

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration	:	
	:	PERB No. A2018-123
between	:	
	:	DECISION AND AWARD
THE CITY OF COHOES	:	
	:	Grievance:
and	:	William Carlson
	:	207-a denial
UNIFORMED FIREFIGHTERS OF COHOES,	:	
LOCAL 2562, IAFF, AFL-CIO	:	

BEFORE: Mary L. Crangle, Arbitrator

APPEARANCES:

For the Union: Thomas J. Jordan, Esquire

For the Employer: Brian S. Kremer, Esquire

The City of Cohoes, New York ("City") and the Uniformed Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO ("Union") are parties to a collective bargaining agreement ("Agreement") that includes a grievance procedure. This procedure sets forth a process for addressing claimed violations of the Agreement, including denial of General Municipal Law 207-a benefits ("207-a benefits"). This procedure culminates in binding arbitration.

Pursuant to the Agreement, the Union submitted a grievance dated June 4, 2018 alleging that the City

violated the Agreement by denying Firefighter William Carlson's application for 207-a benefits. The Union timely submitted the matter to arbitration thereafter as provided for in the Agreement.

The undersigned was duly named as arbitrator in this matter by the New York State Public Employment Relations Board. An arbitration hearing was conducted on April 9, 2018 at the Cohoes City Hall at which time both parties were provided the opportunity to examine and cross examine witnesses and otherwise to support their respective positions. Both parties chose to submit written closing arguments. These were received by the arbitrator on June 3, 2019 and the hearing was declared closed as of that date.

At the hearing the parties agreed that the issue to be decided in this proceeding is as follows:

Did the City violate the collective bargaining agreement by denying Lt. Carlson's application for 207-a benefits? If so, what shall the remedy be?

I find the following facts to be undisputed based on the record evidence. The Grievant, Lt. William Carlson, ("Grievant") has been employed as a firefighter by the Cohoes Fire Department for approximately 28 years. The Grievant works 24 hour shifts with one day on, three days

off. The Grievant incurred a work related injury to his left shoulder in October of 1997 when he was pulling hose at a fire scene. His injury was reported to the City at that time and he was taken to a hospital, treated, and ultimately referred to an orthopedist. The Grievant continued to work thereafter, with intermittent medical treatment, even though he was in pain, until September 29, 2017. At that time his treating orthopedist determined that the Grievant was disabled from his duties as a firefighter because the Grievant's pain level and limited range of motion placed him at risk if he continued working. The Grievant's treating orthopedist diagnosed the Grievant with post traumatic osteoarthritis that resulted from the Grievant's 1997 injury. The Grievant was advised to have shoulder replacement surgery and he subsequently had total shoulder replacement surgery in December of 2017. The Grievant remained disabled thereafter until he was released to full duty by his doctor in mid December of 2018. The Grievant was ultimately permitted by the City to return to work on February 18, 2019.

The Grievant applied for Section 207-a benefits in March of 2017 because he realized his shoulder was getting worse and it was work related. The Grievant continued to work, however, until his treating orthopedist put him out

of work on September 29, 2017. The Grievant received full compensation and was listed as "AS" (accident sick) from September 29, 2017 until he received the City's denial of his 207-a benefits by letter dated May 24, 2018. From that point forward, until he returned to full duty, the Grievant's accumulated sick leave was charged. The Grievant seeks as a remedy in this matter, the restoration of the sick leave he was charged between May of 2018 and February of 2019 when he returned to full duty.

Prior to the Grievant's shoulder replacement surgery, the City's doctor reviewed the matter to assess causality and concurred that the shoulder replacement surgery was necessary and that the Grievant's condition related back to the injury he incurred on the job in 1997. This surgery was approved and paid for by workers' compensation.

General Municipal Law Section 207-a provides for the payment of a firefighter's regular salary or wages when a firefighter is injured or taken sick in the performance of his/her duties until his/her disability arising therefrom has ceased.

Appendix D of the parties' Agreement contains a "Procedure For The Administration Of General Municipal Law Section 207-a Benefits" ("Procedure"). This Procedure in relevant part provides as follows:

5(b) If the City denies the 207-a application, the firefighter shall use his/her accumulated sick leave until it is exhausted.

6. A firefighter disputing the City's determination shall be permitted to dispute same in accordance with paragraph 9 of this Procedure.

9(a) Any denial of 207-a benefits by the City . . . shall be submitted to arbitration in accordance with Article X of the Labor Agreement . . .

9(b) If the issue submitted to the arbitrator involves the firefighter's initial eligibility for benefits, the arbitrator shall find for the City if the City's initial determination was supported by substantial evidence. The arbitrator shall find for the firefighter if the City's initial determination is not supported by substantial evidence . . .

After thoroughly reviewing the evidence before me in this matter, and taking into consideration the positions of the parties, I find that the City's determination that denied the Grievant's application for General Municipal Law Section 207-a benefits is **not** supported by substantial evidence. I so find for the following reasons.

The City presented no witnesses or documentary evidence to substantiate why it denied the Grievant's

application for 207-a benefits. The City's letter of May 24, 2018 simply states "We have reviewed your application and applicable medical records. Your application is denied". No reason was set forth therein nor was one proffered at the hearing.

There was no conflicting medical evidence presented for me to consider. I credit the Grievant's surgeon's testimony that the condition of the Grievant's left shoulder in 2017, that necessitated total shoulder replacement surgery, related to the Grievant's 1997 injury in the performance of his duties as a firefighter and that the Grievant was disabled as a result. Furthermore, the testimony that the City's doctor reviewed the Grievant's medical file and concurred that his disability arose because of a 1997 injury to his left shoulder was not refuted. The City likewise did not contest the testimony that the Grievant's total left shoulder replacement surgery was paid for by workers' compensation. If there had been any concern on the part of the City in 2017 that the Grievant was not disabled as a result of an injury in the performance of his duties, it is reasonable to conclude that his medical treatment would not have been paid for by workers' compensation.

The City argues that the Grievant failed to qualify for 207-a benefits because he was not actually disabled at the time of his initial application in March of 2017. However, the City did not deny the Grievant's application until it issued its denial letter dated May 24, 2018, over a year later. That letter makes no reference to any alleged procedural irregularity. Furthermore, at that time the City had to have known that the Grievant was disabled as a result of a work related injury, especially since it was paying the Grievant accident/sick pay, and had authorized his surgery and treatment to be covered by workers' compensation.

I have reviewed the case law the City submitted in support of its position that it properly denied the Grievant's application. I find such to be factually distinguishable and/or irrelevant to the issue before me.

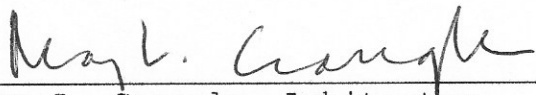
AWARD

The grievance is sustained.

The City's initial determination denying the Grievant's application for General Municipal Law Section 207-a benefits is **not** supported by substantial evidence.

The City violated the collective bargaining agreement by denying Lt. Carlson's application for 207-a benefits.

As a reedy, the City shall restore to the Grievant all contractual benefits that the Grievant is entitled to for the period from the effective date of the denial of 207-a benefits in May of 2018 until the Grievant returned to full duty in February of 2019, including the restoration of the sick leave that the Grievant was charged during this period of time.

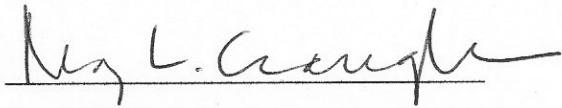


Mary L. Crangle, Arbitrator

Dated: 6/27/19

State of New York :
County of Albany :

I, MARY L. CRANGLE, do hereby affirm that I am the individual described herein and who executed this instrument, which is my Decision and Award.



Mary L. Crangle

Dated: 6/27/19