OPINION

ISSUE 1: Procedural Arbitrability

A. The Meaning of the Contract

The first issue involves procedural arbitrability. The parties stipulated that the Employer, which is contesting arbitrability on procedural grounds, has the burden to prove its case by a preponderance of the evidence. (Transcript at 10.)

A careful examination of the collective bargaining agreement confirms that a resolution of the procedural arbitrability issue depends on the date of the precipitating incident grieved by the Union, the contractual period of time for the Union to file a grievance, and the actual date of the filing of the grievance.

The present individual grievance arose on June 8, 2016. Article V, Section 1(a)(Grievance Procedure) of the collective bargaining agreement requires an individual grievance to be filed "within 15 working days of the precipitating incident." (Joint Exhibit 1 and Joint Exhibit 1(A).) The Union filed the applicable grievance (designated as Grievance # 02-16-02) on or about June 16, 2016. (Joint Exhibit 2.) The grievance on its face is therefore timely and procedurally arbitrable.

The Employer, however, insists that the precipitating event about the Employer's right to force members of the bargaining unit to work beyond twelve hours in non-emergencies occurred many years earlier after the creation of the twelve-hour tours. A proper determination of the Employer's argument requires a careful review of the record.

B. The Application of the Contract

The record indicates that the parties agreed to twelve-hour tours in Paragraph 7 of the Memorandum of Understanding, dated June 23, 2006, subject to ratification by the parties. (Joint Exhibit 1.) Apparently unknown to the Employer, the record indicates that at the time the leaders of the Union disseminated information to the members of the bargaining unit before the ratification of the collective bargaining agreement that introduced the expanded use of twelve-hour tours and specifically represented that forced overtime beyond twelve hours would not occur unless a defined emergency existed. (Transcript at 167 and 210-11 and Union Exhibit 3.) Retired Sergeant Cirelli credibly testified that:

> This was drafted because in order to get the membership to agree to MOU or the past agreement, there had to be, we had to state to them it would not be forced.
>
> . . . .
>
> So they would have never agreed to that being stuck there for a full 16 hours and then return within an 8-hour period.

(Transcript at 170-71.) The Union ratified the Memorandum of Understanding by a narrow margin of fifteen votes. (Employer Exhibit 18.)

The record reflects that shortly after the implementation of the twelve-hour tours a prior Union President, Gerard "Jerry" Coichetti, filed a grievance, dated October 31, 2006, about forced overtime beyond twelve hours in non-emergencies for personnel assigned to work during the turning back of the clocks

during the conversion from Daylight Savings Time to Eastern Standard Time. (Employer Exhibit 8.) The current Union President, Lieutenant Christina Lampropoulos, testified that the parties had resolved--without prejudice--the grievance about members of the bargaining unit working an extra hour beyond the twelve hour limit once a year during the conversion from Daylight Savings Time to Eastern Standard Time. (Transcript at 582-90 and Employer Exhibit 8. See also testimony of James D. Fortunato, transcript at 1203-05.) The Employer therefore knew as of October 31, 2006 that the Union took the formal position that the Employer lacked a right pursuant to Article IX, Section 7 to require employees to work more than twelve hours continuously during non-emergencies.

Retired Sergeant Mathew Cirelli, who had served as the Treasurer of the Union and a member of the Executive Board and who had retired in 2011, credibly testified that the parties had a verbal understanding to hold in abeyance any grievances about forced overtime beyond twelve hours in non-emergencies. (Transcript at 194-98 and 213-14.)

Captain Robert Scognamillo described the effect of the Directed Patrol Agreement, which overlapped for a period after the implementation of the twelve-hour tours from 2010 until February 2013 (transcript at 1927 and 1935):

> there was less of a chance of somebody having to stay because a supervisor who started at one facility would be moved to another facility.

(Transcript at 1673.) Captain Scognamillo related that SOBA

members typically arranged for their own coverage. (Transcript at 1597 and 1605.) Captain Scognamillo acknowledged that he never complained to the Union and never filed a grievance when he was required to stay and did not want to do so after completing a twelve-hour tour. (Transcript at 1607.) As a consequence of the Directed Patrol Agreement and the willingness of members of the bargaining unit to volunteer to work overtime beyond twelve-hour tours, the issue about forced overtime remained somewhat dormant.

Chief James D. Fortunato, who worked for the Employer from January 18, 1981 to January 2, 2017 and served as the Executive Vice President and Chief of Department when he retired (transcript at 1190), clarified that he had a conversation with the prior Union President, Marc Sirlin, about the grievance, dated July 1, 2014 (Employer Exhibit 3), that President Sirlin had filed about Sergeant Eglowitz:

> I said "Marc", where is this [the Eglowitz grievance] coming from after eight years of not receiving any complaints?" Which complaints that I was aware of. It may have been one or two. And Marc said to me, "We're taking the grievance, I have to file it." He said, "But we're not going anywhere with it."

(Transcript at 1213.) Chief Fortunato elaborated:

> I'm sure they weren't going to a second step or bring it to an arbitrator.
>
> . . . I asked him what was -- what was the reason for this, all of a sudden that this happened, and he said that I have some members on the board that are given -- you, giving me grief over this. And I have to take the grievance, but we're not going anywhere with it.

(Transcript at 1214.)

Union President Lampropoulos credibly testified that approximately five or ten open grievances existed about forced overtime beyond twelve hours in non-emergencies. (Transcript at 432 and 437 and Employer Exhibit 1, dated March 25, 2015 involving Sergeant M Albano; Employer Exhibit 2, dated August 3, 2015 involving Sergeant Degennaro; and Employer Exhibit 3, dated July 1, 2014 involving Sergeant Michael Eglowitz.) President Lampropoulos explained:

> . . . SOBA was trying to negotiate it and was holding on to their rights and trying to protect their interest by filing the grievances and trying to negotiate with the Authority.

(Transcript at 486.) President Lampropoulos confirmed that the Employer had sought to eliminate the restrictions contained in Article 9, Section 7, which prohibits the Employer from being "required to work more than twelve hours continuously except in emergencies" (Joint Exhibit 1) during the collective bargaining process during the negotiations for the 2009-2012 collective bargaining agreement that the parties eventually retroactively executed on January 30, 2015. (Transcript at 371-72 and 475. See also transcript at 1474.) President Lampropoulos related that the prior Union President, Marc Sirlin, "said it [changing the contract] was something he would agree to" and that "it was worth a credit." (Transcript at 473.)

President Lampropoulos credibly described that the Union had pursued to arbitration on a consolidated basis two grievances about forced overtime beyond twelve hours in non-emergencies at

the Bronx-Whitestone Bridge and at the Throgs Neck Bridge. (Transcript at 665-67 and Union Exhibit 15, dated November 23, 2015 and Union Exhibit 16, dated December 9, 2015.) President Lampropoulos elaborated that the parties settled the matters and that "we were happy with the results of the settlement." (Transcript at 665.)

Nevertheless, President Lampropoulos explained that the Union continued to file between five and ten grievances about the forced overtime issue, however, the grievances remained in the "hopper" sometimes for years without a formal resolution in the grievance procedure. (Transcript at 737, 749, 772, and 788.) President Lampropoulos reiterated that the parties were trying to address the forced overtime issue while the parties "were attempting to resolve the contract." (Transcript at 779.)

The record lacks clarity about any prior instances when members of the bargaining unit worked forced overtime beyond their twelve-hour tours in non-emergencies. Captain Chris Coradin credibly testified that the Employer does not keep records that differentiate between voluntary overtime and forced overtime. (Transcript at 882 and 901.) Captain Coradin also testified that he never had filed a grievance about being forced to work overtime beyond a twelve-hour tour. (Transcript at 1026.)

The record includes other references to forced overtime, however, the record omits persuasive evidence that such instances did not involve emergencies that occurred within the ambit of

Article IX, Section 7 and Article XXVII (Definition of Emergency). The record suggests that on occasion some relatively de minimis forced overtime may have occurred: for example a return to a facility after a deployment to a different facility or when an arriving bargaining unit member would arrive a few minutes late and the about to depart bargaining unit member remained at work pursuant to Rule 131 of the "Rules and Regulations" unilaterally promulgated by the Employer effective on June 1, 1970. (See transcript at 1556 and 1583, testimony of Captain Scognamillo and Employer Exhibit 9. Cf. testimony of Sergeant Rivera at 96 and 103.) The record omits persuasive evidence that members of the bargaining unit had complained to the Union on the limited occasions that such events may have occurred.

Sharon Gallo-Kotcher, the Vice President of Labor Relations, consistently testified that former Union President Coichetti and former Union President Sirlin had acknowledged that the Employer had the right to force overtime after a twelve-hour tour, however, certain members of the Union Executive Board did not agree so the Union Presidents did not agree to change the applicable contractual provisions to reflect the views of the prior Union Presidents. (See, e.g., transcript at 1859-60 and 1944.) Vice President Gallo-Kotcher recounted that the two Union Presidents filed grievances about such forced overtime without advancing the grievances through the sequential steps of the grievance procedure. (Transcript at 1886.) For example, Vice

President Gallo-Kotcher testified that:

> A couple of times he [Marc Sirlin] came in. One time he actually came in with a document in his hand. I think it was a grievance document, and said, you know, I'm having a problem on my board. We all know what our agreement was. I'm going to file a grievance, but don't worry, it's not going anywhere. It's not going to arbitration because we all know what the Union agreed to.

(Transcript at 1795. See also transcript at 1799.) Vice President Gallo-Kotcher conceded that the Employer initially had sought to create the twelve-hour tours to create certain efficiencies (transcript at 1734) and that the Employer unsuccessfully had attempted to modify the contract to clarify the Employer's right to force overtime after the completion of a twelve-hour tour. (Transcript at 1905.) Vice President Gallo-Kotcher clarified that the two prior Union Presidents had assured Vice President Gallo-Kotcher that appropriate changes would be made to the collective bargaining agreement to reflect the right of the Employer in non-emergencies to force overtime after the completion of twelve-hours, however, neither Union President ever agreed to such changes during the collective bargaining process. (Transcript at 1800-01, 1863, and 1931-32.) Vice President Gallo-Kotcher elaborated:

> So I believe that we had drafted the MOU with a provision. . . . that talked about sergeants and lieutenants working, could -- be forced to work overtime four hours beyond the 12-hour tour. Just what we talked about with Coichetti and Sirlin, about putting into the agreement. It didn't make it in ultimately.

(Transcript at 1806.) As a result, Vice President Gallo-Kotcher

conceded that: "we were just going to live with it the way it had been." (Transcript at 1808.)

In the aftermath of all of these circumstances, the Grievant, Sergeant Roberto Rivera, credibly testified that prior to 2016 the Employer did not force Sergeant Rivera to work forced overtime when a volunteer could not be obtained and when an emergency did not exist. (Transcript at 67.) The Grievant recalled filing a similar grievance in connection with forced overtime on May 16, 2016. (Transcript at 91-92 and Union Exhibit 1.)

The record therefore proves that an unofficial, tacit, and generally undisclosed understanding had existed initially between former Union President Coichetti and the Vice President of Labor Relations and subsequently between former Union President Sirlin and the Vice President of Labor Relations to continue to try to settle the gravamen of the dispute about forcing members of the bargaining unit to work more than twelve continuous hours in non-emergencies. For the most part, the understanding fostered a peaceful relationship between the parties with minimal negative effects because of the ongoing willingness of the members of the bargaining unit to work overtime on a voluntary basis; the existence from 2010 to 2013 of the Directed Patrol Agreement that enabled the Employer to move members of the bargaining unit from one facility to another facility; the practice of the Employer for many years to use Bridge and Tunnel Officers to perform the duties of Sergeants under certain circumstances (Employer Exhibit

15, Employer Exhibit 15(A), Employer Exhibit 16, and Employer Exhibit 17); and the contractual provisions in Article IX, Section 7 and in Article XXVII (Definition of Emergency) that provided the Employer with the right to force employees to work beyond twelve hours continuously in defined emergencies. Instead, the forced overtime issue remained in limbo while the Union periodically filed grievances that languished in the grievance procedure--with the implicit consent of the Employer--and the relatively few affected grievants received overtime compensation for the disputed hours beyond their twelve-hour tours that they had worked. This quiet arrangement, which had existed since the inception of the twelve-hour tours in 2006 and apparently was unknown to many members of the bargaining unit thereafter, precludes finding that a specific "precipitating incident" had occurred within the meaning and application of Article V, Section 1(a) of the collective bargaining agreement for the purpose of finding that the present grievance is not procedurally arbitrable. For these reasons the present individual grievance concerning Sergeant Rivera is timely.

As a result and under the totality of the unusual facts and relevant circumstances contained in the record, the Employer failed to prove by a preponderance of the evidence that the present dispute is not procedurally arbitrable. The Award therefore shall indicate that the grievance is procedurally arbitrable. This determination is consistent with the arbitral precedent contained in the record. Any other issues do not

affect the proper determination of procedural arbitrability.

ISSUE 2: THE MERITS OF THE DISPUTE

I. Introduction

The merits of the dispute involve contract language interpretation. The parties stipulated that the Union has the burden to prove its case by a preponderance of the evidence. (Transcript at 10.)

II. The Meaning of the Collective Bargaining Agreement

The longstanding clear, explicit, and plain language of Article IX, Section 7 provides quite specifically that:

> No employee will be required to work more than twelve hours continuously except in emergencies as hereinafter defined.

(Joint Exhibit 1.) The collective bargaining agreement defines an emergency in Article XXVII. Article IX, Section 4(c)(5) contains the general authorization for compulsory overtime coverage of four hours:

> Compulsory overtime. Man on previous tour and man on following tour each work four hours of overtime.

(Joint Exhibit 1.)

The first part of Article IX, Section 7 contains absolute, specific, and unconditional language that prohibits an employee from being required by the Employer to work beyond twelve hours. The second part of Article IX, Section 7 contains the only exception to the first part of Article IX, Section 7 and excludes from the Article IX, Section 7 prohibition certain emergencies as defined in Article XXVII. The parties incorporated Article IX,

Section 7 and Article IX, Section 4(c)(5) into the collective bargaining agreement before the advent of twelve-hour tours. Under the then existing circumstances of eight-hour tours (which also preceded the introduction of Open Road Tolling), the Employer could require an employee to work four hours of overtime before an eight hour tour or after an eight hour tour without violating the twelve-hour prohibition set forth in Article IX, Section 7. Article IX, Section 7 and Article IX, Section 4(c)(5) were therefore internally consistent.

Captain Coradin credibly described the internal consistency of the collective bargaining agreement in the context of the eight-hour tour schedule:

> Their tour would be eight hours, and if they're working four hours prior or four hours after, that would be a total of four hours. Section 7 prohibits more than 12 continuous hours except in emergencies.
>
> So those two provisions make sense together.

(Transcript at 1170-71.) Captain Coradin further observed that:

> At the facilities, I worked for the most part, and generally, SOBA members volunteer for overtime. So there's not that much forced overtime, but it happened.

(Transcript at 1180.)

Captain Coradin, who was a Sergeant at the time of the introduction of the twelve-hour tours, identified an unresolved issue during the ratification process to approve the revisions to the collective bargaining agreement that authorized the twelve-hour tours:

> there would be no change in the 12-hour work

> rule, and my question to them [Union representatives] was who would then cover a miss-out if no RDO [regular day off] SOBA member wanted it and no one volunteered to work it? How was that going to be covered? And I never got a really straight answer for how that was.

(Transcript at 1187.) Thus Captain Coradin immediately recognized the potential internal inconsistency between Article IX, Section 7 and Article XI, Section 4(c)(5) in the twelve-hour tour environment.

Captain Scognamillo, who became a permanent Lieutenant in September 2006 and a Captain on September 1, 2016, testified that he voluntarily had worked overtime after having worked for twelve hours on occasion and sometimes had remained to cover a missout even though he would have preferred not to work such overtime. (Transcript at 1504-06, 1545, and 1594.) Captain Scognamillo indicated that periodically Sergeants worked mandatory overtime after completing twelve hours of work "most likely for availability reasons." (Transcript at 1508 and 1681.) Captain Scognamillo described situations in which he had instructed Sergeants to remain beyond their twelve-hour scheduled tour:

> I recall supervisors who possibly responded to various types of incidents, accidents, weather, et cetera. For various reasons, they may have had to finish reports, whether it be accident reports, arrest reports, incident reports, and all other various forms where, yes, they had to remain on duty, yes.

(Transcript at 1528.)

Chief Fortunato testified that SOBA members typically had covered their own assignments. (Transcript at 1202.) Chief

Fortunato indicated that nothing had changed in 2006 that "would disallow us" from forcing a member of the bargaining unit to work beyond a twelve-hour tour. (Transcript at 1206.) Chief Fortunato clarified that:

> it was standard operating procedure for SOBA to cover their own overtime, and all of the tours were getting covered and the Authority really ran on overtime. . . . SOBA covered their own overtime. Whether it was forced or -- it was understood that if we put a tour up, it would be covered.

(Transcript at 1211.) Chief Fortunato added that:

> it was often during high alerts that people would get stuck for 16 hours. After they worked 12, they would get stuck for another 4.
>
> . . . during the holiday season where we had a snowstorm and we were at a higher alert, when the whole tour was held over for 16 hours.

(Transcript at 1300, 1302, and 1304. But see transcript at 1487.) A portion of Chief Fortunato's testimony therefore fell under the emergency exception set forth in Article IX, Section 7. Chief Fortunato related that a bargaining unit member could not leave a post until relieved or released. (Transcript at 1310, 1314, and 1321.)

Notwithstanding this testimony, Chief Fortunato recalled that former Union President Jerry Coichetti and Chief Fortunato had discussed the contractual authorization for the Employer to force bargaining unit members to work an additional four hours of overtime and the contractual provision that prohibited the Employer from requiring bargaining unit members to work more than twelve hours. Chief Fortunato specified that:

> we had discussed that in the next round of contract negotiations that that would be corrected so that there was nothing ambiguous about any of the provisions that were the previous MOU.

(Transcript at 1321.) Chief Fortunato continued that the next Union President, Marc Sirlin, subsequently met with some of the representatives of the Employer about a grievance about forced overtime after twelve hours to assure the Employer that:

> they weren't going to a Step 2 and they said they were just going to keep it on file.
>
> And I said "You know, Marc, we really need to put this, you know, to bed eventually, because, you know, this is -- this is going on for a couple of years where, you know, this -- this issue is, you know, up in the air. We tried to fix it, but, you know, sometimes some people see the clause that says we can bring you in four early and we can hold you over for hours," and I said "We'd like -- we'd like to put this in the demands for the next contract to get this, you know, once and for all the right wording," and it was -- went in as one of the demands for the next contract round.

(Transcript at 1327.) As the Union and the Employer felt the same way, Chief Fortunato reasoned that: "that's why we went eight years without receiving any grievances." (Transcript at 1328.) Chief Fortunato recounted that President Sirlin had explained that:

> he was getting some pressure from the Board. He had some new members, and they were questioning the language, so he was going to file this grievance, and they weren't going anywhere with it. They weren't going to Step 2, and they weren't going to push it any further.

(Transcript at 1330. See also transcript at 1471-72, 1701, 1705-07, 1722, and 1725.)

As mentioned with respect to the procedural arbitrability issue, Vice President Gallo-Kotcher consistently testified that the two prior Union Presidents had acknowledged that the Employer had the right to force overtime after a twelve-hour tour; that certain members of the Union Executive Board did not agree; that the two prior Union Presidents did not agree to change the applicable contractual provisions to reflect the views of the prior Union Presidents; and that the two Union Presidents filed grievances about such forced overtime without advancing the grievances through the sequential steps of the grievance procedure. Vice President Gallo-Kotcher conceded that the Employer initially had sought to create the twelve-hour tours to create certain efficiencies (transcript at 1734) and that the Employer unsuccessfully had attempted on more than one occasion to modify the contract to clarify the Employer's right to force overtime after the completion of a twelve-hour tour in non-emergencies. (Transcript at 1905.) Vice President Gallo-Kotcher clarified that the two prior Union Presidents had assured Vice President Gallo-Kotcher that appropriate changes would be made to the collective bargaining agreement to reflect the right of the Employer to force overtime after the completion of twelve-hours, however, neither Union President ever agreed to such changes during the collective bargaining process. (Transcript at 1800-01, 1863, and 1931-32.) As previously quoted, Vice President Gallo-Kotcher elaborated:

> So I believe that we had drafted the MOU with a provision . . . that talked about sergeants

> and lieutenants working, could -- be forced to work overtime four hours beyond the 12-hour tour. Just what we talked about with Coichetti and Sirlin [the former Union Presidents], about putting into the agreement. It didn't make it in ultimately.

(Transcript at 1806.) As a result, Vice President Gallo-Kotcher conceded that: "we were just going to live with it the way it had been." (Transcript at 1808.) During cross-examination Vice President Gallo-Kotcher addressed the contents of the contract:

> Q. Now you agree with me that, obviously, the June 23, 2006, MOA does not have any language regarding SOBA members working 12-hour tours could be required to work more than 12-hour tours, correct, more than 12 hours?
>
> A. Correct.

(Transcript at 1860-61.)

Although the Employer may have harbored certain goals, hopes, and intent about how the forced overtime process should work, a careful review of the record omits any persuasive evidence that both parties mutually had agreed at any time to alter, modify, or supersede the specific written contractual limit of twelve hours of forced overtime in non-emergencies. Due to the inclusion of Article IX, Section 4(c)(5), it would be possible to think that a bargaining unit member could be forced to work an additional four hours after completing a twelve-hour tour, however, the unambiguous language of the collective bargaining agreement in Article IX, Section 7 bars forced overtime beyond twelve hours except for the enumerated emergencies. As recognized by Vice President Gall-Kotcher, no

such bilateral written agreement had existed in the June 23, 2006 Memorandum of Understanding or thereafter. Certainly, the parties easily could have used plain language to enable the Employer to require employees to work more than twelve hours in the absence of an emergency or could have changed Article IX, Section 7 to provide that "no employee will be required to work more than sixteen hours continuously except in emergencies as hereinafter defined." The parties failed to do so. In fact, the parties previously had negotiated Article XXVII for defined emergencies so the parties had demonstrated the skill to expand Article IX, Section 7 when they had agreed to do so. (See generally testimony of retired Sergeant and former Union Treasurer Mathew Cirelli that the twelve-hour limit had remained in effect and that the Employer had sought to expand the definition of emergencies, transcript at 158-60.)

The Union's clear letter, dated June 21, 2006, to the members of the bargaining unit before the ratification of the 2006 agreement that authorized twelve-hour tours buttresses the lack of a bilateral written agreement to negate the presumptive ban on forced overtime after twelve hours of work. The letter indicated:

> Myth #4
> After working 12 hours, we'll be stuck to cover missouts.
>
> False. There will be no change in the twelve-hour work rule. Article IX Section 7 remains in force. No Sergeant or Lieutenant will be required to work more than twelve hours continuously except in emergencies as hereinafter defined.

> Article XXVII remains in force. An emergency as hereinabove referred to shall be as follows:
>
> Fire
> Accident
> Major Disaster
> Major Snow Storm

(Union Exhibit 3 at 6 (myth buster #4).) Although the Union unilaterally generated the June 21, 2006 letter and may not have shared the letter with the Employer, nothing in the record supports the conclusion that both parties had negotiated and had agreed to a contrary written provision.

Union President Lampropoulos specified that the Employer subsequently had failed in its attempt to have Article 9, Section 7 removed from the collective bargaining agreement during the collective bargaining process. (Transcript at 341.) These unsuccessful efforts by the Employer occurred with the participation of the MTA Labor Relations personnel and the President of the Employer. The Employer's unsuccessful and repeated efforts constitute probative evidence that the Employer had recognized the obstacles in the collective bargaining agreement about forced overtime beyond twelve hours during non-emergencies.

On the basis of the specific prohibition contained in the language in Article IX, Section 7 and the surrounding circumstances set forth in the record, the collectively-negotiated agreements prohibit the Employer from requiring an employee to work more than twelve hours continuously in the absence of an emergency. Any change to this arrangement remains

a matter for collective bargaining rather than for arbitration.

III. The Application of the Collective Bargaining Agreement

The Grievant credibly testified that on June 7, 2016 he had reported to the Throgs Neck Bridge and had performed patrol relief duties at the Whitestone Bridge. (Transcript at 30.) The Grievant explained that at approximately 2:30 a.m. on June 8, 2016 a Lieutenant canvassed him about working overtime at 6:00 a.m. on June 8, 2016, however, the Grievant declined any interest in working the overtime. The Grievant clarified that at approximately 5:00 a.m. the Lieutenant directed the Grievant to remain after 6:00 a.m. for forced overtime. (Transcript at 30 and 54-56.) Although the Grievant's forced overtime began at 6:00 a.m., the Grievant learned at approximately 7:00 a.m. that Sergeant Marcigliano would not relieve the Grievant until 12:00 p.m. (Transcript at 31.) The current Union President, Christina Lampropoulos, verified that the Employer had not pre-arranged for coverage for the shift that Sergeant Frank Mintz received approval to miss for Union business. (Transcript at 315.) The decision of the Employer to have the Grievant relieved at noon perforce also violated Article IX, Section 4(c)(5), which limits compulsory overtime to four hours, because the Grievant's forced overtime began at 6:00 a.m. and the four hours of compulsory overtime expired at 10:00 a.m.

The Grievant confirmed that at approximately 10:25 a.m. the first of three vehicular accidents had occurred at the Throgs Neck Bridge that required the Grievant to respond. (Transcript

at 32.) The Grievant elaborated that he had cleared the third accident at approximately 1:00 p.m. and had remained until 4:20 p.m. to complete the associated paperwork . (Transcript at 73-81.) Consistent with the definition of emergency set forth in Article XXVII which explicitly includes "accident" as an emergency, the Grievant presumably made the decision to remain to complete the accident reports because of a memorandum, dated August 6, 2013, from Robert W. Eckert, Jr., Captain of Bridges East, which directed the members of the bargaining unit, such as the Grievant, "to make every effort to complete all MV104 reports as soon as is practical, but no later than the end of your tour." (Joint Exhibit 3.) The Grievant therefore remained at the Throgs Neck Bridge until 4:20 p.m. to complete the accident reports by the end of the Grievant's tour before the Grievant left work and had two regular days off. (Transcript at 34.) Chief Fortunato confirmed that a member of the bargaining unit should complete accident paperwork before leaving for two consecutive regular days off and that members of the bargaining unit would volunteer to stay over to complete such accident reports. (Transcript at 1302.)

No authority, basis, or jurisdictional competence exists in the record for the Arbitrator to re-write Article IX, Section 7 and Article XXVII of the collective bargaining agreement by ignoring the explicit language contained in the collective bargaining agreement. The Arbitrator is cognizant, mindful, and respectful of the other language in Article V, Section 1(d) of

the collective bargaining agreement "that the arbitrator shall have no power to add to, subtract from, modify or amend any of the provisions of the Agreement . . . ." (Joint Exhibit 1.) The Arbitrator also recognizes the well-settled axiom that a party lacks a right to obtain in arbitration what a party did not obtain during the collective bargaining process. Moreover, the Arbitrator should not and will not interfere with the managerial discretion to determine how to operate its facilities and cover assignments consistent with the collective bargaining agreement.

IV. Conclusion

As a consequence, the Union proved by a preponderance of the evidence that the Employer did violate the collective bargaining agreement by requiring Sergeant Roberto Rivera to work more than 12 consecutive hours on the tour beginning on June 7, 2016 and continuing into June 8, 2016. As a remedy, the Employer is directed to cease and desist from requiring members of the bargaining unit to work more than 12 consecutive hours except in an emergency as defined in the collective bargaining agreement. As to the Grievant, the Grievant acknowledged that the Employer had paid him for all of the disputed overtime (transcript at 81) and for a "no-meal" (transcript at 89); the Grievant therefore is not entitled to a monetary remedy in the instant matter.

Any other issues do not affect the proper determination of this matter. This determination is consistent with the precedent contained in the record.

Accordingly, the Undersigned, duly designated as the Arbitrator and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

1. The grievance is procedurally arbitrable.

2. The Employer did violate the collective bargaining agreement by requiring Sergeant Roberto Rivera to work more than 12 consecutive hours on the tour beginning on June 7, 2016 and continuing into June 8, 2016. As a remedy, the Employer is directed to cease and desist from requiring members of the bargaining unit to work more than 12 consecutive hours except in emergencies as defined in the collective bargaining agreement.

Robert L. Douglas
Labor Arbitrator

DATED: July 5, 2020
STATE of New York)ss:
COUNTY of Nassau)

I, Robert L. Douglas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Opinion and Award.