To be Argued by:
Richard S. Corenthal
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Second Department

Docket No.:
2017-04562
2017-09778

In the Matter of the Application of:

JOHN BORELLI, CHRISTOPHER BOSSEY, MICHAEL BURKE, FRANK CALLACE, THOMAS CONNERY, BRIAN CRISTIANO, MICHAEL DILIDDO, RAYMOND FOX, ROBERT FUMARELLI, ALEXANDER HANON, BRIAN HARVEY, PAUL HESSLER, NEIL HICKEY, KEVIN KEHOE, KENNETH KELLY, BRIAN KENNY, WILLIAM MCKENNA, EUGENE MCNULTY, JOSEPH MURRAY, VINCENT PACIARIELLO, WILLIAM PARKER, TIMOTHY POWERS, ARTHUR RIVERA, JEROME RODRIGUEZ, STEPHEN RONAN, FRANK RUCKEL, MICHAEL SAMMON, JOSEPH SANTOLO, WILLIAM SEMRAI, MARK SHAPIRO, PAT SICA, ANDREW VERRINO, GUY VETRANO, MICHAEL WARD, ROBERT CAVALLO, PAUL DIMELLA, RICHARD HIGGINS, KEVIN MCGRATH, and THOMAS SPAUN,

Petitioners-Appellants,

– against –

THE CITY OF YONKERS,

Respondent-Respondent.

REPLY BRIEF FOR PETITIONERS-APPELLANTS

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REPLY STATEMENT OF FACTS

Thirty-nine Petitioners-Appellants, John Borelli, et al., ("Appellants" or "Disabled Retirees"), all permanently disabled Fire Fighters and Fire Officers, submit this reply memorandum of law in further support of their appeal from the August 1, 2016 Decision and Order of the Honorable Helen M. Blackwood partially denying Appellants' Article 78 petition and from the March 10, 2017 Decision and Order of the Honorable Helen M. Blackwood denying Appellants' motion to reargue and/or renew.

This case concerns a misinterpretation of General Municipal Law Section 207-a, ("GML §207-a") - a statute which requires the payment of the "full amount of regular salary or wages" to a Fire Fighter or Fire Officer (hereinafter "Fire Fighter") disabled in the line of duty. The Supreme Court's decision below disregarded controlling legal precedent which completely supported the granting of Appellants' Article 78 petition. N.Y. Gen. Mun. Law § 207-a (McKinney).

A municipality's liability mandated under GML §207-a is as follows: When a Fire Fighter first incurs a line of duty injury, the Fire Fighter is covered by GML §207-a(1) which requires a municipality to pay the "full amount of regular salary or wages" to the Fire Fighter until the disability ceases. N.Y. Gen. Mun. Law § 207-a (McKinney). At the point when the line of duty disability appears to be a permanent disability, the municipality or the Fire Fighter, may file for a disability retirement from the New York State Retirement System. If the disability

retirement is approved, the municipality's financial obligation under GML §207-a is reduced, by at least fifty percent, a percentage which represents "the amounts received under such allowance or pension" but is required to make up the difference in "regular salary or wages" under GML §207-a(2). N.Y. Gen. Mun. Law § 207-a (McKinney). In other words, the GML §207-a(2) benefit is calculated by subtracting the Fire Fighter's disability pension amount from the amount which was paid pursuant to GML §207-a(1) or the "full amount of regular salary or wages." The same term "regular salary or wages" is used in GML §207-a(1) and (2) and the statute is designed to ensure that permanently disabled Fire Fighters are not paid less under GML §207-a(2) than Fire Fighters temporarily disabled in the line of duty receive under GML §207-a(1).

Here, each Appellant retired under collective bargaining agreements between the City and Local 628, IAFF, AFL-CIO ("Local 628") or between the City and Uniformed Fire Officers Association ("UFOA") as a result of their line of duty injuries or illnesses, which were approved by the City as permanent line of duty injures under GML §207-a(2). R. 147. As a result, all Appellants received a salary supplement approved by the City under GML §207-a(2). R. 147. Accordingly, each Appellant received from the City of Yonkers their GML §207-a(2) "regular salary or wages" equal to the amount received by Yonkers Fire Fighters under Fire Fighters under GML §207-a(1) less "amounts . . . under such . . . pension." . N.Y. Gen. Mun. Law § 207-a (McKinney).

Moreover, in order for New York State to determine such pension amounts, the City of Yonkers supplied a calculation to the New York State Retirement System on behalf of each Appellant, and in its calculation the City represented that each Appellant's base salary, longevity, holiday pay, check-in pay and night differential together created the Disabled Retiree's "regular salary or wages." N.Y. Gen. Mun. Law § 207-a (McKinney); R. 149, 153. Accordingly, each Appellant currently receives a disability retirement from New York State which has baked into its formula salary items entitled - base salary, longevity, holiday pay, check-in pay and night differential. Not only did the City represent to the New York State Retirement System that base salary, longevity, holiday pay, check-in pay and night differential were all part of a Disabled Retiree's salary, but the City also labeled the sum of those pay items, "Total Salary" on payroll documents. R. 148, 153.

Just as it did for the disability pension side of the equation, for over thirty years, the City always included night differential, check-in pay and holiday pay in GML § 207-a(2) benefits paid to permanently disabled Fire Fighters including all of the thirty-nine Disabled Retirees in this case. R. 147-155. The City always paid these monies as part of the "regular salary or wages" for GML § 207-a(2) until the day the City claimed it had made an accounting mistake and arbitrarily decided to subtract night differential, check-in pay and holiday pay from each Appellant's GML § 207-a(2) benefit even while continuing to pay night differential, check-in

pay and holiday pay to Fire Fighters on line of duty injury leave under GML § 207-a(1).

It is undisputed that, currently, an active Fire Fighter in Yonkers who works all night shifts, performs all check-in duties, and works every holiday receives the same amount of night differential pay, check-in pay and holiday pay as a Fire Fighter who never worked a night shift or a holiday and never performed check-in duties which explains why the monies have always been included in "regular salary or wages" in the City of Yonkers. R. 148. Likewise, a Yonkers Fire Fighter, in a staff position or on union release time who never works nights or holidays, and would never perform check-in duties, has received night differential, check-in pay and holiday pay as part of their "regular salary or wages." R. 1264. This has been the pay practice in Yonkers for decades and likely for well over thirty years.

To this day, as it has been for nearly thirty years, temporarily disabled Fire Fighters receive their "regular salary or wages" under GML §207-a(1), which includes night differential pay, check-in pay and holiday pay. R. 147-155. Because these Disabled Retirees had been singled out, and paid less than temporarily disabled Fire Fighters, they filed the subject Article 78 petition to challenge the decision of Respondent-Respondent, City of Yonkers, ("Respondent" or "City" or "Yonkers") to improperly terminate benefits paid to them in violation of GML §207-a(2). R. 114-146.

Contrary to the statutory mandate and despite their longstanding policy and practice to include the entire amount of "regular salary or wages" in GML §207-a(1) and (2) benefits on October 5, 2015, the City notified the Disabled Retirees that night differential pay, check-in pay and holiday pay were no longer part of their GML §207-a (2) benefits even while the City admits that such payments are still included in the "regular salary or wages" for every other Yonkers' Fire Fighter, including those receiving GML §207-a (1) benefits during periods of temporary disability in plain violation of GML §207-a (2).

ARGUMENT

I. THE CITY'S CLAIM THAT NIGHT DIFFERENTIAL, CHECK-IN PAY AND HOLIDAY PAY ARE FRINGE BENEFITS SHOULD BE REJECTED BECAUSE THE FACTS IN THE RECORD DEMONSTRATE THAT THE PAYMENTS ARE PART OF GML §207-a (2) "REGULAR SALARY OR WAGES"

The voluminous record in this case proves that time and time again the City made critical admissions and representations which totally contradict the unsupported claims the City now makes in its opposition brief and has made throughout this proceeding. The Supreme Court never acknowledged these critical conflicts, and Respondent still fails to explain them. In Heck v. Keane, 6 A.D.3d 95 (4th Dept. 2004), the Appellate Division held that it was arbitrary, capricious or irrational for the City of Buffalo to terminate GML §207-a(2) benefits because the decision was not "based upon all pertinent evidence [.]" Id. at 99 (emphasis added).

Here, the Supreme Court ignored critical facts and thus misapplied the case law when sanctioned the City's decision to cut "regular salary or wages" for Disabled Retirees based on an "unfair[] discriminat[ion] against employee actually working." R. 18. This discrimination toward the active Fire Fighters in Yonkers does not exist because they continue to receive night differential, check-in pay and holiday pay as part of their "regular salary or wages" under GML §207-a(1). Thus, the Supreme Court's holding in this case, based on the City's misrepresentations, is irrational, and it violates the holding of the Court of Appeals in Mashnouk v. Miles, 55 N.Y. 2d 80, 88 (1982), which stands for the principle that whether a Fire Fighter is active duty or on a GML §207-a (1) or GML §207-a (2) status there is to be "no effect on the income received by a disabled fire fighter." See also, Wise v. Jennings, 290 A.D. 2d 702 (3d Dept. 2002)(GML §207-a(2) "ensure[s] that permanently disabled Fire Fighters receive an amount equal to that of active Fire Fighters of the same position and rank with only the income source and not the amount effected..."). Accordingly, for these reasons and the reasons that follow support a reversal of the Supreme Court's denial of Appellant's Article 78 petition.

The City represented throughout this proceeding that the thirty-year pay practice in Yonkers was an accounting error, yet the City provided no evidence or testimony to support this specious, self-serving claim. In response, the Disabled Retirees presented evidence showing that as far back as 1995, the Yonkers' Personnel Commissioner was well aware that City included night differential and

check-in pay in GML §207-a(2) "regular salary or wages." R. 322. The Supreme Court never addressed the City's obviously pretexual and baseless "error" claim.

Also, in their opposition brief, the City repeats, over thirty times, its newly-created term "fringe benefit" without once defining the term. But the City cannot and does not attempt to square Stipulation that the City signed stating that night differential, check-in pay and holiday pay are part of "regular salary or wages," R. 96, with its current claim that these monies are "fringe benefits" only when it comes to Disabled Retirees. GML §207-a is a statutory benefit, not a "fringe benefit" and it specifically requires that a temporarily disabled Fire Fighter (GML §207-a(1)) and a permanently disabled Fire Fighter (GML §207-a(2)) receive the same "regular salary or wages" as active Fire Fighters. Mashnouk v. Miles, 55 N.Y. 2d 80 (1982).

The issue in this case is not about what constitutes a fringe benefit, but rather the issue is the definition of "regular salary or wages" for active Fire Fighters. Respondent's admission that night differential, check-in pay and holiday pay are part of "regular salary or wages" for active Yonkers Fire Fighters, R. 96, as well the City's concession that night differential, check-in pay and holiday pay are part of the GML §207-a(1) benefit, R. 334, are undisputedly dispositive of the entire issue on appeal in favor of Appellants – that, in Yonkers, night differential, check-in pay and holiday pay are "regular salary or wages" for GML §207-a(2).

The City also failed to address in their opposition brief its representation to the New York State Retirement System that for nearly thirty years, the City included night differential, check in pay, and holiday pay in the "final average salary" calculation to the New York State Retirement System for the purpose of calculating disability retirement benefits and thus GML §207-a(2). R. 144. Because neither of the Supreme Court decisions reference this fact, it appears that this part of the record was overlooked or ignored. To be clear, the City included night differential, check-in and holiday pay salary items into the New York State pension calculation for each Appellant. R. 144. Meaning that at the time of the calculation, the City for decades considered night differential, check-in, and holiday pay to be "regular salary or wages."

This exact representation was a critical fact to the Supreme Court in Smerek v. Christiansen, 111 Misc. 2d 580 (Westchester County Supreme Court, 1981) involving the City of Yonkers and the same facts and legal issues in this case. There, Justice Ferraro held, "The New York State Retirement System considered these regular salary payments [of night differential, check-in pay and holiday pay] in arriving at their 75% allowance and respondents are now required to add 25% of such regular salary." Today, the same fact is true, the City submitted, for each Appellant, a calculation of final average salary to the New York State Retirement System which included payments of night differential, check-in pay and holiday pay. R. 144.

The City cannot be allowed to change the definition of regular salary or wages on its half of the disability retirement equation in order to reduce its liability under GML 207-a(2). Accordingly, in order to comply with the dictates of GML §207-a(2) the City of Yonkers must pay each Appellant, "the difference between the amounts received under such allowance or pension and the amount of his regular salary or wages." N.Y. Gen. Mun. Law §207-a (McKinney). Since the "amount" on the pension side of the equation includes night differential, check-in pay and holiday pay, and the GML §207-a (2) side of the equation must include these payments as well.

The City's "fringe benefit" argument also relies on misrepresentations of the parties' CBAs. Article 4:0 of the Local 628 CBA is entitled Compensation. Section 4:01 of Local 628's CBA is entitled "Annual Salary." Night differential (Section 4:05), check-in pay (Section 4:06), and holiday pay (Section 4:07) fall under "Annual Salary" and "Compensation." R. 169-174. The UFOA's CBA also lists night differential, check-in pay and holiday pay under Article 4 Compensation. R. 257-260. On the other hand, fringe benefits, which are normally for extra benefits such as a cell phone, are contained in different articles under the CBA, for example Meal Allowance is listed in Article 5 of the CBA, and Uniform Allowance is listed in Article 7 of the CBA. R. 264-272.

The City also claims that the GML §207-a(2) benefit does not include fringe benefits provided for in the CBA unless the CBA 'expressly' provides for this as a

§207-a(2) wage supplement benefit." The argument is a red herring, and it was error for the Supreme Court to deny Appellants' Article 78 based on the false assumption that payments of check-in pay shift differential or holiday pay are not "regular salary or wages." These salary items are not "fringe benefits" and whether there is an express CBA provision is irrelevant. Rather the City pays these monies in the same amount as part of, as the City states, "Total Salary" of a Yonkers' Fire Fighter, R. 153, and admits that the GML §207-a(1) benefit "includes night differential, holiday pay and check in pay in addition to their base pay." R. 334. Also fatal to Respondent's claim, the term "fringe benefits" is not defined in GML §207-a nor is the term defined in any of the cases cited by Respondent. Matter of Chalachan used the term "additional benefit" and never mentioned "fringe benefits," and in any event, the "additional benefit" was vacation pay, which is irrelevant to this case.

Therefore, absent from the record is any support for the finding that night differential, check-in pay and holiday pay constitute "fringe benefits." Rather, the record clearly supports the finding that night differential, check-in pay and holiday pay are "regular salary or wages" and cannot be arbitrarily terminated.

II. SMEREK V. CHRISTIANSEN IS GOOD LAW BINDING ON THE CITY OF YONKERS AND SUBSEQUENT CASE LAW SUPPORT A FINDING THAT NIGHT DIFFERENTIAL, CHECK-IN PAY AND HOLIDAY PAY ARE PART OF GML §207-a 'REGULAR SALARY OR WAGES' IN YONKERS

Smerek v. Christiansen, 111 Misc. 2d 580 (Westchester County Supreme Court, 1981) is the only case which addresses the payment of GML §207-a(2) "regular salary or wages" in Yonkers, thus, it is no wonder that the City continues to declare, without actual support, that this case is no longer good law. Smerek v. Christiansen was dispositive of Appellants' Article 78, and the Supreme Court's failure to mention this case is ample basis for reversal because no subsequent case addresses the definition of GML §207-a "regular salary or wages" in Yonkers or the unique facts which are present in only this case.

Further, in claiming that it is no longer bound by Smerek v. Christiansen, the City alleges facts not in the record. The City improperly claims that "the parties have negotiated numerous collective bargaining agreements since Smerek was decided, including new agreements which show that base salary and wages do not include fringe benefits." Opp. Br. at 15-16. First, as a point of clarification the definition of "base salary" as stated by Respondent in the above quote is not in dispute. The relevant term as stated in GML 207-a is "regular salary or wages," which cannot be defined by parsing and confusing other terms such as "base salary" and "annual salary." Further, the City neglects to point to a single shred of evidence to support how or if the CBAs have changed in any relevant way. This is because only the current CBAs are part of the record. As a result the City's argument based on speculative comparisons and evidence outside of the record should be ignored. On the other hand, the record is replete with evidence that since

Smerek and as late as November 2016, the City defined GML 207-a(2) "regular salary or wages" as including night differential, check-in pay and holiday pay. R. 96, 144, 148, 322.

Moreover, it was plain error for the Supreme Court to ignore Smerek v. Christiansen, as the relevant facts in Smerek v. Christiansen are identical to this case. The Smerek Supreme Court noted that the disabled retiree's annual salary at the time of his injury included base pay, longevity pay, check in check out pay, night differential and holiday pay and stated,

> The Court cannot accept respondents' narrow interpretation of the terms "regular salary or wages." Respondents paid petitioner an annual salary of $29,534.08 on a regular basis for over three and one half years immediately prior to their submission of his name for involuntary retirement. The New York State Retirement System considered these regular salary payments [night differential, check-in pay and holiday pay] in arriving at their 75% allowance and respondents are now required to add 25% of such regular salary. The legislative intent is clear and unequivocal that a fireman disabled on the job is entitled to be made whole at least to the extent of receiving his full pay. The Court appreciates the financial plight of the City of Yonkers but economies should not be practiced at the expense of devoted men who render valiant service at the risk of their very lives. [Smerek v. Christiansen, 111 Misc. 2d 580, 581 (Westchester County Supreme Court, 1981).]

Justice Ferraro's decision in Smerek v. Christiansen, is still good law and is based on the same relevant facts in this case. Further, Smerek v. Christiansen, is supported and consistent with subsequent case law such as Mashnouk v. Miles, 55

N.Y. 2d 80 (1982) which did not overturn Smerek as the City erroneously claims. Rather, each court after Smerek looked to how the particular municipality paid their active Fire Fighters and their temporarily disabled Fire Fighters receiving GML §207-a(1) to determine "regular salary or wages" under GML §207-a(2).

In Mashnouk v. Miles, the Court of Appeals found that when a fire fighter, disabled in the line of duty, applies for a disability retirement and thus transitions from GML §207-a (1) to GML §207-a (2) there is to be "no effect on the income received by a disabled fire fighter." Mashnouk v. Miles, 55 N.Y. 2d 80, 88 (1982). Yet, in denying Appellants' Article 78, the Supreme Court authorized the City of Yonkers to pay a GML §207-a (2) Disabled Retiree significantly less that the GML §207-a (1) disabled fire fighter. This finding misapplies the controlling case law. Applying the holding of Mashnouk to the actual facts of this case requires the exact opposite result since every Fire Fighter and every GML §207-a(1) recipient receives payments of night differential, check-in pay and holiday pay in the same amounts whether or not they ever work nights or holidays or perform check-in duties.

Further, contrary to Respondent's claim, neither Matter of Chalachan v City of Binghamton, 55 NY2d 989 (1982) nor Benson v. County of Nassau, 137 A.D. 2d 642 (2d Dept. 1988) overturned Smerek v. Christiansen. Rather, the holdings in Chalachan and Benson turned on facts which are radically different from Smerek v. Christiansen. For example, the Supreme Court in this case held,

> [A]pplying the logic of Chalachan and Benson, it would be unfair to pay 207-a(2) recipients holiday pay since they cannot work holidays, night differential since they cannot work night shifts, or check-in pay, since they need not be compensated for their early arrival for each shift to receive instructions, equipment and/or uniform inspection. For all of these reasons, the court finds that respondents had a rational basis for deciding to reduce the 207-a(2) payments by deducting night differential, holiday pay, and check-in pay.

This illogical holding indicates a complete disregard of the facts in the record in this proceeding. The payments at issue in Chalachan and Benson were paid based on if/when certain duties were performed and certain shifts worked. Here, there is no dispute that the payments at issue are paid to Fire Fighters both active and disabled in the same amounts regardless of work performed. The City continues to pay a GML §207-a(1) benefit that includes night differential, holiday pay and check in pay in addition to their base pay." R. 334. Thus, since the decision to deny Appellants' Article 78 is premised on facts that are not present in this case, it is clear that the Supreme Court overlooked the facts in this case and accordingly misapplied inapplicable case law.

III. THE CITY AND THE SUPREME COURT FAILED TO ADDRESS THE PLAIN LANUAGE AND THE PUBLIC POLICY OF GML§207-a

In their Opposition Brief Respondents completely ignore the public policy concerns undergirding GML §207-a which are critical when interpreting a statute. The Supreme Court also never mentioned the legislative history of GML §207-a. The statute does not define "regular salary or wages," thus, Courts review the

particular pay practices of the particular municipality to determine what constitutes "regular salary or wages." Smerek v. Christiansen, 111 Misc. 2d 580, 581 (Westchester County Supreme Court, 1981); see also, Mashnouk v. Miles, 55 N.Y. 2d 80, 88 (1982)(holding that a transition for GML §207-a(1) to GML §207-a(2) has "no effect on the income received by a disabled fire fighter"). Further, other courts have searched the legislative history of the 1977 GML §207-a amendment and concluded that, "[t]he legislative history of the amendment to section §207–a 'indicate[s] that . . . . Aside from partially shifting the source of the payments made to disabled fire fighters, there is no indication that the Legislature also intended to reduce the amount of such payments." Bobby v. City of Niagara Falls, 5 A.D.3d 997, 999 (4th Dept. 2004)(quoting Mashnouk, 55 N.Y.2d at 87)(emphasis added).

Additionally, the legislative history of GML §207-a shows the relationship between GML §207-a(1) and (2); namely that the addition of GML §207-a(2) was meant only to shift the source of benefits under GML §207-a not the amount. Meaning that from the perspective of the Fire Fighter, there is no difference in amounts received under GML §207-a(1) and (2). According to Mashnouk v. Miles

> Prior to the amendment of section 207-a of the General Municipal Law the statute provided that any paid fire fighter disabled in the course of duty was to be "paid by the municipality or fire district by which he [was] employed the full amount of his regular salary or wages until his disability . . . ceased." . . . . In addition, payments under former section 207-a continued so long as the fire fighter did not recover from his injury, even if he remained disabled for the rest of his life. . . . .

> [T]he primary aim of the new statute was to shift a large portion of the financial burden generated by disabled fire fighters from the municipal payrolls to the appropriate retirement system or pension fund. Aside from partially shifting the source of the payments made to disabled fire fighters, there is no indication that the Legislature also intended to reduce the amount of such payments. Indeed, the relevant memoranda are to the contrary; they indicate that the new law was to have no effect on the income received by a disabled fire fighter. [55 N.Y.2d at 87-88; see also R. 2226-2315 (internal citations omitted.)]

Moreover, the bill jacket for the 1977 GML §207-a amendment creating the GML §207-a(2) benefit makes clear that "regular salary or wages" were to be defined by the amount of an active Fire Fighter's regularly received salary. R. 2226-2315. The legislative history expressly states that the GML §207-a(2) benefit would not be a lesser benefit than GML §207-a(1) or the "regular salary or wages" for an active Fire Fighter. R. 2310 (A "fireman who is disabled . . . will receive in full the same amount that he would have received had he not been injured and continued working."); R. 2253 ("Section 207-a . . . requires the municipality to pay [] full salary as long as he is disabled. This has been interpreted to include salary increments and fringe benefits. . . In other words, he is treated . . . as an active employee for salary purposes.") (emphasis added).

Here, in light of the Legislature's intent to ensure that the addition of GML §207-a(2) did not affect the amounts Fire Fighters received under the original GML §207-a, the City cannot arbitrarily renege on its GML §207-a obligation by defining "regular salary or wages" one way under GML §207-a(1) and another

way under GML §207-a(2). Accordingly, based on the plain language of GML §207-a, the clear legislative intent, subsequent case law holding that GML §207-a(1) and (2) must equal the same amount, Appellants' Article 78 should be granted.

Therefore, since an active Yonkers Fire Fighter or a Yonkers Fire Fighter on GML §207-a(1) never goes without payments of night differential, check-in pay and holiday pay, in their regular salary, the legislative history settles the issue that GML §207-a(2) benefits should not be reduced.

Further, the plain language of GML §207-a(2) supports Appellants' position and provides that if a Fire Fighter is approved for a disability pension under "section three hundred sixty-three of the retirement and social security law" as a result of his line of duty injuries, "such fireman shall continue to receive from the municipality . . . the difference between the amounts received under such allowance or pension and the amount of his regular salary or wages." N.Y. Gen. Mun. Law §207-a (McKinney)(emphasis added). Because the plain language of the statute focuses solely on amount, then it follows that "regular salary or wages" must be defined by the amount of salary Appellants received regularly as Fire Fighters. Because it is undisputed that every paycheck Appellants received included night differential, check-in pay and holiday pay, thus their "regular salary or wages" for purposes of GML §207-a(2) must include these salary items. Also, because the statute requires that retirees under GML §207-a(2) "shall continue to receive" the "amount of his regular salary or wages" less the amount received from

his pension and the City has admitted that regular salary or wages under GML §207-a(1) includes night differential, check-in pay and holiday pay. R. 329

CONCLUSION

For the forgoing reasons, this Court should reverse the August 1, 2016 and March 10, 2017 Decisions and Orders of The Honorable Helen M. Blackwood partially denying Appellants' Article 78 petition (and motion to reargue and renew) and thereby annul the City's decision to reduce GML §207-a(2) benefits, order the City to pay Appellants all monies improperly deducted from their GML §207-a(2) benefits with interest thereon at the legal rate, and order the City to pay Appellants' costs and attorney's fees.

Dated: January 11, 2018
New York, New York

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APPELLATE DIVISION – SECOND DEPARTMENT
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Dated: January 11, 2018
New York, New York

By: _____

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