DC 37, 17 OCB2d 12 (BCB 2024)

(Impasse Appeal) (Docket Nos. BCB-4560-24 & BCB-4561-24) (I-276-23 & I-279-23)

Summary of Decision: The Union appealed certain aspects of the Report and Recommendations of an Impasse Panel arguing that the Panel erred by not considering the statutory requirement of the interest and welfare of the public and that the Panel's decision was not substantially based upon the record evidence. The City appealed other aspects of the Report and Recommendations of the Panel arguing that the Panel did not properly consider the record evidence or public safety in reaching its decision on bargaining demands concerning vision requirements and contractual promotion language for Lifeguards. As to each other's objections, the City and Union contend that the Panel properly considered the evidence and arguments of the parties and issued a report that is supported by the record and follows the criteria set forth in the NYCCBL. After consolidating both appeals into this proceeding, the Board denied both the Union's and the City's appeals. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of Impasse

-between-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO
ON BEHALF OF ITS AFFILIATED LOCALS 461 AND 508,

Petitioner,

- and -

THE CITY OF NEW YORK,

Respondent.

DECISION AND ORDER

On April 23, 2024, District Council 37 ("Union") appealed certain aspects of the Report and Recommendations of an Impasse Panel ("Report") arguing that the Impasse Panel ("Panel") erred by not considering the statutory requirement of the interest and welfare of the public and that the Panel's decision was not substantially based upon the record evidence. On that same date, the City of New York ("City") appealed other aspects of the Report arguing that the Panel did not

properly rely on the record, ignored conclusive evidence, and did not consider public safety in reaching its decision on the vision requirements for Lifeguards working for the New York City Department of Parks and Recreation ("DPR" or "Parks") and on the contractual promotion language. As to each other's objections, the City and Union contend that the Panel properly considered the evidence and arguments of the parties and issued a report that is supported by the record and follows the criteria set forth in the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"). The Board has consolidated both appeals for this decision and denies both the Union's and the City's appeals.

BACKGROUND

Between October 2022 and January 2023, the Union and the City bargained over modifications to the parties' collective bargaining agreement ("Agreement"). On March 16, 2023, the City filed for impasse with the New York City Office of Collective Bargaining ("OCB"). The parties engaged in mediation over four demands presented by the City, and when that was unsuccessful, the Board declared the parties to be at impasse in August 2023 and appointed a Panel to issue a report and recommendations. On October 16, 2023, the City filed another request for a declaration of impasse over two additional demands. The Board declared the parties to be at impasse over those two additional demands, and the two cases were consolidated to be heard before the previously appointed Panel, resulting in six demands being submitted to the Panel. The Panel held hearings on January 3, 12, 17 and 31, 2024. The Panel issued its Report on April 9, 2024.

The City's six demands were:

> **Demand 1:** Adjust the current vision requirements - tiered system with different vision requirements for pools versus beaches to align with industry practice and increase pool of eligible guards (e.g. maintain beach requirement of 20/30 in one eye, 20/40 in the other

eye without corrective lenses, but allow for pool requirements of 20/70 uncorrected vision in each eye, with 20/30 in one eye, 20/40 in the other eye with corrective lenses).

Demand 2: Permanently eliminate swim time requirement for all pools under 5-foot depth, maintaining other requirements, consistent with the qualification standards used for mini-pools for the 2022 season. Parks management will work with lifeguard school on submission of a revised training curriculum based on this requirement as required by the State.

Demand 3: Acknowledgement of management right to appoint additional managers in the supervisory chain of command overseeing the lifeguard program, with no required direct reporting relationship between the Lifeguard Coordinator and the First Deputy Commissioner.

Demand 4: Acknowledgement that Parks designees outside the lifeguard chain of command may serve as Step 1 hearing officer.

Demand 5: Expanded Eligibility for Promotion, amending Article 23 in the [Agreement] to allow for equivalent experience and/or reduce the amount of time in title/position that qualifies an individual for promotion.

Proposed Edits to Personnel Practices, Art. XXIII, Sec. 1:

A Lifeguard must have two seasons of satisfactory service to be eligible for detail as Lifeguard Lieutenant. A Chief Lifeguard detailed as Lifeguard Lieutenant must have one season of satisfactory service to be eligible for Chief Lifeguard. A Chief Lifeguard must have one season of satisfactory service as a Chief Lifeguard to be eligible to be detailed as a Borough Coordinator, and two seasons of satisfactory service to be eligible for Assistant Coordinator or Lifeguard Coordinator. Three years of comparable experience in the areas related to the assignments may serve as a substitute for the experience requirements above.

Demand 6: Acknowledge Parks' right to create programming at non-Parks facilities that utilize lifeguard staff from those separate facilities.

(Report at 4-5)

The Union did not submit any of its own bargaining demands to impasse and did not submit any counterproposals to the City's demands. After holding four days of hearings and accepting significant documentary evidence the Panel issued its Report. The Panel's three Recommendations were:

> Recommendation 1. City Demands 2, 3, 4 and 6 are granted.
>
> Recommendation 2. City Demand 1 is granted in part, and denied in part. City may lower the vision standards for wading and mini pools, but the current vision standard for all other pools shall be maintained, absent mutual agreement of the parties.
>
> Recommendation 3. City Demand 5 is denied and any changes shall be subject to negotiation between the parties.

(Report at 40)

On April 25, 2024, the Union and the City filed separate appeals from those portions of the Panel's Report in which they did not prevail. The Union appeals Recommendation 1 and the City appeals Recommendations 2 and 3. The Board has reviewed both parties' appeals and issues this consolidated decision.

POSITIONS OF THE PARTIES

Union's Position

The Union challenged the Panel's Recommendation 1, which granted Demands 2, 3, 4, and 6. The Union first argues that in granting these demands, the Panel did not properly consider the interest and welfare of the public as required by NYCCBL § 12-311(c)(3)(b).[1] In essence, the

[1] NYCCBL § 12-311(c)(3)(b) provides, in pertinent part:

> An impasse panel . . . shall consider wherever relevant the following standards in making its recommendations for terms of settlement:
>
> (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits,

Union contends that water safety -- as defined by the Union's witnesses -- is the sole measure of the statutory criteria addressing the interest and welfare of the public. The Union contends that the testimony it produced at the hearing conclusively proves that all the City's demands jeopardize water safety and therefore cannot be in the interest and welfare of the public.

The Union next argues that the Report is not based on substantial evidence in the record. The Union contends that the Panel relied solely on a Department of Investigation ("DOI") report to make several findings that adjustments to the Agreement were required due to inefficient and outmoded operations of the lifeguard program. The Union noted that it produced "significant testimony" from witnesses challenging the DOI report findings. (Union Pet. ¶ 61) Nevertheless, it contends that it did not have an opportunity to "rebut" the DOI report because no one who prepared the report testified. (*Id*.) In addition, the Union argues that there was insufficient evidence to show that the City's demands would improve DPR's operations or address the lifeguard shortage, claiming that the record evidence proved that low pay was the sole cause of the lifeguard shortage. Finally, the Union asserts that the evidence in the record is insufficient to show

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> conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;
>
> (ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;
>
> (iii) changes in the average consumer prices for goods and services, commonly known as the cost of living;
>
> (iv) the interest and welfare of the public;
>
> (v) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

that there were any management issues in the lifeguard program that required adjustments to the Agreement.

In response to the City's objection that the Panel's recommendation regarding vision requirements cannot be meaningfully implemented, the Union argues that the City relies on purported facts concerning the configuration of the City's pools and the duties of Lifeguards that are not in the record, and therefore cannot be considered by the Board on appeal. The Union further contends that the City does not cite any facts in the record showing that the Panel's recommendation regarding vision requirements would be impossible to implement. The Union also maintains that, despite the City's disagreement with the outcome, the Panel properly applied the statutory element of interest and welfare of the public in issuing Recommendations 2 and 3.

City's Position

The City's first objection to the Report is that the Panel erred in issuing Recommendations 2 and 3, which granted Demand 1 in part, and which denied Demand 5 in its entirety. The City's argument with respect to Demand 1 is that it cannot be implemented in a meaningful way because of how its pools are configured. Specifically, the City argues that Recommendation 2 should be overturned because it was based on "assumed facts" and is not supported by the record. (City Pet. ¶ 6) The City asserts that Recommendation 2 presumes different visions standards can be effectively implemented. However, it contends on appeal that implementation of the recommendation would be impractical because it lowers the vision standards for lifeguards that staff wading and mini-pools but keeps the current vision standard for lifeguards assigned to all other pools even though lifeguards may be responsible for all types of pools. The City's second objection to the Report is that the Panel ignored "conclusive evidence" in the record about vision standards for lifeguards. (*Id.* at page¶ 5) The City contends that the record shows that the vision

standards for New York City lifeguards exceed the New York State standards; therefore, the City claims that the Recommendation is not based on substantial evidence and must be overturned. The City's objection to Recommendation 3 is that the Panel did not consider public safety when it denied Demand 5 regarding the promotional criteria for lifeguards and its need to expand the pool of qualified candidates. Specifically, the City contends that the Panel focused exclusively on the supervision of pools and ignored the need for supervision of the beach lifeguards and thus failed to fully address its demand.

In response to the Union's objection that the Panel did not properly consider the interest and welfare of the public, the City maintains that the Panel correctly assessed the statutory requirement of "interest and welfare of the public" in Recommendation 1 and that the Panel appropriately balanced the safety of swimmers with the public's interest in having access to bathing facilities, swimming instruction, and a well-functioning DPR. The City also argued that the Panel relied on the record evidence in issuing Recommendation 1, and that the Union's objection that the Panel did not rely on substantial evidence in the record is incorrect.

DISCUSSION

Standard of Review

Pursuant to NYCCBL § 12-311(c)(4)(b), where the report and recommendations of an impasse panel is appealed to this Board, our review is "based upon the record and evidence made and produced before the impasse panel and the standards set forth in subparagraph (b) of paragraph three of this subdivision."

We have long held that the Board's review of an impasse panel decision is limited to deciding "whether the parties have been afforded a fair hearing and whether the record provides

substantial support for the result reached by the impasse panel." *DC 37*, 4 OCB2d 29, at 9 (BCB 2011) (internal quotation marks omitted) (quoting *PBA*, 17 OCB 12, at 6 (BCB 1976)). In our review, we shall not substitute our own judgment for that of the impasse panel. *See DC 37*, 4 OCB2d 29, at 10 ("[I]t need only appear from the decision of the arbitrators that the criteria specified in the statute were 'considered' in good faith and that the resulting award has a 'plausible basis.'") (citations omitted) (quoting *Caso v. Coffey*, 41 N.Y.3d 153, 158 (1976)). An impasse report and recommendations shall be upheld "unless it can be shown that the Report and Recommendations were not based on objective and impartial consideration of the entire record; and unless clear evidence is presented on appeal either that the proceedings have been tainted by fraud or bias or that the Report and Recommendations are patently inconsistent with the evidence or that on its face it is flawed by material and essential errors of fact and/or law." *UFA*, 51 OCB 19, at 11-12 (BCB 1993) (quoting *Podiatry Soc. of NYS*, 9 OCB 23, at 8 (BCB 1972)); *see also Caso v. Coffey*, 41 N.Y.2d at 158 (explaining that because the "essential function of . . . compulsory arbitration panels is to 'write collective bargaining agreements for the parties[,]' [i]t follows that such awards, on judicial review, are to be measured according to whether they are rational or arbitrary and capricious.") (quoting *Mount St. Mary's Hosp. v. Catherwood*, 26 N.Y.2d 493, 503 (1970)). While the parties to an impasse proceeding may in good faith disagree with the findings and reasoning of the panel, "[o]ur principal statutory responsibility is to examine the record to determine whether the parties have been afforded a fair hearing and whether the record provides substantial support for the result reached by the impasse panel; if it does, the fact that an interested party or that the Board might be able to conceive other results is not controlling." *Podiatry Soc. of NYS*, 9 OCB 23, at 8.

In conducting an impasse proceeding, NYCCBL § 12-311(c)(3)(b) sets forth the factors that a panel shall consider, although the Board has noted that, "no fixed value or weight…is prescribed for any of these criteria to be applied equally in all cases." *DC 37*, 4 OCB2d 29, at 9 (internal quotation marks omitted) (quoting *CSBA*, 11 OCB 4, at 7-8 (BCB 1973)). Further, an impasse panel "is free to apply the criteria as circumstances require to the exigencies of each particular case." *DC 37*, 4 OCB2d 29, at 9 (internal quotation marks omitted) (quoting *PBA*, 17 OCB 12, at 6 (BCB 1976)).

Based on the nature of the bargaining demands at issue and the City and Union's assertions in favor and against the requested modifications, the main statutory factor that the Panel had to consider is NYCCBL § 12-311(c)(3)(b)(iv), the interest and welfare of the public. The City and the Union agree that this was the sole statutory criterion at issue, although they disagreed as to its proper interpretation. The Panel set forth a definition of "the interest and welfare of the public," which was narrowly tailored to DPR's mission and its lifeguard program, that the Board believes is a suitable reading of the statute. The Panel wrote:

> [T]he importance of continued and broad access to swimming facilities in the City of New York can not be overstated. Unlike pools located throughout NY State, and perhaps most areas of the country, New York City pools serve as a lifeline to a great many of NYC residents. NYC is characterized by a highly dense population, and a good many NYC residents do not have access to air conditioning or other cooling facilities during the hot summer months. In addition, many residents live in tight and over-crowded living quarters, making public parks and swimming facilities all the more necessary to offer residents a respite and place to go to experience relief and enjoyment. DPR programs also offer residents critical and potentially life-saving swim instruction. Given these factors, the pools and programs offered by DPR and the degree to which DPR can continue to offer and broaden these activities is integrally entwined with promoting the interest and welfare of the public.

(Report at 28-29)

As a general matter, the Board believes that the Panel's conclusions as to the "interest and welfare of the public" underlying the bargaining demands at issue was reasonable and based on the evidence in the record. Moreover, in their appeals, neither party disputes the Panels' description of the uniqueness of DPR's mission and the existing lifeguard program operations.[2]

The Union's Objections

We first address the Union's objections to the Panel's Report.

We find that the Panel properly considered the statutory factors when it granted City Demands 2, 3, 4, and 6. The Panel's decision clearly showed an understanding of the Union's position and the evidence used to support its arguments. (*See* Report at 20) The Panel spent many pages in its decision summarizing the Union's arguments and the witness testimony on each of the City's demands. (*See id.* at 19-28) For example, in describing the Union's position on Demand 1, the Panel stated that, "[t]he Union argues that changes to the vision and swim test standards would result in less capable Lifeguards and would pose a safety risk to the public and other Lifeguards, something that is clearly not in the interest and welfare of the public." (*Id*. at 20) Similarly, concerning City Demand 3, the Panel stated, "[i]t is critical, submits the Union, that the Lifeguard Coordinator who has the most knowledge and responsibility for water safety, report directly to the Deputy Commissioner." (Report at 2; *see also id.* at 23)

In addition to demonstrating an understanding of the record and the Union's arguments, the Panel made its reasoning explicit in addressing each of the demands that are included in Recommendation 1. In reaching its conclusion, the Panel highlighted the supporting evidence that the contract modification sought to advance the interest and welfare of the public. For example,

[2] We also note that while the Panel's general definition of the interest and welfare of the public was tailored to the full set of demands before it, the Panel also carefully considered the safety of the public when utilizing the City's parks and beaches in addressing the individual demands.

in addressing City Demand 2, the Panel found that "[a]s evidenced by the City including through witness testimony, requiring a Lifeguard to swim a quarter mile in 7 minutes and 40 seconds, when they will be assigned to a pool less than 5 feet deep, is not necessary to ensure the Lifeguard is fully capable of guarding such pools." (Report at 32) The Panel went on to find that "[t]he City's argument that eliminating the timed swim test would enable it to hire more Lifeguards and better spread coverage across the five boroughs in the face of the shortage, has credibility. The potential for hiring additional Lifeguards who are fully capable of guarding pools under 5 feet across the City, without compromising on safety, is clearly in the interest and welfare of the public." (*Id.* at 33) Similarly, in analyzing City Demand 3, the Panel considered the public welfare – including water safety issues. It found that, "[t]his change would better equip the First Deputy Commissioner and DPR to further its operations, something clearly in the interest and welfare of the public. Furthermore, as argued by the City, it would also enable the Chief Lifeguards and their staff to focus less on administrative tasks and dedicate more time to the training and supervision of Lifeguards which is clearly in the best interest of the public." (*Id.* at 35) When addressing Demand 4, the Panel held:

> As the employer, DPR must be able to ensure the efficiency and consistency of its disciplinary process. It also must be able to ensure the process is free from the appearance of bias or conflicts of interest. The 2021 DOI Report emphasized these needs. It is also vulnerable to being unable to address the performance of its Lifeguards who are entrusted to ensure the safety of the public at its facilities.

(Report at 35)

In addressing City Demand 6, the Panel found:

> A significant factor weighing on the analysis of the City's Demand is that the facilities at issue are non-DPR facilities that already employ their own CPR-certified lifeguards. . . . There is no question that expanding the reach of aquatic programming that teaches

> lifesaving swimming skills to under-served areas is a matter squarely aimed at serving the interest and welfare of the public.

(Report at 38)

On this record, it is clear that "the criteria specified in the statute were 'considered' in good faith and that the resulting award has a 'plausible basis.'" *DC 37*, 4 OCB2d 29, at 9-10 (quoting *UFA*, 37 OCB 11, at 6 (BCB 1986) (citations omitted)). There can be no question that the Panel considered the interest and welfare of the public, including the importance of water safety, and based its Report on a good faith consideration of the statutory standard. Where the Panel has fully considered the record before it, we will not second-guess its judgment.

Turning to the Union's second basis for appeal, that the Report is not based on substantial evidence in the record, we find this objection similarly without merit. As set forth above, "[o]ur principal statutory responsibility is to examine the record to determine whether the parties have been afforded a fair hearing and whether the record provides substantial support for the result reached by the impasse panel; if it does, the fact that an interested party or that the Board might be able to conceive other results is not controlling." *Podiatry Soc. of NYS*, 9 OCB 23, at 8. The Union's argument that the Panel failed to follow the substantial evidence in the record is, upon review, nothing more than a disagreement with the Panel's conclusion and an effort to persuade the Board that the Union's arguments should have carried the day.

In raising this objection, the Union mischaracterizes the Report's findings and reasoning. For example, the Union alleges that the Report solely relied upon the DOI report for its findings that there needed to be operational changes in the lifeguard program, particularly as to Demands 3 and 4. This is not correct. Although the Panel does reference the DOI report, its holding is based on the full record before the Panel: "While the discussion of the City's demands that follows is specific to the demands, themselves, it should be noted, parenthetically, that the DOI report cited

a number of findings and made recommendations to remediate those findings. That said, the undersigned Panel Arbitrator is *not* adopting the findings of the DOI in this decision." (Report at 29) (emphasis in original). Therefore, based on the mere fact that the Panel references the DOI report when addressing Demands 3 and 4, we do not find that the DOI report was the sole basis for the findings. Rather, it is cited as an added piece of supporting evidence. (*See* Report at 30, 34-36) The Union's argument that the DOI report was entered in error and that it did not have an opportunity to rebut it is belied by the record. There was extensive Union witness testimony offered to rebut the conclusions of the DOI report, as the Union acknowledges in its papers. (Union Pet. ¶ 61, Union Br., at 61)

The Union posits that the record shows that higher pay for lifeguards would increase the number of lifeguard applicants and address DPR's staffing issues. Finding the optimal solution to DPR's staffing issues or a solution other than those contained in the contract modifications brought before the Panel is not an issue before us. In addition, there is no evidence that, in bargaining prior to impasse, the Union offered any counterproposals to address staffing issues, and therefore the only issues before the Panel concerned the modifications sought by the City. Based on the evidence before it, the Panel reasonably concluded that some changes to the parties' Agreement would help increase the pool of lifeguards and improve the operations of the City's pools and beaches and DPR in general, without compromising public safety. Accordingly, we conclude that the Panel's review was based on an objective and impartial consideration of the entire record.

The City's Objections

The City's first argument is that the Panel's recommendation to lower the vision standards for wading and mini-pools cannot be implemented in a meaningful way because of its staffing practices and the configuration of the City pools. The City, however, points to nothing in the

record to suggest that the staffing protocols it now raises before the Board were ever put before the Panel or that the Panel's recommendation conflicts with any testimony or evidence presented. Our review is limited to the record, and we cannot rely upon factual assertions that were not in evidence before the Panel. Moreover, the record establishes that City and the Union negotiated lower standards for lifeguards at mini-pools for the 2022 season, albeit based upon swim times, not vision standards. Nevertheless, in the record before the Panel, there is evidence that the City has, as recently as 2022, been able to staff mini-pools with lifeguards who were not qualified for the larger pools. (Demand 2, Exhibit C-3) That the Panel's recommended contract language is not as useful to the City as granting the full Demand does not serve to make the decision "patently inconsistent with the evidence or that on its face it is flawed by material and essential errors of fact and/or law." *UFA,* 51 OCB 19, at 11-12 (quoting *Podiatry Soc. of NYS*, 9 OCB 23, at 8).

The City's second objection to Recommendation 2 is that the Panel ignored "conclusive evidence" in the record. The City claims that "[t]he record before the Panel conclusively established that both the previously existing vision standard for pools and the City's proposed vision standard for pools, which is outlined in City Demand "1", are far above both those required by the New York State Sanitary Code ("Sanitary Code") and the promulgated vision standards in neighboring jurisdictions, including those used for bathing beaches." (City Pet. ¶ 10) As is clear from the record, however, the Panel did not ignore this evidence. In fact, the Panel considered it carefully but found that the uniqueness of the City's intermediate and large pools supported maintaining the status quo for those facilities. As the Panel said: "[t]he Panel Arbitrator agrees that sufficient vision standards are necessary, especially given that City pools are unique in many respects and differ greatly from pools located throughout NY State. Many of the pools are massive in size and some, built long ago, consist of difficult angles or even obstructions that make it

difficult to view swimmers, especially children." (Report at 31) The Panel reasonably found, based on the record, that the reduction in vision requirements for larger pools did not advance the public interest. The record provides substantial support for this result. The fact that the City does not agree with the Panel's finding does not establish a basis for vacatur. *See Podiatry Soc. of NYS*, 9 OCB 23, at 8.

The City's final argument is that the Panel did not consider public safety when it denied Demand 5, which seeks modifications to the promotional criteria for lifeguards. In particular, the City argues that the Panel erred in relying on evidence offered by the Union and focused only on the pools without including the beaches in its consideration. As an initial matter, we do not agree with the City that the Panel ignored beach lifeguarding issues. Although the record as a whole and the Panel's decision did focus on the City pools as a particularly unique aspect of lifeguarding, the Report makes clear that its decision is premised on the full City lifeguarding program. The Panel wrote, "the Union's arguments on the uniqueness of City pools *and City Lifeguard experience* is persuasive." (Report at 37) (emphasis added). In addition, the Panel reasoned that the impact of the City's demand to modify the promotion criteria on water safety was not as "direct and immediate" as its other demands. *Id.* Therefore, as we held in addressing the Union's objections, it is clear that "the criteria specified in the statute were 'considered' in good faith and that the resulting award has a 'plausible basis.'" *DC 37*, 4 OCB2d 29, at 9-10 (quoting *UFA*, 37 OCB 11, at 6 (citations omitted)). There can be no question that the Panel considered the entire Lifeguard program and the interest and welfare of the public, including the importance of water safety, and based its Report on a good faith consideration of that standard.

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 appeal of District Council 37 AFSCME, AFL-CIO, on behalf of its affiliated Locals 461 and 508 be, and the same hereby is, denied; and it is further

ORDERED, that the appeal of the City of New York, and the same hereby is, denied; and it is further

ORDERED, that the Report and Recommendation of the Impasse Panel, a copy of which is annexed hereto and made a part hereof, and the same hereby is, affirmed.

Dated: May 23, 2024
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLENES
MEMBER

I dissent in part, and concur, in part (see attached opinion) CHARLES G. MOERDLER
MEMBER

I dissent in part, and concur, in part (see attached opinion) PETER PEPPER
MEMBER

DC 37, 17 OCB2d 12 (BCB 2024)

(Impasse Appeal) (Docket Nos. BCB-4560-24 & BCB-4561-24) (I-276-23 & I-279-23)

Opinion of Charles G. Moerdler and Peter Pepper Dissenting, In Part, and Concurring, In Part

While we join in all but one of the Board's conclusions, one critical concern merits mention.

The Record reflects that a foundation for the Arbitrator's recommendation and, presumably, the Majority acceptance of it was the Department of Investigations report. It was improperly admitted without any testimony authenticating it, its findings or conclusion. Nor was any witness offered who could or would support it, thus denying the Union the fundamental right to cross examine. The error is manifest. The scope of the resultant taint is not possible to determine since the Report is not before us. However, the Arbitrator maintained that it was not admitted as part of the Report and presumably given limited weight.[1] It should either have been buttressed by witness testimony or excluded.

We dissent from so much of finding number 1 as granted City demand 1. On the Record and arguments before us, it should have been denied in its entirety. The Record fails to support the City's public safety arguments or dissuade us from subscribing to the Union's position thereon.

In all other respects, we concur in the judgment-order of the subscribed to by the majority.

Dated: May 23, 2024
New York, New York

Respectfully submitted,

CHARLES G. MOERDLER
MEMBER

PETER PEPPER
MEMBER

OFFICE OF COLLECTIVE BARGAINING

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In the Matter of the Impasse

-between-

THE CITY OF NEW YORK,

EMPLOYER,

REPORT & RECOMMENDATIONS

Case No. I-276-23
I-279-23

and

DISTRICT COUNCIL 37, AFSCME, AFL-CIO ON BEHALF OF ITS AFFILIATED LOCALS 461 AND 508,

UNION.

----------x

Before: Gayle A. Gavin, Panel

Appearances:

For the City:
Nicole Andrade, Esq.
By: Leslie J. Morsillo, Esq.

For the Union:
Robin Roach, Esq.
By: Michael Coviello, Esq.

District Council 37, AFSCME, AFL-CIO, Locals 461 and 508 ("the Union") represents employees in the civil service title of Lifeguard and Chief Lifeguard, respectively. Employees of both titles work for the New York City

Department of Parks & Recreation ("Department" or "DPR"). Lifeguards are assigned to City pools and beaches, while Chief Lifeguards are supervisors and coordinators. The terms and conditions of employment for both titles are governed by a collective bargaining agreement between the City and the Union known as the "Seasonal Agreement" covering the period from March 3, 2008 through March 2, 2010.

Between October 2022 and January 2023, the Union and the City bargained over the terms of a successor agreement. Unsuccessful in negotiating a successor agreement, the City filed for impasse with the New York City Office of Collective Bargaining ("OCB") on March 16, 2023. Thereafter, the parties agreed to engage in mediation. On July 21, 2023, the City submitted two additional bargaining demands to OCB for inclusion in the impasse and the Board included the additional demands docketed as I-279-23 on December 19, 2023. The City requested that the Board consolidate the additional demands and the request was granted on January 18, 2024. All demands were consolidated under I-276-23.

The undersigned Panel Arbitrator was selected pursuant to applicable Rule and Procedures of the New York City Office of Collective Bargaining as found at Section 1173.7.0 (b) of the New York City Collective Bargaining Law. Such law requires that the Impasse Panel use the following criteria in reaching its recommendations to resolve this dispute.

1. Comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits,

conditions and characteristics of employment of other employees performing similar work in the New York City or comparable communities;
2. The overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance pensions, medical and hospitalization benefits, food and apparel furnished, and other benefits;
3. Changes in the average consumer prices for goods and services, commonly known as the cost of living;
4. The interest and welfare of the public;
5. Such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse proceedings.

Administrative Code of the City of New York, Section 12-311(c)(3)(b).

Such recommendations are binding upon the parties unless modified or reversed by the New York City Board of Collective Bargaining.

Hearings via Zoom Video-conferencing were held before the Panel on January 3, 12, 17 and 31, 2024.

Contextual background:

The subject matter of the instant matter differs from the more common impasse disputes that typically involve economic terms and conditions, at their core. This impasse was initiated by the City after the parties were unable to agree on changes the City seeks to make to the management structure of the lifeguard program, the qualifications required of those lifeguards assigned to work at City pools (as opposed to

beaches), and the ability to create swim programming at non-DPR facilities using existing facility lifeguards as opposed to lifeguards represented by District Council 37.

Each of the changes the City proposes involve subjects the parties negotiated and agreed upon over the span of several decades and are memorialized in the form of the Seasonal Agreement, letter agreements, grievance settlements and party practices. As will be discussed below, the City asks that each of its demands be granted based on the statutory standard of "the interest and welfare of the public." The Union, however, asks that the *status quo* of the parties' terms and conditions of employment be maintained which it posits is likewise in "the interest and welfare of the public."

City Demands

City Demand 1: Adjust the current vision requirements – tiered system with different vision requirements for pools v. beaches to align with industry practice and increase pool of eligible guards.

- Adjustment of the current vision requirement would simply align the City requirement with industry standards and comply with NYS regulations, with no impact on the ability of successful candidates to perform the duties of the assignment.

City Demand 2: Permanently eliminate swim time requirement for all pools under 5-foot depth, maintaining other requirements, consistent with the qualification standards used for mini-pools for the 2022 season.

- Eliminating the swim time requirement for pools under 5-foot depth complies with NYS regulations, aligns with the parties' agreements over the prior two seasons, and would further expand the number of qualifying candidates for positions across the various DPR facilities.

City Demand 3: Acknowledgement of management's right to appoint additional managers in the supervisory chain of command overseeing the Lifeguard program, with no required direct reporting relationship between the Lifeguard Coordinator and the First Deputy Commissioner.

- Limitations on managerial oversight of the Lifeguard program place an undue burden on the First Deputy Commissioner and interfere with the daily operations of the program.

City Demand 4: Acknowledge that Parks designees outside the lifeguard chain of command may serve as Step 1 hearing officer.

- The current limitation on the assignment of the informal conference hearing officer function abrogates[1] a management prerogative, and must be changed to restore transparency and accountability to the discipline process for Lifeguards.

City Demand 5: Expanded eligibility for Promotion, amending Article 23 in the CBA to allow equivalent experience and/or reduce the amount of time in title/position that qualifies an individual for promotion.

- The current eligibility criteria for promotion into supervisory positions is unduly restrictive and unnecessarily limits the pool of available candidates.

City Demand 6: Acknowledge Parks right to create programming at non-Parks facilities that utilize lifeguard staff from those separate facilities.

Relevant Contract Provisions and Agreements

[1] The Panel has exercised its discretion in correcting an obvious typo.

Seasonal Agreement, Appendix B: (select provisions)

To this end we will implement a year-round Lifeguard Coordinator reporting directly to the Deputy Commissioner of Operations, who will be responsible for all year-round activities, including the school, ordering of supplies and equipment, and other Lifeguard related problems.

1996 Stipulation of Settlement: (select provisions)

SECOND: Pursuant to Appendix B of the seasonal unit collective bargaining agreement, a Lifeguard Coordinator shall be appointed, effective the date of this stipulation, to supervise the water safety/lifeguard program.

THIRD: Lifeguard Coordinator duties, as heretofore worked out jointly pursuant to Appendix B, shall be continued and, as so continued, shall include responsibilities for the operation and direction of the program.

FOURTH: The Lifeguard Coordinator shall report directly to, and shall be directly supervised by, the First Deputy Commissioner for Operations.

FIFTH: The First Deputy Commissioner for Operations shall have responsibility for decision-making concerning ancillary Lifeguard services, including transportation, communication and supplies. The First Deputy Commissioner for Operations shall communicate such decisions directly to the Lifeguard Coordinator.

SEVENTH: Appointments to Lifeguard positions shall continue to be made in accordance with existing applicable standard and certifications. Red Cross certificates shall be not utilized by the D.P.R. as a qualification nor as an alternative for determining Lifeguard eligibility and certification.

EIGHTH: DPR shall not apply for waivers of City and State Health Code standards regarding staffing requirements at beach and pool facilities, including, but not limited to, an application for a waiver of the New York State Sanitary Code, § 6-2.17(1) or applicable sections of the New York City Health Code.

Article XX of Seasonal Agreement

Section 1. Lifeguard Personnel

b. In any case involving an employee with less than three (3) consecutive years of service but more than one (1) year of service as a Lifeguard or Chief Lifeguard (including a person assigned as an Instructor), who has had written charges of incompetence or misconduct served upon him or her the following procedure shall govern:[2]

Step A Following the service of written charges, a conference with such employee shall be held with respect to such charges by the Division Head. The employee may be represented at such conference by a representative of the Union. The person designated by the Commissioner of Parks and Recreation ("DPR Commissioner") to review the charges shall take any steps necessary to a proper disposition of the charges and shall issue a decision in writing by the end of the fifth day following the date of the conference.

Step B If the employee is not satisfied with the decision of the Division Head, and appeal from such decision shall be made to the DPR Commissioner or the DPR Commissioner's designated representative…

Article XXIII of Seasonal Agreement:

Section 1.

A Lifeguard must have three seasons of satisfactory service to be eligible for detail a Lifeguard Lieutenant. A Chief Lifeguard detailed as Lifeguard Lieutenant must have two seasons of satisfactory service to be eligible for Chief Lifeguard. A Chief Lifeguard must have two seasons of satisfactory service as a Chief Lifeguard to be eligible to be detailed as a Borough Coordinator. A Chief Lifeguard detailed as a Borough Coordinator must have two seasons of satisfactory service to be eligible for Assistant Coordinator or Lifeguard Coordinator.

Memorandum of Agreement dated April 18, 2022: (select provisions)

The Agreement entered into herein between DPR and Locals 461 and 508, District Council 37, AFSCME (together, "the Union") shall in no way be

[2] The same process with respect to Step A applies to Lifeguards with more than three (3) years of service.

interpreted or used to challenge the continuing exclusive jurisdiction that Union represented Lifeguards and Chief Lifeguards (together "Lifeguards") have over DPR Learn-to-Swim programs and Lap Programs wherever and whenever the DPR conducts such programs at either DPR or other bathing pools or other swimming facilities, as memorialized in the attached Memorandum of Agreement between the DPR and the Union, dated December 22, 2005 ("the MOA") and subsequent agreements between the DPR and the Union regarding Lifeguard jurisdiction at DPR Learn-to-Swim and Lap Programs.

Notwithstanding the terms and conditions and mutual covenants set for in the MOA, DPR and the Union agree that it is in the best interest of labor relations between the parties to this Agreement, that based on the special circumstances of the Riverbank Program, DPR may utilize lifeguards who have not received DPR lifeguard training, and who are not Lifeguards represented by the Union to serve as lifeguards during the course at Riverbank Program, from April 18, 2022 to June 15, 2022.

It is expressly agreed and understood that neither this Agreement, nor the terms set forth in this Agreement, shall be admissible in any proceeding in any forum, except to enforce its terms.

It is further expressly agreed and understood between the parties that the entering into of this Agreement shall not be deemed or interpreted, in any manner, to be a waiver of the exclusive jurisdiction that DPR Lifeguards and the Union have over Lifeguard positions at DPR facilities and DPR Learn to Swim and DPR Lap Programs.

Memorandum of Agreement Dated December 22, 2005: (select provisions)

The DPR shall assign only Lifeguards who have received DPR lifeguard training to serve as lifeguards in the Learn to Swim and Lap Programs. Red Cross training shall not be sufficient. It is specifically agreed that no other title shall be assigned to serve as lifeguards in these programs.

Positions of the Parties:

The City's Arguments:

The City asks this Panel Arbitrator to recommend certain changes to enable DPR to better manage its lifeguard operations and change its testing standards and qualifications in order to enhance its ability to recruit and retain lifeguards. As a result of the COVID-19 pandemic, among other factors, the City's ability to source qualified candidates for Lifeguard positions has been severely impacted, it argued. The consequence of this shortage, explained the City, has been the closure of some City pools and the elimination of swimming programs – activities that are at the heart of DPR's core mission. These activities are of vital importance to the public and the swim programs are essential to providing for the public's health, safety and quality of life in the City. The modest changes the City is seeking are narrowly tailored to address it's recruitment and retention goals and to restore accountability and transparency to the program, averred the City. The City argues that the Union has not presented any evidence to demonstrate that the existing limitations on DPR's discretion serve a legitimate interest for its membership, nor has it shown that the proposed changes would have a discernible impact on the terms and conditions of its members. The City's detailed arguments for each of the proposed changes follow.

<u>City Demand 1</u>: Adjust the current vision requirements – tiered system with different vision requirements for pools v. beaches to align with industry practice and increase pool of eligible guards.

- **Adjustment of the current vision requirement would simply align the City requirement with industry standards and comply**

with NYS regulations, with no impact on the ability of successful candidates to perform the duties of the assignment.

The current vision standard for Lifeguards at NYC beaches and pools is 20/30 vision in one eye and 20/40 in the other eye, without corrective lenses. The City's first demand seeks to lower the vision standard for lifeguards assigned to pools to 20/70 uncorrected vision in one eye, corrected to 20/30, and 20/40 in the other eye using corrective lenses. The City emphasizes that this change would only apply to lifeguards working at pools, while the vision standard for lifeguards assigned to beaches would remain the same. Even with this new standard, it stated, the vision requirements will still exceed the New York State requirements for pool facilities as well as those used by the American Red Cross for lifeguard certification. The City elicited testimony from Amanda Tarrier, employed by New York State Department of Health, who explained that the New York State Sanitary Code, which provides the minimum standards for lifeguard courses in NY State, does not contain visual acuity standards for lifeguards, or for the lifeguard training courses. DPR Executive Financial Officer David Stark testified that the NY State standard, which applies to pools and beaches, only requires 20/70 uncorrected vision in both eyes. Therefore, the standard proposed by the City would still exceed the State standard, even for beaches. Mr. Stark further testified that over 50% of all Americans use corrective lenses, making the current City standard obsolete and having the effect of greatly reducing the number of qualified candidates

eligible to enter the DPR training program. Along this same line, the City elicited testimony from Parks Commissioner Donoghue, who stated that in 2023, 201 lifeguard candidates failed the vision exam despite being otherwise qualified to become a lifeguard.

Not only would this change in vision standards increase the pool of lifeguard candidates and consequently the number of City lifeguards overall, the City argued it would enable the City to retain its lifeguards. As returning lifeguards may experience changes in their eyesight, they may find themselves disqualified for needing to wear corrective lenses. Accordingly, the City argued, the changes to the vision standards are necessary to attract and retain lifeguards in order to staff its pools and keep them open to the public, something clearly aimed to serve the interest and welfare of the public.

<u>City Demand 2</u>: Permanently eliminate swim time requirement for all pools under 5-foot depth, maintaining other requirements, consistent with the qualification standards used for mini-pools for the 2022 season.

- **Eliminating the swim time requirement for pools under 5-foot depth complies with NYS regulations, aligns with the parties' agreements over the prior two seasons, and would further expand the number of qualifying candidates for positions across the various DPR facilities.**

Similar to the demand to lower the vision standards, the City seeks to change the swim time standards for candidates to qualify as lifeguards. Specifically, the City demand is to eliminate the swim time requirement (1/4 mile in 7 minutes 40 seconds) for pools under 5-foot depth, a change that

aligns with prior agreements made between the parties regarding mini-pools that would enable the City to attract a larger pool of qualified candidates. The City's demand does not alter the other qualifying performance standards for completing the full lifeguard training program and candidates would still need to demonstrate the ability to swim a continuous 300-yard swim test with good form. The new standard is a reasonable one, argues the City, as a timed endurance swim does not bear any relation to a lifeguard's ability of conducting a water rescue in the shallow pools.

As testified to by Ms. Tarrier, the New York State Sanitary Code does not require that lifeguard courses include a timed swim test. With the exception of the timed swim test, lifeguard candidates would still be required to meet all other requirements, such as in-water and dry-land skill sets, CPR, first-aid, back-boarding, rescue skills, and the like, argues the City. Further, argues the City, the timed swim test is out of step with the rest of NY State. There are only two NY State Olympic-sized pools located in NYC requiring an ability to swim 200 yards in 4 minutes. Neither NY State, nor the Red Cross standards require a timed swim test for shallow pool lifeguards, demonstrating that the requirement does not bear a nexus to safety at such facilities, avers the City. The benefit of removing the requirement would be the expansion of qualified lifeguards, something the City submits is crucially needed based on the current lifeguard shortage.

<u>City Demand 3</u>: Acknowledgement of management's right to appoint additional managers in the supervisory chain of command overseeing the Lifeguard program, with no required direct reporting relationship between the Lifeguard Coordinator and the First Deputy Commissioner.

- **Limitations on managerial oversight of the Lifeguard program place an undue burden on the First Deputy Commissioner and interfere with the daily operations of the program.**

The City described that the current structure, whereby the Lifeguard Coordinator reports directly to the First Deputy Commissioner, dates back to an August 31, 1978 side letter between the parties. This structure was also the subject of the stipulation of settlement in 1996 after the Union challenged the placement of an official between the Lifeguard Coordinator and the First Deputy Commissioner. The result of this arrangement is that there is no managerial-level oversight other than that of the First Deputy Commissioner which is unsustainable given the broad responsibilities of that role, the City argues. The First Deputy Commissioner is responsible for DPR's Operations & Management Planning Division as well as the Community Outreach and Partnership Development Division, while being the sole manager overseeing lifeguard operations. Commissioner Donohue testified to the untenability of the arrangement of being so directly involved with the smallest of operational details when such tasks could better be handled by intermediate managers. The result of this arrangement, as testified to by Mr. Stark, is a "bottleneck in the process of finding and onboarding candidates for lifeguard positions." There have been delays in the recertification process, assignment delays, the failure or

refusal to schedule swim tests and lack of follow-up with candidates, submits the City. Mr. Stark testified to the need for the entire process to be reorganized and to enable the Chief Lifeguards to concentrate on Lifeguard training and supervision, as opposed to administrative matters. The City also presented the testimony of the Mayor's Office of Labor Relations First Deputy Commissioner Daniel Pollak, who spoke to the right of management under collective bargaining law to determine its own structure, with the existing structure at issue being unlike anything he has seen citywide.

In addition to the testimony of City witnesses, the City points to a December 2021 report issued by the NYC Department of Investigation ("DOI"). The report cited the limited DPR oversight capacity and visibility resulting from the absence of intermediate managers. The report stressed to DPR the need for changes to the collective bargaining agreement and a restructuring of the organization to give leadership greater visibility into its operations. The City submits that the DOI report recommendations confirmed the untenability of the current arrangement and DPR must have control over the selection and assignment of lifeguard candidates. Until there are changes, which have been resisted by the Union, the recruitment and retention problems will continue, the City maintains.

<u>City Demand 4</u>: Acknowledge that Parks designees outside the lifeguard chain of command may serve as Step 1 hearing officer.

- **The current limitation on the assignment of the informal conference hearing officer function abrogates a management prerogative, and must be changed to restore transparency and accountability to the discipline process for Lifeguards.**

The City described the disciplinary process that is unique to the parties' collective bargaining agreement. Specifically, in Article XX, Step A provides "Following the service of written charges, a conference with the employee shall be held with respect to such charges by the Division Head." This language requires that the Lifeguard Coordinator, or their designee, serve as the conference hearing officer. The City argues there are multiple problems with this arrangement. For instance, the Lifeguard Coordinator is a member of the Union and the position has even been occupied by Union officials, such as the current Lifeguard Coordinator, who is also the Union's treasurer. This arrangement enables the Union to insulate its members from the fair and efficient resolution of disciplinary charges and is ripe for bias and favoritism, avers the City.

The existing process also results in delays due to the unavailability of the Lifeguard Coordinator or designee, as well as delays in issuing decisions, submits the City. The DOI Report noted the deficiencies with the process, finding that in one instance, failure to issue a conference decision resulted in the inability to issue discipline.

Further, argues the City, because the employee can accept the recommendation of the hearing officer at Step 1, the case may proceed no further and the Department has no ability to control the level of

discipline if it disagrees with the hearing officer's recommendation. In fact, it argues, the hearing officer can simply dismiss the charge(s), leaving the Department with no resource to address the underlying behavior. The City points to the testimony of Neil Veloz, who served as a hearing officer in the past, who stated he would decide cases to protect younger Lifeguards since "We don't want to ruin their employment prospects."

The remedy to this situation, as recommended in the DOI Report as critical, is to appoint individuals outside the Lifeguard Division's chain of command to serve as disciplinary hearing officers. This critical change, submits the City, would bring the Lifeguard Division in line with the structure found in nearly every other civilian contract between the parties.

The City refutes the Union's argument that the discipline of Lifeguards requires specific knowledge of the Lifeguard's responsibilities. As testified to by Mr. Stark and Mr. Pollak, throughout the Department and throughout the City for that matter, managers outside the chain of command hear and decide disputes without having prior knowledge of the employee's job responsibilities. The reason for this structure, as emphasized in the DOI Report, is to "ensure impartial decision-making and avoid the appearance of bias." The DOI Report also found that the structure "interfered with effective prosecution and disposition of disciplinary matters." Accordingly, the City argues, the Panel Arbitrator should affirm its ability to exercise discretion to designate the Step 1 hearing officer to restore transparency and accountability of the disciplinary process.

<u>City Demand 5</u>: Expanded eligibility for Promotion, amending Article 23 in the CBA to allow equivalent experience and/or reduce the amount of time in title/position that qualifies an individual for promotion.

- **The current eligibility criteria for promotion into supervisory positions is unduly restrictive and unnecessarily limits the pool of available candidates.**

The eligibility requirements for promotion into supervisory Lifeguard positions is detailed in Article XXIII of the parties' agreement. The provision specifies the Lifeguard titles and number of seasons of satisfactory experience to be eligible for promotion. The City takes issue with the fact that the language only speaks to time spent in service with DPR, and does not reference credentials or other relevant experience for assignment to a leadership position. This restrictive language, argues the City, severely limits the pool of eligible candidates and presents an unfair obstacle to the advancement of otherwise qualified candidates. This is simply another restriction on management's ability to recruit and retain the most qualified supervisors, submits the City. The City elicited the testimony of Mr. Stark who indicated that at the time of his testimony, only five year-round Lifeguards were eligible for promotion to the Lifeguard Coordinator role. The City emphasizes that under its proposal, candidates would still be required to meet all other qualifying standards to be considered for promotion, and it is not seeking to make wholesale changes to selection criteria. The proposal would enable DPR to open up higher level positions to candidates

with previous experience outside the DPR program. Specifically, the City seeks to amend Article XXIII to allow for the consideration of "three years comparable experience in areas related to the assignment" as an optional criteria, and to lower the length of service required for promotion into the higher level assignments.

<u>City Demand 6</u>: Acknowledge Parks right to create programming at non-Parks facilities that utilize lifeguard staff from those separate facilities.

The City describes that, in the past, it has offered aquatic programs, or learn-to-swim programs, at non-DPR pool locations where there was not a DPR pool located nearby. The Union and the City have agreed in the past, and on an *ad hoc* basis, to permit DPR to use lifeguards already employed at these facilities, as opposed to using DPR lifeguards. The City is seeking a determination that it can continue to offer these programs at non-DPR facilities, relying on the non-DPR lifeguard staff, without first seeking approval from the Union. According to the City, expanding DPR's ability to provide this service fosters the healthy and safe use pools and beaches. Commissioner Donoghue testified that the result would "have a trickle-down effect of making our pools and beaches safer, which is a core mission of the Parks Department and the Lifeguard program."

The City further argues that engaging the Union each time it seeks to offer aquatic programming at non-Parks facilities is impractical and has resulted in a truncation of the programming. The City stresses that it should

not be required to use DPR lifeguards, already in scare supply, to staff the non-DPR facilities. Rather, DPR could staff City pools with its own lifeguards and provide even greater opportunities for the public to use City facilities, while freely offering lifesaving programming to the greater public throughout the City at non-DPR facilities. Facing a nation-wide lifeguard shortage that has impacted DPR lifeguards, it is irrational to require DPR to utilize its lifeguards at non-City facilities, argues the City.

The Union's Arguments:

Contrary to the positions espoused by the City, the Union asked this Panel Arbitrator to reject the City's demands and maintain the *status quo* of the parties' existing terms and conditions of employment. The changes the City seeks are significant, and the City has not demonstrated a compelling need to make such significant changes, argues the Union. The Union described the history of bargaining between the parties through which the current terms and conditions were agreed upon, both via the Seasonal Agreement and a stipulation of settlement. Now, avers the Union, the City seeks to alter the parties' agreements without consent from the Union, and in some cases has already done so, and take back the rights previously agreed to. Not having presented a compelling reason for taking these actions, the Union submits the *status quo* must be maintained. The

Union's argument with respect to each of the proposed City demands are summarized, in turn, here.

<u>City Demand 1</u>: Adjust the current vision requirements – tiered system with different vision requirements for pools v. beaches to align with industry practice and increase pool of eligible guards.

- **Adjustment of the current vision requirement would simply align the City requirement with industry standards and comply with NYS regulations, with no impact on the ability of successful candidates to perform the duties of the assignment.**

<u>City Demand 2</u>: Permanently eliminate swim time requirement for all pools under 5-foot depth, maintaining other requirements, consistent with the qualification standards used for mini-pools for the 2022 season.

- **Eliminating the swim time requirement for pools under 5-foot depth complies with NYS regulations, aligns with the parties' agreements over the prior two seasons, and would further expand the number of qualifying candidates for positions across the various DPR facilities.**

The Union argues that changes to the vision and swim test standards would result in less capable Lifeguards and would pose a safety risk to the public and other Lifeguards, something that is clearly not in the interest and welfare of the public. The higher standards for City Lifeguards are not only necessary based on the unique nature of City pools and beaches, but they have proven to ensure a high safety record, with no deaths occurring at City facilities over the last ten (10) years, avers the Union.

With respect to the vision requirements, the Union maintains that the standard proposed by the City would be insufficient based on the work

Lifeguards must perform at City pools. It described the massive nature of many of the pools, with some characterized by difficult angles or even obstructions that make it difficult to view swimmers, especially children who often play on or around such obstructions. These pools are often extremely crowded and filled to capacity, especially with children, who are smaller and more difficult to see, explains the Union.

The proposed standard of 20/70 vision and the use of corrective lenses wouldn't be sufficient to obtain a NY State driver's license, argues the Union. As for allowing for the use of corrective lenses, the Union maintains that this would be difficult to enforce, as it is difficult to swim with glasses and they can get lost or fall off while swimming. While the City's demands may follow Red Cross recommendations, the City specifically agreed with the Union not to follow the lower Red Cross standards for certification. The Union explains that the Red Cross exercises limited control over its Lifeguard certification process. If the standards were lowered to the Red Cross level required, the Union avers, it would imply that Lifeguards do not need to see well to work at a pool. Working as a Lifeguard involves serious danger even in shallow water pools, it argues, and reduced standards would not only pose a risk to the public, but to fellow Lifeguards who rely upon each other for maximum water safety.

The Union emphasizes that the lack of qualified Lifeguard applicants is not the result of maintaining high standards. Rather, the Lifeguard shortage existed prior to the COVID-19 pandemic, although the situation

worsened as a consequence of COVID-19. Moreover, the standards were in certain respects even higher at one point before the Union agreed to lower the standards required for working at mini-pools in the 2022 season. The Union submits that the City has presented no evidence to demonstrate that lowering the standards would have a significant impact on improving its recruitment numbers. Rather, the City has offered little to incentivize its current Lifeguard population to remain with DPR, who leave based on working conditions. In fact, the Union submits, the number of returning Lifeguards is half what it was before the pandemic, while the number of new Lifeguards is roughly the same at 200 to 300 per year.

The Union argues that the swim time test demanded by the City should be rejected for many of the same reasons why the vision requirements should be maintained. It explained that Lifeguards are at the perimeter of the pools and could be fifty (50) yards from a drowning victim. Clearly, it submits, Lifeguards must be able to swim fast enough to reach a potential victim and this is true even when a swimmer is taller than the maximum depth of the pool, as people can drown in only a few feet of water.

<u>City Demand 3</u>: Acknowledgement of management's right to appoint additional managers in the supervisory chain of command overseeing the Lifeguard program, with no required direct reporting relationship between the Lifeguard Coordinator and the First Deputy Commissioner.

- **Limitations on managerial oversight of the Lifeguard program place an undue burden on the First Deputy Commissioner and interfere with the daily operations of the program.**

The structure of the Lifeguard Division is detailed in Appendix B of the Seasonal Agreement which consists of a side letter from 1978 establishing the year-round Lifeguard Coordinator position and providing that the Lifeguard Coordinator report directly to the Deputy Commissioner. The side letter also provides that the Lifeguard Coordinator is responsible for overseeing the Lifeguard program. The Union submits that the purpose of this arrangement was to ensure a water safety expert is at the highest levels of management. This reporting relationship was reaffirmed in 1996 via a stipulation of settlement in which it was agreed that the Lifeguard Coordinator would continue to report directly to the First Deputy Commissioner and maintain oversight of the Lifeguard program. It is critical, submits the Union, that the Lifeguard Coordinator who has the most knowledge and responsibility for water safety, report directly to the Deputy Commissioner. Despite these agreements, argues the Union, the City has appointed a seasonal Lifeguard Coordinator and the Deputy Commissioner is running the Lifeguard program operations, already violating the parties' agreements and collective bargaining law. While the City maintains its demand acknowledges what should be a managerial right, the City bargained this right away, as evidenced in the Seasonal Agreement and the stipulation of settlement, claims the Union. The Union

further submits that the City has presented no special circumstances compelling a change to this arrangement that has run effectively and successfully for decades.

The Union submits that the City has unilaterally implemented its demand under Mayor Adams direction by putting in place a first deputy commissioner and assuming control over the Lifeguard program. This is despite the City having agreed to its obligations under the Seasonal Agreement and the stipulation of settlement. Now, the Union argues, the City is attempting to absolve itself of having engaged in an improper practice by asking this Panel Arbitrator to grant its demand.

<u>City Demand 4</u>: Acknowledge that Parks designees outside the lifeguard chain of command may serve as Step 1 hearing officer.

- **The current limitation on the assignment of the informal conference hearing officer function arrogates a management prerogative, and must be changed to restore transparency and accountability to the discipline process for Lifeguards.**

The Union submits that this demand, if granted, would fundamentally change the due process rights of its members. The demand seeks to change the disciplinary rights, including the chain of command between the Lifeguard Coordinator and the Department, obtained by the Union for its members during bargaining and which are incorporated into the Seasonal Agreement in Article XX. The Union cited to a previous impasse proceeding in which it obtained these rights. *See Matter of District Council*

37 and City of New York, I-95-72 (August 4, 1973). The Union submits that the hearing under the Lifeguard Coordinator is not the only step of the disciplinary process. Rather, it starts with the service of charges by the Department, then is heard by the Lifeguard Coordinator or his designee, then there may be an appeal to the Department, and can ultimately proceed to arbitration.

Contrary to what is argued by the City, the Union argues that the Step A hearing does not result only in acquittals. Numerous members have been found guilty of charges and terminated by the Department, it submits. Furthermore, the City has failed to produce any evidence that a single hearing was delayed, that there was a conflict of interest, or that the Hearing Officer's recommendations failed to follow disciplinary standards.

The Union avers that, should this demand be granted, there could be an impact on public safety. Matters decided by Hearing Officers who are unfamiliar with the importance of water safety could result in members being disciplined for actions that are otherwise in the best interest of the public and the workforce. A Lifeguard's primary concern is safety, and they are best suited to understand the decision making process of a Lifeguard who is accused of misconduct.

<u>City Demand 5</u>: Expanded eligibility for Promotion, amending Article 23 in the CBA to allow equivalent experience and/or reduce the amount of time in title/position that qualifies an individual for promotion.

- **The current eligibility criteria for promotion into supervisory positions is unduly restrictive and unnecessarily limits the pool of available candidates.**

The Union submits that Demand 5 would allow the DPR to hire less experienced Lifeguards to be supervisors and Lifeguards who have no experience guarding City pools. This ignores the unique challenges of guarding City pools, such as the large size of the pools, the crowds who utilize them, and the demographics of the pool visitors. According to the Union, experience at facilities outside the City could never equate to the experience gained by working at City pools.

The Union also argues that the City has not demonstrated any need to change the Seasonal Agreement. There are several qualified candidates that DPR could promote to Lifeguard Coordinator but they have failed to do so and have for years. The City's reasoning, that it wants to bring "fresh leadership" to the program, argues the Union, demonstrates there is no need to make a change. Rather, argues the Union, the City is seeking to claw back rights obtained by the Union through bargaining. Nor is the structure different from other agencies who require experience with the City to be eligible for promotion. The Union points to the New York City Police Department and the New York City Fire Department as examples which would not hire someone from outside the agency to serve in a supervisory position. The reasoning is clear, argues the Union, that those positions are safety sensitive ones, like that of the Lifeguard positions. The

Union submits that the Panel consider the "interest and welfare of the public" to ensure the proper experience of Lifeguard supervisors.

<u>City Demand 6</u>: Acknowledge Parks right to create programming at non-Parks facilities that utilize lifeguard staff from those separate facilities.

The Union rejects the City's demand on the basis that the work of operating and overseeing the City swim programs is the exclusive right of the Union members. The Union cites to prior Board of Collective Bargaining case law for the premise that in order to show work is exclusive to a union, the union must prove: (1) that the work in question had been performed by unit employees exclusively, and (2) that the reassigned tasks are substantially similar to those previously performed by unit employees." *See IUOE, L. 15 & 14,* 77 OCB 2, at 12 (*citing Niagara Frontier Transp. Auth.,* 18 PERB ¶ 3083 (1985). The Union submits that operating and overseeing the City swim programs is precisely the type of work Lifeguards have performed since they were organized in the 1960s. Furthermore, the City's own actions through prior agreement with the Union demonstrates that the City considered this work to be exclusive to the Union, or it wouldn't have needed to enter such agreements in the past when it sought to use non-DPR Lifeguards. The agreement between the City and the Union was a limited time agreement to allow non-Union Lifeguards to work at certain City facilities. Because the City has violated this exclusivity and already

implemented this demand, the Union filed an Improper Practice that is pending at the Office of Collective Bargaining.

As with the other demands proposed by the City, this demand also has a public safety component and proposes an action that is against the "interest and welfare of the public." The public expects that City swim programs would utilize the higher standards required of City Lifeguards and it is in their interest that they have the superior quality of Lifeguards at City facilities, avers the Union. Based on each of the arguments presented, the Union maintains that the Panel should reject the City's demands in the interest of public safety, Lifeguard safety, and the bargaining history of the City and the Union.

DISCUSSION

The Impasse Panel Arbitrator has carefully and thoroughly considered the documentary evidence presented, the testimony elicited, and the arguments proffered by both parties in support of their respective positions. She has likewise evaluated all evidence presented based on the statutory criteria in arriving at the following findings and recommendations. As the City and Union arguments were summarized herein in the order of the City demands, this discussion will continue that structure for purposes of consistency and clarity.

By way of background, the importance of continued and broad access to swimming facilities in the City of New York can not be overstated.

Unlike pools located throughout NY State, and perhaps most areas of the country, New York City pools serve as a lifeline to a great many of NYC residents. NYC is characterized by a highly dense population, and a good many NYC residents do not have access to air conditioning or other cooling facilities during the hot summer months. In addition, many residents live in tight and over-crowded living quarters, making public parks and swimming facilities all the more necessary to offer residents a respite and place to go to experience relief and enjoyment. DPR programs also offer residents critical and potentially life-saving swim instruction. Given these factors, the pools and programs offered by DPR and the degree to which DPR can continue to offer and broaden these activities is integrally entwined with promoting the interest and welfare of the public.

It is also important to understand that NYC, like the rest of the country, has experienced a severe lifeguard shortage, leading to pool and beach closures, both publicly and privately. The COVID-19 pandemic, while not the sole reason for the lifeguard shortage, was certainly an aggravating factor and one on which most can agree.

Given the criticality of the DPR's mission to continue to provide necessary services, combined with the shortage of lifeguards that is hampering this mission, it is evident that certain changes must to be made to overcome the barriers faced by DPR. While the discussion of the City's demands that follows is specific to the demands, themselves, it should be noted, parenthetically, that the DOI report cited a number of findings and

made recommendations to remediate those findings. That said, the undersigned Panel Arbitrator is *not* adopting the findings of the DOI in this decision. It is worth pointing out however, that while both parties have pointed fingers for program/operational shortcomings, the DOI report demonstrates that some of the blame for the program's shortcomings rested with the First Deputy Commissioner. A close reading of the DOI Report indicated that the First Deputy Commissioner had long acquiesced to many of the problems DOI identified and must bear some responsibility for how the Lifeguard program has been handled. It is unfortunate that now, the parties find themselves at this impasse juncture, and certain of the City's demands are an obvious attempt to remedy some of the program's problems that should have been dealt with long ago.

With that as a backdrop, City Demand 1 seeks to lower the vision standard for lifeguards assigned to DPR pools to 20/70 uncorrected vision in one eye, corrected to 20/30, and 20/40 in the other eye using corrective lenses. This change would only apply to lifeguards working at DPR pools and will still exceed the New York State requirements for pool facilities as well as those used by the American Red Cross for lifeguard certification purposes. The City contends that this change in vision requirements would enable DPR to increase the pool of Lifeguard candidates, as well as enable the City to retain more lifeguards. With over 50% of Americans needing some type of corrective lenses, lowering the vision requirements would help

the City in combating the Lifeguard shortage, while still maintaining standards more than adequate for Lifeguards working at its pools.

The Union strongly objects to the City's contention that the proposed lower vision requirements would be sufficient for work Lifeguards must perform at City pools. The Panel Arbitrator agrees that sufficient vision standards are necessary, especially given that City pools are unique in many respects and differ greatly from pools located throughout NY State. Many of the pools are massive in size and some, built long ago, consist of difficult angles or even obstructions that make it difficult to view swimmers, especially children. That said, however, there is a vast difference in the various sizes, capacities and depths of City pools. The pools are categorized as Olympic, Intermediate, Wading, Mini, and Diving. Olympic and Intermediate sized pools are very large in size, capacity, and the number of bathers they can accommodate, often in the hundreds and even well over one thousand bathers. Wading and mini pools, however, are much smaller in size and capacity, and the number of bathers they accommodate is generally much fewer, mainly in the twenties and thirties but for a few wading pools in Manhattan that can accommodate hundreds of bathers. The depths of the different categories of pools also vary. Intermediate and Olympic pools range in depth from three feet to over 12 feet. Wading and mini pools, however, range in depth from nine inches to three feet.

Based on the arguments set forth by both parties, it does not reason that the final determination must be an "all or nothing" approach. Based on each of the factors that differentiate City pools, a reasonable recommendation would be that the City's proposal to reduce the vision standards is more appropriate for the wading and mini pools. In general, they are smaller pools, with fewer bathers, and have three feet or less of water. There is also potentially a lesser chance of corrective lenses being an obstacle in water less than three feet deep, and especially those pools that only have a foot or so of water.

Based on the significant number of wading and mini pools throughout the City, lowering the vision requirements for Lifeguards assigned to those pools will potentially serve the City's goal of increasing the Lifeguard candidate pool and promote retention of existing Lifeguards. Maintaining the current vision standards for Intermediate and Olympic size pools is in recognition of the different nature of those pools and the Union's arguments are persuasive in maintaining the *status quo* for those categories of facilities.

City Demand 2 seeks to eliminate the swim time requirement for pools under 5-foot depth, while maintaining all other requirements, including a 300-yard swim test with good form. As evidenced by the City including through witness testimony, requiring a Lifeguard to swim a quarter mile in 7 minutes and 40 seconds, when they will be assigned to a pool less than 5 feet deep, is not necessary to ensure the Lifeguard is fully capable of

guarding such pools. This City is not seeking to change the standards for its public beaches and Lifeguard candidates for pools will still need to complete the 300-yard swim component, and all other components of the full lifeguard program, including the in-water and dry-land skill sets, CPR, first-aid, back-boarding and other rescue skills.

The City's argument that eliminating the timed swim test would enable it to hire more Lifeguards and better spread coverage across the five boroughs in the face of the shortage, has credibility. The potential for hiring additional Lifeguards who are fully capable of guarding pools under 5 feet across the City, without compromising on safety, is clearly in the interest and welfare of the public.

City Demand 3, allowing the City to appoint additional managers in the supervisory chain of command overseeing the Lifeguard program, with no direct reporting relationship between the Lifeguard Coordinator and the First Deputy Commissioner, unquestionably lies at the heart of management's right to determine its management structure. That said, the City clearly bargained this right away when it agreed to the Union's request in the 1978 side letter, and again in the 1996 Stipulation of Settlement. The question then comes down to whether the City has presented a sufficiently compelling case that the changes it seeks would be in the interest and welfare of the public. For the reasons that follow, this Panel Arbitrator finds that the City has met its burden.

Perhaps the most striking element of the current structure is the direct reporting line between the Lifeguard Coordinator and the First Deputy Commissioner. The First Deputy Commissioner of DPR has an incredibly broad set of responsibilities, including responsibilities over the Operations & Management Planning Division and the Community Outreach & Partnership Development Division. Under the current structure, there is no manager between the First Deputy Commissioner and the Lifeguard Coordinator, making the First Deputy Commissioner the sole manager responsible for overseeing the Lifeguard program. The result, argues the City, is the lack of accountability and oversight over the Lifeguard program. This view was also addressed in the December 2021 investigation report issued by the NYC Department of Investigation ("DOI"). The report specifically declared a necessity for needing changes to the collective bargaining agreement and the organizational structure in order to have effective operational supervision. The DOI report specifically highlighted that the current structure has "resulted in limited DPR oversight capacity and visibility".

Enabling the First Deputy Commissioner to rely on intermediate managers to oversee the program's operation would enable the First Deputy Commissioner to focus on other critical responsibilities in support of DPR's mission. The current structure not only has a deleterious effect on the Lifeguard program, but it negatively affects the Deputy Commissioner's ability to support DPR, as a whole. This change would better equip the First

Deputy Commissioner and DPR to further its operations, something clearly in the interest and welfare of the public. Furthermore, as argued by the City, it would also enable the Chief Lifeguards and their staff to focus less on administrative tasks and dedicate more time to the training and supervision of Lifeguards which is clearly in the best interest of the public.

With respect to City Demand 4, that DPR be permitted to designate a Step 1 hearing officer outside the Lifeguard chain of command, the City's arguments in support of its demand are compelling. It is difficult to argue against the City's position that having a Step I hearing officer from outside the Union ranks has a direct tie to the "Interest of the public" criteria. As the arrangement stands today, a Step 1 hearing officer could potentially delay hearing a matter or delay issuing a decision, or recommend a penalty that may be accepted by the employee at Step I that DPR does not agree is sufficient to address the conduct or performance at issue. As the employer, DPR must be able to ensure the efficiency and consistency of its disciplinary process. It also must be able to ensure the process is free from the appearance of bias or conflicts of interest. The 2021 DOI Report emphasized these needs. It is also vulnerable to being unable to address the performance of its Lifeguards who are entrusted to ensure the safety of the public at its facilities.

While the Union argues that the City failed to produce evidence of the problems with the current arrangement, such as delays, bias or improper decision making, the mere fact that the DPR has little control over

the first step of the process is fraught with potential abuse even crediting the Union with having the utmost diligence and shared goal of ensuring Lifeguards are accountable for their actions. The Union argues that the City's claim that Lifeguard Union officers serving as hearing officers poses a conflict of interest ignores the nepotism and favoritism demonstrated by DPR management. That said, the record evidence before the Panel Arbitrator does not bare out the contention that DPR management is plagued by nepotism and favoritism. Moreover, such contentions are bested addressed in another forum.

As for the Union's claim that only hearing officers that are Lifeguards with knowledge of water safety should hear matters at Step I, this argument is not supported by the record. As described by the City, agencies throughout the City have hearing officers conduct hearings without prior knowledge of an employee's duties and responsibilities. Furthermore, the subsequent steps of the parties' disciplinary process are heard by managers who are not Lifeguards.

Turning to City Demand 5, it involves expanding the eligibility of promotions into supervisory positions by allowing DPR to open up positions to lifeguards who have experience outside of DPR programs. This, the City claims, would expand the pool of eligible candidates and freshen leadership in the program. The City also seeks to lower the length of service required for higher level positions that oversee Lifeguard operations. The Union argues that this Demand discounts the unique nature of lifeguarding

at City pools, which is unlike most other places, and that there is no equivalent experience at other locations that would match that gained lifeguarding at City facilities. Furthermore, the Union avers that the experience requirements for becoming a supervisor are minimal and lowering the time in service for promotion would lead to less qualified supervisors.

As with each of the City demands, the criteria to be analyzed is whether it is in the interest and welfare of the public to recommend a change to that which the parties have negotiated. Unlike some of the other demands set forth by the City, Demand 5, as presented by the City and based on the record, does not have the same direct and immediate impact on the safety and welfare of the public. While having fresh leadership is potentially a need the City has identified, as well as the need to increase the Lifeguard pool, the Union's arguments on the uniqueness of City pools and City Lifeguard experience is persuasive. This is true for outside hires as well as internal promotions. The length of service required for promotions, as it currently stands, is better left to negotiation between the parties than this Panel making a recommendation as to what is necessary experience to advance to a more senior position.

Finally, as to City Demand 6, it seeks to affirm the right of DPR to create programming at non-Parks facilities using the employed lifeguard staff that already exists at those facilities, as opposed to using DPR Lifeguards. The City submits that this demand will serve to make permanent

an arrangement that has previously been agreed to by the parties on an *ad hoc* basis. The significance of this arrangement, argues the City, is that these non-Parks facilities offer aquatic programming at locations without a nearby DPR facility, thereby expanding the reach of programs in the community. Furthermore, the City submits, this arrangement would free up existing DPR Lifeguards to staff City pools that are already experiencing a staffing shortage. The Union rejects this Demand, arguing that the work being performed is exclusive to the Union having been previously performed exclusively by bargaining unit members, and the reassigned tasks are substantially similar to those previously performed by unit employees.

A significant factor weighing on the analysis of the City's Demand is that the facilities at issue are non-DPR facilities that already employ their own CPR-certified lifeguards. To require that the DPR use its own Lifeguards that are already in short supply is redundant and not a good use of resources given the challenge of staffing DPR pools with existing Lifeguards. While the parties entered into agreements in the past to allow DPR to rely on existing non-DPR facility lifeguards, the fact that these are non-DPR facilities, with their own lifeguard staff, weighs in favor of allowing the DPR to continue to offer the programming with the assistance of the facilities' own staff. There is no question that expanding the reach of aquatic programming that teaches lifesaving swimming skills to under-served areas is a matter squarely aimed at serving the interest and welfare of the public.

The Union's argument of exclusivity, even though mutually agreed to in the past, does not outweigh this important interest, and the fact that these non-DPR facilities have their own staff that have previously provided lifeguard duties when the DPR is offering a program weighs against the argument that the work performed is the exclusive work of the Union members. This is the case even though the DPR and Union have entered into agreements in the past as even then it is not clear that absent these agreements, the work would be exclusive to Union members. The question and determination of exclusivity is more properly within the purview of the NYC Board of Collective Bargaining than this Panel Arbitrator.

As a final point, given the criticality to the residents of the City of New York and the direct relationship between the DPR swimming facilities/program and the interest and welfare of the public, the Panel strongly suggests that the City/DPR create an *ad hoc* committee whose mission is to address and solve the Lifeguard recruitment and retention problem. The Union should be invited to partner with the City/DPR to address this critical matter as their input could prove invaluable. In the event the Union does not participate, as it has declined to participate in a recruitment task force in the past[i], the City/DPR should proceed, with or without the Union's cooperation, to work toward concrete solutions for the recruitment and retention issues it faces within the confines of its authority under the parties' collective bargaining agreement and labor law.

Each and all of the arguments and evidence submitted by the parties have been carefully evaluated, even if not specifically referenced in the above summation. Therefore, in accordance with this Report, the undersigned Panel makes the following recommendations:

RECOMMENDATIONS:

1. City Demands 2, 3, 4 and 6 are granted.
2. City Demand 1 is granted in part, and denied in part. The City may lower the vision standards for wading and mini pools, but the current vision standard for all other pools shall be maintained, absent mutual agreement of the parties.
3. City Demand 5 is denied and any changes shall be subject to negotiation between the parties.

Impasse Panel

Dated: April 9, 2024
Orange County
State of New York

AFFIRMATION

TOWN OF NEW WINDSOR)
COUNTY OF ORANGE)

I, Gayle A. Gavin, affirm that I am the individual described in and who executed the foregoing instrument, which is my Report and Recommendations.

Dated: April 9, 2024

[i] In 2023, the Union was asked to participate in the NYC Lifeguard Interorganizational Task Force to boost recruitment, but the Union declined.