

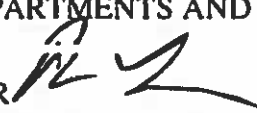


OFFICE OF LABOR RELATIONS

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TO: HEADS OF CONCERNED CITY DEPARTMENTS AND AGENCIES
FROM: ROBERT W. LINN, COMMISSIONER 
SUBJECT: EXECUTED CONTRACT: AUTO MECHANICS, ET AL.
TERM: MAY 31, 2008 TO SEPTEMBER 30, 2017

Attached for your information and guidance is a copy of the executed contract entered into by the Commissioner of Labor Relations and the Health and Hospitals Corporation on behalf of the City of New York and the Local 246, Service Employees International Union ("SEIU"), AFL-CIO on behalf of the incumbents of positions listed in Article I of said contract.

The contract incorporates terms of an agreement reached through collective bargaining negotiations and related procedures.

DATED: December 14, 2018

OFFICE OF LABOR RELATIONS REGISTRATION	
OFFICIAL	CONTRACT
NO: 19007	DATE: 12/14/18

Local 246, SEIU
2008-2017 Auto Mechanics Non-Economic Agreement

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Local 246, SEIU
2008 - 2017 Auto Mechanics et al Non-Economic Agreement

COLLECTIVE BARGAINING AGREEMENT entered into this 14th day of December 2018, by and between the City of New York and related public employers pursuant to and limited to their respective elections or statutory requirement to be covered by the New York City Collective Bargaining Law and their respective authorizations to the City to bargain on their behalf and the New York City Health and Hospitals Corporation (hereinafter referred to jointly as the "Employer"), and Local 246, Service Employees International Union, AFL-CIO (hereinafter referred to as the "Union"), for the seventy-three month and thirty day period from May 31, 2008 to September 30, 2017.

WITNESSETH:

WHEREAS, the parties hereto have entered into collective bargaining and desire to reduce the results thereof to writing,

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE I - UNION RECOGNITION AND UNIT DESIGNATION

Section 1.

The Employer recognizes the Union as the sole and exclusive collective bargaining representative for the bargaining unit set forth below, consisting of employees of the Employer, wherever employed, whether full-time, part-time per annum, hourly or per diem, in the below listed title(s), and in any successor title(s) that may be certified by the Board of Certification of the Office of Collective Bargaining to be part of the unit herein for which the Union is the exclusive collective bargaining representative and in any positions in Restored Rule X titles of the Classified Service the duties of which are or shall be equated by the City Personnel Director and the Director of the Budget for salary purposes to any of the below listed title(s):

<u>Title Code</u>	<u>Title</u>	<u>Title Code</u>	<u>Title</u>
92505	Auto Machinist	92611	Machinists Helper
92510	Auto Mechanic	91210	Motor Grader Operator
92511	Auto Mechanic (Diesel)	90736	Rubber Tire Repairer
91704	Battery Repairer	92340	Sheet Metal Worker
90706	Carriage Upholsterer	91835	Sign Painter
90708	Door Check Repairer	90764	Supervisor Door Check Repairer
90709	Door Stop Maintainer	90762	Supervisor Door Stop Maintainer
91719	Electrician (Automobile)	92343	Supervisor Sheet Metal Worker
91825	Letterer	91215	Tractor Operator
92610	Machinist		

Section 2.

The terms "employee" and "employees" as used in this Agreement shall mean only those persons in the unit described in Section 1 of this Article.

ARTICLE II - DUES CHECKOFF

Section 1.

- a. The Union shall have the exclusive right to the checkoff and transmittal of dues on behalf of each employee in accordance with the Mayor's Executive Order No. 98, dated May 15, 1969, entitled "Regulations Relating to the Checkoff of Union Dues" and in accordance with the Mayor's Executive Order No. 107, dated December 29, 1989, entitled "Procedures for Orderly Payroll Check-Off of Union Dues and Agency Shop Fees" or any other applicable Executive Order.
- b. Any employee may consent in writing to the authorization of the deduction of dues from the employee's wages and to the designation of the Union as the recipient thereof. Such consent, if given, shall be in a proper form acceptable to the City, which bears the signature of the employee.

Section 2.

The parties agree to an agency shop to the extent permitted by applicable law, as described in a supplemental agreement hereby incorporated by reference.

ARTICLE III - WAGES AND SUPPLEMENTS

The wages and other supplements applicable to employees covered by this Agreement shall be in accordance with the respective Determinations of the Comptroller, subject to the terms and conditions thereof.

ARTICLE IV - MANAGEMENT RIGHTS

It is the right of the Employer to determine the standards of service to be offered by the agency; determine the standards of selection for employment; direct its employees; determine, establish and revise standards of acceptable employee performance; take disciplinary action; relieve its employees from duty because of lack of work or for any other legitimate reasons; maintain the efficiency of its operations; determine the methods, means and personnel by which its operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

ARTICLE V - GRIEVANCE PROCEDURE

Section 1.

Definition: The term "*Grievance*" shall mean:

- a. A dispute concerning the application or interpretation of the terms of this **Collective Bargaining Agreement**;
- b. A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the **Employer** applicable to the agency which employs the grievant affecting terms and conditions of employment; provided, disputes involving the **Rules and Regulations of the New York City Civil Service Commission** or the **Rules and Regulations of the Health and Hospitals Corporation** with respect to those matters set forth in the first paragraph of **Section 7390.1 of the Unconsolidated Laws** shall not be subject to the grievance procedure or arbitration;
- c. A claimed assignment of **employees** to duties substantially different from those stated in their job specifications;
- d. A claimed improper holding of an open-competitive rather than a promotional examination;
- e. A claimed wrongful disciplinary action taken against a permanent **employee** covered by **Section 75(1) of the Civil Service Law** or a permanent competitive **employee** covered by the **Rules and Regulations of the Health and Hospitals Corporation** upon whom the agency head has served written charges of incompetency or misconduct while the **employee** is serving in the **employee's** permanent title or which affects the **employee's** permanent status.
- f. Failure to serve written charges as required by Section 75 of the Civil Service Law or the Rules and Regulations of the Health and Hospitals Corporation upon a permanent employee covered by Section 75 (1) of the Civil Service Law or a permanent competitive employee covered by the Rules and Regulations of the Health and Hospitals Corporation where any of the penalties (including a fine) set forth in Section 75 (3) of the Civil Service Law have been imposed.
- g. A claimed wrongful disciplinary action taken against an eligible provisional employee. In any case involving a grievance by an employee under this Section 1(g) of this Article, all terms of the "Disciplinary Procedure for Provisional Employees" shall govern, as set forth in the agreements between DC 37 and the City of New York dated August 30, 2011 and April 27, 2018 (appended), or in equivalent agreements at non-mayoral agencies (e.g. the September 18, 2015 agreement between DC37 and NYC Health + Hospitals).

Section 2.

The Grievance Procedure, except for paragraphs (D) and (E) of Sections 1, shall be as follows:

Employees may at any time informally discuss with their supervisors a matter which may become a grievance. If the results of such a discussion are unsatisfactory, the **employees** may present the grievance at **Step I**.

All grievances must be presented in writing at all steps in the grievance procedure. For all grievances as defined in Section 1c, no monetary award shall in any event cover any period prior to the date of the filing of the **Step I** grievance unless such grievance has been filed within thirty (30) days of the assignment to alleged out-of-title work. No monetary award for a grievance alleging a miscalculation of salary rate resulting in a payroll error of a continuing nature shall be issued unless such grievance has been filed within the time limitations set forth in Step I below for such grievances; if the grievance is so filed, any monetary award shall in any event cover only the period up to six years prior to the date of the filing of the grievance.

Step I - The **employee** and/or the **Union** shall present the grievance verbally or in the form of a memorandum to the person designated for such purpose by the agency head no later than 120 days after the date on which the grievance arose. The **employee** may also request an appointment to discuss the grievance. The person designated by the **Employer** to hear the grievance shall take any steps necessary to a proper disposition of the grievance and shall issue a reply in writing by the end of the third work day following the date of submission.

NOTE: *The following STEP I(a) shall be applicable only in the Health and Hospitals Corporation in the case of grievances arising under Section 1a through 1c and 1f of this Article and shall be applied prior to Step II of this Section.*

STEP I(a) - An appeal from an unsatisfactory determination at **Step I** shall be presented in writing to the person designated by the agency head for such purpose. The appeal must be made within five (5) work days of the receipt of the **Step I** determination. A copy of the grievance appeal shall be sent to the person who initially passed upon the grievance. The person designated to receive the appeal at this Step shall meet with the **employee** and/or the **Union** for review of the grievance and shall issue a written reply to the **employee** and/or the **Union** by the end of the fifth work day following the day on which the appeal was filed.

STEP II - An appeal from an unsatisfactory determination at **STEP I** or **STEP I(a)**, where applicable, shall be presented in writing to the agency head or the agency head's designated representative who shall not be the same person designated in **STEP I**. The appeal must be made within five (5) work days of the receipt of the **STEP I** or **STEP I(a)** determination. The agency head or designated representative, if any, shall meet with the **employee** and/or the **Union** for review of the grievance and shall issue a determination in writing by the end of the tenth work day following the date on which the appeal was filed.

STEP III - An appeal from an unsatisfactory determination at **STEP II** shall be presented by the **employee** and/or the **Union** to the **Commissioner of Labor Relations** in writing within ten (10) work days of the receipt of the **STEP II** determination. Copies of such appeal shall be sent to the agency head. The **Commissioner of Labor Relations** or the **Commissioner's** designee shall review

all appeals from **STEP II** determinations and shall issue a determination on such appeals within fifteen (15) work days following the date on which the appeal was filed.

STEP IV - An appeal from an unsatisfactory determination at **STEP III** may be brought solely by the **Union** to the Office of Collective Bargaining for impartial arbitration within fifteen (15) work days of receipt of the **STEP III** determination. In addition, the **Employer** shall have the right to bring directly to arbitration any dispute between the parties concerning any matter defined herein as a "grievance". The **Employer** shall commence such arbitration by submitting a written request therefor to the Office of Collective Bargaining. A copy of the notice requesting impartial arbitration shall be forwarded to the opposing party. The arbitration shall be conducted in accordance with the Consolidated Rules of the Office of Collective Bargaining. The costs and fees of such arbitration shall be borne equally by the **Union** and the **Employer**. The determination or award of the arbitrator shall be final and binding in accord with applicable law and shall not add to, subtract from or modify any contract, rule, regulation, written policy or order mentioned in Section 1 of this Article.

Section 3.

As a condition to the right of the **Union** to invoke impartial arbitration set forth in this Article, including the arbitration of a grievance involving a claimed improper holding of an open-competitive rather than a promotional examination, the **employee** or **employees** and the **Union** shall be required to file with the Director of the Office of Collective Bargaining a written waiver of the right, if any, of the **employee** or **employees** and the **Union** to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

Section 4.

In any case involving a grievance under Section 1e of this Article, the following procedure shall govern upon service of written charges of incompetency or misconduct:

STEP A - Following the service of written charges, a conference with such **employee** shall be held with respect to such charges by the person designated by the agency head to review a grievance at **STEP I** of the Grievance Procedure set forth in this **Agreement**. The **employee** may be represented at such conference by a representative of the **Union**. The person designated by the agency head to review the charges shall take any steps necessary to a proper disposition of the charges and shall issue a determination in writing by the end of the fifth day following the date of the conference.

If the **employee** is satisfied with the determination in **STEP A** above, the **employee** may choose to accept such determination as an alternative to and in lieu of a determination made pursuant to the procedures provided for in **Section 75 of the Civil Service Law** or the **Rules and Regulations of the Health and Hospitals Corporation**. As a condition of accepting such determination, the **employee** shall sign a waiver of the **employee's** right to the procedures available to him or her under **Sections 75 and 76 of the Civil Service Law** or the **Rules and Regulations of the Health and Hospitals Corporation**.

STEP B(i) - If the **employee** is not satisfied with the determination at **STEP A** above then the

Employer shall proceed in accordance with the disciplinary procedures set forth in **Section 75 of the Civil Service Law** or the **Rules and Regulations of the Health and Hospitals Corporation**. As an alternative, the **Union** with the consent of the **employee** may choose to proceed in accordance with the Grievance Procedure set forth in this **Agreement**, including the right to proceed to binding arbitration pursuant to **STEP IV** of such Grievance Procedure. As a condition for submitting the matter to the Grievance Procedure the **employee** and the **Union** shall file a written waiver of the right to utilize the procedures available to the **employee** pursuant to **Sections 75 and 76 of the Civil Service Law** or the **Rules and Regulations of the Health and Hospitals Corporation** or any other administrative or judicial tribunal, except for the purpose of enforcing an arbitrator's award, if any. Notwithstanding such waiver, the period of an **employee's** suspension without pay pending hearing and determination of charges shall not exceed thirty (30) days.

STEP B(ii) - If the election is made to proceed pursuant to the Grievance Procedure, an appeal from the determination of **STEP A** above, shall be made to the agency head or designated representative. The appeal must be made in writing within five (5) work days of the receipt of the determination. The agency head or designated representative shall meet with the **employee** and the **Union** for review of the grievance and shall issue a determination to the **employee** and the **Union** by the end of the tenth work day following the day on which the appeal was filed. The agency head or designated representative shall have the power to impose the discipline, if any, decided upon, up to and including termination of the accused **employee's** employment. In the event of such termination or suspension without pay totaling more than thirty (30) days, the **Union** with the consent of the grievant may elect to skip **STEP C** of this Section and proceed directly to **STEP D**.

STEP C - If the grievant is not satisfied with the determination of the agency head or designated representative the grievant or the **Union** may appeal to the Commissioner of Labor Relations in writing within ten (10) days of the determination of the agency head or designated representative. The **Commissioner of Labor Relations** shall issue a written reply to the grievant and the **Union** within ten (10) work days.

STEP D - If the grievant is not satisfied with the determination of the **Commissioner of Labor Relations**, the **Union** with the consent of the grievant may proceed to arbitration pursuant to the procedures set forth in **STEP IV** of the Grievance Procedure set forth in this **Agreement**.

Section 5.

Any grievance of a general nature affecting a large number of **employees** and which concerns a claimed misinterpretation, inequitable application, violation or failure to comply with the provisions of this **Agreement** shall be filed at the option of the **Union** at **STEP III** of the grievance procedure, without resort to previous steps.

Section 6.

If a determination satisfactory to the **Union** at any level of the Grievance Procedure is not implemented within a reasonable time, the **Union** may re-institute the original grievance at **STEP III**

of the Grievance Procedure; or if a satisfactory **STEP III** determination has not been so implemented, the **Union** may institute a grievance concerning such failure to implement at **STEP IV** of the Grievance Procedure.

Section 7.

If the **Employer** exceeds any time limit prescribed at any step in the Grievance Procedure, the grievant and/or the **Union** may invoke the next step of the procedure, except that only the **Union** may invoke impartial arbitration under **STEP IV**.

Section 8.

The **Employer** shall notify the **Union** in writing of all grievances filed by **employees**, all grievance hearings, and all determinations. The **Union** shall have the right to have a representative present at any grievance hearing and shall be given forty-eight (48) hours' notice of all grievance hearings.

Section 9.

Each of the steps in the Grievance Procedure, as well as time limits prescribed at each step of this Grievance Procedure, may be waived by mutual agreement of the parties.

Section 10.

- a. Any grievance relating to a claimed improper holding of an open-competitive rather than a promotional examination shall be presented in writing by the **employee** or the **Union** representative to the **Commissioner of Labor Relations** not later than thirty (30) days after the notice of the intention to conduct such open-competitive examination, or copy of the appointing officer's request for such open-competitive examination, as the case may be, **has** been posted in accordance with **Section 51 of the Civil Service Law**. The grievance shall be considered and passed upon within ten (10) days after its presentation. The determination shall be in writing, copies of which shall be transmitted to both parties to the grievance upon issuance.
- b. A grievance relating to the use of an open-competitive rather than a promotional examination which is unresolved by the **Commissioner of Labor Relations** may be brought to impartial arbitration as provided in Sections 2 and 3 above. Such a grievance shall be presented by the **Union**, in writing, for arbitration within 15 days of the presentation of such grievance to the **Commissioner of Labor Relations**, and the arbitrator shall decide such grievance within 75 days of its presentation of such grievance to the **Commissioner of Labor Relations**, and the arbitrator shall send a copy of such request to the other party. The costs and fees of such arbitration shall be borne equally by the **Employer** and the **Union**.

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Section 11.

A non-Mayoral agency not covered by this **Agreement** but which employs **employees** in titles identical to those certified by this contract may elect to permit the **Union** to appeal an unsatisfactory decision received at the last step of its Grievance Procedure prior to arbitration on fiscal matters only to the **Commissioner of Labor Relations**. If such election is made, the **Union** shall present its appeal to the **Commissioner of Labor Relations** in writing within ten (10) work days of the receipt of the last step determination. Copies of such appeals shall be sent to the agency head. The **Commissioner of Labor Relations**, or the **Commissioner's** designee, shall review all such appeals and answer all such appeals within ten (10) work days. An appeal from a determination of the **Commissioner of Labor Relations** may be taken to arbitration under procedures, if any, applicable to the non-Mayoral agency involved.

Section 12.

The grievance and the arbitration procedure contained in this **Agreement** shall be the exclusive remedy for the resolution of disputes defined as "grievances" herein. This shall not be interpreted to preclude either party from enforcing the arbitrator's award in court. This Section shall not be construed in any manner to limit the statutory rights and obligations of the **Employer** under **Article XIV** of the **Civil Service Law**.

Section 13. Expedited Arbitration Procedure

- a. The parties agree that there is a need for an expedited arbitration process which would allow for the prompt adjudication of grievances as set forth below.
- b. The parties voluntarily agree to submit matters to final and binding arbitration pursuant to the New York City Collective Bargaining Law and under the jurisdiction of the Office of Collective Bargaining. An arbitrator or panel of arbitrators, as agreed to by the parties, will act as the arbitrator of any issue submitted under the expedited procedure herein.
- c. The selection of those matters which will be submitted shall include, but not be limited to, out-of-title cases concerning all titles, disciplinary cases wherein the proposed penalty is a monetary fine of one week or less or written reprimand, and other cases pursuant to mutual agreement by the parties. The following procedures shall apply:
 - i. **SELECTION AND SCHEDULING OF CASES:**
 - (1) The Deputy Chairperson for Disputes of the Office of Collective Bargaining shall propose which cases shall be subject to the procedures set forth in this Section 13 and notify the parties of proposed hearing dates for such cases.
 - (2) The parties shall have ten business days from the receipt of the Deputy Chairperson's proposed list of cases and hearing schedule(s) to raise any objections thereto.

- (3) If a case is not proposed by the Deputy Chairperson for expedited handling, either party may, at any time prior to the scheduling of an arbitration hearing date for such case, request in writing to the other party and to the Deputy Chairperson of Disputes of the Office of Collective Bargaining that said case be submitted to the expedited procedure. The party receiving such request shall have ten business days from the receipt of the request to raise any objections thereto.
- (4) No case shall be submitted to the expedited arbitration process without the mutual agreement of the parties.

ii. CONDUCT OF HEARINGS

- (1) The presentation of the case, to the extent possible, shall be made in the narrative form. To the degree that witnesses are necessary, examination will be limited to questions of material fact and cross examination will be similarly limited. Submission of relevant documents, etc., will not be unreasonably limited and may be submitted as a "packet" exhibit.
- (2) In the event either party is unable to proceed with hearing a particular case, the case shall be rescheduled. However, only one adjournment shall be permitted. In the event that either party is unable to proceed on a second occasion, a default judgment may be entered against the adjourning party at the Arbitrator's discretion absent good cause shown.
- (3) The Arbitrator shall not be precluded from attempting to assist the parties in settling a particular case.
- (4) A decision will be issued by the Arbitrator within two weeks. It will not be necessary in the Award to recount any of the facts presented. However, a brief explanation of the Arbitrator's rationale may be included. Bench decisions may also be issued by the Arbitrator.
- (5) Decisions in this expedited procedure shall not be considered as precedent for any other case nor entered into evidence in any other forum or dispute except to enforce the Arbitrator's award.
- (6) The parties shall, whenever possible, exchange any documents intended to be offered in evidence at least one week in advance of the first hearing date and shall endeavor to stipulate to the issue in advance of the hearing date.

Section 14. Provisional Due Process

In any case involving a grievance by an employee of a City agency under Section 1g of this Article, all terms of the "Disciplinary Procedure for Provisional Employees", including the expiration dates, as set forth in the agreements between DC 37 and the City of New York dated August 30, 2011 and any subsequent agreements, shall govern.

ARTICLE VI - UNION ACTIVITY

Section 1.

Time spent by Union Officials and representatives in the conduct of labor relations with the City and on Union activities shall be governed by the terms of **Executive Order No. 75**, as amended, dated March 22, 1973, entitled "**Time Spent on the Conduct of Labor Relations between the City and Its employees and on Union Activity**" or any other applicable Executive Order. No employee shall otherwise engage in union activities during the time he/she is assigned to his/her regular duties.

Section 2.

The Employer agrees not to discriminate in any way against any employee for union activity, but such activity shall not be carried on during working hours or in working areas.

Section 3.

There shall be no union activity on Employer time other than that which is specifically permitted by the terms of this Agreement.

ARTICLE VII - NO STRIKES

In accordance with the New York City Collective Bargaining Law, as amended, neither the **Union** nor any **employee** shall induce or engage in any strikes, slowdowns, work stoppages, mass absenteeism, or induce any mass resignations during the term of this **Agreement**.

ARTICLE VIII - OVERTIME

Section 1.

All overtime shall, as far as practicable, be distributed equitably among the employees in each work area within a department.

Section 2.

The designation of work areas for the purposes of overtime shall be made by each department.

Section 3.

Overtime records in each department may be available for inspection by a duly authorized officer of the Union.

Section 4.

Whenever possible, officers of the Union will be notified of the distribution of overtime.

Section 5.

An employee directed to return to work after completing a shift shall be guaranteed a minimum of two (2) hours of work.

ARTICLE IX - TRANSFERS

Section 1.

The term "transfer" shall mean the reassigning of an employee from one "geographic location" to another. For purposes of the Article, the parties shall define "geographic location" as it applies to the Department of Sanitation, the Police Department and the Fire Department.

Section 2.

With the exception of temporary transfers, voluntary transfers from one geographic location to another shall be made on the basis of seniority in title, work performance, attendance record, disciplinary record, as well as the qualifications to perform the specific work.

Section 3.

With the exception of temporary transfers, involuntary transfers from one geographic location to another shall be made on the basis of least seniority in title, providing the remaining personnel have the ability and qualifications to perform the required work.

Section 4.

Temporary transfers shall be limited to a period of not more than thirty (30) calendar days. Temporary transfers shall be limited to no more than two (2) per employee per year.

Section 5.

With the exception of temporary transfers, all vacancies that the Employer has decided to fill shall be posted on a department bulletin board five (5) working days in advance of the effective date prior to filling except when such vacancies are to be filled in an emergency. (With respect to the Department of Sanitation, the posting period as set forth in this Section, shall be for ten (10) working days and shall apply to transfers between zones only). Vacancy postings shall include shift start and end times; however this shall not preclude management from changing shift start and end times.

Section 6.

In the event that the Employer subsequently hires employees, an employee who was involuntarily transferred pursuant to Section 3 of this Article, has the right within one year and without a bid to return to the work location from which he was transferred before any other employee can be placed in that work location.

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Section 7.

With the exception of temporary transfers, an opening from which an employee is transferred and its resulting vacancy, if any, may be processed in accordance with Section two (2) and three (3) of this Article. Further transfers resulting from the aforementioned vacancy shall be exempt from this Article V, and filled in the manner set forth in Section three (3) of this Article.

ARTICLE X - BULLETIN BOARDS AND NOTICES**Section 1.**

The **Union** may post notices on bulletin boards in places and locations where notices usually are posted by the **Employer** for the **employees** to read. All notices shall be on **Union** stationery, and shall be used only to notify **employees** of matters pertaining to **Union** affairs. The minimum space to be provided on any such bulletin board shall be sufficient for a document on paper size "8-1/2 x 13".

Section 2.

Notices or announcements shall not contain anything political or controversial or anything reflecting upon the Employer, any of its employees, or any labor organization among its employees and no material, notices or announcements which violate the provisions of this Section shall be posted. A violation of this Section which continued after notice to the Union shall result in revocation of the rights and privileges contained in this Article X.

Section 3.

The Union shall be given copies of all notices which pertain to the employees and which a department has decided to post or otherwise publicize within the department.

ARTICLE XI - WORKING CONDITIONS**Section 1.**

Where practicable a minimum temperature of 50 degrees Fahrenheit shall be maintained in all indoor areas where employees are directed to work, wash up, and dress.

Section 2.

Where practicable, areas not exclusively used for repairs and in which traffic is allowed, shall be segregated for employees when they are required to work in said areas. Such segregated areas shall have warning devices such as signs, lights and other safety equipment to prevent accidental entrance of vehicles.

Section 3.

The Employer shall make all reasonable efforts to provide employees with sanitary washing and toilet facilities, including hot and cold running water, toilet paper, paper towels, proper lighting and ventilation.

Section 4.

An ample supply of potable drinking water shall be available to all employees in their respective work locations.

Section 5.

Adequate locker space shall be provided for each employee.

Section 6.

All vehicles shall be reasonably free of debris, human waste, insects, animals and other such waste which would lead to an unhealthy and unsafe condition before employees shall be required to work on them.

Section 7.

All employee work areas shall be properly ventilated in order to prevent the collection of noxious, explosive or other dangerous fumes.

ARTICLE XII - LABOR-MANAGEMENT COMMITTEE

Section 1.

The **Employer** and the **Union**, having recognized that cooperation between management and employees is indispensable to the accomplishment of sound and harmonious labor relations, shall jointly maintain and support a labor-management committee in each of the agencies having at least fifty employees covered by this **Agreement**.

Section 2.

Each labor-management committee shall consider and recommend to the agency head changes in the working conditions of the **employees** within the agency who are covered by this **Agreement**. Matters subject to the Grievance Procedure shall not be appropriate items for consideration by the labor-management committee.

Section 3.

Each labor-management committee shall consist of six members who shall serve for the term of this **Agreement**. The **Union** shall designate three members and the agency head shall designate three members. Vacancies shall be filled by the appointing party for the balance of the term to be served. Each member may designate one alternate. Each committee shall select a chairperson from among its members at each meeting. The chairperson ship of each committee shall alternate between the members designated by the agency head and the members designated by the **Union**. A committee shall make its recommendations to the agency head in writing.

Section 4.

The labor-management committee shall meet at the call of either the **Union** members or the **Employer** members at times mutually agreeable to both parties. At least one week in advance of a

meeting the party calling the meeting shall provide, to the other party, a written agenda of matters to be discussed. Minutes shall be kept and copies supplied to all members of the committee.

ARTICLE XIII - SAFETY

Section 1.

All alleged unsafe conditions reported by the Union, concerning employees covered by this Agreement, shall be duly noted by the appropriate supervisor and acted upon affirmatively or negatively as expeditiously as possible.

Section 2.

All alleged unsafe conditions not acted upon expeditiously may become the subject of a grievance.

Section 3.

All road call vehicles shall be equipped with all necessary safety devices:

- Emergency lights and (where necessary and practicable) traffic deflection lights;
- Flares and/or safety triangles;
- Safety vest;
- Radio;
- Cones;
- Spill absorbent.

Section 4.

Where an employee is working alone, such as in a confined space or an isolated location, the employer shall account for each employee at reasonable intervals appropriate to the job assignment to ensure the employee's safety.

The employer shall account for each employee during the work shift by sight or verbal communication. Where sight is not practicable, the employee shall be provided a device capable of emergency communication.

Section 5.

The City agrees to take all necessary steps to safeguard all tools and tool cabinets, brought on its property by the members of Local 246, SEIU, in the titles covered by this agreement.

To the extent that there are issues at agencies and/or facilities regarding the appropriate safeguarding of personal equipment, the parties shall form a joint labor-management committee to quickly address those concerns.

This Section 5 shall not be construed to change any existing policies, practices, or procedures relating to Local 246 members bringing their own tools into the workplace.

ARTICLE XIV - BARGAINING BAR DURING TERM OF AGREEMENT

Section 1.

The parties acknowledge that they have raised and negotiated in good faith concerning all mandatory subjects of collective bargaining not within the purview of a determination pursuant to Section 220 of the Labor Law with respect to positions which are subject to said Section 220. A dispute concerning the application or interpretation of the terms of a Comptroller=s Determination shall be subject to the Grievance Procedure of this Agreement. Except for the foregoing, the terms of this collective bargaining agreement represent the entire agreement of the parties. All subjects, not provided for herein, were disposed of in the course of negotiations; and the parties, accordingly, acknowledge that there remains no further duty to bargain concerning them unless consented to in writing.

Section 2.

Nothing herein shall authorize or require collective bargaining between the parties during the term of this Agreement, except that the parties may mutually agree in writing to engage in collective bargaining where (a) the matter was not specifically covered by the agreement or raised as an issue during the negotiations out of which such agreement arose and (b) there shall have arisen a significant change in circumstances with respect to such matter which could not reasonably have been anticipated by both parties at the time of the conclusion of negotiations.

Section 3.

There shall be no resumption of negotiations during the term of an agreement upon the claim that the agreement is not consummated or not executed or that one of the parties promised to resume negotiations on any particular matter unless such claim is substantiated by a written document signed by the party against whom the claim is made.

Section 4.

This contract expresses all agreements and understandings between the parties and no other agreements, understanding or practice shall be of any force or effect.

ARTICLE XV - PERSONNEL AND PAY PRACTICES

Section 1. Vacation Picks

In the scheduling of vacations for employees, subject to the vacation policy and procedures of the employer, the employer agrees that vacation picks for employees covered by this Agreement shall be, by seniority in the employee's Civil Service Title.

Section 2. Grace Period

a. Every employee is obligated to report for work as scheduled.

2008-2017 Auto Mechanic et al.

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- b. Except for the employees described in subsection c below, there shall be a grace period of five minutes at the beginning of the work shift. When an employee's lateness extends beyond the five-minute grace period, the full period of time between the scheduled reporting time and the actual reporting time shall be charged against such employee (e.g. an employee whose starting time is 9:00 a.m. who reports to work at 9:05 a.m. would not be "late," but such an employee with such a starting time who reports to work at 9:06 a.m. would be charged with six (6) minutes of lateness).
- c. The following employees shall not be entitled to the five-minute grace period described in subsection b above: employees whose positions require, in the event of late reporting for work, that another be held over from a previous shift or be called in to substitute for the late employee, at premium rates of pay.

ARTICLE XVI - FINANCIAL EMERGENCY ACT

The provisions of this Agreement are subject to applicable provisions of law, including the New York State Financial Emergency Act for the City of New York as amended.

ARTICLE XVII - APPENDICES

The Appendix or Appendices, if any, attached hereto and initialed by the undersigned shall be deemed a part of this Collective Bargaining Agreement as if fully set forth herein.

ARTICLE XVIII - SAVINGS CLAUSE

In the event that any provisions of this Agreement are found to be invalid, such invalidity shall not impair the validity and enforceability of the remaining provisions of this Agreement.

ARTICLE XIX - PERFORMANCE COMPENSATION

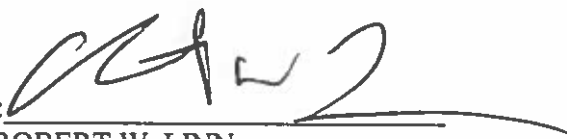
The Union acknowledges the Employer's right to pay additional compensation for outstanding performance.

The Employer agrees to notify the Union of its intent to pay such additional compensation.

19007

WHEREFORE, we have hereunto set our hands and seals this 14th day of December 2018

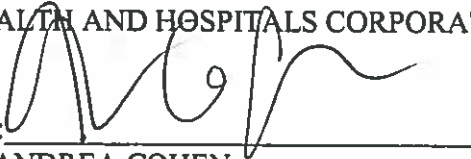
FOR THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS AS DEFINED HEREIN:

BY: 
ROBERT W. LINN
Commissioner of Labor Relations

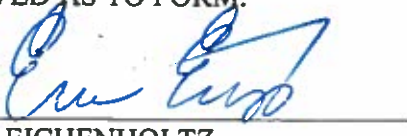
FOR LOCAL 246,
SERVICE EMPLOYEES
INTERNATIONAL UNION,
AFL-CIO

BY: 
JOSEPH A. COLANGELO
President

FOR THE NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION

BY: 
ANDREA COHEN
Vice President

APPROVED AS TO FORM:

BY: 
ERIC EICHENHOLTZ
Acting Corporation Counsel

CERTIFIED TO THE FINANCIAL CONTROL BOARD:

DATE: _____

UNIT: Auto Mechanics, et al

TERM: May 31, 2008 to September 30, 2017

OFFICE OF LABOR RELATIONS
REGISTRATION
OFFICIAL CONTRACT



NO: 19007
DATE: 12/17/18



OFFICE OF LABOR RELATIONS

40 Rector Street, New York, N.Y. 10006-1705
nyc.gov/olr

ROBERT W. LINN
Commissioner
RENEE CAMPION
First Deputy Commissioner
CLAIRE LEVITT
Deputy Commissioner
Health Care Cost Management

STEVEN H. BANKS
General Counsel
GEORGETTE GESTELY
Director, Employee Benefits Program

December 14, 2018

Mr. Joseph A. Colangelo
President
Local 246 SEIU
217 Broadway
New York, NY 10007

**RE: Auto Mechanics, et al.
May 31, 2008 to September 30, 2017**

Dear Mr. Colangelo:

Pursuant to Article IX, Section 1 of the labor agreement between the parties dated for the duration of the term of said agreement, the term "Geographic Location" shall have the following meaning in the following administrations and/or departments.

In the Sanitation Department the term geographic location shall mean a "zone", i.e., a borough shop and its satellite garages.

The borough shops and satellite garages are presently designated as follows:

Manhattan Command

Borough Shop, M1, M2, M3, M3A, M4, M4A, M5, M6, M7, M8, M8A, M9, M10, M11, M12, Manhattan Lot Cleaning

Bronx Command

Borough Shop, BX1, BX2, BX3, BX3A, BX4, BX5, BX6, BX6A, BX7, BX8, BX9, BX10, BX11, BX12, Bronx Lot Cleaning

Queens Command

Queens North Borough Shop, BKN1, BKN2, BKN3, BKN4, BKS6, BKSA, QW1, QW2, QW3, QW4, QW5, QW5A, QW6, QN7, QN7A, QW9, QN11B, QN13A, Enforcement, North Shore Marine Transfer Station, Hamilton Marine Transfer Station.

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Cioffe Command

Cioffe Borough Shop, BKN5, BKS7, BKN8, BKN9, BKS10, BKS11, BKS12, BKS13, BKS14, BKS15, BKS15A, BKS16, BKN17, BKS18, BK Lot Cleaning, Derelict Vehicle Operations, QE8, QE10, QE12, QE13, QE14, South West Marine Transfer Station.

Richmond Command

Richmond Borough Shop, R1, R2, R3, Transfer Station and Plant 1

Central Repair Shop - 5th Floor Operations

Special Chassis Shop, Forge Shop, Body Shop and Passenger Car Shop.

Central Repair Shop - 4th Floor Operations

Major Component Shop, Minor Component Shop, Motor Room and Machine Shop.

In the Police Department "geographic locations" shall be co-extensions with the following subgroups:

1. All shops within the borough of the Bronx.
2. All shops within the borough of Manhattan.
3. All shops within the borough of Brooklyn.
4. All shops within the borough of Staten Island.
5. The Central Repair Shop in Queens.
6. All other shops in the borough of Queens.

For the Fire Department "Geographic Locations" shall include:

35th Street (Fire), Pumper Section, Chiefs Cars, Ladder Section, Machine Shop, Electrical Shop, Randalls Island Preventive Maintenance, Tire Shop.

58th Street (EMS), Support Shop, Ambulance Shop, Body Repair Section,

Satellite Shops:

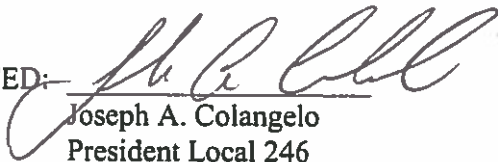
1. Coney Island
2. Seaview
3. Gouverneur
4. Jacobi
5. Randalls Island

Very truly yours,



Robert W. Linn

ACCEPTED:



Joseph A. Colangelo
President Local 246

19007

DATED:

December 14, 2018



sanitation

Kathryn Garcia
Commissioner

Kathryn Garcia
Commissioner
125 Worth Street
7th Floor/Room 720
New York, NY 10013

To: BME Deputy Directors
BME Shop Stewards

From: R. DiRico, Deputy Commissioner

The following will be the BME policy regarding notification of personnel for non-emergency weekend overtime:

Saturday Overtime- Notification before the end of shift Thursday

Sunday Overtime- Notification before the end of shift Friday

When overtime assignments are given, the number of people may be increased but not decreased; unless the entire overtime program is cancelled.

If an employee is working on a particular job that requires continuity during regular hours, management has the right to work that employee on that job out of rotation on overtime; but, employee will be recording as having worked those hours.

If an employee desires to work in a capacity that he has no training for, and it is the employee's turn to work in rotation, the employee will be required to produce at the accepted quantity and quality levels.

In the event of an emergency situation, when people must be kept after their normal work shift, every effort will be made to give those persons the earliest possible notification.

During "off-shift" snow emergency overtime, BCC has agreed to give BME three-hour notification in order to get our people in place (i.e. if BCC determines that support personnel are necessary at 10:00 pm, they will contact BME by 7:00 pm).

The foregoing policy may be varied or abrogated if such conditions arise that warrant such variation or abrogation.



OFFICE OF LABOR RELATIONS

40 Rector Street, New York, N.Y. 10006-1705
nyc.gov/olr

ROBERT W. LINN
Commissioner
RENEE CAMPION
First Deputy Commissioner
CLAIRE LEVITT
Deputy Commissioner
Health Care Cost Management

STEVEN H. BANKS
General Counsel
GEORGETTE GESTELY
Director, Employee Benefits Program

December 14, 2018

Mr. Joseph A. Colangelo
President
Local 246 SEIU
217 Broadway
New York, NY 10007

RE: Auto Mechanics, et al.
May 31, 2008 to September 30, 2017

Dear Mr. Colangelo:

The parties agree that Local 246 can establish a voluntary benefit program through a dues check off agreement covering prevailing rate titles. Local 246 shall bear the entire cost for the implementation and maintenance of the program and enter into supplemental agreements for voluntary benefits.

Very truly yours,

Robert W. Linn

ACCEPTED:

Joseph A. Colangelo
President Local 246

DATED:

December 14, 2018

19007



OFFICE OF LABOR RELATIONS

40 Rector Street, New York, N.Y. 10006-1705
nyc.gov/olr

ROBERT W. LINN
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STEVEN H. BANKS
General Counsel
GEORGETTE GESTELY
Director, Employee Benefits Program

December 14, 2018

Mr. Joseph A. Colangelo
President
Local 246 SEIU
217 Broadway
New York, NY 10007

RE: Auto Mechanics, et al.
May 31, 2008 to September 30, 2017

Dear Mr. Colangelo:

This is to confirm the parties' agreement that any new or amended provisions of this non-economic agreement will be implemented prospectively, as of the date the contract is registered. If this conforms to your understanding, please countersign below.

Very truly yours,

Robert W. Linn

ACCEPTED:

Joseph A. Colangelo
President Local 246

DATED:

December 14, 2018

190071

DISCIPLINARY PROCEDURE FOR PROVISIONAL EMPLOYEES - UPDATED

1. Purpose

New York State Civil Service Law, Article 4, Title B, §65 governs provisional appointments. The purpose of this agreement is to continue the disciplinary procedure for certain provisional employees in accordance with Section 65(5)(g) of the Civil Service Law, as amended by Chapter 467 of the Laws of 2016, so that such procedure will continue to apply during the timely submission, approval and implementation of a revised plan to reduce provisional appointments in accordance with Section 65(5)(c-3) of the Civil Service Law.

2. Eligibility Criteria

- a. The employee must have served for at least two (2) years in the same or similar title or related occupational group in the same agency without a break in service (see: below) of more than 31 days; and
- b. The employee must have been serving provisionally in such competitive class position on a full-time per annum or full-time per diem basis and assigned regularly to work the normal, full-time work week established for that title. (see: Attachment A for special provisions applicable to School Based Employees.)
- c. Prior provisional service followed by permanent service may not be aggregated with current provisional service (e.g. prior provisional service as a temporary or seasonal "step-up" followed by permanent service may not be counted towards meeting the service requirement in an employee's current provisional position.)

The following unpaid time in excess of 31 days will not be deemed a break in service or be counted as service:

- (i) for maternity/childcare leave;
- (ii) for military leave;
- (iii) jury duty;
- (iv) for union business pursuant to Executive Order 75;
- (v) while pending workers' compensation determination;
- (vi) while on workers' compensation option 2;
- (vii) due to illness or exhaustion of paid sick leave; and
- (viii) due to family illness.

3. Exceptions

- a. No provisional employee shall be deemed to be permanently appointed under any circumstances, nor shall this disciplinary procedure be deemed to preclude removal of any provisional employee as a result of the establishment of, or appointment from, an appropriate eligible list, or in accordance with any other provision of law.
- b. Notwithstanding the provisions in Section 2, Eligibility Criteria, above, this Disciplinary Procedure shall not be available to any employee appointed on a provisional basis to any position for which one or more appropriate eligible lists have been established including but not limited to any list established pursuant to a plan approved in accordance with NYS Civil Service Law Section 65(5).

4. Procedure

When a claimed wrongful disciplinary action has been taken against an eligible provisional employee (see: Eligibility Criteria), the following procedure shall govern upon service of written charges of incompetence or misconduct:

- STEP A** Following the service of written charges, a conference with such employee shall be held with respect to such charges by the person designated by the agency head to review a grievance at STEP I of the Grievance Procedure set forth in Article XV of this Agreement.¹ The employee may be represented at such conference by a representative of the Union. The person designated by the agency head to review the charges shall take any steps necessary to a proper disposition of the charges and shall issue a determination in writing by the end of the fifth day following the date of the conference.
- STEP B(i)** If the employee is not satisfied with the determination at STEP A above, then the employee may choose to proceed in accordance with the Grievance Procedure set forth in Article XV of this Agreement through STEP III. The Union, with the consent of the employee, shall have the right to proceed to binding arbitration pursuant to STEP IV of such Grievance Procedure. The period of an employee's suspension without pay pending hearing and determination of charges shall not exceed thirty (30) days.
- STEP B(ii)** An appeal from the determination of STEP A above shall be made to the agency head or designated representative. The appeal must be made in writing within five (5) work days of the receipt of the determination. The agency head or designated representative shall meet with the employee

¹ Reference is to 1995-2001 Citywide Agreement.

and the Union for review of the grievance and shall issue a determination to the employee and the Union by the end of the tenth work day following the day on which the appeal was filed. The agency head or designated representative shall have the power to impose the discipline, if any, decided upon, up to and including termination of the accused employee's employment. In the event of such termination or suspension without pay totaling more than thirty (30) days, the Union with the consent of the grievant may elect to skip STEP C of this Section and proceed directly to STEP D.

STEP C If the grievant is not satisfied with the determination of the agency head or designated representative the grievant or the Union may appeal to the Commissioner of Labor Relations in writing within ten (10) days of the determination of the agency head or designated representative. The Commissioner of Labor Relations shall issue a written reply to the grievant and the Union within fifteen (15) work days.

STEP D If the grievant is not satisfied with the determination of the Commissioner of Labor Relations, the Union with the consent of the grievant may proceed to arbitration pursuant to the procedures set forth in STEP IV of the Grievance Procedure set forth in Article XV of this Agreement.

The arbitrator's decision, order or award (if any) shall be limited to the application and interpretation of the Agreement and the arbitrator shall not add to, subtract from or modify the Agreement. The arbitrator's award shall be final and binding and enforceable in any appropriate tribunal in accordance with Article 75 of the Civil Practice Law and Rules. The arbitrator may provide for and direct such relief as the arbitrator deems necessary and proper, subject to the limitations set forth in this Procedure and any applicable limitations of law.

5. Limitations on Arbitrator's Award

Notwithstanding any inconsistent provision of this Procedure, when an eligible list exists for the title that the employee held provisionally, an Arbitrator shall not be empowered to order reinstatement of an employee.

This limitation shall not preclude a monetary remedy for any portion of the period covered from the implementation of the disciplinary penalty at issue in the grievance to the date of the establishment of an eligible list.

6. **Expiration Date**

This Disciplinary Procedure shall be deemed to have been in force and effect on and after the expiration date of the original Disciplinary Procedure for Provisional Employees, as approved on August 30, 2011, and shall expire on the earlier of the following:

- a. the expiration, final disapproval or termination of a revised plan to reduce provisional appointments submitted to the New York State Civil Service Commission in accordance with Section 65(5)(c-3) of the Civil Service Law; or
- b. November 1, 2018.

FOR THE CITY OF NEW YORK

**FOR DISTRICT COUNCIL 37,
AFSCME, AFL-CIO**

BY: 
ROBERT W. LINN
Commissioner of Labor Relations

BY: 
HENRY GARRIDO
Executive Director

Date: 4/26/18

Date: 4/26/18

APPROVED AS TO FORM:

BY: 
Eric Eichenholtz
Acting Corporation Counsel

Date: 4/27/2018

Attachment A
School Based Employees

An employee of the Department of Health who is regularly and exclusively assigned to work at a Board of Education facility (hereinafter, "School Based Employee" or "SBE") shall be covered by the provisional disciplinary provisions set forth herein, provided that the following criteria are met:

- a. Such SBE must regularly work the listed full-time work week established for a per annum title set forth in Appendix A of the 1995-2001 Citywide Agreement during the customary school year without a break in service of more than 31 days.
- b. If such SBE is placed in unpaid status at the end of the customary school year, such period in unpaid status during the customary break between school years shall be deemed an authorized leave without pay and not considered a break in service. However, such authorized leave without pay during the break between customary school years shall not be creditable towards meeting the required two years of service required for provisional disciplinary rights.
- c. Such SBE, upon return to paid status from the break between customary school years, must continue to be assigned to regularly work on a full-time basis without a break in service of more than 31 days.
- d. If such SBE is assigned to work during all or part of the break between customary school years, such time in paid status shall count towards meeting the two year service requirement for provisional disciplinary rights provided such service is on a full-time basis. However, no part-time service rendered during such break between customary school years shall be creditable towards meeting the required two years of service required for provisional disciplinary rights.
- e. SBEs meeting the above criteria shall become eligible for the provisional disciplinary rights set forth herein when their aggregated full-time service during consecutive customary school years (inclusive of any *full-time* service rendered during the breaks between such consecutive customary school years) totals the required two years. Under typical circumstances, this would be expected to occur sometime during their third school year of employment.



OFFICE OF LABOR RELATIONS

40 Rector Street, New York, N.Y. 10006-1705
nyc.gov/olr

ROBERT W. LINN
Commissioner

RENEE CAMPION
First Deputy Commissioner

CLAIRE LEVITT
*Deputy Commissioner
Health Care Cost Management*

MAYRA E. BELL
General Counsel

GEORGETTE GESTELY
Director, Employee Benefits Program

Attachment B

April 26, 2018

David Paskin
Director of Research and Negotiations
District Council 37
125 Barclay Street
New York, New York 10007

Re: Provisional Due Process Eligibility

Dear Mr. Paskin:

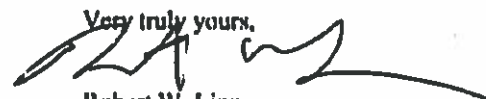
This letter serves to convey the City of New York's position regarding due process procedures for provisional employees outlined in the agreement dated April 26, 2018, entered into between the City of New York and District Council 37 and supersedes the Agreement dated August 30, 2011, entered into after the Union's withdrawal of the Improper Practice Petition docketed as BCB-2899-10.

The Office of Labor Relations (OLR) shall apply the terms of the attached "Disciplinary Procedure for Provisional Employees" and side letter agreement between the City and DC 37 to other unions covered by the Career and Salary Plan. However, this "Disciplinary Procedure for Provisional Employees" and side letter agreement shall not expand rights previously embodied in Article XVI of the January 1, 1995 through June 30, 2001 Citywide Agreement, as amended, nor shall it confer any rights or benefits that provisional employees did not enjoy under the Citywide Agreement, or under an applicable unit agreement, before the decision in *CSEA v. Long Beach*.

The "Disciplinary Procedure for Provisional Employees" and side letter agreement specifically exclude the New York City Health and Hospitals Corporation ("HHC") even though HHC is a signatory to the Citywide Agreement.¹

The Parties shall append the "Disciplinary Procedure for Provisional Employees" and attachments B and C to the Citywide Agreement and to the unit agreements provided such unit agreements previously extended such coverage to provisional employees.

If the above terms are acceptable to DC 37, please execute the signature line provided below.

Very truly yours,

Robert W. Linn

Agreed and Accepted on Behalf of District Council 37

BY: 
David Paskin

¹ By letter agreement dated September 18, 2015, New York City HHC (formerly known as HHC) entered into a provisional due process agreement with District Council 37

19007



OFFICE OF LABOR RELATIONS

40 Rector Street, New York, N.Y. 10006-1705
nyc.gov/olr

ROBERT W. LINN
Commissioner

RENEE CAMPION
First Deputy Commissioner

CLAIRE LEVITT
*Deputy Commissioner
Health Care Cost Management*

MAYRA E. BELL
General Counsel

GEORGETTE GESTELY
Director, Employee Benefits Program

Attachment C

April 26, 2018

David Paskin
Director of Research and Negotiations
District Council 37
125 Barclay Street
New York, New York 10007

Re: Pending Provisional Employee Disciplinary Cases

Dear Mr. Paskin:

This letter confirms our mutual understanding and agreement concerning certain provisional employees on whose behalf grievances alleging claimed wrongful disciplinary actions by the agency were filed prior to and/or subsequent to the Court of Appeals' decision in *CSEA v. Long Beach* but which cases have been held in abeyance and have not progressed to arbitration.

In addition to the limitation set forth in Section 5 of the "Disciplinary Process for Provisional Employees" in determining a "back pay" award, if any, the arbitrator shall exclude the period of time from the date of the *Long Beach* decision through January 28, 2008. An arbitrator may award "back pay" for the period subsequent to the affected employee's discipline/termination but prior to the Court of Appeals' decision in *CSEA v. Long Beach* (that is, May 1, 2007.) However, in no case may "back pay" be awarded for any period during which a provisional employee was serving while an eligible list existed for the title the employee held provisionally. Moreover, in awarding backpay, the Arbitrator must consider the efforts of the employee in mitigating his or her damages and must also offset any backpay award by any and all interim earnings, including unemployment compensation. In no event may an employee be awarded backpay in excess of one year's base salary for the position s/he held provisionally.

If you concur with the contents set forth herein, please execute the signature line provided below.

Very truly yours,

Robert W. Linn

Agreed and Accepted on Behalf of District Council 37

BY:
David Paskin

19007