COURT OF APPEALS
OF THE STATE OF NEW YORK

In the Matter of CITY OF YONKERS,

Petitioner-Respondent,

-against-

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

Respondent-Appellant.

AFFIRMATION IN OPPOSITION TO MOTION FOR LEAVE TO APPEAL

Supreme Court, Westchester County Index Nos. 54477/16

App. Div., Second Department Docket No. 2016-11321

PAUL K. BROWN, an attorney duly admitted to the Courts of the State of New York, affirms the following under penalties of perjury:

1. I am associated with the firm Archer, Byington, Glennon & Levine LLP, attorneys for Respondent-Appellant Yonkers Fire Fighters, Local 628, International Association of Fire Fighters, AFL-CIO ("Local 628" or the "Union"), in the above-captioned proceeding commenced by Petitioner-Respondent City of Yonkers (the "City" or "Movant").

2. I make this Affirmation pursuant to 22 NYCRR §500.22(d) in opposition to the City's motion for leave to appeal the Appellate Division, Second Department's unanimous Decision and Order entered October 14, 2020 (the "Decision") denying the City's petition to permanently stay arbitration of a grievance (the "Grievance") concerning a decrease in General Municipal Law

("GML") §207-a(2) benefits for permanently disabled Fire Fighters. The Decision is attached to the Affirmation of Paul J. Sweeney ("Sweeney Aff.") as Exhibit "A."

3. Movant has not demonstrated that this case warrants review by this Court. *See*, 22 NYCRR §500.22(b)(4). The issues presented are not novel or of public importance. The issues presented do not present a conflict with prior decisions of this Court. The issues presented do not involve a conflict among the departments of the Appellate Division. Accordingly, the City's motion for leave should be denied.

BACKGROUND

4. Local 628 and the City are parties to a CBA covering the terms and conditions of employment of Local 628 members employed by the City. (R. 5). The CBA contains a broad grievance and arbitration procedure, which grants either party the right to arbitrate disputes "involving the interpretation or application of any provision of this Agreement." (R. 61, 86, 137).

5. Further, the CBA contains a stand-alone GML §207-a Procedure which, by its terms, is "intended to regulate both the application for, and the award of, benefits under §207-a of the General Municipal Law." (R. 82, 123). By its terms, the CBA's GML §207-a Procedure "shall apply to any claim of entitlement to or use of GML §207-a benefits." (R. 87).

6. In addition to the broad arbitration procedure in the CBA, the GML §207-a Procedure also grants authority to an arbitrator to "consider and decide all allegations and defenses made with regard to the GML §207-a claim." (R. 128-29).

7. Article 31:01 of the CBA, Maintenance and Continuation of All Other Benefits, provides that "the City and the Union agree that they will not alter or revoke any benefits or other provisions heretofore negotiated for or granted to the members." (R. 74).

8. For at least three decades, the City paid its disabled retirees GML §207-a(2) supplemental payments in an amount equal to the regular salary paid to an active Fire Fighter of similar rank. (R. 161-62, 166).

9. For all active duty Fire Fighters, the City has paid salaries which included payments called Night Differential, Check-in Pay, and Holiday Pay, regardless of the schedule worked. *Id.*

10. On or about December 9, 2015, the City unilaterally departed from its longstanding past practice and advised approximately forty-four (44) permanently disabled retirees receiving GML §207-a(2) benefits that the City would reduce this benefit, and threatened recoupment of benefits already paid. (R. 158-59).

11. The Union filed a contract grievance pursuant to the CBA's grievance and arbitration provision. (R. 155-57, 160). In addition to alleging a violation of the negotiated GML §207-a Procedure, Local 628 also alleged that the City's

unilateral change to GML §207-a(2) benefits violated the parties' longstanding past practices in violation of Article 31:01 of the CBA. *Id.* Ultimately, the Union filed a demand for arbitration after exhausting the grievance procedure. (R. 179-80).

12. On April 5, 2016, the City filed a Petition to Stay Arbitration of the subject grievance. (R. 13-29). The Supreme Court initially denied the City's motion to permanently stay arbitration and ordered the parties to proceed to arbitration, based on a finding that the Grievance was reasonably related to the subject matter of the CBA under the "reasonably related" legal standard enunciated in *Matter of Bd. of Educ. of Watertown Sch. Dist. v. Watertown Educ. Assn.*, 93 N.Y.2d 132 (1999) ("*Watertown*"). (R. 322-23). Thereafter, the City filed a motion to reargue and/or renew. (R. 326). On October 17, 2016, Justice Terry Jane Rudderman reversed her original decision and order, and permanently stayed arbitration of the Grievance. (R. 8).

13. Local 628 appealed the Supreme Court's decision, and on October 14, 2020, the Second Department unanimously reversed the Supreme Court decision. Sweeney Aff., Ex. "A." In reversing the Supreme Court's decision, the Second Department applied the well-settled arbitrability standard established by this Court, which first examines whether there is any statutory, constitutional, or public policy

prohibition against arbitration, and if there are none, whether the parties agreed to arbitrate the dispute at issue. *Id.* at 2.

14. The Second Department's analysis correctly recognized this Court's precedent set forth in *Watertown* as follows:

> Where, as here, the relevant arbitration provision of the CBA is broad, if the matter in dispute bears a reasonable relationship to some general subject matter of the CBA, it will be for the arbitrator and not the courts to decide whether the disputed matter falls within the CBA (*Matter of City of Yonkers v. Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO*, 167 A.D.3d [599,] at 601; *see Matter of Board of Educ. of Watertown City School Dist. [Watertown Educ. Assn.]*, 93 N.Y.2d 132, 143; *Matter of City of Yonkers v. Yonkers Fire Fighters, Local 628, AFL-CIO*, 153 A.D.3d [617,] at 618). If there is none, the issue, as a matter of law, is not arbitrable. If there is, the court should rule the matter arbitrable, and the arbitrator will then make a more exacting interpretation of the precise scope of the substantive provisions of the CBA, and whether the subject matter of the dispute fits within them.

(Sweeney Aff., Ex. "A") (citing *Watertown*, 93 N.Y.2d at 143).

15. The Second Department's analysis continued to correctly apply this Court's precedent set forth in *Watertown* as follows:

> Here, the Supreme Court erroneously determined, upon reargument, that Local 628's grievance was not arbitrable. There is no constitutional, statutory, or public policy provision prohibiting the submission to arbitration of disputes between the parties regarding the payments at issue in this matter (*see Matter of City of Johnstown [Johnstown Police Benevolent Assn.]*, 99 N.Y.2d [273,] at 278) Moreover, 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, since Appendix C of the CBA, as

> subsequently modified by the parties' stipulation, expressly addresses the payment of General Municipal Law § 207-a benefits, and Article 31 of the CBA recites the parties' agreement that benefits will not be unilaterally altered or revoked. Thus, the Union's grievance – that the exclusion of sums paid for night differential, check-in pay, and holiday pay, from General Municipal Law §207-a benefits violates the CBA – constitutes an arbitrable dispute, and it is for an arbitrator to determine whether those disputed payments fall within the scope of the parties' CBA.

(Sweeney Aff., Ex. "A").

16. On or about October 30, 2020, the City moved for leave to reargue the appeal, or, in the alternative, for leave to appeal to the Court of Appeals from the Second Department's October 14, 2020 Decision and Order.

17. By motion order entered March 8, 2021, the Second Department denied the City's motion, with $100 costs. (Sweeney Aff., Exhibit "G").

18. On or about April 6, 2021, the City served the instant motion for leave to appeal to the Court of Appeals by overnight mail.

ARGUMENT IN OPPOSITION

I. THE SECOND DEPARTMENT APPLIED THE CORRECT "REASONABLE RELATIONSHIP" ARBITRABILITY STANDARD PURSUANT TO SETTLED COURT OF APPEALS PRECEDENT

19. The Court should deny the City's motion for leave to appeal, because the Second Department correctly applied controlling case law to the facts of this case. Specifically, the Court followed the well-established "reasonable

relationship" arbitrability standard enunciated by the Court of Appeals in *Watertown*, 93 N.Y.2d 132, 143 (1999).

20. The City's argument that the Second Department's Decision ignored or misapplied controlling Court of Appeals and Second Department precedent is wholly without merit. The City erroneously claims that this Court relied on an "erroneous and lesser 'reasonably related' legal standard" in analyzing whether the dispute at issue is arbitrable. (Sweeney Aff., ¶ 45). The City misguidedly points to *Matter of Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v. City of Cohoes*, 94 N.Y.S.2d 686 (2000) ("*Cohoes*") and argues that the new arbitrability standard—bespoke for GML §207-a(2) benefits—should be whether the CBA "expressly provided" certain GML §207-a(2) benefits, rather than whether the dispute is "reasonably related" to the general subject matter of the CBA. (Sweeney Aff., ¶ 42).

21. However, the City's position misreads and is inconsistent with the black letter text of the *Cohoes* decision. The Court's analysis in *Cohoes* explicitly begins with "the general rule that, under a broad arbitration clause in a CBA, if the matter in dispute bears a 'reasonable relationship' to some general subject matter of the CBA, it will be for the arbitrator and not the court to decide whether the disputed matter falls within the CBA." *Cohoes*, 94 N.Y.2d at 694. Applying that general rule, the Court in *Cohoes* held that the parties' dispute was not arbitrable

because, unlike the collective bargaining agreement (the "CBA") in this case, "the CBA [was] silent as to whether the contractual rights [at issue] . . . [were] applicable to firefighters on [GML] §207-a status." *Id.*

22. In short, *Cohoes* did not announce a new and distinct arbitrability standard applicable only to disputes regarding GML § 207-a(2) benefits. *Id.* Rather, the Court of Appeals explicitly applied the well-settled "reasonable relationship" test of *Watertown* and its progeny. *Id.*

23. Like the Court in *Cohoes*, the Second Department properly applied the longstanding "reasonably related" standard in the Decision, and correctly found—unanimously—that the Grievance challenging the City's unilateral change to GML §207-a(2) benefits bore a reasonable relationship to the CBA's GML §207-a Procedure and the maintenance of benefits provision set forth in Article 31:01, and appropriately deferred questions of contract interpretation to the arbitrator. (Sweeney Aff., Ex. "A").

24. Beyond the City's misapprehension of the Court's holding in *Cohoes*, that case is readily distinguishable from the facts of this case. Unlike the CBA here, the *Cohoes* CBA did not have a GML §207-a procedure or reference GML §207-a benefits. Further, the grievance in *Cohoes* concerned only individual GML §207-a claims – it did not concern a unilateral change in the employer's GML §207-a practices. All that the *Cohoes* Court would have required for access to

arbitration under a broad arbitration clause like the parties have here was the presence of some language in the CBA that arguably related to the subject matter of the grievance, as the Court stressed the "total absence" of any express provision of the CBA dealing with the rights or benefits of disabled employees. *Cohoes*, 94 N.Y.2d at 694.

25. Accordingly, the Second Department correctly applied the "reasonable relationship" test announced by this Court in *Watertown*, and the City has not established any departure from Court of Appeals or Second Department precedent.

II. THE SECOND DEPARTMENT'S DECISION DOES NOT CREATE A SPLIT AS ALL DEPARTMENS APPLY THE SAME "REASONABLE RELATIONSHIP" ARBITRABILITY STANDARD PURSUANT TO SETTLED COURT OF APPEALS PRECEDENT

26. All Departments of the Appellate Division recently considering the arbitrability of disputes regarding GML §207 benefits have expressly applied the Court's "reasonable relationship" test announced in *Watertown*. (Sweeney Aff., Ex. "A") (2d Dept 2020) (applying *Watertown* to arbitrability of disputes regarding GML §207-a benefits); *Matter of Vill. of Manlius*, 185 A.D.3d 1501 (4th Dept 2020) (applying *Watertown* to arbitrability of disputes regarding GML §207-a benefits); *Matter of Cortland County*, 140 A.D.3d 1344 (3d Dept 2016) (applying *Watertown* to arbitrability of disputes regarding GML §207-c benefits). There is

no split.

27. The City fabricates a purported conflict by pointing to the earlier Third Department decision in *Matter of Town of Niskayuna v. Fortune*, 14 A.D.3d 913 (3d Dept 2005) and the earlier Fourth Department decision in *Matter of Town of Evans v. Town of Evans Police Benevolent Assn.*, 66 A.D.3d 1408 (4th Dept 2009). (Sweeney Aff. ¶¶ 47, 48). However, just as in *Cohoes*, the CBAs in both *Niskayuna* and *Evans* were "entirely silent" as to whether the benefits in question were applicable to disabled recipients of GML §207-a benefits. *Niskayuna*, 14 A.D.3d at 914; *Evans*, 66 A.D.3d at 1409. Moreover, neither of these cases featured an explicit agreement by the parties to arbitrate "any claim of entitlement to or use of GML 207-a benefits," as is the case here. (R. 84). Finally, both of these Departments of the Appellate Division have subsequently reaffirmed and applied the Court's "reasonable relationship" test announced in *Watertown* to disputes regarding GML §207 benefits.

28. In other words, *Niskayuna* and *Evans* do not apply a new, different, discrete arbitrability standard used only for purposes of GML §207-a benefits as the City contends, but rather applied the general "reasonable relationship" test, finding—unlike here—that the parties' CBAs were "silent" as to GML §207-a(2) benefits, and thus the Third and Fourth Departments found the specific disputes in *Niskayuna* and *Evans* were not arbitrable under the relevant CBAs in those cases.

29. Therefore, both decisions relied on by the City as its sole support for its purported "irreconcilable fissure" between departments are clearly distinguishable from the facts in this case, and do not demonstrate any split whatsoever, as the CBA here contains a broad arbitration clause and expressly provides for arbitration of "any claim of entitlement to or use of GML 207-a benefits." (R. 84).

30. Thus, there is no conflict warranting leave to appeal.

III. THE SECOND DEPARTMENT'S DECISION REPRESENTS A STRAIGHTFORWARD APPLICATION OF THE "REASONABLE RELATIONSHIP" ARBITRABILITY STANDARD AND DOES NOT PRESENT NOVEL ISSUES OR ISSUES OF PUBLIC IMPORTANCE

31. This case represents a straightforward application of the well-established and long-standing legal standard governing the arbitrability of labor disputes, which is as follows: "under a broad arbitration clause in a CBA, if the matter in dispute bears a 'reasonable relationship' to some general subject matter of the CBA, it will be for the arbitrator and not the courts to decide whether the disputed matter falls within the CBA." *Cohoes*, 94 N.Y.2d at 694. There is nothing novel about this legal standard, which has been upheld and applied by this Court for years.

32. Likewise, the facts of this case do not present any novel or unique issues in applying the above well-founded legal standard. A reasonable relationship

exists between the subject matter of a particular dispute and a CBA when "contractual interpretation is at least colorable[.]" *N.Y. State of Children & Family Servs. v. Lanterman*, 14 N.Y.3d 275, 283 (2010); *Matter of Johnson City Profl. Fire Fighters Local 921 v. Vill. of Johnson City*, 75 A.D.3d 805, 808 (3d Dept 2010).

33. Moreover, the City's observation that parties entering into a CBA containing broad form arbitration clause may be required to arbitrate disputes bearing a reasonable relationship to the subject matter of the CBA, including disputes concerning GML §207-a(2) benefits where, as here, the parties' CBA includes provisions expressly addressing the payment of GML §207-a(2) benefits, is totally unremarkable and does not demonstrate any special public importance.

34. Further, arbitration of labor disputed is not disfavored, as the City appears to presume. To the contrary, this Court has long recognized that "'arbitration is considered so preferable a means of settling labor disputes that it can be said that public policy impels its use.'" *Matter of City of Oswego v. Oswego City Firefighters Ass'n Local 2707*, 21 N.Y.3d 880 (2013) (quoting *Matter of Associated Teachers of Huntington v Board of Educ, Union Free School Dist. No. 3, Town of Huntington*, 33 NY2d 229, 236 (1973)); *Matter of City of Long Beach v. Civ. Servs. Empls. Assn.*, 8 N.Y.3d 465, 476 (2007) ("This policy of encouraging arbitration is even weightier when it comes to public employment, as not only does

the Taylor Law require collective bargaining, but also 'public policy in this State favors arbitral resolution of public sector labor disputes' [...] In fact, we have noted that 'arbitration of labor disputes under collective bargaining agreements is part and parcel of the collective bargaining process itself.'") (citations omitted); *Matter of Town of Haverstraw v. Rockland Cty. Patrolmen's Benevolent Ass'n*, 65 N.Y.2d 677, 678 (1985) ("public policy favors arbitration as a means of settling labor disputes [...] This court will intervene for reasons of public policy only where a policy 'prohibit[s], in an absolute sense, particular matters being decided [...] by an arbitrator") (citations omitted).

35. Accordingly, the Second Department's conformance with well-settled Court of Appeals precedent does not present novel issues or issues of public importance that warrant this Court's review.

WHEREFORE, the undersigned respectfully requests that Movant's motion for permission to appeal be denied, with costs, and such further relief that this Court deems just and proper.

Dated: April 14, 2021
Melville, New York

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