental medical or other information.

Example of Light Duty Assignments

- 1) Pre-plans and pre-fire planning efforts
- 2) Assisting Fire Inspectors in the performance of fire inspections
- 3) Prepare, schedule, and deliver Life Safety/Public Education Programs
- 4) Record keeping and other light office duties.
- 5) Training. Under the direction of the Training officer, employee may assist in the development and delivery of training to incumbent employees or employees in training
- 6) Conduct tours
- 7) Report writing
- 8) Assist in the Apparatus Shop and perform support functions such as parts pick-up, delivery, etc.
- 9) Assist Senior Captain/Battalion Chiefs in Special Projects
- 10) Scheduling of Special Events
- 11) Fire Department Liaison to Community Groups/meetings
- 12) Participate in Inventory and Loss Control efforts.
- 13) Statistical Research for Grants Program
- 14) Mentoring and Coaching new employees
- 15) Recruitment Officer
- 16) Facilities Manager
- 17) Other tasks that are identified and are consistent with the physical limitations of the employee.

Procedure for the Administration of Section 207-a of the
General Municipal Law for the Fire Department
of the City of Niagara Falls, New York

Section 1. INTENT.

This procedure is intended to implement the express language of Section 207-a of the General Municipal Law (hereinafter "§207-a") and is not intended to reduce any benefit that a firefighter (hereinafter "employee") is entitled to pursuant to §207-a, including any benefit which may be conferred by statute subsequent to the enactment of this policy.

For the purposes of this Article, "business day" shall mean Monday through Friday, excluding any holiday or any other weekday when City Hall is closed for regular business.

On its behalf, the City shall designate the Fire Chief, or his designee, who shall have exclusive authority to make an initial determination of eligibility for 207-a benefits.

Section 2. NOTICE OF DISABILITY OR NEED FOR MEDICAL OR HOSPITAL TREATMENT.

a. An employee or anyone acting on his behalf may claim a right to benefits under §207-a, either because of a new illness or injury or the recurrence of a prior illness or injury, shall make written notice and application for those benefits within ten (10) business days of when the employee knew or reasonably should have known that the illness or injury could give rise to the claim of entitlement to §207-a benefits. The written notice and application shall be presented to the Chief or his designee, or to the appropriate supervisor, on the form contained in Appendix "A". Appendix "A" shall include the following:

- Compensation carrier report with medical authorization
- NYS Fire Casualty Report
- NFFD Special Report
- NFFD work capability sheet

- NYS 207 a application

b. The City will provide the employee, without cost, a copy of the records provided the City pursuant to the authorization as well as any records or reports by physicians, health care providers or other experts who examine the employee on behalf of the City. The medical authorization shall contain a confidentiality statement prohibiting the use or release of said medical records, except for purposes authorized by §207-a and this Procedure, including any hearing arising pursuant thereto.

c. In the event of a physical inability by the employee to give appropriate notice, such notice may be provided by another acting on behalf of such employee. If known, the notice shall describe the nature of the injury or sickness and the name of the treating physician. In the event of the employee's inability due to his injuries to give notice the City shall extend the time frame of Sec 2 (a) to a period of time that shall take his/her injuries into consideration.

d. The failure to satisfy any time limits specified above shall render a notice of filing untimely and shall preclude an award of any benefits pursuant to §207-a of the General Municipal Law; however, the Chief, upon good cause shown by the employee, shall have sole discretion authority to excuse said failure to provide timely notice.

Section 3. STATUS PENDING DETERMINATION OF ELIGIBILITY FOR BENEFITS.

a. The City shall determine the §207-a status of the employee within thirty (30) days of the submission of the completed written notice and application. Should the City fail to determine the employee's status within thirty (30) days, the employee shall be placed on provisional §207-a leave pending a final determination of his eligibility.

1. In the event that an employee placed on provisional §207-a pursuant to Subsection 3(a) above is denied §207-a eligibility and: (1) the employee does not appeal the denial under Section 7 of this Procedure, or; (2) the employee's appeal is denied, the

employee will reimburse the City in time (sick or vacation time) or money, at the option of the employee, for the § 207-a leave advanced.

b. Prior to a final determination of eligibility for §207-a benefits, the employee's work status will be determined by the limits imposed on the employee's work capabilities sheet. If "no duty" is assigned, the employee will be required to use their own sick leave or other time available to him/her until a determination of eligibility is made or a change in the command officer's work status.

Section 4. BENEFIT DETERMINATIONS.

a. In determining the application, the City may require additional information from the employee, interview witnesses and may send the employee to a physician or physicians of its choice for examination, at the City's expense. Should the employee be required to submit to a medical examination, the City shall provide a copy of the physician's report to the employee at no cost.

b. The City's eligibility determination will be made in writing to the employee. Should eligibility be denied, the writing shall set forth in detail any and all reasons for the determination. The City will also provide the employee, without cost, a copy of all information used in connection with the City's determination should eligibility be denied. Should the City receive additional medical information subsequent to its final determination, the same shall be provided to the employee at no cost.

d. Should the employee be awarded §207-a, all leave time used by the employee during the eligibility review period (from the date of injury) shall be restored in full within 14 days. The fire department records shall be the official records for the purposes of this section.

Section 5. ASSIGNMENT TO LIGHT DUTY.

Pursuant to §207-a (3), the City, through the Chief or the Chief's designee, may assign a disabled employee specified light duties, consistent with his/her status as an employee.

The City shall follow the policies and procedures set forth in the light duty policy contained in Appendix "B".

Section 6. TERMINATION OF BENEFITS.

a. Salary payments provided by §207-a (1) shall terminate upon the employee's accidental disability retirement or a performance of duty disability retirement, as set forth in the Retirement and Social Security Law.

b. The City will not discontinue §207-a benefits without the consent of the employee unless the employee's treating physician certifies that he is medically able to return to work and the employee refuses to do so. In the event that the City believes that the benefit should terminate and the employee does not consent, or his physician does not certify that he is able to return to work, whether full duty or light duty, the City may utilize the provisions of Section 7 in order to receive a determination from the arbitrator regarding the employee's continued eligibility for benefits. In the event an arbitrator determines that an employee improperly failed to return to full duty then in such event the arbitrator may direct that the employee's accrued time be charged.

Section 7. DISPUTE RESOLUTION PROCEDURE.

In the event of a dispute concerning entitlement to benefits or the application of this article, the matter will be submitted directly to arbitration pursuant to the rules of the Public Employment Relations Board. A hearing shall be held within sixty (60) days of appointment except that the deadline may be extended upon mutual consent. The arbitrator shall render his decision within thirty (30) days of the closing of the record, including the submission of post hearing arguments. The determination of the arbitrator shall be final and binding on the City and the employee, but shall not preclude further review at a subsequent date based upon new or supplemental medical or other information. The cost of arbitration shall be borne by the City and provision for a transcript shall be made by the City.

Section 8 DISABILITY RETIREMENT

Consistent with §207-a, the City may file an application on the employee's behalf for retirement under Section 363 or 363-c of the New York State Retirement and Social Security Law. The City shall notify the employee and the employee's Union prior to doing so. Any injured or sick employee who is receiving §207-a benefits shall permit reasonable medical inspections in connection with such an application for accidental disability retirement or performance of duty disability retirement in accordance with Section 6 above.

Section 9. CONTINUATION OF CONTRACT BENEFITS

An employee who is totally disabled shall accrue all contract benefits for the first six (6) months of his total disability. Thereafter, said employee shall not accrue any contract benefit but shall continue to receive regular salary or wages pursuant to §207-a and health care benefits as outlined by the Collective Bargaining Agreement. An employee on light-duty assignment pursuant to Section §207-a will continue to accrue all contract benefits during that assignment.

Section 10. OUTSIDE EMPLOYMENT.

The City and the Union agree that the terms of GML § 207-a relating to outside employment shall apply to any dispute under this article. The question of whether an employee has engaged in conduct violative of § 207-a shall be subject to the provisions of sections 6 & 7 of this article.

Section 11. HAZARDOUS EXPOSURE

An employee who reasonably believes he or she may have been exposed to a health hazard (AIDS, Hepatitis-B, biological or chemical toxins, etc.) as a result of the performance of his or her duties, may file a hazardous exposure form which will be maintained by the City in the employee's personnel file. A blank form is attached as Appendix "C". Should an employee claim a job-related injury due to exposure to a health hazard, then he or she must comply with the filing requirements contained in this Procedure as well as the requirements contained in this Section.

Section 12. EXCLUSIVITY OF PROCEDURES

These procedures are the sole exclusive procedures for determining an employee's eligibility for benefits under §207-a. As such, an employee shall have no right to challenge decisions of the City regarding eligibility or continued eligibility for §207-a benefits under the grievance machinery included in any collective bargaining agreement to which the employee or his or her collective bargaining representatives are a party. Notwithstanding this exclusivity clause, either party may file a grievance for a violation of these procedures. In that case, the scope of the arbitrator's authority will be solely to determine whether the procedures were complied with or violated.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives:

Appendix "A"