LBA, 8 OCB2d 16 (BCB 2015)

(Arb.) (Docket No. BCB-4078-14) (A-14707-14)

Summary of Decision*:** The City challenged the arbitrability of a grievance alleging that the NYPD failed to follow its procedures and wrongfully denied a lieutenant a line of duty injury designation. The City argued that the request for arbitration must be denied because the Union cannot submit a valid waiver as Grievant has brought actions in both federal and state courts and because NYPD LODI determinations are not subject to arbitration. The Union argues that it has submitted a valid waiver as the federal and state actions were not for the same claim that it now seeks to arbitrate and that there is a nexus between the grievance and the failure of the NYPD to follow its LODI policies. The Board found that the Union has provided a valid waiver but that it has failed to establish the requisite nexus. Accordingly, the petition was granted, and the request for arbitration was denied. ***(Official decision follows.)

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Arbitration

-between-

THE CITY OF NEW YORK and
THE NEW YORK CITY POLICE DEPARTMENT,

Petitioners,

-and-

LIEUTENANTS BENEVOLENT ASSOCIATION,
on behalf of Lt. RICHARD YARUSSO,

Respondent.

DECISION AND ORDER

On August 29, 2014, the City of New York ("City") and the New York City Police Department ("NYPD" or "Department") filed a petition challenging the arbitrability of a grievance brought by the Lieutenants Benevolent Association ("Union") on behalf of Lt. Richard Yarusso ("Grievant"). In its request for arbitration, the Union alleges that the NYPD failed to

follow its procedures and wrongfully denied Grievant a line of duty injury ("LODI") designation. The City argues that the request for arbitration must be denied because the Union cannot submit a valid waiver as Grievant has brought actions in both federal and state courts. The City further argues that the Union has not identified any rule, regulation, or written policy allegedly violated by the NYPD and has not established the requisite nexus as NYPD LODI determinations are not subject to arbitration. The Union argues that the waiver it submitted is valid as the federal and state actions were not for the same claim that it now seeks to arbitrate. The Union further argues that it has established a nexus as the request for arbitration clearly states that the Union seeks to grieve the failure of the NYPD to follow its LODI policies. This Board finds that the Union has provided a valid waiver but has not established the requisite nexus. Accordingly, the petition challenging arbitrability is granted, and the request for arbitration is denied.

BACKGROUND

Grievant was hired by the NYPD on February 28, 1994, and retired as a Lieutenant on ordinary disability on December 23, 2011. The Union is the duly certified collective bargaining representative for the Lieutenant title. The City and the Union are parties to a collective bargaining agreement ("Agreement"), dated November 1, 2009, through October 31, 2011, that remains in effect pursuant to the *status quo* provision of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL").

Article XXI, § 1, of the Agreement contains the grievance and arbitration procedures and defines a grievance to include:

> a. A claimed violation, misinterpretation, or inequitable application of the provisions of this Agreement; [and]
>
> b. A claimed violation, misinterpretation or misapplication of the

> rules or regulations, or procedures of the Police Department affecting terms and conditions of employment . . . .

(Pet., Ex. 1)

The Union appended to the request for arbitration a copy of the NYPD's Patrol Guide Procedure ("PGP") 205-05, the purpose of which is "[t]o report and record line of duty injuries and death occurring within the [C]ity." (Pet., Ex. 14) PGP 205-05 addresses the notification of an injury or death (to superiors, family, press, *etc.*), what a member is required to do at the time of an injury, and the LODI report. The LODI report has sections for comments from the officer, the officer's supervisor, and an investigating supervisor. PGP 205-05 states that the "Medical Division will make the final determination of APPROVAL/DISAPPROVAL of ALL applications for [LODI] designations and will notify the commanding officer of the member of final designation." (Pet., Ex. 14, p. 4) (emphasis in original) PGP 205-05, however, does not contain any procedures regarding how the Medical Division reviews requests for a LODI determination.

It is undisputed that Grievant was assigned to the Wingate Concert series on August 24, 2009, and that shortly afterwards he noticed a decrease in his hearing in his left ear. Grievant's primary care physician sent him to a specialist who conducted an audiogram on September 2, 2009, that revealed profound hearing loss in his left ear.[1] In mid-October 2009, the NYPD's Medical Division noted that Grievant could not hear out of his left ear, except for occasional beeping. Grievant was placed on restricted duty where he remained until his retirement. On December 22, 2009, Grievant was sent to an audiologist affiliated with the NYPD's Medical Division who submitted a report to the NYPD concluding that, despite initial improvement,

[1] The details of Grievant's hearing loss and treatment come from *Yarusso v. City of New York*, 2013 WL 772799 (S.D.N.Y. Feb. 26, 2013), incorporated by reference into the petition.

Grievant's hearing was not likely to improve. In late February 2010, Grievant was fitted with NYPD-issued hearing aids. Also in late February 2010, the NYPD advised Grievant that he was determined to be auditorily disabled and should be surveyed for evaluation by the Article II Medical Board of the NYPD's Pension Fund ("Pension Fund") to determine whether he could perform the full duties of a NYPD police officer. The Pension Fund evaluates applications for disability retirement and determines whether the officer is unable to perform the duties of the job. If the Pension Fund so finds, it will retire the member. If the condition is determined to be a result of an accidental injury received on duty, the member is retired on Accidental Disability Retirement at 75% of the officer's salary. Otherwise, the member is retired on Ordinary Disability Retirement at 50% of the officer's salary.

On March 18, 2010, Grievant filed a LODI report ("March 2010 LODI report") stating that "while firing my service pistol at the outdoor range, I noticed hearing damage." (Pet., Ex. 3) The supervisor's section of the March 2010 LODI report noted that Grievant was wearing standard NYPD-issued hearing protection. The investigatory supervisor's section noted that Grievant "is currently on Restricted Duty Status due to a pre-existing hearing condition" and recommended that Grievant not be granted LODI status. (Pet., Ex. 3)

On August 8, 2010, Grievant filed a second LODI report ("August 2010 LODI report") stating that the cause of his hearing loss was the August 2009 Wingate Concert detail. The supervisor's section of the August 2010 LODI report confirms that at the Wingate Concert assignment, Grievant was exposed to an "extreme[ly] loud noise level for a prolonged period" and recommended that Grievant be granted LODI status. (Pet., Ex. 4) The investigating supervisor concurred in the recommendation of LODI status, stating:

> Medical records do indicate that [Grievant] did sustain substantial hearing loss to his left ear. The investigation also reveals that it is

> medically documented that extreme noise from such things as a concert does cause damage to sensory cells and hearing loss. Based on the investigation above [Grievant] did sustain hearing loss as a result of his noise exposure at the concert. Recommend [LODI] designation.

(Pet., Ex. 4) The NYPD's Medical Division, however, denied both of Grievant's requests for a LODI designation.[2]

On September 10, 2010, the Union, by letter, filed a grievance regarding the "arbitrary and capricious manner in which the Department's Medical Division baselessly came to a conclusion regarding a possible causal factor related to [Grievant's] hearing loss." (Pet., Ex. 6) (emphasis deleted). The Union requested that Grievant "be granted the opportunity to visit an audiologist, by whom he has not yet been examined, to receive an objective and informed second opinion." *Id.*

On January 5, 2011, a three-physician panel of the Pension Fund reviewed Grievant's medical records pertaining to his hearing loss, interviewed Grievant, and recommended approval of Ordinary Disability Retirement. Grievant submitted an application for Accidental Disability Retirement on May 3, 2011.

On August 10, 2011, the Union sent the NYPD another letter ("Union's August 2011 Letter") reiterating the grievance and stating that "the evidence in the record [] consists of symptoms and medical treatment contemporaneous with the Line of Duty event of August 24, 2009." (Pet., Ex. 8). The Union once again requested that Grievant's LODI request be approved or that "an independent medical examiner evaluate the evidence to determine if such a finding is with merit." (Pet., Ex. 8)

---

[2] The rationale for the denial cannot be determined on the record before us; the recommendations of Medical Division's Chief Surgeon on the exhibits is illegible. (*See* Pet., Ex. 5)

On August 15, 2011, Grievant filed a claim against the City and the NYPD in federal court alleging that he was discriminated against on the basis of his hearing disability in violation of the Americans with Disabilities Act ("ADA") and the New York State and New York City Human Rights Laws. Grievant claimed that he was able to, with reasonable accommodations, still perform the duties of a NYPD officer. On December 23, 2011, Grievant was retired from the NYPD with an Ordinary Disability Retirement.

The Deputy Commissioner of Labor Relations, by letter dated March 21, 2012 ("NYPD's March 2012 Letter"), responded to the Union's August 2011 Letter, informing the Union that the NYPD "has disapproved the request" for a LODI designation. (Pet., Ex. 9)

On February 26, 2013, the federal court granted the City's motion for summary judgment, finding that Grievant was not qualified under the meaning of the ADA as his hearing loss, even with hearing aids, prevented him from patrol duties and, thus, he could not perform the essential functions of his job, either with or without accommodation. The federal court rejected Grievant's disparate impact claim "that he was retired with an Ordinary Disability [Retirement] after the [Pension Fund] ignored reports prepared by [his] hearing specialists and relied primarily on a report prepared before he was fitted with a hearing aid." *Yarusso*, 2013 WL 772799, *5. The federal court noted that "to the extent that [Grievant] disagreed with Defendant's decision to retire him, or its decision to retire him with an Ordinary Disability [Retirement] instead of an Accidental Disability [Retirement], the proper forum to address such a claim would have been a now time-barred proceeding under Article 78." *Id.* (citing *McDarby v. Dinkins*, 907 F.2d 1334, 1338 (2d Cir. 1990)) ("The grant of an ordinary disability pension [by the NYPD] is reviewable on the merits in an Article 78 proceeding.").

In July 2013, Grievant filed an Article 78 petition in state court challenging the NYPD Medical Division's denial of an Accidental Disability Retirement. The Grievant alleged that the NYPD's March 2012 Letter was not received by the Union until March 2013 and that the Article 78 petition was timely. Grievant further alleged that at the time of filing the Article 78 petition, the NYPD had not yet reached a final determination as to whether Grievant qualified for a LODI designation. On October 3, 2013, the state court dismissed the Article 78 petition as untimely. On October 29, 2013, the federal court denied Grievant's motion for reconsideration.

On May 28, 2014, Counsel for the Union replied to the NYPD's March 2012 Letter. In it, the Union asserted that the NYPD's March 2012 Letter was not received by the Union until March 12, 2013, and that it was not in conformance with the Agreement's grievance procedures. (Pet., Ex. 10) The Union requested a Step III decision.

On June 5, 2014, the NYPD responded ("NYPD's June 2014 Letter) "that denials of [LODI] designations are not subject to the grievance procedure." (Pet., Ex. 11) The NYPD's June 2014 letter further states, in pertinent part:

> The additional data section on page four [of PGP 205-05] provides that the Medical Division makes the final determination as to line of duty designations. In this case, upon receipt of the [Union's] August 10, 2011 letter protesting the denial of [LODI] status, this office requested that the matter be reviewed. Thereafter, the Medical Division determined that the denial of the application was consistent with the medical evidence. Subsequently, [Grievant] commenced an Article 78 proceeding . . . challenging the denial [of LODI] designation. That petition was denied as untimely.

(Pet., Ex. 11)

By letter dated June 17, 2014, the Union filed a Step IV grievance, stating that the NYPD's June 2014 Letter did "not satisfactorily address the Step III grievance." (Pet., Ex. 13) On July 24, 2014, the Union filed the instant request for arbitration, stating that the issue to be

arbitrated was whether "the [NYPD] wrongfully denied [Grievant's] request for [LODI] coverage and failed to follow its own procedural rules in connection with [Grievant's] hearing loss he sustained as a result of his assignment on August 24, 2009." (Pet., Ex. 2) The Union appended a copy of PGP 205-05 to the request for arbitration and seeks an order that the NYPD comply with its procedural rules, designate Grievant LODI status, award back pay, and all other just and proper relief.

POSITIONS OF THE PARTIES

City's Position

The City argues that the request for arbitration must be denied because the Union cannot submit a valid waiver. According to the City, NYCCBL § 12-312(d) prevents forum shopping and duplicative litigation by preventing the arbitration of a matter that has already been submitted to a court. The issue in the instant request for arbitration is whether the NYPD wrongfully denied Grievant's request for LODI status and failed to follow its own procedures in doing so. Grievant has filed suit in both federal and state courts challenging the same determination. This, according to the City, is precisely the type of duplicative litigation prohibited by the waiver provision of the NYCCBL.

Further, the City argues that the request for arbitration must be denied because the Union failed to identify the provision of the Agreement or the rule, regulation, or procedure allegedly violated, misinterpreted, or misapplied. The City argues that, assuming, *arguendo*, the Union meant PGP 205-05 as the undefined procedure in the grievance, PGP 205-05 does not create any right to arbitration as it explicitly states that all LODI determinations by the Medical Division are final. This case, according to the City, is analogous to *DEA*, 63 OCB 10 (BCB 1999), in which

the Board denied a request for arbitration seeking to grieve a denial of LODI status under PGP 120-3, which has the identical finality language as PGP 205-05.

Union's Position

The Union argues the request for arbitration clearly seeks to arbitrate the NYPD's failure to follow its LODI procedures. The Union argues that the City's waiver argument is an impermissible attempt to argue the merits of the dispute and that it has submitted a valid waiver. According to the Union, Grievant did not submit the same dispute to any other forum; Grievant's federal and state court claims did not concern the same claim that the Union now seeks to arbitrate. Thus, the Union argues, the instant request for arbitration is not duplicative. Further, summary judgment was granted in the federal suit and the state suit was dismissed as untimely.

The Union argues the petition challenging arbitration must be denied as there is a clear nexus between the grievance and the NYPD's procedures for LODI designations. In the grievance, the Union requested that Grievant be seen by an objective audiologist for a second opinion. The instant matter, according to the Union, is distinguishable from *DEA*, 63 OCB 10, as that case solely concerned a challenge to the failure to grant a LODI designation while the instant case concerns the NYPD's failure to follow its procedures, which is arbitrable. Thus, the Union argues, the instant request for arbitration has the requisite nexus, and the petition challenging arbitration must be denied.

DISCUSSION

The City challenges the arbitrability of a grievance concerning the NYPD's failure to grant Grievant a LODI designation. The Board finds that the Union has provided a valid waiver but has failed to establish the requisite nexus.

It is the "policy of the [C]ity to favor and encourage . . . final, impartial arbitration of grievances." NYCCBL § 12-302; *see also* NYCCBL § 12-312 (setting forth grievance and arbitration procedures). Further, "the NYCCBL explicitly promotes and encourages the use of arbitration, and 'the presumption is that disputes are arbitrable, and that doubtful issues of arbitrability are resolved in favor of arbitration.'" *PBA*, 4 OCB2d 22, at 12 (BCB 2011) (quoting *CEA*, 3 OCB2d 3, at 12 (BCB 2010)); *see also DC 37*, 13 OCB 14, at 11 (BCB 1974). The Board is empowered "to make a final determination as to whether a dispute is a proper subject for grievance and arbitration." NYCCBL § 12-309(a)(3). However, the Board "cannot create a duty to arbitrate where none exists." *PBA*, 4 OCB2d 22, at 12; *see also IUOE, L. 15*, 19 OCB 12, at 9 (BCB 1977).

The City raises two arguments that must be addressed prior to addressing the question of the substantive arbitrability of the grievance in the instant matter: (i) that the Union has not provided a valid waiver and (ii) that the Union failed to cite a specific provision or procedure allegedly violated in the request for arbitration. *See UMD, L. 333, ILA*, 4 OCB2d 37, at 12-13 (BCB 2011); *SSEU, L. 371*, 3 OCB2d 53, at 6-8 (BCB 2010).

Regarding the City's argument that the Union has not submitted a valid waiver because Grievant has filed suit in both federal and state courts, NYCCBL § 12-312(d) provides that:

> As a condition to the right of a municipal employee organization to invoke impartial arbitration under such provisions, the grievant or grievants and such organization shall be required to file with the director a written waiver of the right, if any, of said grievant or grievants and said organization to submit *the contractual dispute being alleged under a collective bargaining agreement* to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award. *This subdivision shall not be construed to limit the rights of any public employee or public employee organization to submit any statutory or other claims to the appropriate administrative or judicial tribunal.*

NYCCBL § 12-312(d) (emphasis added).

NYCCBL § 12-312(d) was amended in 2012 to add the emphasized text. *See* LL 39/2012 § 2. The amendments were in response to *Matter of Roberts v. Bloomberg*, 83 A.D.3d 457 (1st Dept. 2011), in which the First Department found that decades of Board decisions on waiver were in "conflict with the clear wording of [the] statutory provision." *Id.* at 458. In *Roberts*, the court found that a waiver submitted under the pre-amended NYCCBL § 12-312(d) constituted an agreement "to arbitrate the entire dispute, not just contractual claims" and that "there is nothing in the statute or its legislative history to support [the] position that statutory or constitutional claims are exempt from the waiver." *Id.*; *see also UMD, L. 333, ILA*, 4 OCB2d 37, at 15-17 (explaining *Roberts*). Prior to *Roberts*, the Board had interpreted the NYCCBL's waiver requirement so that a federal or state suit raising statutory, constitutional, or common law claims did not prevent the submission of a valid waiver and the arbitration of a claim under the contract. *See UFA*, 73 OCB 3A, at 7-13 (BCB 2004) (explaining Board's waiver analysis). We believe that the 2012 amendment was a clarification consistent with our earlier interpretation of the NYCCBL's waiver requirement.

Where the employer argues that a court action precludes the submission of a valid waiver, we look at the grounds of the suit to determine if the contractual claims raised in arbitration have also been raised before the court. If so, a valid waiver is not possible, and the matter cannot proceed to arbitration. If the court action raises only non-contractual claims, even when arising out of the same underlying circumstances, the court action will not preclude the submission of a valid waiver and the grievance, if otherwise arbitrable, may proceed to arbitration. *See UFA*, 73 OCB 3A, at 14 (claim allowed to proceed to arbitration despite federal

suit arising out of the same circumstances if Grievants withdraw from court "claims alleging violations of the Agreement").

Further, NYCCBL § 12-312(d) "prevents the subsequent arbitration of a matter submitted to *and adjudicated on its merits* by a court." *PBA*, 3 OCB2d 41, at 12 (BCB 2010) (emphasis added) (citing *PBA*, 23 OCB 8, at 4 (BCB 1979)); *see also UFA*, 4 OCB2d 65, at 10 (BCB 2011); *DC 37, L. 376*, 1 OCB2d 36, at 12 (BCB 2008) (claim not arbitrable where a judicial proceeding has concluded with a judgment on the merits on the precise claims on which arbitration is sought). Thus, a union can execute a valid waiver as long as "the merits of the instant grievance were never fully litigated." *Local 3, IBEW*, 45 OCB 7, at 9 (BCB 1990); *see also PBA*, 35 OCB 22, at 13-15 (BCB 1985) (court action seeking a temporary stay pending resolution of a contract dispute does not prevent the submission of a valid waiver as long as the action does not seek an adjudication of the arbitration claim).

Regarding Grievant's federal action, the claims raised there were statutory; specifically, the ADA and the New York State and New York City Human Rights Laws. *See Yarusso*, 2013 WL 772799, *5. As NYCCBL § 12-312(d) was amended explicitly to ensure that a waiver would not limit an employee or union from pursuing statutory claims such as those raised by Grievant in his federal suit, we find that the federal suit does not prevent the submission of a valid waiver by the Union in this matter.

Regarding Grievant's state law action, we need not determine if the claims that the Union now seeks to arbitrate were raised before the state court as there was no adjudication on the merits of the state action. *See PBA*, 3 OCB2d 41, at 12; *PBA*, 23 OCB 8, at 4. The state court found, in dismissing the state suit as untimely, that it did "not have the discretion to address the merits" of Grievant's claim. (Pet., Ex. 12) As Grievant was prevented from litigating the merits

of his state law claims, an arbitration on those claims would not be duplicative. Accordingly, Grievant's state action also does not prevent the submission of a valid waiver.[3]

Further, "we have long held [that] we will 'not dismiss requests for arbitration because of technical omissions when a petitioner's ability to respond to the request or prepare for arbitration was not impaired.'" *SSEU, L. 371*, 3 OCB2d 53, at 6-7 (quoting *NYSNA*, 2 OCB 2d 32, 11 (BCB 2009)); *see also CWA*, 51 OCB 27, at 14 (BCB 1993), *affd.*, *City of New York v. MacDonald*, No. 405350/93 (Sup. Ct. N.Y. Co. Sept. 29, 1994), *affd.*, 223 A.D.2d 485 (1st Dept. 1996). In the instant matter, the NYPD "had clear notice of the nature of the opposing parties' claim prior to the submission of its request for arbitration, and therefore had an opportunity to attempt to settle the issue at the lower steps of the grievance procedure." *CWA*, 51 OCB 27, at 14 (City's challenge to arbitrability denied even though the union failed to cite to the pertinent contract language until it submitted its answer). The NYPD was on notice from the earliest stages of the grievance process of the Union's claim. While the request for arbitration did not cite a specific procedure, appended to it was PGP 205-05. Accordingly, we find that the request for arbitration is not defective. *See SSEU, L. 371*, 3 OCB2d 53, at 8; *NYSNA*, 69 OCB 21, at 5-6 (BCB 2002).

We now address the substantive arbitrability of the grievance in the instant matter. To determine the arbitrability of a grievance, the Board employs a two pronged test:

> (1) whether the parties are in any way obligated to arbitrate a controversy, absent court-enunciated public policy, statutory, or constitutional restrictions, and, if so
>
> (2) whether the obligation is broad enough in its scope to include the particular controversy presented. In other words, whether there is a nexus, that is, a reasonable relationship between the subject matter of the dispute and the general subject matter of the Agreement.

[3] Our ruling here is restricted to the record before us, including the notation by the State Supreme Court Justice that she could not reach the merits of the dispute.

UFOA, 4 OCB2d 5, at 9 (BCB 2011); *see also NYSNA*, 69 OCB 21, at 7 (BCB 2002).

To establish a nexus between the collective bargaining agreement and the subject of the grievance "a party need only demonstrate a . . . 'relationship between the act complained of and the source of the alleged right, redress of which is sought through arbitration.'" *PBA*, 4 OCB2d 22, at 13 (quoting *PBA*, 3 OCB2d 1, at 11 (2010)); *see also Local 371*, 17 OCB 1, at 11 (BCB 1976). This showing, by definition, "does not require a final determination of the rights of the parties in this matter; such a final determination would in fact constitute 'an interpretation of the agreement that this Board is not empowered to undertake.'" *OSA*, 1 OCB2d 42, at 16 (BCB 2008) (quoting *Local 1157, DC 37*, 1 OCB2d 24, at 9 (BCB 2008)); *see also* Civil Service Law § 205.5(d). Thus, "[o]nce an arguable relationship is shown, the Board will not consider the merits of the grievance . . . [as] where each interpretation is plausible; the conflict between the parties' interpretation presents a substantive question of interpretation for an arbitrator to decide." *PBA*, 4 OCB2d 22, at 13 (citations and internal editing marks omitted); *see also COBA*, 63 OCB 13, at 10 (BCB 1999); *Local 3, IBEW*, 45 OCB 59, at 11 (BCB 1990).

Here, the first prong is met. The parties' Agreement has an arbitration clause and the City has not argued in the instant case that there are any court-enunciated public policy, statutory, or constitutional restrictions barring the arbitration of the grievance. Rather, the City argues that there is no nexus between the Union's claim and PGP 205-05. We agree.

The Union seeks to arbitrate two issues: (i) the denial of Grievant's request for a LODI designation and (ii) the failure of the NYPD to follow its own procedures when it determined not to grant Grievant's request for a LODI designation. The Union identified PGP 205-05 as the procedure that the NYPD allegedly failed to follow. As for the Union's first claim, PGP 205-05 explicitly states that the Medical Division will make the final determination as to LODI

designations, which are thus not subject to grievance and arbitration. As for the Union's second claim, there are no procedures in PGP 205-05 that the Union alleges that the NYPD failed to follow. The Union, at the earlier stages of the grievance process, requested that an independent medical examiner evaluate the evidence to determine if Grievant warranted a LODI designation. However, nothing in PGP 205-05 provides for or requires an independent evaluation. Thus, there is no nexus between the grievance and PGP 205-05. Accordingly, the petition challenging arbitrability is granted, and the request for arbitration is denied.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the petition challenging arbitrability filed by the City of New York and the New York City Police Department, docketed as BCB-4078-14, hereby is granted and it is further

ORDERED, that the request for arbitration filed by Lieutenants Benevolent Association, docketed as A-14707-14, hereby is denied.

Dated: May 28, 2015
New York, New York

SUSAN J. PANEPENTO
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

CHARLES G. MOERDLER
MEMBER

GWYNNE A. WILCOX
MEMBER