

**INTEREST ARBITRATION AWARD
AMERICAN ARBITRATION ASSOCIATION
CASE NO. 17 0002 3182 2**

CITY OF PHILADELPHIA

And

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 22

Arbitration Panel

Joseph T. Cleary, Esq.
CLEARY, JOSEM & TRIGIANI LLP
IAFF-Appointed Arbitrator

Shannon D. Farmer, Esq.
BALLARD SPAHR LLP
City-Appointed Arbitrator

James M. Darby, Esq.
Neutral Arbitrator and Panel Chair

Appearances

FOR THE IAFF:

Cassie Ehrenberg, Esq.
Regina Hertzog, Esq.
Jason Brodsky, Esq.
CLEARY, JOSEM & TRIGIANI LLP

FOR THE CITY:

Meredith Swartz Dante, Esq.
Shaina Hicks, Esq.
BALLARD SPAHR LLP

Patrick Harvey, Esq.
*CAMPBELL DURRANT BEATTY
PALOMBO & MILLER*

Kay Kyungsun Yu, Esq.
AHMAD & ZAFFARESE

The Board of Arbitration (“Board” or “Panel”) was selected pursuant to the provisions of Section 4(b) of the Act of June 24, 1968, P.L. 237, as amended, 43 P.S. §217.4(b) (“Act 111”) and the procedures of the Philadelphia Office of the American Arbitration Association. The parties agreed to waive the time limits under Act 111. Hearings in this matter were conducted in 2017 on May 23, June 19, 22, July 26, August 3, 23, October 3, 5, 10, 25, 27 at which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. Following executive sessions of the Panel, the Award contained herein was adopted by a majority of the Panel.

I. BACKGROUND

This Act 111 interest arbitration was conducted under the dictates of the Pennsylvania Intergovernmental Authorities Act (“PICA Act”), which created the Pennsylvania Intergovernmental Cooperation Authority (“PICA”). The PICA Act requires that the City develop, at least annually, Five-Year Financial Plans that provide for balanced budgets and must be reviewed and approved by PICA. The City is further required to undertake “a review of compensation and benefits” and to ensure that expenditures, including those for employee wages and benefits, are balanced with revenues. 53 P.S. § 12720.102(b)(1)(iii)(H); 12720.209(b) and (c). Under the PICA Act, a failure on the part of the City to comply with such requirements would result in the mandatory withholding of state funding and tax revenues designated for the City.

Most relevant for this Panel, Section 209(k) of the PICA statute, entitled “Effect of plan upon certain arbitration awards,” requires that, prior to rendering an Act

111 award which grants a pay or fringe benefit increase, the Panel must consider and accord substantial weight to:

- i. the approved financial plan; and
- ii. the financial ability of the [City] to pay the cost of such increase in wages or fringe benefits without adversely affecting levels of service.

53 P.S. § 12720.290(k)(l). The Panel also must make a written record of the factors it considered when making its determination according substantial weight to the Five Year Plan and the City's ability to pay. 53 P.S. § 12720.290(k)(2).

During the course of this Act 111 proceeding, both parties raised arguments regarding the City's financial condition and ability to pay for this Award within the confines of the Five Year Plan. In making this Award, the Panel has carefully reviewed and considered the testimony of the witnesses and the exhibits submitted by the parties, as well as statements made by both parties in support of their respective positions. This Panel has duly considered the parties' arguments, and has accorded the City's financial concerns the substantial weight required by law.

II. FINDINGS

In light of the PICA Act's requirement that the Panel make findings, supported by substantial evidence in the record, that the City has the ability to pay the cost of the Award without adversely affecting service levels, the Panel has carefully considered the evidence and the contentions of the parties. After doing so and fully complying therewith, the Panel has made the following findings in support of its Award:

1. The City is statutorily required to maintain a balanced budget.
2. The City is also required to submit a revised five year plan that is balanced in each of its years to PICA for approval whenever it appears that the City's budget is no longer balanced as a result of unplanned revenue decreases or expense increases.

The City is required to provide quarterly updates to PICA showing how actual results and current projections compare to those contained in the approved five year plan.

3. PICA can require the City to make mid-year adjustments if there is a variance from the approved five year plan. Because the City is prohibited by law from enacting mid-year tax increases, such adjustments generally must come from service reductions.

4. After the issuance of the 2008-2009 interest arbitration award, the City suffered a financial crisis as a result of the then-deteriorating local and national economy and would have faced a \$2.4 billion deficit in its Five Year Plan if it had not taken corrective actions.

5. To close the deficit in its FY10-FY14 Five Year Plan ("FY10-FY14 Plan"), the City made extensive cuts to its budget, including cuts which affected core services. In addition, the City sought and received approval from the state legislature for three changes: a temporary 1% increase in the sales tax for FY10-FY14; a deferral of a portion of the City's minimum required contribution to the pension fund for FY10 and FY11, which was required to be repaid with interest in FY13 and FY14; and a change in the amortization period for the City's repayment of the pension fund's unfunded liability.

6. This partial deferral of pension payments allowed the City to conserve funds in FY10 and FY11, but cost the City more over the course of the Five Year Plan because the deferral was required to be repaid at an interest rate of 8.25%. The City fully repaid the pension deferral earlier than required with all required interest.

7. As a result of the City's continuing financial struggles and the condition of its pension fund, the contracts and interest arbitration awards with Local 22 and the City's other unions starting in 2009 included provisions designed to reduce the City's pension costs and improve the fund's condition. Specifically, these contracts imposed an additional pension contribution of 1% of wages upon new hires or the acceptance of Plan 10 – a different retirement benefit that reduced the benefits for covered new hires to a combination of defined contribution and defined benefit.

8. In 2010, when these new pension terms were first adopted, the City's pension plan was slightly more than 50% funded and the City's pension obligations had grown by more than 130% since FY01.

9. An arbitration panel issued an award setting the terms and conditions of the bargaining unit for the period from July 1, 2013 through June 30, 2017 on January 9, 2015 ("2013-2017 Award"). The 2013-2017 Award contained wage and premium pay increases as well as other benefits for bargaining unit employees.

10. The 2013-2017 Award also changed the funding structure of the Local 22 health care delivery program with the City moving from a fixed, per member per month contribution to paying only the actual costs for benefits and administration. The Award also required an increase in the co-pays that employees pay for doctor's visits and

prescription drugs and added financial incentives for employees to participate in wellness and disease prevention activities.

11. Since FY11, the City has maintained positive fund balances and the City's respective five year plans have projected continued modest, positive growth in the economy, even as they continue to reflect the City's long-term challenges. As a result, each of these five year plans has projected fund balances far lower than experts recommend for a city of this size. The City's FY18-FY22 Five Year Plan ("FY18-FY22 Plan"), which is the PICA-approved plan at this time, continues to reflect these challenges and, as a result, continues to project modest fund balances as well.

12. FY18-FY22 Plan assumes steady economic growth. In recognition of the City's non-competitive tax structure, the FY18-FY22 Plan also continues targeted tax reductions to attract both businesses and residents. In addition, the FY18-FY22 Plan makes targeted, critical investments in public safety, health and human services.

13. Reflecting the City's fragile recovery since the economic downturn and its long-term challenges, the FY18-FY22 plan contains projected fund balances that are significantly lower than experts recommend.

14. The Panel was presented with experts from both parties who testified regarding the current and future economic condition of the City. All of their testimony was considered and weighed in reaching this Award.

15. The Panel concludes that the City has acted responsibly in reaching its five year plan forecasts. The Panel notes, however, that those forecasts, at least in times of strong economic growth, have sometimes proved more conservative than the actual revenues. Similarly, the Panel recognizes that the threat of a recession exists, which could lead revenues to be significantly below the City's forecasts, as happened in the last recession. Finally, the Panel takes note that the City's proposed FY19-FY23 Five Year Plan contains tax increases in order to fund critical City functions.

16. It is clear to the Panel that weaknesses in the economy and demographic challenges continue to pose threats to the City's economy, including: a poor population that creates a weak tax base and a large demand for social services; its responsibility for both city and county government services; significant employee benefit costs; and already high tax burdens. In fact, even without the tax increases currently under consideration, City residents are among the most heavily taxed of any City in the country.

17. The City's poverty rate is the highest of the nation's ten largest cities, and much higher than that of the state or the nation as a whole.

18. A large portion of the City's budget is spent on expenses over which the City has little to no control, including pension and debt service. Pension costs pose a particular burden on the City.

19. Personnel costs are projected to account for more than 65% of the City's FY18 General Fund spending – or more than \$3.3 billion.

20. In FY18, the City expects to spend more than \$680 million on pension costs alone, which is more than 15% of its General Fund budget.

21. Pension contributions grew from \$194 million in FY01 to \$622 million by FY16, an increase of 230%. Even as Philadelphia's contributions into the pension fund have increased substantially, the retirement system's funded ratio declined from 77.5% in FY01 to 44.8% in FY16.

22. As of the latest valuation report presented to the Panel, the City's pension is 44.8% funded, with a \$6 billion unfunded liability, showing a steady decrease in funding ratio over the past several years, even as the economy has slowly improved, and despite the City's increasing contributions.

23. As a result of the City's economic condition, coupled with its significant unfunded pension liabilities, bond rating agencies have placed Philadelphia on "negative watch" and S&P downgraded the City from an A+ to an A rating.

24. The Pennsylvania legislature has also recognized the gravity of the City's pension situation, making permanent the additional 1% sales tax initially passed as a temporary measure in 2010 and dedicating a portion of the revenues to pensions. Rather than using this additional revenue to reduce the City's statutory minimum pension contribution ("MMO"), the City has committed to using the additional revenues to increase the pension funding above the MMO.

25. The City has made changes to the pension benefits for new hires and current employees in each of the contracts and interest arbitration awards reached with other unions since 2016. In every case, they include increased contributions for current employees and changes for new hires designed to increase the money going into the pension fund and slow the growth of future obligations. The City has committed to using these contributions to add additional revenues to the pension fund, rather than to offset its required contributions under the MMO.

26. The Panel finds that the City's pension funding ratio and its unfunded liability is a significant factor that must be addressed by this Award. The panel notes that the issue of pensions dominated a significant portion of these proceedings and recognizes that the City will not attain fiscal stability until it has remedied the financial condition of its pension fund.

27. The Panel notes that Local 22 fought vigorously against the increases in pension contributions for both current employees and new hires which were ordered in the award issued by the FOP interest arbitration panel for the period FY18-FY20 ("FY18-FY20 FOP Award"). At the same time, the City has urged the Panel to award tiered pension contributions for current employees and a hybrid plan for new hires which replicate the changes negotiated by District Council 33, the City's largest union. The Panel has considered the arguments made by both sides and acknowledges that Local

22 members meet their obligations to the pension fund and that the deficiencies the Pension Fund faces cannot be attributed to the members. However, the Panel is unwilling to break the long-standing tradition of wages and pension contributions for employees in this bargaining unit which mirror those of the FOP bargaining unit, which is three times the size.

28. The Panel also notes that Local 22 argued vigorously for the Panel to create a stress pay benefit to mirror that which the FOP enjoys. The Panel finds that the premium pay which Local 22 receives is analogous to FOP stress pay and it would not be appropriate to add an additional stress pay benefit. The Panel finds, however, that increases which have occurred in FOP stress pay in past awards warrant an increase in premium pay for Local 22, as premium pay is intended to reflect the fact that Local 22 members work a longer scheduled work week than FOP-represented employees. Given the City's financial challenges, the Panel has split that increase between two years to spread out the financial impact on the City while still giving bargaining unit employees the significant financial benefit the Panel finds appropriate.

29. The Panel declines to award changes in health benefits for employees which the City sought. As the FOP Panel did, the Panel recognizes that the benefits these employees enjoy are uncommonly generous. However, the Panel recognizes the strides the Local 22 Health Fund has made in reducing the cost of the benefits through its administration of the benefit program and pursuit of wellness and disease management initiatives since the current funding system and increases in co-pays went into effect in 2015. Given these efforts, the Panel believes it is appropriate to leave the costs to employees unchanged at this time.

30. As the Panel did for the FY18-FY20 FOP Award, the Panel finds that the City can pay for the cost of this Award in light of its positive economic projections, even as there are threats to the City's economy on the national, state and local level which make it inappropriate to award the many other financial benefits Local 22 has requested.

31. Finally, Local 22 has requested that the Panel direct the City to change the schedule for paramedics and EMTs to align with the platoon schedule for firefighters, as it was before 2009. The City argues that this request is outside the Panel's jurisdiction as it would infringe on the City's management rights. The Panel notes that the City has included funding for this change in its proposed FY19-FY23 Five Year Plan at the request of the Fire Commissioner who has expressed his desire to make such a change this summer. As a result, the Panel finds it unnecessary to address the issue or determine if it would have the authority to do so.

III. **AWARD**

1. **Term:** July 1, 2017 through June 30, 2020

2. **Wages:**

3.25% increase effective July 1, 2017

3.5% increase effective July 1, 2018

3.75% increase effective July 1, 2019

3. **Pension:**

a. Effective July 1, 2017, the existing employee contributions towards pension benefits shall be increased by .92% for employees in Plan A and Plan '10 hired or rehired (in accordance with existing treatment of rehired employees under the pension ordinance) on or before June 30, 2017. The increase shall be calculated based on the employee contribution rates which would otherwise be in effect as of July 1, 2017 for each employee.

b. Effective July 1, 2018, the existing employee contributions towards pension benefits shall be increased by an additional .92% for employees in Plan A and Plan '10 hired or rehired (in accordance with existing treatment of rehired employees under the pension ordinance) on or before June 30, 2017.

c. The contribution rate for employees hired or rehired (in accordance with existing treatment of rehired employees under the pension ordinance) on or after July 1, 2017 shall be increased by 2.5% over the employee contribution rate which would otherwise be in effect as of July 1, 2017 for each employee, not including the increase described in paragraph 3(a), which will not apply to employees hired on or after July 1, 2017.

d. All contribution increases which are directed by this Award will be in addition to, rather than offset, the City's required contributions under the MMO. Accordingly, in calculating the MMO each year, the City will not include the amount of these additional contributions in calculating its required contribution.

e. No changes in employee contributions will be made for employees in Plan X (except that rehires will be treated in accordance with 3(c) above).

4. **Health Care:**

a. In light of the impressive strides which have been made in moderating health care costs over the term of the last award which has led to the Local 22 Health Fund having assets in excess of \$15 million while providing outstanding benefits to members and their families, the City shall not be responsible for the payment of any expenses for administration or claims paid for the first full month following the issuance of the Award.

b. To allow bargaining unit employees to also reap the benefits of Local 22's management of its health fund and in light of the additional pension contributions being required of current employees by this Award, each non-probationary bargaining unit employee on the active payroll as of the date the Award is issued shall receive a one-time cash payment equal to the amount of the Health Fund expenses (claims and administration) for the month in question under paragraph 4(a) divided by the number of non-probationary bargaining unit members on the active payroll as of the date the Award is issued. The payment shall be paid within 60 days of the later of Local 22 providing a statement of the Health Fund expenses (claims and administration) for the month in question under paragraph 4(a) or passage of the ordinance implementing the pension changes in paragraph 3.

c. During the term of the Award, the special one-time \$800 incentive in the 2013-2017 Award for employees to engage in certain defined wellness activities shall be available to employees first hired by the City of Philadelphia Fire Department on or after January 1, 2017. Employees hired between January 1, 2017 and the date the Award is issued shall have 6 months from the date the Award is issued to complete the required activities to qualify. Employees hired after the date the Award is issued shall have 6 months from their hire date to qualify. All other terms and conditions of the Wellness Fitness Program will remain in effect.

5. **Post-Retirement Health Care:**

Retirees/spouses who are or become eligible for Medicare and who are receiving City-paid coverage will be encouraged by the Local 22 Health Fund to enroll in Medicare Part A and Part B when they become eligible. Upon doing so, the City's contribution to the Health Fund on account of such retiree (and spouse/eligible dependent, as applicable) will be the amount of the Medicare Part B premium and the cost of a supplemental plan (including prescription, dental and vision) that will be made available to the retiree (or spouse/eligible dependent) for so long as they are eligible for City-paid coverage. Enrollment in the supplemental plan (in addition to the benefits provided by Medicare) will not result in coverage that is greater than what is provided by the Health Fund to those who are not enrolled in Medicare. The City will continue to pay the cost of benefits for retirees and/or dependents who are not Medicare eligible or who do not enroll in Medicare for so long as they are eligible for City-paid coverage. The terms of this paragraph will also apply to any retiree/spouse who has enrolled in Medicare prior to the date the Award is issued and is still receiving City-paid coverage.

6. **Heart and Lung/Premium Pay:**

Premium pay was created to compensate bargaining unit employees for a work week which is, on average, longer than the week worked by police, and as a corollary to police stress pay. The panel finds that given the gains that have occurred in stress pay for police in past awards, an increase in premium pay for this unit is warranted, but also recognizes that the award already provides a significant financial burden on the City. Therefore, premium pay will be increased by .5 of an hour per week effective July 1, 2018 and by an additional .2 of an hour per week effective July 1 2019,

both of which shall be subject to all of the existing provisions which govern the payment of premium pay. In addition, and for the express purpose of helping to ameliorate the impact on the City from this increase in compensation for bargaining unit employees, the parties will implement the attached Heart and Lung policy.

7. **Pay Date:**

The City shall have the right to change the schedule of pay dates. The City will provide at least 90 days' notice of any change and meet with the Union to discuss the transition.

8. **Payroll:**

All employees shall be paid through direct deposit or receive a "pay card" instead of a live paper check. Once the City has the ability to provide employees with electronic access to their payroll information (through an employee self-service module), there will no longer be paper stubs issued.

9. **Promotional Examinations:**

Effective with promotional examinations announced on or after May 21, 2018, all college degrees from accredited colleges and universities will be eligible for promotional points, regardless of the major. For the purpose of all promotional examinations announced after the date the Award is issued, the City will grant ½ a point for any Associate's Degree, 1 point for any Bachelor's Degree, and 1.5 points for any Master's Degree.

10. **Vacation:**

Employees hired on or after July 1, 2017 will not be guaranteed vacation during the period of the Summer Vacation Schedule from May 1 to September 30 annually during their first 3 years of sworn employment in the Fire Department (i.e., 3 years from graduation from the Fire Academy) and will be scheduled for vacation based on an even distribution of vacations during the calendar year. During their next 2 years of sworn employment in the Fire Department, these employees will be guaranteed 1 week of vacation during the period of the Summer Vacation Schedule.

11. **Retiree Trust Fund:**

The City will make a lump sum payment to the Retiree Trust Fund of 2.65 Million Dollars within sixty (60) days of the Award and 2.65 Million Dollars on each July 1, 2018 and July 1, 2019.

12. **Health Care Administration:**

a. Replace paragraph 5(19) of the 2013-2017 Award with the following:

As used herein, the term "Related Expenses" shall mean expenses attributable to the provision of benefits, including TPA/ASO, stop loss, disease management, bundled services, any deposits or advances required by selected vendors, any taxes or fees required as the result of state or federal law, and any day-to-day administrative expenses.

b. Replace paragraph 5(20) of the 2013-2017 Award with the following:

Prior to July 1, 2018 and each July 1 thereafter, the Fund shall provide the City with a statement setting forth the actual costs, by category, of medical, drug, dental, and vision benefits, Related Expenses and projected incurred claims for the plan year ended on June 30th, and the trend to be applied for the upcoming plan year, along with the projected administrative costs for the upcoming plan year ("Projected Costs"). Any reasonableness of the projected or actual administrative costs and other Related Expenses must be raised by the City within 30 days of receipt of the statement of projected and actual costs. If the dispute cannot be resolved by the parties, either party shall have the right to demand arbitration cover the reasonableness of the projected or actual administrative costs and other Related Expenses.

c. Delete paragraph 5(21) of the 2013-2017 Award.

13. **Disciplinary Suspensions:**

Employees who are serving a disciplinary suspension during a week when a holiday occurs shall continue to serve the full length of the suspension without interruption but the suspension will not impact their accrual of holiday compensatory time.

14. **Overtime:**

Within 3 months after the Award is issued, the parties shall form a joint labor-management committee consisting of three members each from the Union and the City to discuss equalization of overtime.

15. **Sick Leave:**

Within 3 months after the Award is issued, the parties shall form a Joint Labor Management Committee consisting of 3 members representing the Union and 3 members representing the City to discuss application of the Managing Director's Sick Leave Policy and the rules governing the Catastrophic Leave Bank.

16. **Gear Bags:**

As soon as reasonably practicable after issuance of the Award, the City will make available a gear bag to each bargaining unit employee actively assigned to a fire suppression role.

17. **Social Media Policy:**

Within 6 months after the Award is issued, the parties shall form a Joint Labor Management Committee consisting of 3 members each from the Union and the City to discuss the Fire Department's Social Media Policy.

18. **Life Insurance:**

Effective January 1, 2019, the City's monthly contribution for life insurance for active employees will be increased by \$4.00 per employee per month.

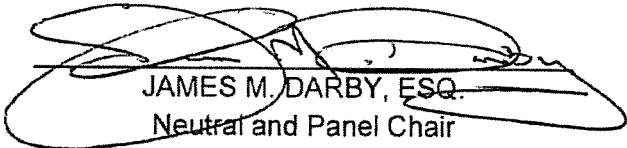
19. **Grievance and Arbitration:**


Local 22 will deliver copies of all settlement agreements signed by the grievant, if applicable, and Local 22 to the Mayor's Office of Labor Relations. The agreement shall be signed by the Mayor's Office of Labor Relations within 10 business days of delivery. A fully-executed copy of the agreement shall be delivered to Local 22 within 3 business days after being signed. The time for the City to implement the terms of any settlement agreement shall not begin to run until it is delivered to Local 22. Delivery may be effectuated by e-mail.

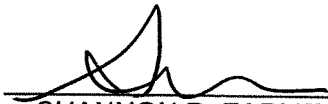
CONCLUSION

All remaining terms and conditions of employment not expressly modified by this Award or previously agreed to by the parties in negotiations shall remain "as is" through June 30, 2020. All proposals of the parties not included in the Award are denied.

It is understood that the signatures of the Arbitrators attest to the fact that the contractual changes represent the majority opinion and Award on each issue by the members of the Arbitration Panel.


JAMES M. DARBY, ESQ.
Neutral and Panel Chair


JOSEPH T. CLEARY, ESQ.
IAFF Local 22 - Appointed Arbitrator
Concur * Dissent **


SHANNON D. FARMER, ESQ.
City - Appointed Arbitrator
Concur Dissent as to paragraph

2 (wages) and to the increase in premium pay in Paragraph G only.

Dated: _____, 2018

* Arbitrator Cleary concurs except as to paragraph 3, pensions.

** Arbitrator Cleary dissents only as to paragraph 3, pensions.

Heart and Lung Administration and Adjudication Procedures Between the City of Philadelphia & International Association of Fire Fighters, Local 22

ARTICLE I: GENERAL PROVISIONS

Section 1: Scope

- A. These procedures are for employees of the City of Philadelphia represented by The International Association of Fire Fighters, Local 22 is designed to be the exclusive procedure regarding the administration and adjudication of claims for service connected disabilities that fall under the Pennsylvania Heart and Lung Act. All rights, responsibilities and remedies of the parties are defined by these procedures. Any prior agreement between the City and Local 22 concerning the administrator and adjudication of Heart and Lung benefits shall no longer be in effect as of the date of the implementation of these procedures.
- B. These procedures can only be amended by mutual consent of the parties or by an award issued through interest arbitration pursuant to Act 111.

Section 2: Definitions

- A. Arbitrator: An Arbitrator who is a member of the Arbitration Panel and who has been selected to preside over and rule on any matters relating to a claim.
- B. City Administrator: The office or entity designated by the City as responsible for administering claims filed under the Heart and Lung Act.
- C. Claimant: An employee who requests benefits under the Heart and Lung Act, files a petition for benefits, or otherwise receives benefits under the Heart and Lung Act.
- D. City: City of Philadelphia.
- E. Covered Members: Includes all bargaining unit members of Local 22 that meet the qualifications for coverage pursuant to the terms of the Pennsylvania Heart and Lung Act. Currently, this includes Fire Fighters, Fire Service Paramedics and Emergency Medical Technicians. Cadets and former City employees are not covered members.
- F. Day: For purposes of computing time under these procedures, a day shall mean a calendar day, except that when the time provided is less than 30 days, the term day shall exclude Saturdays, Sundays, and official City Holidays.
- G. Department: The Philadelphia Fire Department.
- H. Heart and Lung Appeal: Any petition filed on behalf of the City or Claimant to the Arbitration Panel requesting the panel to issue a decision and order on behalf of the filing party.

- I. City Network Provider Panel: Complete list of all designated medical providers available to Covered Members under both Heart and Lung and Civil Service Regulation 32.
- J. Union: International Association of Fire Fighters, Local 22. Also referred to as “Local 22.”

Section 3: Selecting Heart and Lung Medical Panel Provider

- A. Unless otherwise modified in accordance with these procedures, the list of medical providers designated by the City will be used for all Heart and Lung injuries.
- B. All Heart and Lung panel providers that are currently listed on the approved Police, Fire and Sheriff’s Heart and Lung panel shall remain approved on the newly formed Local 22 Heart and Lung panel (“Heart and Lung Panel”) so long as the provider has executed or agrees to execute and abide by the most recent version of the City Administrator Service Provider Contract within 30 days from the date these procedures goes into effect.
- C. An authorized representative of Local 22 must provide a written request to the City Administrator for the addition of any proposed medical provider. The request must include the name of all professional staff that will be administering medical treatment, the professional address including the practice name, a copy of the Curriculum Vitae(s), and the proposed specialty for each provider.
- D. All providers must successfully complete the City Administrator credentialing process as set forth in the City Administrator Service Provider Contract, including providing all licenses, insurances, and certifications required for good standing in the medical community.
- E. The provider must agree to abide by and sign the most recent version of the City Administrator Service Provider Contract. The terms of the Service Provider Contract are the sole discretion of the City Administrator and are not subject to the Heart and Lung Arbitration process described in these procedures. The City Administrator may amend the Service Provider Contract at any time and at its sole discretion.
- F. The City Administrator shall have the right to disqualify professional staff from initial participation on the Heart and Lung Panel for concerns regarding the quality of medical treatment, lack of professional credentials, past work history, the Administrator’s ability to adequately refer claims, failure to sign and/or agree to the terms of the City Administrator Service Provider Contract, and/or any other objectively rational basis for disqualification.
- G. The City Administrator will accept or reject the medical provider within 90 days of the written request. The acceptance or rejection will be in writing and, if rejected, will include specific reasons for the rejection as described in Article I, Section 3(F).
- H. The Union may file an appeal to the Heart and Lung Arbitration Panel if it disputes the disqualification. The standard for review by the panel is that the City Administrator must

establish a rational basis for the disqualification. A rational basis is defined as any reason that is related to a legitimate City interest.

- I. When a provider is removed from the Panel for any reason, the Claimant may select one of the remaining providers of the same specialty to undertake further care. The selection of a new provider will not be considered a request for a transfer of care.

Section 4: Removal of Heart and Lung Medical Providers

- A. Upon written request to the City Administrator by an authorized representative of Local 22, the City Administrator will remove any provider from the Heart and Lung Panel within 90 days of the receipt of the request so long as a suitable alternative is available on the panel for treatment for the injured workers.
- B. Upon written request to Local 22 and City Administrator, a provider may request and will be granted removal from the Heart and Lung Panel at any time for any reason.
- C. Upon written notification to an authorized representative of Local 22, the City Administrator may remove any provider from the Local 22 Heart and Lung Panel for cause. This provision supersedes any contrary provision of the Service Provider Contract. The written request must contain specific reasons for the removal of the provider. The removal of the provider will occur 60 days following the written request unless Local 22 requests a formal hearing before the Heart and Lung Arbitration Panel within 30 days of receipt of the written request. The request for a formal hearing must be made in writing to the City Administrator.
- D. The Heart and Lung Arbitration Panel must uphold a disputed removal for cause if the preponderance of the evidence establishes that the provider has not abided by a material term, condition and/or expectation of the Service Provider Contract. Failure of a panel provider to sign the newest version of the Service Provider Contract within 60 days of delivery to the provider is permissible grounds for removal for cause and must be upheld by the Heart and Lung Arbitration Panel.

ARTICLE II: MEDICAL TREATMENT PROTOCOLS

Section 1: Initial Medical Treatment and Options

- A. All claimants who suffer what they believe to be a work injury shall report the injury as required by the Department's Directives, and shall be seen for initial medical treatment at the City designated Regulation 32 Occupational Health Clinic.
- B. Claimants who have been placed on either limited duty or no duty status by the Regulation 32 Occupational Health Clinic are permitted to transfer care to the Heart and Lung Panel at any time after the initial limited or no duty determination. Transfer requests to the Heart and Lung Panel must be forwarded to the City Administrator within 48 hours of the Safety Offices receipt of the request from the Claimant, and an appointment must be scheduled to occur within 10 days from the last Regulation 32 Panel visit.

- C. Claimants who have been released to limited duty by the Regulation 32 Clinic may remain no duty provided that the Claimant requests a transfer of care to the Heart and Lung Panel within 48 hours of the light duty release and is seen by the designated Heart and Lung Panel provider within 10 days from the last Regulation 32 Occupational Clinic visit. If the transfer is requested within the 48 hours and Claimant is seen within 10 days of the last Regulation 32 Clinic visit, the duty status set by the Heart and Lung Panel provider will be honored. However, if the Claimant is not seen within the 10-day window as a result of conduct of the Claimant, he/she can either return to limited duty pending the appointment with the Heart and Lung Panel provider or remain out of work and run his/her own time pending the appointment. If the initial appointment is not scheduled within 10 days, the Claimant will remain in no duty status pending the date of the initial Heart and Lung Panel provider evaluation.
- D. Claimants may request and be granted a transfer of care to the Heart and Lung Panel before the classification and/or compensability determination is made by the City Administrator regarding their injury. The allowance of a transfer of care to the Heart and Lung Panel before a determination is made by the City Administrator concerning the compensability or classification of the injury shall not be deemed to be either an acceptance of the claim as compensable or an acknowledgement that the claim falls under the purview of the Heart and Lung Act. The transfer of care to the Heart and Lung Panel may be revoked if the City Administrator determines it is not a compensable Heart and Lung claim.
- E. Claimants who are returned to full duty by the Regulation 32 Occupational Health Clinic at the initial medical contact will not be permitted to transfer care to the Heart and Lung Panel regardless of the classification or acceptance of the claim unless the duty status changes in a future visit, but may seek a second opinion with a Regulation 32 Occupational Health doctor as described in Article III, Section 4 or request to seek a Regulation 32 Specialist opinion at the sole discretion of the Employee Disability Medical Director.
- F. Claimants who disagree with the duty status determination made by the Regulation 32 Occupational Health Clinic may initiate a Heart and Lung Duty Status Appeal or utilize any other legal remedy to address their duty status. The Claimant must use his/her own paid leave time during the course of a Duty Status Appeal. A Claimant who is returned to full duty at the initial medical contact without a subsequent change in duty status is subject to the Rules and Regulations concerning treatment under the terms of Regulation 32 unless the Heart and Lung Panel rules otherwise.

Section 2: Choice of Providers

- A. Claimants who transfer care to the Heart and Lung Panel will be provided with a list of the currently approved Heart and Lung Panel primary care physicians and be permitted to select the doctor of their choice from the approved list.
- B. Claimants who have been referred to a specialist by a Heart and Lung Panel primary care physician shall be provided with the currently approved list of City providers in that

specialty and will be permitted to select the specialist of their choice from the approved list. This choice of specialist extends to all specialties including, but not limited to, surgeons, other specialized medical care, physical therapy, functional capacity evaluations, and diagnostic study facilities.

- C. Claimants who suffer injuries that require medical monitoring for exposure to blood borne pathogens shall be required to treat with specialists within the Regulation 32 network for disbursement of the required medications and follow up testing/medical monitoring. This requirement does not preclude the Claimant from transferring care to Heart and Lung providers for evaluation purposes or for treatment of other injuries.

Section 3: Transfers of Care Within the Heart and Lung Panel

- A. A Claimant may request a transfer of care to another Heart and Lung Panel provider at any time. This applies to both occupational health and all other specialists. Claimant will be permitted a transfer of care when he/she establishes that the transfer will reasonably result in the improvement of his his/her medical status.
- B. The Claimant will remain in Injured on Duty status while awaiting the decision to grant or deny a transfer of care, while awaiting the opinion of the primary care physician, or if a transfer of care is approved. If a transfer of care is denied, the Claimant has a right to file a Heart and Lung Appeal, but must use his/her paid leave time during the process of the appeal. The Arbitrators may award a restoration of leave balances if the Claimant is successful on appeal and the Arbitrators find that the leave was used as a direct result of Claimant's inability to work.
- C. All requests for transfers of care must go through the Safety Office pursuant to Safety Office protocol. The Safety Office must forward the transfer request to the City Administrator within 48 hours of receipt and a decision on the requested transfer must be made within 7 business days. Local 22 shall also submit a copy of the transfer request to the Office of Risk Management upon receipt.

Section 4: Second Opinions

- A. If a Claimant is released to full duty at the initial Occupational Health Clinic visit following an injury, he/she will be granted, upon request, a second opinion from a Regulation 32 Occupational Health physician to address duty status. Claimant will receive Injured on Duty benefits while he/she awaits the second opinion so long as the second opinion is requested within 48 hours of being seen (excluding weekends and holidays). If the second opinion clinic doctor opines that the Claimant should be carried no duty or limited duty, the Claimant has the choice to either transfer care to this clinic doctor or to a Heart and Lung Primary Care physician.
- B. A Claimant may request a second opinion to another Heart and Lung Panel specialist at any time. Second opinions will be permitted so long as there is a reasonable basis for the request. Claimants who request a second opinion shall be provided with the currently approved list of City providers in that specialty and will be permitted to select the specialist of their choice from the approved list. If the City is unable to provide at least

three reasonable alternatives for a second opinion in any field from its approved list, the Claimant may select a local specialist outside of the Panel.

- C. If the second opinion specialist recommends surgery or treatment in his/her field of specialty which was otherwise opposed by the initially-designated physician, the Claimant will be granted a transfer of care to a different Panel specialist upon request. A Claimant is not permitted to transfer care to a second opinion specialist until the expiration of 6 months from the date a written opinion was rendered.
- D. All requests for second opinions must go through the Safety Office. All requests for second opinions will be processed within 7 business days from receipt at the Safety Office. If the second opinion request is denied, the Claimant can file an appeal in accordance with Article V.

Section 5: City Designated Medical Examinations following Request for Transfer or Second Opinion

- A. A Claimant who is granted a transfer of care or second opinion shall submit to an examination by a physician of the City's choosing upon receiving reasonable notice from the City Administrator regarding the date, time and place of the examination. The City will provide transportation to and from the City designated medical examination if requested. Refusal to comply with the examination, without reasonable cause or excuse, will entitle the City to an order from the Arbitration Panel suspending the right to receive Heart and Lung Benefits for the duration of the Claimant's refusal.

Section 6: Procedure Upon Release To Return To Work

- A. All Claimants entitled to Heart and Lung status and benefits with respect to a work-related injury who are released to return to work in any capacity by a City Network provider shall, within twenty-four (24) hours of being released to return to work, do one of the following:
 - 1. Return to work consistent with the duty status set for them by their treating physician; or
 - 2. File a Duty Status Appeal with the Safety Office; or
 - 3. Request a transfer of care; or
 - 4. Request a second opinion
- B. Should the Claimant fail to follow the procedure outlined in Section 6(A) above, the Claimant shall be deemed to be insubordinate, and the claimant's entitlement to Heart and Lung benefits shall be immediately suspended at the next available hearing.

Section 7: Medical Treatment and Options following Termination of Heart and Lung Benefits

- A. Following termination of Heart and Lung benefits, Claimants who remain current employees are subject to the rules, regulations, and procedures set forth by Civil Service Regulation 32. Claimants will be contacted by the City Administrator to select a Regulation 32 Clinic provider for further evaluation and treatment. Failure to abide by the rules, regulations, and procedures set forth by Regulation 32 will result in termination of Regulation 32 benefits.
- B. All such Claimants must treat within the City Network Panel for the first 90 days following notice of injury. Following the initial 90-day period, Claimants who have been separated from City employment are subject to the terms of the PA Workers' Compensation Act.
- C. At the conclusion of the initial 90-day period following notice of injury, current employees may also opt out of the Civil Service Regulation 32 program and avail themselves of their rights under the PA Workers' Compensation Act.

Section 8: Written Denial of Medical Treatment

- A. Upon request, a Claimant shall receive a written confirmation from the City Administrator of the denial of any medical treatment that has been prescribed by a Heart and Lung Panel provider.

ARTICLE III: CLAIMS FOR BENEFITS UNDER THE HEART AND LUNG ACT

Section 1: Initial Reporting and Notice Requirements

- A. A Claimant must provide written notice to his immediate supervisor, safety claimant and/or City Administrator within 120 days of the date on which the Claimant knew or should have known of the alleged work related injury. Failure to notify the Department of the occurrence and work relatedness of the injury within 120 days shall bar Claimant from obtaining Heart and Lung benefits.
- B. The initial written notice of the claim by the Claimant must provide the City Administrator with sufficient information to make a determination accepting or denying the claim. Information sufficient to make a determination includes, but is not limited to, the information contained on the City of Philadelphia Accident, Injury & Illness Form (commonly referred to as COPA II form).
- C. The Claimant shall provide the City Administrator with a list of all medical providers who have provided treatment for the claimed injury and shall execute a medical release authorizing the release of the medical provider records to the City.
- D. The City shall have the right to have all Claimants examined by a physician of the City's choosing prior to the acceptance of any claim.

- E. The City Administrator will make a written determination approving or denying a claim within 21 days of receipt of the initial claim or it will be deemed denied automatically. The City may deny a claim for reasons consistent with the terms of the PA Workers' Compensation Act. A denial may be reexamined by the City Administrator at any time.
- F. If the City Administrator denies a claim, a "Notice of Denial" will be served upon the Claimant and Local 22. Such notice will advise the Claimant of his/her right to file a claim petition, a general statement of the reason or reasons for denying the claim and the time for filing a petition.
- G. If the claim is denied as not compensable, the Claimant may pursue whatever legal remedy is available. Remedies include, but are not limited to, those available under the Heart and Lung Act, Regulation 32, and the PA Workers' Compensation Act. Claimants must use their own paid leave time during periods of absence while any claim is in denied status.
- H. If the City Administrator accepts the claim as a compensable claim, but does not classify the claim as Heart and Lung, the Claimant may file an appeal to the Heart and Lung Arbitration Panel.

Section 2: Reporting and Notice Requirements Upon Receipt of Benefits

- A. During any period that they are receiving disability benefits from the City, including Heart and Lung benefits, Regulation 32 benefits and/or Workers' Compensation benefits, all Claimants have an affirmative duty to report, in writing, to the Safety Office any outside employment they have, including self-employment, together with the specifics of such employment, including:
 - 1. The name and address of the employer;
 - 2. The amount of wages from any such employment or self-employment;
 - 3. The dates of such employment or self-employment;
 - 4. The nature and scope of such employment or self-employment; and
 - 5. Any other information relevant in determining the Claimant's entitlement to or amount of compensation.
 - 6. The report referred to above must be made as soon as possible, but no later than 30 days after such employment or self-employment commences.
- B. During any period during which a Claimant is receiving disability benefits from the City, including Heart and Lung benefits, Regulation 32 benefits, and/or Workers' Compensation benefits, the City or its Third-Party Administrator (TPA) may submit to the Claimant every six months a Verification Form permitted under Section 311.1(d) of the Pennsylvania Workers' Compensation Act. The Claimant is obligated to accurately complete the Verification Form and return it to the sending agent within 30 days of

receipt of the Verification Form. Should the Claimant fail to return the completed Verification Form to the sending agent within 30 days of the date on which the form was received, the City is permitted to suspend any and all disability compensation payments to the Claimant until such time as the completed Verification Form is returned to the sending agent. Should the Claimant return the Verification Form to the sending agent more than 30 days after it was sent to the claimant, the City shall reinstate any disability benefits due the Claimant, effective the date on which the Verification Form is received by the sending agent. The Claimant shall forfeit all disability benefits between the date on which the Verification Form was due back to the sending agent, and the date on which the Verification Form was actually received by the sending agent.

- C. A Claimant has a right to a hearing prior to the suspension of Heart and Lung benefits when failing to timely return the Verification Form. The City has a duty to file a Heart and Lung Appeal requesting suspension of benefits and a hearing will be scheduled at the next regularly scheduled Heart and Lung Arbitration date.

Section 3: Classification

- A. Heart and Lung Benefits are available to Covered Members who are temporarily disabled as a result of a work-related injury that occurred during the performance of duties. All other compensable work related injuries are covered under the terms of Civil Service Regulation 32 and the PA Workers' Compensation Act.
- B. When a Claimant transfers care to a Heart and Lung Panel provider before a classification determination is made by the City's Administrator, but the claim is not classified as Heart and Lung, the claim will be accepted as a Regulation 32 claim. The Claimant, upon receiving the Notice of Denial of Heart and Lung classification, shall immediately cease treatment with the Heart and Lung Panel provider and return to the Regulation 32 network. If the Claimant immediately ceases treatment with the Heart and Lung Panel provider and returns to the Regulation 32 network, he/she will be paid Injured on Duty benefits pursuant to the provisions of Regulation 32. Upon receiving Notice of the Denial of Heart and Lung status, Claimants must be seen by a Regulation 32 network provider, but may challenge the classification of the injury and, upon request and with proper notice to all parties, have a Temporary Classification Hearing before the Heart and Lung Arbitration Panel at the next regularly scheduled available hearing date.
- C. When a Claimant has not transferred care to a Heart and Lung Panel provider before a compensability/classification determination is made, if his/her claim is ultimately accepted by the City Administrator as compensable, but is not classified as Heart and Lung, the Claimant will be paid Injured on Duty benefits pursuant to the provisions of Regulation 32. Upon receiving the Notice of Denial of Heart and Lung status, the Claimant shall continue to be seen by the Regulation 32 network provider, but may challenge the classification of the injury and, upon request and with proper notice to all parties, have a Temporary Classification Hearing before the Heart and Lung Arbitration Panel on the next regularly scheduled available hearing date.

Section 4: Effect of Complete Denial of Heart and Lung Claim

- A. A Claimant who disagrees with the complete denial of a claim may initiate a Heart and Lung Appeal pursuant to the terms of Article V of this agreement, or seek any other legal remedy that may be available under any other statute or law including, but not limited to, the terms of the Civil Service Regulations or PA Workers' Compensation Act. The Claimant must use his/her own paid leave time during the litigation of a denied claim consistent with Departmental directives and the Civil Service Regulations.

Section 5: Effect of Voluntary Classification of a Claim as Heart and Lung

- A. The voluntary classification of a claim as Heart and Lung by the City Administrator may not be revoked without a final decision by the Heart and Lung Arbitration Panel. The City may institute Heart and Lung Arbitration proceedings as described in Article V to request revocation of the Heart and Lung classification upon request to the Heart and Lung Arbitration Panel with proper notice to all parties.

Section 6: Filing, Service, And Proof Of Service Of Heart And Lung Appeals

- A. Whenever submission of a document or other notice is required by these procedures , it is deemed complete upon one of the following:
 - 1. Delivery in person signed for by an authorized representative of the party.
 - 2. Via electronic submission with proof of receipt at the electronic address.
 - 3. By United States Mail as evidenced by Postal Service postmark, properly addressed, with postage or charges pre-paid.
- B. The parties who must be served pursuant to these procedures are the City Administrator, counsel of record, the Claimant, and Local 22.

Section 7: Attorney Fee Award

- A. In the event of an award of counsel fees by the PA Bureau of Workers' Compensation related to a Claimant's receipt of disability benefits during a period when the Claimant is receiving Heart and Lung Benefits, the counsel fee shall be deducted from the claimant's Heart and Lung Benefits and paid to the Claimant's attorney as a fee. The City shall never be obligated to pay a counsel fee over and above the amount it is obligated to pay an claimant in disability benefits pursuant to the Heart and Lung Act.

ARTICLE IV: ARBITRATION PANEL

Section 1: Selecting Arbitrators and the Arbitration Panel

- A. Claims filed for benefits provided under the Heart and Lung Act shall be heard and decided only by an Arbitration Panel established pursuant to these procedures and assigned in the manner described herein.

- B. Each hearing will be convened before a three-person panel consisting of a neutral Arbitrator, a representative appointed by Local 22, and a representative appointed by the City.
- C. Ralph Colflesh and Walt DeTreuX shall serve as the neutral Arbitrators. Each neutral Arbitrator shall rotate equally splitting, as much as practically possible, the arbitration hearings and case assignments. Cases shall be assigned in chronological order based on the alleged date of claimant's injury on an equal rotation basis.
- D. Each year from October 1st through October 15th, either party may strike one of the designated neutral Arbitrators. If the parties are unable to agree upon the identity of the replacement, either party can request the American Arbitration Association to provide the parties with a list of three arbitrators from which a replacement shall be selected in accordance with the procedures utilized to select an Act 111 arbitrator, except that the parties shall alternate which party shall have the first strike of the list, starting with a coin toss to determine which party strikes first for the first such replacement arbitrator.
- E. If one of the neutral Arbitrators should be unable to serve, the parties shall meet and attempt to agree upon a replacement. If agreement on a replacement arbitrator cannot be reached within 30 days, the parties shall submit a request to the American Arbitration Association for a list of three arbitrators from which a replacement shall be selected in accordance with the procedures utilized to select an Act 111 arbitrator, except that the parties shall alternate which party shall have the first strike of the list, starting with a coin toss to determine which party strikes first for the first such replacement arbitrator.

Section 2: Authority of the Arbitration Panel

- A. Except as provided in these procedures , the Arbitration Panel shall have the authority to decide and resolve all issues arising between and amongst the parties hereto and the Claimants represented by Local 22 regarding any claim related to benefits under the Heart and Lung Act.
- B. The Arbitration Panel should be guided by judicial opinions interpreting the Heart and Lung Act, along with the prior decisions of the Arbitration Panel.
- C. The Arbitration Panel shall have the authority to grant, deny, or modify a claim. Except as provided in these procedures , the Panel shall have the additional authority to terminate, suspend, or modify Heart and Lung benefits, rule on the reasonableness and necessity of medical treatment, compel the production of documents, compel the submission to medical examinations, rule on applications for supersedeas, determine the permanency of an injury, rule on the application of the rules regarding medical care, or to order any other action deemed necessary to expedite a fair and final resolution of any claim or petition contemplated under these procedures.
- D. The following issues are excluded from the Arbitration Panel's jurisdiction and beyond its authority to consider:

1. The terms of the Service Provider Contract, which are at the sole discretion of the City Administrator;
 2. The payment of medical bills; medical bills are paid and processed pursuant to the PA Workers' Compensation Act and the Service Provider Contracts.
 3. Any award of legal fees or costs; all parties shall be responsible for payment of their own legal fees and costs.
- E. The Neutral Arbitrator assigned to hear the specific claim(s) and/or appeal(s) will remain assigned for the duration of the litigation. The claims(s) and/or appeal(s) may not be reassigned to another neutral arbitrator unless expressly agreed to by all parties.

Section 3: Arbitration Fees

- A. The fees and expenses charged by the Neutral Arbitrator for hearing Heart and Lung Panel Appeals shall be split equally between the City and Local 22, along with any expenses associated with the conduct of the hearing.
- B. Each party shall bear any costs associated with its own representative on the Arbitration Panel and its own attorney's fees.
- C. Any Claimant who files a Heart and Lung claim and is represented by counsel shall be entirely responsible for his or her legal fees and costs.

ARTICLE V: INITIATION OF HEART AND LUNG ARBITRATION PANEL PROCEEDINGS

Section 1: Pleadings

- A. To initiate a Heart and Lung Arbitration proceeding, the initiating party shall give written notice to the other party on the form prescribed by the City Administrator.
- B. The form prescribed by the City Administrator shall be referred to as a Heart and Lung Appeal. The filing of this form with all relevant information described below shall be sufficient to initiate a request for any relief under the terms of these procedures.
- C. A Heart and Lung Appeal shall include a statement of the nature of the claim together with the relevant facts and the remedies being sought. The statement of claim should be in sufficient detail to permit those to whom notice is given to investigate the merits of the claim and to prepare a response.
- D. Upon receipt of the Heart and Lung Appeal, the City Administrator will schedule an initial hearing to occur at the next regularly scheduled Heart and Lung Arbitration Panel proceeding. Unless an emergency hearing is granted, all hearings shall be scheduled no less than 14 days from the date of service.
- E. Service is governed by Article III, Section 6 of this agreement.

- F. A formal written answer to any Heart and Lung Appeal is not required.
- G. A party has the right to amend a Heart and Lung Appeal at any time in a proceeding before the Arbitration Panel unless the Arbitration Panel determines that amendment will prejudice the other party.
- H. If the Arbitration Panel determines, after a hearing with an opportunity to be heard, that a Heart and Lung Appeal is frivolous or without a valid basis, the Neutral Arbitrator, upon his/her own motion or upon the motion of a party, will issue a decision dismissing the Appeal or make another determination within the Neutral Arbitrator's discretion.

ARTICLE VI: PRE-HEARING PROCEDURES

Section 1: Depositions

- A. Any party may take the oral deposition of any medical expert or treating physician at any time following the initiation of proceedings hereunder in order to establish any disputed issue regarding any pending claim or petition. The party taking the deposition shall be solely responsible for the costs and fees associated with the deposition.
- B. Any party desiring to take an oral deposition shall provide notice at least 30 days prior to the date scheduled for the taking of the deposition to the witness, all counsel of record and the Claimant, if the Claimant is not represented by counsel of record.
- C. Any party, Claimant or witness may object to the oral deposition in writing prior to the scheduled date of the deposition. The objection must be served on the opposing party no more than 14 days following the service of the notice of deposition. The serving of the objection shall stay the deposition until it is ordered by a Neutral Arbitrator to be held. The request for a ruling shall be accompanied by a copy of the notice of oral deposition, any subpoena and the written objection required by this paragraph. The Neutral Arbitrator will, after giving the Claimant, witness and parties adequate notice and opportunity to be heard, rule on the objection within five working days. The Arbitration Panel is not required to hold a hearing on the objection, but instead may require that all responses be submitted in writing.
- D. Transcripts of oral depositions will be presumed admissible unless the opposing party objects prior to the certification of the record.

Section 2: Discovery

- A. Parties shall cooperate in the voluntary exchange of such documents and information as will serve to expedite the resolution of the dispute in arbitration.
- B. Discovery shall be conducted in the most expeditious and cost-effective manner practicable, and shall be limited to that which will lead to relevant information and material to the dispute and for which each party has a substantial, demonstrable need.

- C. Parties shall exchange all discovery requests not later than 14 days after the initial hearing. All discovery, including submission of information requested, exchange of copies of documents requested, and taking of depositions, shall be concluded at least 15 days in advance of the final hearing. The Arbitration Panel, upon a showing of good cause, may modify the timing of discovery.
- D. Any disputes relative to discovery shall be presented to the Arbitration Panel for final and binding resolution. The Arbitrators may grant, upon good cause shown, either party's request for discovery in addition to or limiting that for which this section expressly provides.
- E. Any party who intends to offer any document into evidence must give the other party notice of such intent at least seven days prior to the date that the document will be offered. The notice must be accompanied by a copy of the document.
- F. The following documents are presumed admissible without the need for additional testimony unless an objection to the document's admissibility is made at or prior to the first hearing after the party is served with notice of the intention to submit the document(s).
 - 1. Bills, records and reports of medical providers, including but not limited to records of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists or other licensed health care providers.
 - 2. Bills for drugs, medical appliances and prescriptions.
 - 3. A report of rate or earnings and time lost from work or compensation.
- G. The Claimant or any other party may subpoena the person whose testimony is waived by this rule to appear at the hearing and any adverse party may cross-examine him as to the document.

Section 3: Authorizations

- A. Claimants must submit to the City any signed additional authorizations necessary for the City to obtain medical reports, medical records, medical bills, employment records or any other records, documents or information that may be relevant to the claim. Such documentation shall be used solely and exclusively for the purposes of the management of the claim and/or compliance with the terms of these procedures.

Section 4: Subpoenas

- A. A party in interest in any proceedings under these procedures may request that the Neutral Arbitrator issue a subpoena to compel the attendance of a witness or require the production of any books, documents, records, or items relevant to the proceeding at a scheduled hearing or deposition. A signed subpoena may not be served until the expiration of 10 days following the issuance by the Neutral Arbitrator.

- B. The Neutral Arbitrator may, upon the filing of written objections by any person served with a subpoena or any party in interest, and upon adequate notice to all parties in interest and an opportunity to be heard, quash or limit the scope of any subpoena issued or served. All objections must be served no later than 10 days following the issuance of the subpoena.
- C. The party requesting by subpoena the production of any witness or documents shall solely bear the costs of such production.

Section 5: Physical Examination of Claimant by City Designated Provider

- A. The City shall have the right to cause the physical examination of a Claimant by a health care provider of the City's choice once litigation has commenced. Said examination shall only be conducted upon reasonable notice to the Claimant. The City shall be responsible for all expenses arising from such examination, and will be responsible for transportation to and from the examination, upon request. Immediately upon receipt of the same, the City shall provide the Claimant, Local 22, and counsel of record with a true and correct copy of any report or other document issued by such health care provider.
 - 1. If Claimant has already been examined pursuant to Article III, Section 1(D) and the current litigation is addressing whether the injury is work related, the City will not be entitled to a second examination unless it is to address additional diagnoses or change in duty status.

ARTICLE VII: ARBITRATION HEARING PROCEDURES

Section 1: Venue and Place of Hearing

- A. All hearings under this agreement shall be scheduled at Municipal Services Building unless otherwise agreed upon by the parties. A hearing date shall be available at least one time each calendar month.

Section 2: Arbitration Proceedings

- A. An initial hearing shall be scheduled to occur at the first available date after the service of any petition, but not less than 14 days from the date the petition was served. Unless specifically described otherwise in Sections 5, 6, 7 and 8 of this Article, the initial hearing will be a pre-trial hearing. At the initial hearing, the Panel shall place a scheduling order on the record. The order shall establish specific deadlines for the presentation of evidence by the parties, dates for future hearings including the date for the final hearing, specific dates for setting any medical examinations to be scheduled, and any other relevant guidelines that must be adhered to by the parties.
- B. The moving party, at the first hearing, shall advise the Neutral Arbitrator and opposing parties of all allegations and issues of fact and/or law involved in the appeal, proposed amendments to the pleadings, stipulations of fact, names and methods of presenting witnesses, any intended exhibits, dates of depositions, estimated hearing time, and any other subjects that may aid in the disposition of the proceedings.

- C. A final hearing shall be scheduled to occur within 90 days of the initial pre-trial hearing. At the final hearing, all evidence will be certified, the record will close and the Arbitration Panel will issue a briefing schedule, if applicable, along with a date for the issuance of the final decision.
- D. Upon request of the parties, the Arbitration Panel may extend the trial schedule for good cause. Good cause is defined as a substantial reason put forth in good faith that is not unreasonable, arbitrary, or irrational and that is sufficient to create an excuse for an act otherwise required under these procedures.
- E. The moving party must present his/her evidence first and has the burden of persuasion unless otherwise indicated in these procedures.

Section 3: Evidence

- A. The Arbitration Panel shall afford each party a full and fair opportunity to present any proof relevant and material to the dispute, to call and cross-examine witnesses and to present its argument.
- B. The parties shall produce such evidence as the Panel deems necessary to an understanding and determination of the dispute.
- C. The rules of evidence shall be applied to the same extent and in the same manner as in a labor arbitration.
- D. The Neutral Arbitrator shall be the judge of the relevancy, materiality and admissibility of the evidence offered, and the Neutral Arbitrator's decision on any question of evidence or argument shall be final and binding.
- E. All testimony shall be under oath or affirmation.

Section 4: Briefs

- A. At the close of the record or at any other relevant time, the Arbitration Panel may require, or the parties may request to submit, proposed findings of fact, conclusions of law, and legal briefs or memoranda for the Panel's review and consideration.
- B. Except in extraordinary circumstances, the Arbitration Panel shall require that all submissions referenced in subsection (A) be made no later than 30 days following the final hearing.
- C. A party's failure to submit a brief in a timely manner or to obtain an extension approved by the Panel constitutes a waiver of opportunity to make the submission. The Panel shall issue a decision regardless of the submission of briefs within the time frame set at the final hearing.

Section 5: Temporary Classification Hearing

- A. A Temporary Classification Hearing shall be available to all Claimants in cases where the City Administrator denied Heart and Lung benefits because of a belief that the injury did not occur in the performance of duties within the meaning of the Heart and Lung Act.
- B. The hearing shall be scheduled at the next regularly scheduled hearing date but not later than 14 days from the date of service of the appeal.
- C. The Claimant shall testify regarding the circumstances of the injury and the parties shall present other relevant testimony or documentary evidence that is available. The Arbitration Panel shall consider the testimony and evidence to initially determine whether it appears more probable than not that the injury will be classified as compensable under the Heart and Lung Act.
- D. If the Arbitration Panel determines that it is more probable than not that the claim will be classified as compensable under the Heart and Lung Act, the Arbitration Panel shall issue an interlocutory order granting Heart and Lung status. The Claimant then shall be entitled to all Heart and Lung benefits under the terms of these procedures pending the final decision made on the merits of this appeal.
- E. If the Arbitration Panel determines that it is more probable than not that the claim will be classified as Regulation 32, the Panel shall issue an interlocutory order denying the Claimant Heart and Lung status in which case the Claimant will be required to treat pursuant to Civil Service Regulation 32.
- F. Following the initial hearing, the case shall proceed as it would in any other Heart and Lung Appeal. Evidence and briefs may be submitted pursuant to the general rules found herein after which the Arbitration Panel shall issue a final decision.

Section 6: Supersedeas Hearing Regarding Duty Status Appeals

- A. The City and Claimant shall have the right to file a Duty Status Appeal contesting the Claimant's current duty status. The initial hearing on every Duty Status Appeal shall be listed on the first available hearing date following the expiration of 21 days after the filing of the appeal.
- B. The Claimant and/or medical providers who have examined Claimant shall testify at this hearing concerning Claimant's physical condition and appropriate duty status. The parties shall present such other relevant testimony or documentary evidence for the Arbitration Panel to initially determine the appropriate duty status. The Arbitration Panel shall be permitted to make an adverse inference if Claimant's fails to testify at the initial hearing absent a reasonable excuse.
- C. The party filing the Duty Status Appeal bears the burden of proof at the supersedeas hearing. If the filing party provides clear and convincing evidence that the duty status should change, the Arbitration Panel shall immediately issue an interlocutory order changing the duty status to be consistent with the medical information on which the

Arbitration Panel is relying. If clear and convincing evidence is not provided by the filing party, the duty status shall remain the same and supersedeas shall be denied by immediate interlocutory order.

- D. If the Panel terminates and/or suspends the Claimant's Heart and Lung benefits by interlocutory order on a Duty Status Appeal, the City will allow the Claimant to use his/her accrued, unused sick time during the remainder of the proceedings if the Claimant believes that he/she remains unable to return to work and all sick time permitted shall be exempt from the restrictions of the Department's Sick Use Policy.
 - 1. The exemption from the restrictions of the Department's Sick Use Policy shall only extend to the currently litigated Heart and Lung injury which was subject to the interlocutory order. If the proceedings are extended by excessive delay on the part of the Claimant, the Arbitration Panel may issue an interlocutory order revoking the exception to the Department's Sick Use Policy. If the proceedings are extended by the excessive delay on the part of the City representatives, the Arbitration Panel may revoke the interlocutory order and allow the Claimant to return to Injured on Duty payroll status.
- E. The interlocutory order issued by the Arbitration Panel at the initial hearing shall not constitute a final decision on the merits. The interlocutory order shall only determine the employee's duty status until the Arbitration Panel's final decision is made regarding the Duty Status Appeal. The interlocutory order also shall not affect the Claimant's rights to continue treating with Heart and Lung Panel providers during the pendency of the appeal.
- F. Following the initial hearing, the case shall proceed as it would in any other Heart and Lung Appeal. Evidence and briefs may be submitted pursuant to the general rules found herein after which the Arbitration Panel shall issue a final decision.

Section 7: Emergency Relief

- A. A hearing to seek emergency relief may be requested when the moving party has an objective reason to believe that failure to provide a speedy remedy will result in irreparable harm to the moving party. A hearing will be scheduled to provide evidence of the alleged harm at the next hearing date. The moving party must provide clear and convincing evidence of a legally preventable harm along with evidence that there is no other speedy or adequate remedy available.
 - 1. If the Arbitration Panel does not believe that there is sufficient reason to schedule an emergency relief hearing, it may issue an informal order in writing denying the request.
- B. If the moving party meets his/her burden of proof, the Arbitration Panel will issue an interlocutory order granting appropriate relief pending the outcome of the underlying litigation. If the moving party does not meet his/her burden of proof, the Arbitration Panel will issue an interlocutory order denying the relief sought.

- C. The interlocutory order issued by the Arbitration Panel at the initial hearing shall not constitute a final decision on the merits. The interlocutory order shall only determine the status of the relief sought until the issuance of a final decision.
- D. Following the emergency relief hearing, the case shall proceed as it would in any other Heart and Lung Appeal. Evidence and briefs may be submitted pursuant to the general rules found herein after which the Arbitration Panel shall issue a final decision.

Section 8: No Longer Temporary Hearing

- A. When a Claimant has been unable to return to full duty work in his/her position for a cumulative period of 550 calendar days resulting from a compensable Heart and Lung injury, the Arbitration Panel will find that the Claimant's injury is no longer temporary.
 - 1. For purposes of this Section, the presumption that an injury is no longer temporary is established upon the Arbitration Panel's receipt of competent medical evidence supporting that the injury continues to result in light duty or no duty status following Claimant's failure to be able to return to full duty work in his/her position for the cumulative 550-day period.
 - 2. This presumption is rebuttable upon evidence that establishes that Claimant will return to work in a full duty capacity in a limited time period with no further restrictions in the future. The limited period must be of such a nature that the Arbitration Panel can reasonably believe that the additional period of disability is truly temporary with a definitive ending and will not extend for another indefinite time period. The finding of No Longer Temporary is also rebuttable upon evidence that establishes that Claimant has, through no fault of his/her own, shown good medical cause or extenuating circumstances for the delay in recovery or has not received timely medical treatment.
- B. After proper notice to the parties, a hearing will be automatically scheduled at the next available hearing date, but not less than 30 days following service of the notice of hearing. The hearing will address the presumption of No Longer Temporary status and the employee's continuing eligibility for Heart and Lung benefits.
- C. Claimant's Heart and Lung benefits shall be terminated at this hearing on the basis that Claimant's disability is no longer temporary, unless Claimant presents competent medical evidence at the hearing which establishes that Claimant's injury remains temporary in accordance with Article VII Section 8(A)(2).
- D. In all cases where Claimant's Heart and Lung benefits are continued based upon medical evidence presented by Claimant at the initial No Longer Temporary Hearing, the Arbitration Panel shall schedule a hearing to take place no more than 30 days following the date of the anticipated full recovery. At this second hearing, the parties shall present all evidence regarding whether the injury is No Longer Temporary, the record shall be certified and closed, and a briefing schedule established. The Arbitration Panel shall thereafter issue a decision on the merits of the petition.

Section 9: Decisions of the Arbitration Panel

- A. The Arbitration Panel shall render a decision and award (collectively the "Award") based solely on the evidence presented, the applicable law and these Procedures as interpreted by the Arbitrators. The award must be signed in the affirmative by at least two out of the three Arbitrators for the Award to be valid and enforceable.
- B. The Arbitration Panel is expected to issue an Award within 30 days after the date set for the final submissions of the Parties. The Award shall be in writing and signed and dated by the Arbitrators and shall be accompanied by a reasoned decision containing express findings of fact (including findings on each issue or fact raised by a Party), the rationale for any grant of (or refusal to grant) relief and, if necessary to dispose of any issues of law, conclusions of law, discussions of legal authorities and the application of the law to the facts. Any dissenting or concurring opinions shall be attached.
- C. The decision of the Arbitration Panel shall be final and have the full legal force and effect of law. The Award may be entered as a judgment in any court of competent jurisdiction.

Section 10: Appeal Rights

- A. The parties shall have the right to appeal any Award of the Arbitration Panel within 30 days from the date of service of the Award on the parties by the Arbitration Panel.
- B. The initial appeal shall be to the Court of Common Pleas in the City and County of Philadelphia. All appeals of any Award by the Arbitration Panel shall be controlled by legal standards of local agency appeals, and not by Act 111 appeal standards.