To be Argued by:
PAUL J. SWEENEY
(Time Requested: 30 Minutes)

APL-2021-00162
Westchester County Clerk's Index Nos. 54477/16 and 60328/16
Appellate Division–Second Department Docket No. 2016-11321

Court of Appeals

of the

State of New York

In the Matter of the Arbitration between

CITY OF YONKERS,

Petitioner-Appellant,

– against –

YONKERS FIRE FIGHTERS, LOCAL 628, IAFF, AFL-CIO,

Respondent-Respondent.

REPLY BRIEF FOR PETITIONER-APPELLANT

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STATEMENT OF RELATED LITIGATION

Pursuant to Rule 500.13 of the Courts Rules of Practice, the following information as to the status of related litigation is provided as of the date of this brief. The status of related litigation remains as was set forth in the Brief for the Petitioner-Appellant City of Yonkers dated December 16, 2021.

The Petitioner-Appellant City of Yonkers moved the Westchester County Supreme Court pursuant to Article 75 of the Civil Practice Law and Rules to vacate an arbitration award in the same matter in favor of Respondent-Respondent Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO, based on the same issues, facts and grounds on which this Court granted leave to appeal to the City (*see Matter of City of Yonkers v Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO*, Sup Ct Westchester County Index No. 60260-2021). By Decision and Order dated December 3, 2021, Supreme Court (Giacomo, J.) denied that relief and dismissed the special proceeding. On December 8, 2021, the City filed and served a notice of appeal to the Appellate Division, Second Department. That appeal is still pending. [1]

In its Brief, the Respondent-Respondent Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO represented that a proceeding before the Public Employment Relations Board ("PERB") which was transferred to the Appellate Division, Third

[1] Pursuant to Rule 500.6, counsel for the parties have advised the Clerk of the Court as to the change in status and provided filed copies of the Supreme Court's Decision and Order dated December 3, 2021 and the Notice of Appeal dated December 8, 2021.

Department, *Uniformed Fire Officers Association of the City of Yonkers and Yonkers Fire Fighters, Local 628 v. New York State Public Employment Relations Board and City of Yonkers*, 197 AD3d 1470 (3d Dept 2021) is related litigation. For reasons set forth in its letter to the Clerk of the Court dated December 17, 2021, the City noted the reasons why the PERB matter may not be deemed related litigation.[2] While the Petitioner-Appellant took no position on the Respondent-Respondent's request to include the PERB proceeding as related litigation, it did request an opportunity to brief the issues summarized in its December 17, 2021 letter to the Clerk of the Court in the event that the Court agreed to consider the PERB proceeding.[3]

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[2] In that letter, the Petitioner-Appellant noted *inter alia* that (i) opposing counsel did not list the matter as a "related" case or proceeding in its Preliminary Appeal Statement dated May 5, 2021; (ii) PERB is an administrative agency which lacks jurisdiction to hear cases involving contract disputes such as the one brought by the Union in the pending appeal and PERB "has consistently interpreted [Civil Service Law § 205 (5) (d)] to deprive it of jurisdiction over failure-to-negotiate improper practice charges when the underlying disputes are essentially contractual, in favor of resolving the dispute through the parties' grievance-arbitration machinery, or resort to the courts." *Matter of Roma v Ruffo*, 92 NY2d 489, 497 [1998]; and (iii) as the issues were not "identical," collateral estoppel against the City as to PERB's factual findings based on the PERB record, including, an alleged past practice, would not apply. *Kauffman v. Eli Lilly & Co.*, 66 N.Y.2d 449 (1985).

[3] The Petitioner-Appellant has not been advised that the PERB matter will be considered by this Court as related litigation.

PRELIMINARY STATEMENT

Petitioner-Appellant the City of Yonkers (hereinafter, the "City") respectfully submits this Reply Brief in further support of its appeal of the October 14, 2020 Decision and Order of the Appellate Division, Second Department on October 14, 2020, which reversed Supreme Court's October 17, 2016 Decision and Order, finding that Respondent-Respondent Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO's (hereinafter, the "Union") grievance over the City's recalculation of retiree benefits pursuant to GML § 207-a (2) was arbitrable. In so holding, the Second Department applied the test for arbitrability articulated in *Matter of Board of Educ. of Watertown City School Dist. (Watertown Educ. Assn.)* (93 NY2d 132, 143 [1999] [hereinafter *Watertown*]), stating, among other things, that "given the breadth of the arbitration clause in this case, the disputed payments clearly bore a reasonable relationship to some general subject matter of the parties' CBA" [R: 388-390].

It is respectfully submitted that the Court should reverse the Second Department's decision and reinstate Supreme Court's Order permanently staying arbitration in this matter, inasmuch as the Second Department applied the incorrect test for arbitrability to the circumstances presented here. The proper test is articulated in this Court's holding in *Uniformed Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v. City of Cohoes* (94 NY2d 686 [2000] [hereinafter *Cohoes*]), which held that a contract grievance pertaining to the provision of a CBA fringe

benefit to GML §§ 207-a and 207-c (collectively, "GML § 207") recipients was not arbitrable unless an "express provision" of the CBA extended such a contractual benefit to GML § 207 recipients.

ARGUMENT

POINT I

COHOES AND ITS PROGENY ARTICULATE A SEPARATE, "EXPRESS PROVISION" STANDARD, WHICH THE SECOND DEPARTMENT FAILED TO APPLY IN ITS DETERMINATION OF THE ARBITRABILITY OF THE INSTANT DISPUTE

In its answering brief, the Union's primary argument in support of the Second Department's reversal of Supreme Court's Decision and Order granting the City a stay of arbitration is that the Second Department correctly applied the basic, "reasonable relationship" test to find the Union's grievance arbitrable. More specifically, the Union argues that there was no need for the Second Department to apply the more stringent "express provision" standard articulated in this Court's decision in *Cohoes* and numerous subsequent appellate cases because, in the Union's view, it is a standard fabricated by the City to support its argument that the instant grievance is not arbitrable. The Union's argument is incorrect, and reflects its own misunderstanding of how courts examine arbitration demands claiming that a municipality should include additional benefits in its GML § 207-a payments that are not contemplated by the statute or the case law interpreting the same.

Contrary to the Union's contention, this Court's decision in *Cohoes* is not "just one of the hundreds of reported decisions where the courts have adhered to *Watertown* . . . and limitedly examined only whether the subject matter of a CBA is reasonably related to a given dispute" [Union's Br. at 19]. While it is true that the *Cohoes* Court acknowledged the existence of the *Liverpool-Watertown* test as a "general rule" governing the arbitrability of grievances related to purely contractual benefits (*see Cohoes*, 94 NY2d 686, 694 [2000]), it would appear that the Court included that citation as a point of contrast to the much more specific, "express provision" test that it subsequently applied to stay arbitration in that case.

Indeed, as the Court itself stated, the analysis of the arbitrability of the union's grievance in *Cohoes*, which alleged that certain contractual benefits contained in the parties' CBA should be extended to disabled firefighters receiving statutory, GML § 207-a benefits, warranted an application of the "well-settled rule that recipients of [GML §] 207-a benefits cannot claim additional employment entitlements beyond those in the statute unless there is an express provision in the collective bargaining agreement awarding them" (94 NY2d 686, 695 [2000]). The Court explained that the circumstances presented in *Cohoes* justified its application of the "express provision" test and, by extension, its departure from the "reasonable relationship" test, stating that

> because disabled firefighters do not perform regular duty in exchange for the "payment of the full amount of regular salary or wages" under

> [GML] § 207-a, apart from contractual entitlements, "[t]he collective bargaining agreement should not therefore be construed to *implicitly expand* whatever compensation rights are provided petitioners under the statute. Any *additional benefits must be expressly provided for in the agreement*"

(*id.* at 694 [emphases and alterations original], quoting *Matter of Chalachan v City of Binghamton*, 55 NY 2d 989, 990 [1982]). Ultimately, even though the CBA at issue in *Cohoes* contained a broad grievance arbitration clause, much like the one at issue here, after examining the language of the parties' CBA, the Court affirmed a permanent stay of arbitration in favor of the city due to "the total absence of any express provision in the CBA making applicable to firefighters on [GML] § 207-a status the specific contractual provisions the [u]nion claims were violated" (*Matter of Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v City of Cohoes*, 94 NY2d at 694).

As the foregoing makes clear, the analysis utilized by the Court to stay arbitration in *Cohoes* bears no resemblance to the *Liverpool-Watertown* test, which asks only "whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the CBA" (*Watertown*, 93 NY2d 132, 143 [1999]). Rather, the *Cohoes* Court's arbitrability analysis depended upon an application of the "express provision" test the Court derived from its prior holding in *Matter of Chalachan v City of Binghamton* (55 NY2d 989 [1982]).

Further undermining the Union's argument that the "express provision" test does not exist is the fact that, in the two decades since this Court decided *Cohoes*, this supposedly fictional test has been uniformly applied by multiple appellate courts, including the Second Department, in CPLR article 75 proceedings like the instant one, which seek to stay the arbitration of grievances alleging that a municipality violated the terms of a CBA because of its purported failure to provide GML § 207 recipients with additional contractual benefits over and above a firefighter/police officer's "regular salary or wages", which is all the statute requires (*see Matter of Incorporated Vil. of Floral Park v Floral Park Police Benevolent Assn.*, 89 AD3d 731, 732-733 [2nd Dept. 2011] [staying arbitration of grievance alleging leave time should continue to accrue while police officer is out on GML § 207-c status where CBA did not contain express provision guaranteeing same]; *Matter of Town of Tuxedo v Town of Tuxedo Police Benevolent Assn.* 78 AD3d 849, 851 [2d Dept 2010] [similar holding regarding accrual of leave time while police officer is out on GML § 207-c status due to lack of express CBA provision]; *Matter of Town of Evans [Town of Evans Police Benevolent Assn.]*, 66 AD3d 1408, 1408-1409 [4th Dept 2009] [staying arbitration of portion of grievance where CBA was silent regarding holiday, vacation and personal time accruals during period of 207-c disability, but denying stay regarding sick time accrual because CBA expressly provided same to injured/disabled officers]; *Matter of Town of Niskayuna [Fortune]*,

14 AD3d 913, 914 [3d Dept 2005] [applying "express provision" test to stay arbitration where "the CBA is entirely silent as to whether the health benefits accorded regular police officers are applicable to disabled officers receiving [GML] benefits"]).

Tellingly, none of the above-cited cases make any reference to *Watertown* or the "reasonable relationship" test for arbitrability. However, all of these cases cite to and rely on this Court's articulation of the "express provision" test set forth in *Cohoes*, thus providing additional confirmation that the "express provision" test not only exists, but is well established and regularly utilized to decide Article 75 cases like this one.[4] Accordingly, it is submitted that the great weight of established judicial authority dictates that the correct test for whether the City and the Union agreed to arbitrate the instant dispute is not whether the grievance bears a "reasonable relationship" to some general subject matter in the CBA. Rather, the correct test is whether the CBA "expressly provides" the benefits at issue to GML § 207-a (2) recipients, which it does not (*see* Point II, *infra*).

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[4] The Union attempts to explain away the total lack of any reference to *Watertown* or the "reasonable relationship" test in *Cohoes'* progeny by stating that the application of *Watertown* in those subsequent cases "is implicit and part of the fabric of . . . those decisions, just as it is with every arbitrability dispute in public sector labor relations since the Court's decision in *Watertown* over two decades ago." It is submitted the Union's position reinforces misguided interpretation of the holding in *Cohoes*, and would strain credulity in any event, inasmuch as it appears to flatly disregard the unambiguous text of those decisions.

In a last ditch effort to avoid this straightforward legal conclusion, The Union points to one Third Department case and one Fourth Department case (as well as the Second Department's erroneous decision on appeal), that purportedly "reaffirm[] and expressly appl[y] the Court's 'reasonable relationship' test announced in *Watertown* to disputes regarding GML §207 benefits" [Union's Br. at 23]. However, both of the cases the Union cites are inapposite to the facts and circumstances presented here, thus making them completely irrelevant to the Court's consideration of the proper test (*i.e.*, the "express provision" test) to be applied in this case.

For example, *Matter of Cortland County (CSEA, Inc., Local 1000 AFSCME, AFL-CIO)* (140 AD3d 1344 [3d Dept 2016] [hereinafter *Cortland County*]), has nothing to do with GML § 207 benefits *at all*. Rather, *Cortland County* deals with the arbitrability of a grievance "alleging that [the County] violated the CBA by refusing to accommodate [an employee's] work restriction" (*id.* at 1344).

Matter of Village of Manlius (Town of Manlius Professional Firefighters Assn., IAFF Local #3316) (185 AD3d 1501 [4th Dept 2020] [hereinafter *Manlius*]), does utilize the *Watertown* "reasonable relationship" test to determine the arbitrability of the grievance at issue but, there, the grievance was based on the employer's decision pursuant to a contractually negotiated GML § 207 policy to deny the employee's application for 207 benefits altogether (*see Manlius*, 185 AD3d at 1502). Here, however, the Union's arbitration demand challenges the amount and

type of payments that an eligible GML § 207-a (2) recipient should be paid; it has nothing to do with a determination of a Union member's eligibility for statutory benefits, generally [R: 180].

This distinction between *Manlius* and the instant proceeding is significant, inasmuch as GML §§ 207-a and 207-c do not prescribe a particular procedure for determining an employee's eligibility for such benefits. Therefore, if the parties' CBA contains a broad arbitration clause and a negotiated procedure for the determination of eligibility for GML § 207 benefits, it may be appropriate for a court to analyze the arbitrability of a grievance alleging that a municipality incorrectly determined a bargaining unit member to be ineligible for statutory benefits pursuant to the *Watertown* "reasonable relationship" test, inasmuch as the determination, and the dispute arising therefrom, are purely contractual in nature (*see Manlius*, 185 AD3d at 1502).

However, where, as here, the gist of the Union's grievance is that the City must continue to pay all current and future GML § 207-a recipients a certain level of statutory benefits, the contents of the parties' negotiated 207 procedure are only relevant if the procedure expressly sets forth the types of payments that are to be included in those benefits, other than the regular salary or wages to which such recipients are statutorily entitled. This is so because of the well-established rule that "[a] collective bargaining agreement should not . . . be construed to implicitly expand

whatever compensation rights are provided petitioners under [GML § 207-a]" (*Cohoes*, 94 NY2d 686, 694 [2000] [internal quotation marks, alterations and citations omitted]).

Thus, while the CBA at issue here does include a negotiated GML § 207-a procedure that deals with determinations of eligibility for, and the administration of such benefits [R: 123-137], it is undisputed that the policy is devoid of any express provision that purports to provide GML § 207-a (2) recipients with Night Differential, Check-In Pay and Holiday Pay (hereinafter, the "Special Pays") or any additional contractual benefit, other than their regular salary or wages. Accordingly, the Union's reliance on *Manlius* as support for the application of the "reasonable relationship" test to the facts of this case, and on the contractual 207 procedure in the parties' CBA as a basis for the arbitrability of the instant dispute are both misplaced, and should be disregarded by the Court.

In light of the foregoing, it is submitted the Second Department erred in its application of the "reasonable relationship" test to conclude that the instant grievance is arbitrable. The court's analysis completely ignores this Court's prior holding in *Cohoes*, as well as several appellate division decisions that rely on *Cohoes* (including some of its own) which, when viewed together, thoroughly establish that the "express provision" test – not the "reasonable relationship" test – is the applicable standard by which courts determine whether parties to a CBA agreed to

arbitrate a grievance regarding the scope of a municipality's GML § 207-a (2) payment obligations.

POINT II

ARBITRATION OF THE INSTANT DISPUTE SHOULD BE PERMANENTLY STAYED, AS THE PARTIES' CBA CONTAINS NO "EXPRESS PROVISION" REQUIRING THE CITY TO INCLUDE THE SPECIAL PAYS IN DISABLED, RETIRED FIREFIGHTERS' GML § 207-a (2) WAGE SUPPLEMENT PAYMENTS

Perhaps as an acknowledgement of the flimsiness of its argument in favor of the application of the *Watertown* "reasonable relationship" to determine whether or not the instant grievance is arbitrable, the Union now argues for the first time in the years-long history of this litigation that the parties' CBA does, in fact, expressly provide that the contractual Special Pays to which active duty firefighters are entitled are also extended to those who are now, or may in the future be recipients of GML § 207-a (2) benefits. Aside from the fact that this argument is arguably unpreserved for this Court's review, it is also entirely meritless.

First, the Union argues that the Special Pays "are all listed under Article 4, 'Compensation,' and have been treated as part of regular salary or wages, for decades" [Union's Br. at 29]. However, it is submitted that the heading of the CBA Article under which the Special Pays appear, and the City's extracontractual past practices are immaterial to the key question regarding the arbitrability of the instant dispute, namely, whether the CBA expressly provides for the inclusion of the Special

Pays in a firefighter's regular salary or wages for purposes of GML §207-a (2) wage supplement payments.

Indeed, the only types of payments that have ever been "treated" as regular salary and wages for purposes of GML § 207-a statutory payments are (a) base wages or salary; (b) negotiated wage or salary increases (*see Mashnouk v Miles*, 55 NY2d 80 [1982]); and (c) longevity payments (*see Matter of Farber v. City of Utica,* 97 N.Y.2d 476, 479 [2002]; *Whitted v City of Newburgh*, 126 AD3d 910 [2d Dept 2015]; *Matter of Aitken v City of Mount Vernon*, 200 AD2d 667, 668 [2d Dept 1994]). Thus, the Special Pays are outside the scope of the statutory/judicial definition of regular salary or wages, and, as such, can only be incorporated into the contested GML § 207-a (2) payments by express contractual language. The Article heading, "Compensation" undoubtedly fails to accomplish this, and the City's extracontractual past practices are not contractual language at all.

Next, the Union, argues that "the CBA contains an express GML § 207-a (2) provision in Article 12:02 of the CBA, as well as a negotiated and appended GML § 207-a (2) procedure governing the award of benefits" [Union's Br. at 30]. As stated above, it is true that Appendix C to the CBA contains a GML § 207-a procedure that deals with applications and determinations of eligibility for, and the administration of such benefits [R: 123-137]. However, irrespective of the fact that it expressly lays how one may qualify for GML § 207-a (2) wage supplement

payments [R: 130-131], the procedure is, on the whole, irrelevant to the Court's analysis of the arbitrability of this dispute.

Nowhere in the negotiated GML § 207 procedure is there any express provision that includes the Special Pays in a disabled, retired firefighter's GML § 207-a (2) benefits. Moreover, Section 12:02.01 of the CBA, which references and incorporates the 207 procedure, states the parties' mutual understanding of the procedure is that it "concern[s] the *statutory* benefits provided by [GML § 207-a]" [R: 47 (emphasis added)], as opposed to the inclusion of any additional, fringe benefits provided by the CBA.

Finally, the Union argues that "Article 31, entitled 'Maintenance and Continuation of All Other Benefits,' prohibits the City from revoking or altering any benefits negotiated for or granted that are not specifically referred to in the CBA" [Union's Br. at 30]. It is submitted that this statement, in and of itself, amounts to a tacit admission on the Union's part that there is no express contractual provision anywhere in the CBA that requires the inclusion of the Special Pays in retired, disabled firefighters' GML § 207-a (2) wage supplement payments and is not referred to anywhere in the contract, which is entirely correct.[5]

[5] Elsewhere in its brief, the Union, while incorrectly accusing the City of inviting the court to interpret the CBA in order to determine the arbitrability of this dispute (*see* p. 13, n 3, *infra*), ironically attempts to support the relevance of CBA Article 31 to the arbitrability question by calling the Court's attention to the Arbitrator's award in this case, which was issued during the pendency of this appeal. In the Arbitrator's view, "the express language of Article 31 establishes that night differential, check-in pay, and holiday pay are regular salary and wages for GML [§]207-

As for what the CBA actually does say about a firefighter's regular salary or wages, the City previously discussed in its opening brief to the Court that the express language of Section 4:02 of the CBA ("Rate of Pay") establishes that, for GML § 207-a purposes, a firefighter's "regular salary or wages" is comprised of (a) base salary, (b) longevity payments and (c) arson pay [R: 37; City's Opening Br. at 24-25]. The CBA's rate of pay section does not expressly include the Special Pays, or any other salary benefit in its definition, nor does the section and supplemental appendix that defines and discusses the term "Base Salary" [R: 36, 80]. The CBA provisions governing Night Differential, Check-In Pay and Holiday Pay (*i.e.* the Special Pays), also contain no express provision stating that that they shall be paid to disabled, retired firefighters receiving GML § 207-a (2) benefits, nor do these sections contain any indication that the Special Pays are part of a Union member's base pay or rate of pay *(i.e.*, regular salary or wages) [R: 39-40].[6]

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a(2) recipients because that is the law of the contract" [Comp. Award at 18; Union's Br. at 16]. Whether or not the Arbitrator is correct – and it is certainly the City's position that he is not –it is based on an interpretation of the CBA, which it would be improper for the Court to consider in the context of this CPLR Article 75 proceeding.

[6] On multiple occasions in its brief, the Union accuses the City of requesting that the Court parse through and interpret various provisions of the CBA, such as Article 4, in order to determine whether the CBA expressly provides for the inclusion of the contractual Special Pays in disabled, retired firefighters' GML § 207-a (2) benefits. Nothing could be further from the truth. At no point has the City invited the Court to interpret the CBA as part of the "express provision" test/analysis. The City is simply requesting that the Court do what it did in *Cohoes*, and that three of the four departments of the appellate division did in subsequent cases relying on *Cohoes*, namely, examine the relevant provisions of the CBA and simply acknowledge that the express contractual language that would make the Union's grievance arbitrable is simply not present. This

In sum, there is no express term anywhere in the CBA that would afford the Special Pays to firefighters that may, in the future, become eligible to receive GML § 207-a (2) benefits. "[This] total absence of any express provision in the CBA making applicable to firefighters on [GML] § 207-a status the specific contractual provisions the Union claims were violated, is fatal to [its] arbitration claim" (*Cohoes*, 94 NY2d 686, 694 [2000]). Accordingly, it is submitted that the Second Department improperly reversed the Order of Supreme Court granting the City a permanent stay of arbitration, which this Court should reinstate.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Court should reverse the Decision and Order of the Second Department dated October 7, 2021 and grant the City a permanent stay of arbitration in accordance with the Supreme Court's October 17, 2016 Order on reargument.

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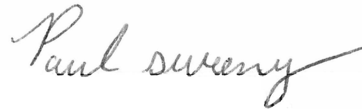
exercise requires no contract interpretation, inasmuch as the language is either in the contract, or it is not. Here, it is not.

Dated: February 21, 2022
Binghamton, New York

COUGHLIN & GERHART, LLP



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CERTIFICATION PURSUANT TO 22 NYCRR § 500.13 (c)

The undersigned hereby certifies the total number of words herein, inclusive of point headings and footnotes and exclusive of pages containing the statement of the status of related litigation; the table of contents; the table of cases and authorities; and the statement of questions presented, is 3,537.

Dated: February 21, 2022
Binghamton, New York

Paul J. Sweeney, Esq.

STATE OF NEW YORK	)		**AFFIDAVIT OF SERVICE**
	)	ss.:	**BY OVERNIGHT FEDERAL**
COUNTY OF MONROE	)		**EXPRESS NEXT DAY AIR**

I, **Jeremy Slyck** of Rochester, New York, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above.

On February 22, 2022

deponent served the within: **REPLY BRIEF FOR PETITIONER-APPELLANT**

Upon:

Archer, Byington, Glennon & Levine, LLP
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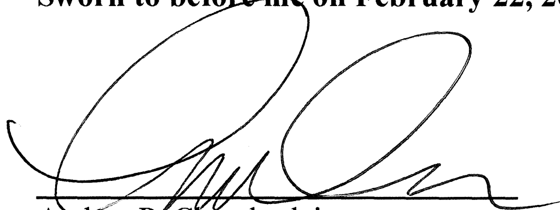
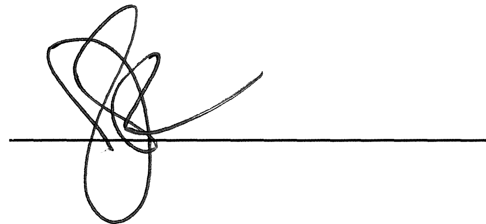
the address(es) designated by said attorney(s) for that purpose by depositing **one (1)** true copy of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on February 22, 2022



Andrea P. Chamberlain
Notary Public, State of New York
No. 01CH6346502
Qualified in Monroe County
Commission Expires August 15, 2024



Job # 510615

STATE OF NEW YORK)
) ss.:
COUNTY OF MONROE)

AFFIDAVIT OF SERVICE BY OVERNIGHT FEDERAL EXPRESS NEXT DAY AIR

I, **Jeremy Slyck** of Rochester, New York, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above.

On February 22, 2022

deponent served the within: **REPLY BRIEF FOR PETITIONER-APPELLANT**

Upon:

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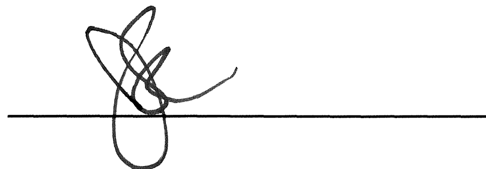
the address(es) designated by said attorney(s) for that purpose by depositing **three (3)** true copy of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on February 22, 2022



Andrea P. Chamberlain
Notary Public, State of New York
No. 01CH6346502
Qualified in Monroe County
Commission Expires August 15, 2024

Job # 510615