STATE OF NEW YORK
SUPREME COURT : COUNTY OF WESTCHESTER

In the Matter of the Arbitration between

CITY OF YONKERS,

Petitioner,

vs.

YONKERS FIREFIGHTERS,
LOCAL 628, IAFF, AFL-CIO,

Respondent.

MEMORANDUM OF LAW

Index No.:
RJI No.:

Assigned Judge:

AAA Case No.:
(Improper Reduction of GML 207-a(2) Benefits)

PRELIMINARY STATEMENT

This Memorandum of Law is submitted in support of a Petition to Stay Arbitration filed by the Petitioner, the City of Yonkers ("City" or "Petitioner") to stay arbitration of a grievance filed by the Respondent, Yonkers Firefighters, Local 628, IAFF, AFL-CIO ("Respondent" or "Union").

COLLECTIVE BARGAINING AGREEMENT

The City and Respondent are parties to a collective bargaining agreement ("CBA") which, covered the period July 1, 2002 through June 30, 2005 (Exhibit "A") and, as extended by stipulations between the parties, covered the periods July 1, 2005 through June 30, 2009 (Exhibit "B") and July 1, 2009 through June 30, 2019 (Exhibit "C").[1]

CBA Article 1 (Recognition) provides that "[t]he City recognizes the Union as the exclusive bargaining agent for all those employees holding the rank of Firefighter (herein

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[1] All exhibit citations references are to those exhibits annexed to the Petition.

referred to as "members") *who are now on active duty and employed* by the Fire Department of the City of Yonkers ("Department")." (Exhibit "A" at CBA Section 1:0, emphasis added).

CBA Article 29 (Grievance Procedure) provides for grievance arbitration "[i]n the event of a dispute between the parties to this Agreement *involving the interpretation or application of any provision of this Agreement.*" (Exhibit "A" CBA Article 29, first paragraph, emphasis added).

Appendix "C" to the CBA, as recently modified by the July 1, 2009 through June 30, 2019 stipulation (Exhibit "C"), is the negotiated procedure pertaining to General Municipal Law ("GML") 207-a(2) benefits. Section 1 of the updated procedure provides that "[t]his policy is intended to provide a *procedure to regulate both the application for, and the award of, benefits* under section 207-a of the General Municipal Law (hereafter referred to as "GML 207-a"). (Exhibit "C" at revised CBA Appendix "C", emphasis added). The revised GML 207-a procedure (which is effective July 1, 2009) does address GML 207-a(2) claims, but limits arbitration of retiree disputes to one circumstance: the City's refusal to award GML 207-a(2) benefits. (Section 20 of Exhibit "C" at revised CBA Appendix "C").[2]

FACTS

On December 9, 2015, the City issued forty-four (44) determinations to retired firefighters who received an "Accidental" or "Performance of Duty" ("POD") disability retirement from the New York State Retirement System by reason of a line of duty injury advising the retirees that the City had overpaid them General Municipal Law ("GML") 207-a(2) benefits.

[2] The original GML 207-a procedure under which affected retirees retired did not address GML 207-a(2) benefits at all. (Exhibit "A" at CBA Appendix "C").

GML 207-a(2) benefits include a tax free "wage supplement" paid to those retired firefighters who received an "Accidental" or "POD" disability retirement from the New York State Retirement System by reason of a line of duty injury. The GML 207-a(2) benefit represents the difference between the retiree's disability retirement pension paid by New York State and his or her "regular wages or salary."

The overpayment was created by the City including certain "special pays" or fringe benefits found in the CBA (night differential, holiday pay and check-in pay) in the calculation of the GML 207-a(2) benefit despite the fact that the CBA did not expressly include such fringe benefits as a negotiated benefit for retired firefighters who received an "Accidental" or "POD" disability retirement from the New York State Retirement System by reason of a line of duty injury.

The City's December 9, 2015 determination provided notice to the retirees that the City intended to adjust the GML 207-a benefit and recoup the overpayment. Prior to affecting the adjustment or recoupment, the City afforded each retiree with a right to a due process hearing.

All 44 retirees requested a due process hearing. 43 of the 44 retirees participated in the due process hearings in February and March 2016 at which they were represented by legal counsel. The majority of the retirees were represented by Attorney Richard S. Corenthal (Union legal counsel) who requested an adjournment of the due process hearings which were originally scheduled for mid-January 2016.

The City has not made any determination to adjust or recoup the GML 207-a(1) benefits paid to active firefighters represented by the Respondent. GML 207-a(1) provides that a firefighter will receive his or her regular wages and salary so long as they remain disabled due to a line of duty incident. In other words, the City continues to pay active firefighters a GML 207-

a(1) benefit that includes night differential pay, holiday pay and check-in pay in addition to their base pay.

On or about December 15, 2015, Respondent's president, Barry McGoey, filed a "step 1" grievance with Fire Commissioner John Darcy alleging that the "reduction in GML 207-a(2) pension supplement benefits is a violation of Local 628's CBA for those retirees (who retired subject to the terms of Local 628's CBA) as well as for all present members of Local 628 who are currently on GML 207-a status and in the application process for a NYS Disability Retirement Pension benefits, as well as all current members of Local 628 who may become injured or ill and be entitled to GML 207-a benefits." Attached to the December 15, 2015 grievance was the City's redacted December 9, 2015 determination mailed to the affected retirees. (Exhibit "D").

On December 17, 2015, Mr. McGoey supplemented the Union grievance by alleging that the City's actions amounted to a violation of CBA Article 31 (Maintenance and Continuation of All Other Benefits) and a violation of CBA Article 12, Section 12:02 and CBA Appendix C. (Exhibit "E").

On December 22, 2015, Fire Commissioner Darcy rejected the grievance at step 1 as pertaining to a matter outside the scope of the CBA. In his letter Fire Commissioner Darcy advised Mr. McGoey that the City was not seeking to adjust or recoup the GML 207-a benefits paid to the active firefighters and members of the Union whom he represented. (Exhibit "F").

On December 23, 2015, Mr. McGoey wrote to Fire Commissioner Darcy taking exception with the City's position and advising that the Union may take certain actions. (Exhibit "G"). On December 24, 2015, Mr. McGoey filed a "step 2" grievance with Mayor Mike Spano. (Exhibit "H").

On January 7, 2016, the Office of the Mayor reaffirmed Fire Commissioner Darcy's position on the grievance as being outside the CBA and not arbitrable and refused to meet with Mr. McGoey for that reason. (Exhibit "I").

On or about March 17, 2016, Respondent served a Demand for Arbitration dated March 17, 2016 ("Demand") with the American Arbitration Association. The Demand was not received by the City until March 22, 2016. (Exhibit "J").

In the "Nature of Grievance" portion of the Demand, the Respondent checks "Contract Interpretation" and states "City's decision to stop paying holiday pay, night differential pay and check-pay [sic] *as part of GML 207-a(2) supplement* violates the CBA, including Appendix C and Article 31, Maintenance of Benefits." (Exhibit "J", emphasis added). In the "Remedy Sought" portion of the Demand, the Respondent makes a demand to "Continue to include holiday pay, night differential pay and check-pay [sic] *as part of GML 207-a(2) supplement*." (Exhibit "J", emphasis added). In the "Name of the Grievant(s)" portion of the Demand, the Respondent identifies "active and retired members." (Exhibit "J").

The City's motion to stay arbitration is made within twenty (20) days of the Demand and no motion to compel arbitration has been made.

DISCUSSION

POINT I:
Arbitration of this Dispute Requires An Agreement to Arbitrate

A grievance may only be submitted to arbitration where the parties agree to arbitrate that kind of dispute, and where it is lawful for them to do so. In determining whether a grievance is arbitrable, the Court of Appeals has laid out a two-part test enunciated in *Matter of Acting Supt. of Schools of Liverpool Cent. School Dist.*, 42 NY2d 509 (1977) and *Matter of Board of Educ. of Watertown City School Dist.*, 93 NY2d 132, 143 (1999). Under *Liverpool-Watertown* and

progeny, this Court must first ask whether there is any statutory, constitutional or public policy prohibition against arbitration of the grievance. *See Liverpool* at 513. This is the "may-they-arbitrate" prong. If there is no prohibition against arbitrating, this Court is to examine the CBA to determine if the parties have agreed to arbitrate the dispute at issue. *See Watertown* at 140; *Liverpool* at 513-514. This is the "did-they-agree-to-arbitrate" prong. *See Matter of City of Johnstown v Johnstown Police Benevolent Ass'n*, 99 NY2d 273, 278 (2002). In this case, there is no agreement to arbitrate.

In *Liverpool*, the Court of Appeals held that an agreement to arbitrate must be express, direct and unequivocal as to the issues or disputes to be submitted to arbitration; anything less would lead to a denial of arbitration. *Matter of Acting Supt. Of Schools of Liverpool Cent. School Dist.*, *supra*; *see also*, *Matter of Board of Education of Port Jefferson Union Free School District v. Port Jefferson Teachers Association*, 243 A.D.2d 468, 469 (2d Dept. 1997). "It is well settled that a party cannot be compelled to arbitrate in the absence of an express, direct and unequivocal agreement to do so." *In re Sherwood*, 108 A.D.3d 979, 980 (3d Dept. 2013) (citing *S. Colonie Cent. Sch. Dist. v. S. Colonie Teachers Ass'n*, 46 N.Y.2d 521 (1979)).

"The policy of favoring arbitration in private sector labor relations does not apply equally in the field of public employment." *Liverpool*, *supra* at 513; *Matter of City of Plattsburgh*, 108 A.D.2d 1045, 1046 (3rd Dept. 1985). Without an express and unequivocal agreement to the contrary, there is a presumption that the public entity did not intend to refer a particular matter to arbitration. *Id.* The agreement must be clear. A party cannot be unilaterally coerced to arbitrate a dispute it has not agreed to arbitrate.

POINT II:
CBA and GML 207-a Procedure Do Not Provide for Arbitration of this Dispute

In the CBA, the parties agreed to limit grievance arbitration to a "dispute between the parties to this Agreement *involving the interpretation or application of any provision of this Agreement*." (Exhibit "A" at CBA Section 1:0, emphasis added). While some arbitration agreements allow for the arbitration of every employment dispute, the CBA provides for arbitration based only on an express provision of the CBA.

The parties negotiated a GML 207-a procedure (Exhibit "A" at CBA Appendix "C") which was recently modified by the July 1, 2009 through June 30, 2019 stipulation (Exhibit "C"). The parties intended that the GML 207-a procedure was "intended to provide a *procedure to regulate both the application for, and the award of, benefits* under section 207-a." (Exhibit "C" at Appendix "C", emphasis added).

While the original GML 207-a procedure (Exhibit "A" at CBA Appendix "C") did not address GML 207-a(2) claims, the revised GML 207-a procedure (Exhibit "C" at CBA Appendix "C") limits arbitration of GML 207-a(2) retiree disputes to one circumstance: the City's refusal to award GML 207-a(2) benefits. (Section 20 of Exhibit "C" at CBA Appendix "C").

As such, by agreement, the right of retirees to arbitrate a dispute pertaining to GML 207-a(2) benefits is limited to the denial of a claim to GML 207-(2) benefits. The right to arbitrate any other dispute is not expressly set forth.

POINT III:
CBA and GML 207-a Procedure Do Not Expressly Provide for the Claimed GML 207-a(2) Benefit

Even assuming *arguendo* that the CBA did permit the arbitration of GML 207-a(2) disputes other than a denial of GML 207-a(2) benefits, the CBA does not expressly provide that the GML 207-a(2) benefit shall include the fringe benefits in dispute: differential pay, holiday pay or check-in pay.

The Court of Appeals and the Appellate Division, Second Department have long held that, for purposes of GML 207-a(2), the term "regular wages or salary," consists of "salary increases given to active firefighters following the award of the disability retirement allowance or pension as well as the benefit of longevity pay increases provided to active firefighters." *Matter of Whitted v. City of Newburgh*, 126 A.D.3d 910, 911 (2d Dept. 2015), citing *Matter of Mashnouk v. Miles*, 55 N.Y.2d 80, 88 (1982); *Matter of Farber v. City of Utica*, 97 N.Y.2d 476 (2002); *Matter of Aitken v. City of Mt. Vernon*, 200 A.D.2d 667, 668 (2d Dept. 1994).

The Court of Appeals and the Second Department have also held that the GML 207-a(2) wage supplement benefit is calculated by excluding all other contract fringe benefits paid to active fire fighters unless the parties expressly negotiated a GML 207-a(2) wage supplement benefit that includes such fringe benefits. In addressing claims by active firefighters who were provided GML 207-a(1) benefits that they were also entitled to other benefits under the CBA, the Court of Appeals has held:

> The collective bargaining agreement in question is entirely silent regarding the status of disabled firemen as employees of the city. Their continued status as employees even after disability has occurred is strictly a matter of statutory right. *The 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, and petitioners' argument

that they are entitled to unused vacation benefits by reason of the absence of language specifically excluding their class from vacation benefits is thus without merit.

Matter of Chalachan v. City of Binghamton, 55 N.Y.2d 989, 990 (1982) (emphasis added).

Citing *Chalachan* which dealt with a claim to vacation benefits, the Second Department extended the rule to claims to shift differentials. In the *Matter of Benson v. Nassau County*, 137 A.D.2d 642, 643 (2d Dept. 1988) the Second Department held:

> We note a line of cases which follow the rationale illustrated above and specifically limit the meaning of the phrase "regular salary or wages" in General Municipal Law §§ 207-a and 207-c to "base salary". In this regard, vacation and sick leave accrued while on disability leave were held to be not within the purview of either General Municipal Law § 207-a or § 207-c (*Phaneuf v. City of Plattsburgh*, 84 Misc 2d 70, *affd* 50 AD2d 614, *lv dismissed* 38 NY2d 1004), nor are fringe benefits (*Matter of Geremski v. Department of Fire*, 78 Misc 2d 555), overtime (33 Opns St Comp, 1977, at 71), paid holidays (34 Opns St Comp 1978, at 170), or uniform allowances (1982 Opns St Comp No. 82-352) within the purview of those sections.
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> *Id.* at 137 A.D.2d 642.

In this case, the express terms of the CBA make it clear that the fringe benefits in dispute were not intended to be considered part of a firefighter's "regular wages or salary" as that term has been interpreted by the Court of Appeals and the Second Department for purposes of GML 207-a(2).

The CBA at Section 4:01.01 ("Base Salary") defines "the annual base salary" as that "provided on the Appendix A annexed." (Exhibit "A" at pg. 4). Appendix A, which only addresses base salary and longevity, does not include the fringe benefits. As such, the term "annual base salary" is a defined term.

The CBA at Section 4:02 ("Rate of Pay") provides that a "members rate of pay shall be one and two hundred thirty-secondths (1/2323ths) of *annual base salary plus longevity* . . .

Members who are assigned to arson pursuant to 4:01.03 shall in addition, have their arson pay included in computing their hourly and daily rates." (Exhibit "A" at pg. 5, emphasis added). The CBA's rate of pay section excludes all other salary benefits from its definition, including the fringe benefits.

The CBA at Sections 4:05 ("Night Differential"), 4:06 ("Check-In Pay") and 4:07 ("Holiday Pay"), provide these special pays to "firefighter" or "members." (Exhibit "A" at pg. 7-8). These sections do not address the payment of fringe benefits to retirees.

While the CBA does address some retiree benefits, such as retiree health insurance (Exhibit "A" at pg. 12), the CBA does not address a retiree benefit pertaining to fringe benefits.

A February 27, 2009 stipulation that settled a Local 628 grievance pertaining to withholdings from GML 207-a payments provides that the City *will continue to withhold payroll taxes and other withholdings* from "unit members receiving GML 207-a benefits of *night differential, check-in pay, holiday pay*, sick leave incentive *and/or any other payments other than salary*." (Exhibit "K" at pg. 4) (emphasis added). As such, Local 628 recognized that the fringe benefits would be treated differently than "salary."

In sum, the CBA incorporates a negotiated (and now updated) GML 207-a procedure which does not provide the disputed fringe benefits as part of a GML 207-a(2) benefit for the retirees. The stipulations that extended the expired CBA did include negotiated wage increases that benefit the Retirees. However, these stipulations do not provide for fringe benefits as part of a GML 207-a(2) benefit for the retirees. (Exhibits "B" and "C"). As such, there is no express terms in the CBA that provide that active or retired firefighters are entitled to the dispute fringe benefits.

POINT IV:
Arbitration Not Available to Retirees When CBA Does Not Expressly Provide for the Disputed Benefit

Finding that the CBA was silent on the GML 207-a(2) benefit claimed, the Court of Appeals has held that a CBA "should not therefore be construed to implicitly expand whatever compensation rights are provided [the retirees] under the statute. *Any additional benefits must be expressly provided for in the agreement.*" *Chalachan, supra at* 55 N.Y.2d 989, 990 (emphasis added).

In a later decision, *Matter of Uniformed Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v. City of Cohoes*, 94 N.Y.2d 686 (2000), the Court of Appeals held that the failure of the CBA to expressly provide for a contract benefit would adversely impact the right to arbitrate a dispute relating to that benefit.

> In our view, the total absence of any express provision in the CBA making applicable to firefighters on General Municipal Law § 207-a status the specific contractual provisions the Union claims were violated, is fatal to appellants' arbitration claim. We, lower courts and other authorities have recognized that, because disabled firefighters do not perform regular duty in exchange for the "payment of the full amount of regular salary or wages" under General Municipal Law § 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*" [citations omitted].
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> *Id.* at 94 N.Y.2d 686, 694-95 (2000) (emphasis original).

Prior to *Cohoes*, the Second Department had also implemented this same rule. In *Board of Education, West Babylon Union Free School District v. W. Babylon Teachers Association*, 60 A.D.2d 577 (2d Dept. 1977), the Second Department in staying arbitration held:

> There is no provision in the collective bargaining agreement dealing with the subject matter of this dispute, which is only a permissible, as opposed to a mandatory, subject of bargaining,

> except for one clause which sets forth the compensation of department directors if and when appointed; there is no express and unequivocal agreement to arbitrate disputes which are unrelated to the "meaning or applications of (the parties') Agreement."
>
> *Id.* at 60 A.D.2d 577, 577.

In *Matter of Town of Tuxedo v. Town of Tuxedo Police Benevolent Association*, 78 A.D.3d 849, 851 (2010) the Second Department implemented the same rule to stay arbitration on a demand to arbitrate an accrued leave payout dispute affecting a GML 207-c recipient who received a disability retirement.

> Here, contrary to the PBA's contention, the CBA did not contain any language expressly providing that leave time would accrue during the period that a disabled officer receives General Municipal Law § 207–c benefits, or that a disabled officer would be paid for such leave time upon retirement. Accordingly, the Supreme Court should have granted the petition in Proceeding No. 2 to permanently stay arbitration
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> *Id.*

In *Matter of Incorporated Village of Floral Park v. Floral Park Police Benevolent Association*, 89 A.D.3d 731 (2d Dept. 2011), the Second Department again implemented the same rule to stay arbitration on a demand to arbitrate a leave accrual dispute.

> Here, contrary to the PBA's contention, the parties' collective bargaining agreement does not expressly provide that leave time accrues during the period that a disabled officer is not working and is receiving benefits pursuant to General Municipal Law § 207–c...Had the parties intended to allow disabled officers to continue to accrue leave time during their period of disability, they could have inserted such language into Article XVI, Section 4, but they did not do so. Under such circumstances, the dispute is not arbitrable (*see Matter of Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL–CIO v. City of Cohoes,* 94 N.Y.2d at 694–695, 709 N.Y.S.2d 481, 731 N.E.2d 137).
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> *Id.* at 732-33.

Similarly, in this case and despite the CBA's relatively broad arbitration clause, neither the CBA nor the negotiated GML 207-a procedure, provides the retirees with a GML 207-a(2) benefit that includes the fringe benefits at issue, much less the adjustment or recoupment of that benefit in the event of an overpayment. It is undisputed that the CBA does not expressly provide that retirees with the claimed GML 207-a(2) benefit: the inclusion of night differential pay, holiday pay, or check-in pay as part of the GML 207-a(2) benefit.

As it appears that the Union has failed to negotiate the right to arbitrate this dispute and failed to include a defined GML 207-a(2) benefit that includes certain fringe benefits, the Union should not be allowed to "implicitly expand" the CBA and get from arbitration what it failed to get at the bargaining table.

POINT V: Alleged Past Practice of Paying Fringe Benefits Is Outside the CBA

In its grievance, the Union claims a GML 207-a(2) benefit under the CBA's "maintenance of benefits" provisions. CBA Section 31:01 provides that "[t]he 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* not specifically referred to in this Agreement…" (CBA Section 31:01, emphasis added).

On its face, Section 31:01 provides for the continuation of certain past practices only for the benefit of "members." While this "maintenance of benefits" provision may allow a current or active firefighter to continue to receive payment of GML 207-a(1) benefit that includes the fringe benefits in dispute, this provision grants no similar "maintenance of benefits" rights to retirees who cannot claim the benefit of an alleged past practice.

The Court of Appeals has long held that retirees do not have a claim for contract benefits by way of past practice. In the case of *Matter of Aeneas McDonald Police Benevolvent*

Association, Inc. v. City of Geneva, 92 N.Y.2d 326 (1998), the Court of Appeals addressed the issue of "whether retired municipal employees, who are no longer members of any collective bargaining unit, may enforce a past practice in civil litigation with their former municipal employer." *Id.* at 330. The Court of Appeals held "[w]here, as here, the past practice concededly is unrelated to any entitlement expressly conferred upon the retirees in a collective bargaining agreement, we hold that there is no legal impediment to the municipality's unilateral alteration of the past practice." *Id.* at 330-331.

The Court of Appeals held that while past practice concerning health benefits for *current employees* cannot be unilaterally modified because health benefits can be a form of compensation (*See id.* at 331-332), a past practice concerning *retired* members is not permitted because a public employer's duty to bargain does not extend to retirees. *See id.* at 332. The Court concluded by holding that "past practice, like any other form of parol evidence, is merely an interpretive tool and cannot be used to create a *contractual* right independent of some express source in the underlying agreement." *Id.* at 333.

At best, the *Aeneas* case stands for the proposition that active duty firefighters may be able to obtain or keep GML 207-a(1) benefits by way of past practice. However, the instant dispute involved a retiree benefit under GML 207-a(2), which can only be paid to a retiree and not to an active duty firefighter. As such, the Union cannot claim that active duty firefighters are entitled to a retiree benefit by virtue of a past practice.

Like *Aeneas*, in the current case there is no express contractual provision providing GML 207-a(2) recipients with fringe benefits and there is no express contractual provision providing GML 207-a(2) recipients with a mechanism for grieving or arbitrating the City's decision. The GML 207-a(2) recipients cannot claim past practice as they are retirees--not employees--and the

City is not required to bargain with the retirees. Past practice can only be used as a tool in helping to understand a contractual ambiguity. Here, there is no ambiguity - the CBA does not contemplate paying fringe benefits to GML 207-a(2) recipients and it does not contemplate arbitration of such claims by GML 207-a(2) recipients. As such, Section 31:01 does not provide the retirees or active duty firefighters with a "contract" basis to arbitrate the dispute.

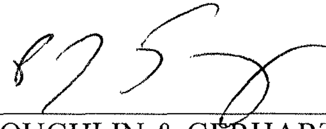
POINT VI:
Retirees Have Elected to Pursue Appeals Outside of Arbitration.

In this case, the affected retirees have already elected their remedies by participating in the due process appeal process. If dissatisfied with the result of the process, these retirees will have further rights of review under CPLR Article 78. Accordingly, the retirees should not be permitted to litigate the same dispute in two different forums. Pursuit of arbitration may have collateral effects on related litigation. *Simon v. Boyer*, 51 A.D.2d 879, 880 (4th Dept. 1976), *aff'd,* 41 N.Y.2d 822 (1977).

Conclusion

It is black letter law that disputes outside of the contract cannot be arbitrated absent an express agreement to do so. In this case, arbitration by a retiree is limited to disputes pertaining to a denial of GML 207-a(2) benefits and there is no express CBA provision which provides that the GML 207-a(2) benefit shall include differential pay, holiday pay or check-in pay. Absent an express provision in the CBA, there is no contractual agreement to arbitrate: (a) GML 207-a(2) claim other than one involving the denial of GML 207-a(2) benefits to a retiree; (b) a GML 207-a(2) claim concerning the calculation of a retiree's GML 207-a(2) benefit; or (c) a GML 207-a(2) claim based on a past practice. Accordingly, this Court should grant the City's motion to stay arbitration.

Dated: April 5, 2016



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