

AMERICAN ARBITRATION ASSOCIATION
ARBITRATOR'S OPINION AND AWARD

In the Matter of the Arbitration Between

IAFF Local 902

and

City of Malden

Case No. 01-25-0005-6725

Grievance: Forms 1 & 2; Alleged
unilateral change

Before

Marjorie F. Wittner, Arbitrator
Hearing Date: May 8, 2026

Appearances

Patrick N. Bryant, Esq.

Representing IAFF, Local 902

David K. Kouroyen, Esq.

Representing City of Malden

Statement of Award: The grievance is timely. The grievance is sustained.

Introduction

The IAFF-Local 902 (Union) filed a demand for arbitration with the American Arbitration Association over a grievance pertaining to alleged changes in Injured-on-Duty (IOD) forms. The parties selected me to arbitrate the dispute. On May 8, 2026, I conducted a one-day arbitration hearing at Malden City Hall. During this hearing, the parties had the opportunity to submit relevant evidence and to question and cross-examine sworn witnesses. The Union presented its case first. It had one witness, Union President Ken Guiel (President Guiel). The City of Malden (City or Employer) also had one witness, Fire Chief Stephen Froio (Chief Froio). Both parties submitted post hearing briefs on July 13, 2026, at which time the record was closed.

Relevant Contract Provisions

Article XIV
Grievance Procedure

Section 1 Any grievance or dispute which may arise between the parties, involving the application, meaning or interpretation of this Agreement shall be settled in the manner set forth in this article.

Section 2 The term "grievance" shall include any dispute concerning any decision or order of either the Mayor, the Fire Commissioner, the Chief of the Fire Department or other person in command position as any such decision may affect employees covered by this Agreement, or terms or conditions of work and employment. . . .

Section 3 For the purpose of this Agreement, the grievance procedure shall be as follows:

Step 1: The Union Grievance Committee shall present the grievance, in writing to the Chief of the Department within thirty (30) days. The Chief shall respond to the Union Grievance Committee within five (5) working days.

Step 2: If the grievance is not resolved and mutually acceptable at Step 1, it shall be presented to the Fire Commissioner within five (5) days of receipt of the response of the Chief of the Fire Department. The Fire Commissioner shall respond in writing within ten (10) days.

Step 3: If the grievance still remains unsettled after Step 2, the Union may within fifteen (15) days of receipt of the response of the Fire Commissioner, submit the grievance to arbitration. Said submission to arbitration shall be made to the American Arbitration Association, with a copy thereof, delivered in hand or mailed to the City.

The Arbitrator shall be without power to alter, amend, add to or subtract from the express language of the Agreement. The decision of the Arbitrator shall be final and binding on the parties.

Article XVI Savings Clauses

Section 1 This Agreement has not been designed to violate any federal, state, county or municipal laws, nor shall anything in this Agreement be interpreted as diminishing the rights of the City to determine and prescribe the methods and means by which the operation of the fire department shall be conducted, other than is limited by this agreement

Section 2 All job benefits presently enjoyed by the members which are not specifically provided for or abridged by this contract, shall continue under the conditions upon which they had previously been granted.

Section 3 Should any provision of the agreement be held unlawful by order of a court or administrative agency of competent jurisdiction, all of the provision, shall remain in full force and effect.

Article XXI – Sick Leave

Section 7 Injured Leave/Limited Duty

- A. An employee incapacitated for duty because of sickness, injury, or disability sustained in the performance of their duty shall be granted injury leave without loss of pay or other compensation for the period of such incapacity pursuant to M.G.L. Chapter 41, section 111F, as modified hereunder, and subject to the provisions of this Article. The term “duty” shall include limited duty tasks as described and defined in this Article.
- B. An employee who is out on injury leave shall be entitled to examination and treatment by a physician of their own choice and may, as described herein, be examined from time-to-time by a City physician at the City’s expense upon direction of the appointing authority. The City shall have the right to require such examination once the employee out on injury leave has missed three 24-hour tours of duty.
- C. The purpose of the City-designated physician examination shall be to determine whether or not the firefighter is fit for full or light duty, or whether the firefighter remains disabled from any duty. If the City physician determines that said firefighter is fit for full or limited duty, before such firefighter may be ordered to return to such duty, the firefighter shall first be entitled to obtain a medical opinion from his or her own treating physician as to such fitness for full or light duty. If there is a disagreement between such physicians, they shall thereupon jointly designate a physician agreeable to both whom, at the City's expense, shall examine the employee and render a medical opinion as to the employee’s fitness, copies of which shall be transmitted to the City and the employee.

The parties agree to make reasonable efforts to agree upon the third physician within 21 days after they exchanged their determinations as to the firefighter’s fitness to return to full or light duty. In the event of the inability of such physicians to agree upon the third physician or at the expiration of the 21 days, whichever comes first, the physician shall be jointly selected from a list of physicians established or selected by the Commissioner of Public Health of the Commonwealth of Massachusetts in cooperation with the parties hereto.

Pending receipt of such opinion, the City shall not require the employee to return to full or limited duty and shall continue to compensate him/her on paid injury leave. If the third physician determines that the employee is not fit to return to full or limited duty, the employee shall be continued on paid injury leave. If the third physician determines that the employee is fit to return to full duty or fit to return

to limited duty, the employee shall no longer be continued on pai[d] injury leave if such employee refuses to return to the duty approved by such independent physician.

D. Limited task duties shall be as follows:

E. ¹ Employees on injured leave shall, as a condition of continuing injury leave benefits under General Laws, c. 41, s. 111F, report to the Fire Chief or his designee every two (2) weeks and provide an update regarding their medical treatment, prognosis, and if known, a projected date to return to duty. The foregoing provision shall be applied uniformly and consistent with the terms of the attached General Order, which shall be issued and implemented within thirty (30) days of execution of this Agreement.²

Issue

The parties did not agree on the issue.³ The Union proposed:

- 1) Whether revised Forms 1 and 2 violate the collective bargaining agreement?
- 2) If so, what shall the remedy be?

The City proposed:

- 1) Is the Union's grievance timely?
- 2) If the Union's grievance is timely, did the City's use of Standard Form 2 to request medical information violate Article 21 of the CBA, if so, what shall be the remedy?

I formulate the issue as follows:

- 1) Is the Union's grievance timely?
- 2) Did the City's use of new Form 1 and Form 2 violate the CBA and, if so,
- 3) What shall be the remedy?

Findings

¹ This provision is continued in a Memorandum of Agreement (MOA) signed by the parties on October 27, 2021. It has not been modified by any subsequent agreements.

² The record does not include the referenced General Order.

³ The City's post-hearing brief states that the parties agreed upon the issue as set forth above. The Union's post-hearing brief conversely states that the parties agreed that the Arbitrator could frame the issue and proposed what is set forth above. My hearing notes reflect discussion of proposed issues that are different than either of those contained in the parties' post-hearing briefs. I rely upon the issues formulated in my notes, which accurately reflect the testimony and arguments presented by both parties during the hearing and in their post-hearing briefs.

For at least 20 years, the City of Malden's Fire Department (Department) has maintained two forms (Form 1 and Form 2) for the Union's bargaining unit members and their physicians to complete in connection with Injured-on-Duty (IOD) leave. Form 1 is an incident report that is completed by the firefighter and the firefighter's supervisor at the time of the accident/injury. Form 2 is completed by the firefighter's treating physician, should the firefighter seek medical care following the injury/accident.

Prior Form 1

Prior to June 2024, Form 1 was a two-page document called "Supervisor Accident Investigation Report." It required basic information such as firefighter name, and the time, date, and location of the accident/injury. It also provided space for the firefighter to provide the following information:

- Full description of how the accident or injury occurred;
- Nature of injury and body area;
- Major cause of accident;
- Whether injury was sustained in the course of regular job duties or at the direction of the supervisor;
- Treatment received (first aid, doctor, hospital).

The form also provided space for the supervisor to indicate whether the employee had returned to work, and total number of days out on injury. Once complete, the firefighter submitted the form to the Deputy, who then submitted it to the Department's office for the Chief to review and sign. In small print, the bottom of Form 1 states, "Copyright Meditrol Inc. 1986." Prior to around June 2024, Meditrol was the City's claims administrator for claims the City submitted pursuant to M.G.L. c. 41, s. 111F (Section 111F).

There is no dispute that Prior Form 1 did not contain a medical release. Chief Froio testified that employees had not had to submit a medical release with their Form 1 since at least 2015. President Guiel, who has been with the Department for over 20 years, and held Union positions for the majority of those years, testified that, although employees did have to eventually submit such releases in connection with obtaining IOD benefits, such releases were not submitted with the initial injury report and, once submitted, were limited to the injury at issue.

Prior Form 2

If the injured firefighter returned to work immediately without seeing a doctor, he or she was only required to fill out Form 1. If, however, the firefighter saw a physician in connection with the injury, the physician was required complete a Form 2 (titled "Initial/Supplemental Medical Treatment Form"). The employee was required to submit a Form 2 the first time he/she saw their physician. If the employee remained out of work on IOD leave, the employee was required to submit a new Form 2 each time they were subsequently seen by a treating physician. Before June 2024, Form 2 was a one-page document that included the following sections:

- Type of injury;
- Diagnosis;
- Prognosis;
- Checkboxes for whether the injury was a:
 - Direct result of single accident or injury;
 - Cumulative Condition;
 - Chronic Recurring Disease;
 - Toxic/Hazardous Substance;
 - Treatment/Medication.

A separate box in the middle of the page stated in bold, “**The Malden Fire Department Provides Alternate Light Duty Assignments.**” The provider was instructed to “Complete this section relative to current capabilities/limitations.” Under the heading “What can employee do?”, eight activities were listed alongside a column titled “Duration.” The eight activities were walking, standing, sitting, bending, reaching, stooping, climbing and driving. There was additional space for the physician to indicate whether there were any lifting (weight) restrictions, and whether the firefighter could do the following:

- Sitting work only;
- Sit and stand as needed;
- Leave and return for medical appointments,
- As much as splint/bandage permits;
- Avoid overhead reaching;
- Other.

There was a separate and final box for the physician to fill out, “IF EMPLOYEE IS UNABLE TO RETURN TO WORK IMMEDIATELY.” (All caps in original). This section asked only for a “Prognosis for return to full duty and expected date?” and “Next follow-up appointment.” There was then space for the physician’s signature and date.

The very bottom of the form stated “Effective 3/1/17.” President Guiel testified that although Form 2 changed in 2017, the changes were not material.”

Two events of note happened in 2024. First, on April 14, 2024, Arbitrator Beth Wolfson issued an award (Wolfson Award) holding that the City violated the “clear and unambiguous” language of Article XXI, Section C of the CBA when Chief Stephen Froio (Chief Froio) reached out directly to the personal physicians of firefighters on IOD by calling them or sending them questionnaires to obtain more information regarding the firefighter’s injury, treatment, limitations, prognosis, etc.⁴ Arbitrator Wolfson wrote, in pertinent part:

Article XXI, Section 7 is clear and unambiguous. It sets out the parties’ agreed-to procedure for the examination of an employee who is out on IOD.

⁴ According to Arbitrator Wolfson, Chief Froio testified that he “probably sent the questionnaire because the Forms 2 were not clear.” *Wolfson Award*, p. 8.

Subsection B states the employee “shall be entitled to examination and treatment by a physician of their own choice.” It also states the employee “may ... be examined from time-to-time by a City physician at City expense upon direction of the appointing authority.” In addition, it states, “The City shall have the right to require such an examination once an employee out of injury leave has missed three 24-hour tours of duty.” Subsection C makes clear that the purpose of having a City-designated examination “shall be to determine whether or not the firefighter is fit to return to full or light duty, or whether the firefighter remains disabled from any duty. Subsection C also provides that if the City physician determines the firefighter is fit for full or limited duty, before the firefighter may be ordered to return to duty, the firefighter is entitled to first obtain a medical opinion from their treating physician if there is a disagreement between those two physicians. Subsection C sets out the procedure to select and have the employee examined by a jointly-designated physician. Nowhere in Article XXI does it say the employer has the right to contact the employee’s treating physician directly for information or an opinion regarding fitness for full or light duty. Indeed, the Employer has acknowledged that.

The Employer argues, instead, that Subsection C is not relevant because it never ordered [redacted firefighter names] to be examined by an Employer-appointed physician. Rather, because the Employer was relying on the recommendations of their treating physicians and because Article XXI does not prohibit it from directly contacting those physicians, it has the right to do so. I find this argument unpersuasive. This is not an instance of “gap filling.” The procedure set forth in Article XXI, Section 7 is clear, unambiguous and complete. To read into it such an additional step would be to permit the Employer to unilaterally modify the parties’ negotiated agreement.

Arbitrator Wolfson also rejected the City’s past practice arguments. As a remedy, Arbitrator Wolfson ordered the City to cease and desist from communicating directly with firefighters’ treating physicians without first obtaining permission.

Several months later, the City implemented a new Form 1 and Form 2 (Revised Forms 1 and 2) without giving the Union prior notice or an opportunity to bargain. According to Chief Froio, it did so as a result of the City switching Section 111F insurance administrators from Meditrol to Guardian Claims Services (Guardian). The record contains no evidence of any discussions or communications between Guardian and the City regarding these forms.⁵

⁵ The Union contests any suggestion that Guardian mandated that the form be used. I agree that the record contains no evidence regarding any interactions between Guardian and the City regarding the use or content of the form and thus, I cannot find that the Guardian required the City to use them. Nevertheless, as described in the body of the decision, given the similarities in language and design between the old and new forms, including language specifically referencing the Malden Fire Department, boldface sentences in both Form 2’s indicating that the Department

Revised Form 1

The City began using Revised Form 1, now titled "Injured-on-Duty Incident Report Form," around June 2024. Revised Form 1 is five-pages long. At the top of page 1 are both the Department's and Guardian's logo, name, address, and phone number. The bottom of the first page indicates that the form was last updated on 7/10/24, The bottom also has a copyright symbol followed by the name "Guardian Claims Services, Inc."

Page 1 of the form seeks the same basic identifying information as Revised Form 1, e.g., injury details, including date, time, and physical address or location of injury. It also seeks information regarding specific body parts injured, the nature of the injury (e.g., sprain, burn, laceration, etc.), and the cause of the injury (e.g., fall, slip, trip, etc.). In addition to providing space for the employee to describe in their own words the nature, cause and location of their injury,, it required the employee to use a specific code. The numerous codes for body parts injured, nature, and cause for injury were listed on page 4 of the form.

Page 2 of Revised Form 1 seeks further injury details, including several lines for the firefighter to describe the details of the incident, the pain they were experiencing, and its exact location on the body. This page also contains a drawing of the front and back of a body, with instructions for the firefighter to circle or draw an arrow where the pain/ injury is located.

The top of Page 3 asks for information regarding any witnesses to the accident. After this section is the following statement:

I hereby certify the foregoing statements made by me on this form to be true to the best of my knowledge. I am aware that if any of the foregoing statements on this form made by me are willfully false, I may be subject to penalties, which may include criminal prosecution and/or disciplinary action up to and including termination.

Beneath the statement were signature lines for the employee, supervisor and Chief. In much smaller print at the bottom of Page 3 is a related statement:

Any person who knowingly and with intent to defraud any insurance company, employer, or other person and who files an application for benefits or statement of claim contain any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subject such person to criminal and civil penalties.

offered light duty assignments, I find that the forms were not merely generic Guardian forms, and find it likely that the City and/or the Department worked with Guardian on developing them.

Page 5 is comprised entirely of a “Medical Release Form” directed to: “Guardian Claims Services Inc. and the Malden Fire Department and any other physicians, hospitals, clinic or medical care provider, presently unknown to me, who may have or subsequently acquire information concerning my physical information.” The release authorizes those entities to give Guardian, the City, and the Department:

[A]ll information, facts and particulars, including reports, records, results from diagnostic tests, x-rays and statements of charges which may be requested regarding my medical condition, diagnosis, treatment rendered, prognosis, estimates of disability or recommendations for further treatment and to furnish them copies of such reports. You are further authorized to allow any physician appointed by them to review all such reports, records and ex-rays in your possession.

This information is to be used for purposes of evaluating my workers' compensation or Injured-on-Duty injury, and for no other purpose, now or in the future.

Revised Form 2

Revised Form 2 is dated July 16, 2024.. It contains many of the same questions as the old Form 2, including diagnosis, prognosis, the source of the injury, and requires the physician to check off nearly identical lists regarding current activity and lifting capacity. In the “Return to Work” section of the form, it contains similar language regarding light duty, advising physicians that, **“Malden Fire Department offers light duty assignments that allow patients to sit, stand and walk as needed.”** Directly beneath that statement were two headings: “Return ability” and “Return Timing.” Under “Return Ability,” were four checkboxes:

- Employee may resume work with modified assignment and with restrictions
- Employee may resume regular work without restrictions
- Employee is completely unable to work
- Employee must follow up prior to work

Under “Return Timing,” the physician had the choice of checking “Immediately” or filling in another date.

Firefighters began using the new forms immediately. City Exhibit 1 consists of approximately 35 completed new Form 2s with exam dates ranging from August of 2024 to April of 2026. Two of the forms pertaining to the same firefighter (JD) and the injury he suffered on October 3, 2025, were completed by JD's physician on October 6 and October 14, 2025.⁶

Grievances and Discussions concerning Forms 1 and 2

⁶ Many of the forms in City Exhibit 1 were follow-up reports reflecting a firefighter's subsequent visit to his treating physician.

The Union first learned about the new forms when it came to their attention that Form 1 now contained a medical release form.⁷ On June 27, 2024, President Guiel submitted a grievance pertaining to the Revised Forms 1 and 2 to Chief Froio but asked him to hold it pending further discussion. This grievance alleged a violation of Articles XXI and XVI and stated:

This is a change to the form and what information requested and it also asked for the release of your medical records, which is a clear violation of the [Wolfson] arbitration award.

The grievance stated that Union sought “to have these items negotiated, otherwise litigation shall ensue.” The Union did not process this grievance to arbitration.⁸

The record contains no further contact between the parties regarding the forms until October 25, 2024, when Chief Froio sent an email to a firefighter (JP) to recap a meeting in which they “had disagreed” over whether a Form 2 that JP’s physician had filled out meant that JP could work light duty.⁹ After further discussion of the meeting, Chief Froio closed by stating that he was again offering JP light duty and if JP refused, JP would be placed on personal sick leave. On October 27, President Guiel sent an email to Chief Froio advising him, among other things, that ordering JP “to work light duty or use paid leave is in violation of our contract” and that the Union “will not hesitate to enforce it.”

Sometime in November 2024, the parties met at City Hall to discuss the new forms. President Guiel, Union Vice President Turrell and Union counsel were present for the Union. Chief Froio, the City Solicitor and the City Controller were present on behalf of the City. The Union told the City that they had concerns over Form 1, in particular, the medical release, and Form 2, which they stated was confusing for the physician to fill out. The Union made some suggestions for modifying the forms, including not requiring the physician to fill out the “Return Capacity” portion of Form 2 if the physician was not releasing the firefighter to return to work, and to clarify that the records released pursuant

⁷ The record does not reflect the source of this information.

⁸ The City objected to the admission of the grievance on grounds that the copy offered into evidence was unsigned and there are no records that it was ever submitted. However, President Guiel credibly testified about the grievance and stated that he signed it, but that he failed to take a copy of the unsigned grievance, even though that it is his usual practice. Chief Froio was not asked about this grievance and did not refute that he had received it. Moreover, the grievance appears on a form titled “Official Grievance Form,” which, except for the substance and lack of signature, is identical to the “Official Grievance Form” that the Union undisputably submitted on October 22, 2025. For these reasons, I find that the Union did submit a grievance to Chief Froio protesting the new Forms 1 and 2 on June 27, 2024.

⁹ The Form 2 completed by FP’s physician on October 15, 2024 was included in City Exhibit 1. The physician had checked the two bottom boxes in the “Return to Work Section,” i.e., “Employee is completely unable to work,” and “Employee must follow up prior to returning to work.” Under Current Capacity, he had indicated some limitations on walking, standing, running, and climbing, but no restrictions on sitting, bending, reaching, etc. The physician did not check the box indicating that JP could return to light or modified duty.

to the medical release would pertain only to the injury. Chief Guiel testified that the City said they would get back to the Union. The City never responded to these requests and Revised Forms 1 and 2 remained in effect, and unchanged, after this meeting.

According to President Guiel, firefighters continued to complain to him about the new forms.¹⁰ As a result, on October 25, 2025, he filed the following grievance:

Nature of Grievance: On Duty [sic] Injury Form 1, Form 2 and the Medical Release,

The revised form request additional information and access to medical records, which violates Injury Leave Article XXI, Section 7 Paragraph A and Savings Clauses XVI Section 2 articles. By applying new criteria, the denial excluded individuals eligible for IOD and deprived members of benefits protected by the Savings Clauses.

Contract Provision(s) and Section(s) Violated if Applicable

Past Practice violation, Saving Clauses Article XVI, Section 2, Injury Leave Article XXI, Section 7, Paragraph A.

Remedy Requested – The release of the New Form 1, Form 2, and associated documents ought to be suspended without delay. As negotiations for a forthcoming contract are anticipated, these matters may be appropriately addressed at that time. The City is advised to maintain use of the existing forms until such agreement is formally concluded.

The grievance was signed by President Guiel (under both the Union's and Grievant's signature lines) and Chief Froio.

Chief Froio denied the grievance in an email that he sent to President Guiel on October 28, 2025 for two reasons, timeliness, and that the criteria used on the forms had not changed. As to timeliness, Chief Froio stated that they have been using the forms since June 2024 and prior to "onboarding Guardian," they were using similar forms. He denied that there was any new criteria being used and "no members have been excluded from any eligible IOD benefits." He further stated that the Department has always required access to all medical records surrounding on duty injury claims. The Union subsequently submitted the grievance to arbitration.¹¹

Processing of the Revised Forms

Chief Froio has spent a total of 25 years working in the City in fire safety. He has served as Chief for the past three years. He previously served as a firefighter, a

¹⁰ The records contains no details regarding these additional complaints.

¹¹ The record does not reflect whether the grievance was ever processed at Step 2 (Fire Commissioner).

lieutenant, a Captain and a Deputy. He was Chief for just one year before implementing Revised Forms 1 and 2.

Chief Froio testified at length on both direct and cross-examination as to how he used Revised Forms 1 and 2 to determine whether a firefighter should remain on IOD or return to work in a light duty assignment. With respect to Revised Form 1, Chief Froio testified that he would not grant a request for IOD unless the firefighter executed the medical release as written. Since Revised Form 1 went into effect, Chief Froio has denied IOD benefits to one firefighter who wanted to release those medical records pertaining only to his injury.

With respect to Revised Form 2, Chief Froio testified that there have been cases where if a physician has not checked the box stating that an employee is completely unable to work and but otherwise indicated that the firefighter could sit, stand, walk, etc., he would, on a case-by-case basis, offer them light duty. If the firefighter refused to perform such duty, Chief Froio would not grant IOD leave, but would require the firefighter to use his own sick time while he remained out of work. Chief Froio testified, without providing specifics, that this was his practice under Prior Form 2 as well. Similarly, the Chief testified that even if the first box on Form 2 (Employee may resume work with modified assignment and with restrictions) was not checked, he has also offered that employee light duty and required them to take sick leave if they refused, without first requiring them to go to a City physician. He further testified that it is only when the physician checks the box "employee is completely unable to return to work," that he would send the employee to a City physician to determine the employee's ability to work a light duty assignment.

Parties' Arguments

Procedural Arbitrability -Timeliness

City

The grievance is procedurally inarbitrable because it is "fatally untimely." Article XIV, Section 3 of the CBA requires the Union to "present the grievance, in writing, to the Chief of the Department within thirty (30) days." The forms were implemented in June 2024, and the City has required bargaining unit members to complete these forms "dozens, if not hundreds," of times since then. The Union admits that it knew the forms were implemented as of June 27, 2024, so the time for the Union to file the grievance was sometime in July 2024, not more than a year later.

Any defense that the forms constitute a continuing violation must fail. First, the crux of the grievance is the creation of New Form 2, which occurred a single time in June 2024. The repeated uses of the form do not create new causes of action. Further, the Union waived its right to challenge these forms by remaining silent after they were implemented.

The grievance procedure is clear – grievances must be filed within 30 days. If the Arbitrator were to ignore this deadline, she would be modifying the CBA, which is expressly prohibited under Article XIV of the CBA.

Union

The delay in the Union processing the grievance is not a viable defense. The City did not object to the grievance at arbitration on procedural grounds. And even if it had, such a claim should be rejected because it is well established that grievances alleging continuing violations are timely without regard to when the initial breach occurred, so long as there is a subsequent breach in the same matter that gives rise to a new grievance. State of Delaware, Department of Corrections, 11 LAIS 2144 (Lang, 1983). Redacted Arb, 2017 WL 44483880 *1 (Shrage, 2017)(It is well established that “certain contract violation are not finite but occur again and again, and may be challenged each time they arise, regardless of when they first arose and the time restrictions in the grievance procedure.” Bornstein, Gosline, and Greenbaum, *Labor and Employment Arbitration*, s. 8.03.) The City’s continuing violation of plain and unambiguous contract language entitled the Union to file this grievance at any time, especially as it is not seeking any relief prior to the grievance period.

Merits

Union

The City violated the Article XXI, Section 7 and Article XVI of CBA by changing IOD forms by adding new criteria that is determinative of whether injured firefighters are eligible for IOD or may be forced to work light duty or be placed on other leave.

1. Article XXI, Section 7 - The City’s revised form violates Article XXI, Section 7, as construed by Arbitrator Wolfson, by requiring disclosure of additional information to determine fitness and limiting IOD to when treating physicians specifically determine that an injured firefighter is completely unable to return to work.

Arbitrator Wolfson’s decision held that Article XXXI, Section 7 is the exclusive way of determining the fitness and eligibility of injured firefighters for light duty. As interpreted by Arbitrator Wolfson, Article XXI, Section 7 does not permit the unilateral removal of an injured firefighter from IOD unless specifically authorized by the firefighter’s physician or the City exhausts the detailed multi-step burden shifting process set forth in Section 7. Instead, the CBA requires that the firefighter be examined by the City physician.

The forms in effect when the Wolfson award issued differed materially from the Revised Forms because they request additional information. Until June 2024, Form 1 did not require firefighters to execute a release of medical records to the City, provide visual rendering of their injury, enumerate body parts injured, or affirm their injury under threat of prosecution and discipline. Until June 2024, Form 2 did not require physicians to determine whether injured firefighters were

incapable of performing light duty or “completely unable to work,” but only whether they were capable of returning to work immediately. As such, the Chief could not, based on Form 2, remove an injured firefighter from IOD and force them to choose between light duty or sick leave, unless their personal physician specifically authorized light duty.

The revised forms compel disclosure of the type of information prohibited Chief Froio from seeking. Based on the requirements of this new information, and consistent with the Wolfson award, the new forms violate Article XXI, Section 7 of the CBA.

2. Article XVI -Regardless of whether the changed forms violate Article XXI, Section 7, they violated Article XVI, Section 2, the contract’s “maintenance of standards” provision. This provision incorporates and codifies terms and conditions of employment, particularly mandatory subjects of bargaining, even if not expressly memorialized in the CBA. The Commonwealth Employment Relations Board has held that injured on duty leave and the criteria and procedure for eligibility for injury leave are mandatory subjects of bargaining.

Before the City changed its form, a firefighter could not be denied IOD in the first instance for failing to depict their injury visually or pursuant to a body part code, to attest to their injury under pains and penalties of prosecution and termination, or execute an unconditional authorization to release medical information. Additionally, a firefighter could not be removed from IOD and ordered to choose between sick leave and light duty prior to an examination by a City or neutral physician unless the firefighter’s treating physician specially approved light duty.

The City’s changes were material. They conditioned IOD eligibility on authorizing the release of medical records, attestation as to injury, and graphic details as to injury. They have been used to force firefighters to choose between light duty and or use of other paid leave (e.g., sick, vacation, etc.) prior to being examined by a City-designated physician.

The City cannot, under the guise of an edict by a new insurer, unilaterally make material changes to the forms and the criteria for eligibility for IOD leave and light duty. The Arbitrator should direct the City to restore the old forms or remove material changes.

If the Arbitrator determines that the changes violated Article XXI, Section 7, she need not reach the issue of whether the changes also violated Article XVI.

Remedy - As to Form 1, the City should be directed to remove the medical release, graphic rendering of injury, and attestation under threat of criminal prosecution. As to Form 2, the City should be directed to remove the options for physicians to select about employee eligibility to work, including the option for being completely unable to work. The City should be directed to restore the ability of the physician merely

to affirm that the injured firefighter is unable to return to work immediately. The Arbitrator should further direct the City to make whole any firefighter harmed by the changes within 30 days of the filing of this grievance.

City

The Union has failed to establish any violation of the terms of the CBA. The CBA is completely silent as to how Forms 1 and 2 should be structured, their format, or the information sought therein. The Union's contention that the CBA prohibits the City from providing routine medical updates and medical releases is absurd and unfounded. The Union's allegations violate other parts of the CBA, the Department's past practice, the Department's management rights, and the express requirements of M.G. L. c 41, s. 111F.

Article XVI provides that the Agreement has not been designed to violate any federal, state county or municipal laws, nor shall anything in this Agreement be interpreted as diminishing the rights of the City to determine and prescribe the methods and means by which the operation of the Fire Department shall be conducted, other than as limited by this agreement. Article 7(E) requires employees on injured leave to provide updates regarding their medical treatment, prognosis, and a projected return date. As alluded to in the CBA, under Section 111F, employees must substantiate their IOD status by providing medical documentation and granting their employer authorization to obtain relevant medical information pertaining to the occupational injury.

The contents and general requirements of Revised Forms 1 and 2 have been in effect for decades and the revised forms are not materially different than those previously in effect.

The Union's assertions that employees have been denied IOD status are vague and unsubstantiated. In any event, the Union's remedy does not seek relief for any particular employees – instead, it seeks only to suspend the operation of the forms. Neither the Union nor the Arbitrator have the authority to bar or prohibit the City's use of the revised forms or to require medical releases and updates from employees on IOD status.

Decision

Procedural Arbitrability - Timeliness

In its response to the grievance, at the hearing, and in its post-hearing brief, the Employer argued that the grievance was procedurally inarbitrable because it was untimely.¹² The arbitrability of a grievance is an affirmative defense, which the City has the burden of proving. Here, there is no dispute that the Union was aware of the changes to Forms 1 and 2 as of June 27, 2024, around the time that they were first implemented.

¹² Thus, the Union's assertion in its post-hearing brief that the Employer did not challenge procedural arbitrability is incorrect.

On that date, it protested those changes by submitting a grievance to Chief Froio, which it asked the Chief to hold pending further discussion.

There were two subsequent discussions – one in October 2024, which pertained to Firefighter JP, and which involved a dispute over the meaning of the Form 2 that JP's physician had completed, and another in November 2024, where representatives of both parties met at City Hall to discuss the forms and the Union made some proposals to change them. The City did not get back to the Union after that meeting. This sequence of events belies the City's contention that the Union waived its right to challenge these forms after they were implemented by remaining silent after they were implemented.

In the meantime, from June 2024 and continuing into 2026, including in October 2025, the City processed what it describes as "dozens, if not hundreds" of Revised Forms 1 and 2. The record shows that the Chief relied on information contained in these forms to determine whether or not to offer light duty to firefighters, and to require them to use their own sick time in the event they refused. After not hearing from the City for many months, and after firefighters continued to complain about the new forms, the Union filed a second grievance on October 22, 2025. Accordingly, the grievance in this matter does not rest on the one-time promulgation of the Revised Forms. Rather, it rests on the City's continued processing of forms containing language that arguably violates the CBA.

Based on these facts, and because there is evidence that the Department processed IOD forms in the 30-day period preceding the filing of the grievance, I find that the violation alleged here is a continuing one, which recurred each time that the Department processed a Revised Form 1 and Form 2. In continuing violation situations, arbitrators permit the filing of grievances at any time during the period of the continuing violation, but award a remedy only as to alleged violations that occurred during the relevant grievance period, here, 30 days prior to the date the grievance was filed, or September 22, 2025.

Merits

Before discussing whether the Revised Forms violated the CBA or established practices in any way, I must first determine whether there are any actual differences between the Prior Forms 1 and 2 and their revised counterparts. If there are not, as the City argues, I must find there has been no change and deny the grievance.

The Union contends that there were three material changes to Form 1: the use of a diagram and injury codes, the attestation of possible criminal prosecution for willfully false statements concerning injury, and the medical records release. There is no dispute and it is readily apparent that Prior Form 1 did not contain a medical release or an acknowledgement of possible criminal prosecution for making willfully false statements. As such, I find that both modifications to be changes that merit further discussion.

I reach a different conclusion as to the use of a diagram and injury codes. Prior Form 1 provided space for the injured employee to describe the "Nature of Injury and

Body Area” and “Major Cause of Accident.” Revised Form 1 seeks the same information but requires the employee to supplement their narrative with diagrams and codes. Because this does not change the scope of the information requested, only the manner in which it is reported, I do not find the codes or diagrams to be actual changes warranting further analysis.

Regarding Form 2, the Union contends that Form 2 was materially changed by requiring physicians to select three options regarding the employee’s ability to return to work and by limiting the physician’s ability to recommend that the employee remain on leave only if they certify that the injured firefighter is “completely unable to work.” I agree that Prior Form 1 contains no questions regarding the employee’s ability to work a light duty assignment or limited the physician’s ability to recommend that the employee not return to working any way. Instead, it more generally asked the physician to indicate what activities the employee was currently capable of performing, and whether the employee was unable to return to work immediately. I therefore find the changes to Form 2 material and address whether they violate the CBA in the next section.

Article XXI, Section 7

I turn first to the issue of whether the changes to Revised Form 2 violated Article XXI, Section 7 of the CBA. I find that they did. Arbitrator Wolfson’s award makes clear that Article XXI, Section 7 (C) of the CBA provides the exclusive procedure for determining the fitness of injured firefighters for full or light duty, and that procedure did not include the employer contacting the firefighter’s physician to obtain this information. Here, instead of seeking this information from the firefighter’s physician via questionnaire, the City promulgated new forms that sought the very same information, and to the same end – to make determination regarding the firefighter’s ability to perform light duty, before a City physician has examined the employee.¹³ Accordingly, for the same reasons stated in the Wolfson Award, I find that the revisions to Form 2 contained in the “Return Ability Section,” i.e. the four checkboxes indicating whether the employee may resume work with modified assignment and with restrictions; the employee may resume regular work with restrictions, the employee is completely unable to work, or the employee must follow up prior to returning to work, violate Article XXI, Section 7 of the CBA.

The City’s arguments do not persuade me otherwise. First, as set forth above, I have found there to be material differences between Prior Form 2 and Revised Form 2.

Second, the City argues that the information requested in Revised Form 2 is consistent with that required by Section 7(E), and that the Union’s claims that the CBA prohibits the new information sought in Revised Form 2 are “absurd” and “unfounded.” It is true that, as a condition of continuing IOD benefits, Section 7(E) requires employees to

¹³ Moreover, unlike the questionnaire at issue in the Wolfson award, which requested the information directly from the employee’s physician, Revised Form 2 effectively made the provision of this information from employee’s physicians a condition of receiving IOD benefits at the initial stage of the process. This is a new criteria for receipt of IOD benefits.

report to the Fire Chief every two weeks, and to provide an update regarding their medical treatment, their prognosis, and if known, a projected date to return to duty. However, with the exception of updates regarding medical treatment, which neither Prior Form 1 nor Revised Form 2 require, Prior Form 2 is consistent with Section 7(E) to the extent it required the treating physician to provide a prognosis and projected date of return.¹⁴ The Union has not objected to the requirements of Section 7(E) or Prior Form 1. Instead, it objects to additional information that Revised Form 2 seeks, which is not contained in Section 7(E), specifically the four options contained at the bottom of that form. Section 7(E) therefore provides no justification for the changes to Revised Form 2.

Finally, the City points to no specific provision in Section 111F, as incorporated into the CBA, that authorizes the City to seek information from the employee's physician to enable it to unilaterally determine whether an employee must return to work or forfeit IOD payments without having the employee examined by a City physician. While I agree generally that employees should be required to substantiate their IOD status by providing appropriate medical documentation, the parties have negotiated a specific procedure that sets forth the order and means by which they must do so. It is the City's departure from this procedure that forms the basis of the violation of Article XXI, Section 7 found here.¹⁵

Medical Release and Attestation

The Union argues that Revised Form 1 violated Article XXI, Section 7 by newly conditioning IOD leave on the employee providing a full and unconditional medical release and by requiring the employee to acknowledge that making willfully false statements on that form could result in criminal prosecution or disciplinary action. However, on its face, and as discussed herein, Article XXI, Section 7 describes the process for determining whether an employee can remain on IOD leave or whether they are physically fit for full or light duty. It does not address the initial injury report that an employee must fill out in any way. I therefore find that requiring employee to execute a medical release with their first injury report and to sign attestation does not violate Article XVI, Section 7. However, because an employee's failure to comply with these new requirements are new criteria that can affect the employee's entitlement to IOD benefits in the first instance, without regard to whether they are otherwise entitled to take such leave, I find these changes to the form are more appropriately analyzed under Article XVI, Section 2, the maintenance of benefits provision.

Article XVI, Section 2

This article of the CBA provides that "All job benefits presently enjoyed by the members which are not specifically provided for or abridged by this contract shall continue under the conditions under which they had been granted." I agree with the Union that Article XVI, Section 2 is a standard "Maintenance of Benefits" or past practice clause,

¹⁴ Neither Prior Form 1 nor Revised Form 2 required the employee's physician to discuss specific medical treatments.

¹⁵ Because I have found that the revisions to Form 2 violated Article XXI, Section 7, I need not reach the issue of whether they also violated Article XVI.

which arbitrators traditionally construe as preserving terms and conditions of employment that are not necessarily codified in a CBA but that would otherwise be subject to mandatory bargaining. I further agree with the Union that eligibility criteria for paid injury on duty leave is a mandatory subject of bargaining. See, e.g., Town of Harwich, 32 MLC 27, 30-31, MUP-01-2960 (additional citations omitted). Material changes to work rules that affect employees' terms and conditions of employment are also mandatory subjects of bargaining. See, e.g., City of Springfield, MUP-12-2466 (2015), 2015 WL 4061666, at *12 (citing Murphy Diesel Co., 184 NLRB 757, 762-64 (1970) *aff'd* 454 F.2d 303 (7th Cir. 1971)).

Based on both Chief Froio's and President Guiel's testimony, I find that there was at least a nine year, mutually known and understood practice of employees not having to submit medical releases when they submitted their initial Form 1. Because the criteria for IOD benefits are a mandatory subject of bargaining, I find that the City violated Article XVI, Section 2, when in June 2024, it required employees to execute an unaltered medical release forms as a condition of being granted IOD leave..

Regarding the attestation, there is no dispute that Prior Form 1 did not require employees to acknowledge that making willfully false statements on that form could subject them to discipline, much less criminal prosecution. Although it is likely that employees knew, either as a matter of Department policy, or general knowledge and common sense, that lying on Department forms could result discipline up to and including termination, there is no evidence that prior to June 2024, they were aware that making willfully false statements on IOD forms could also result in criminal prosecution. Because this is a new and severe disciplinary standard that could result in an employee being denied IOD benefits if they refuse to sign it, I find that by including this attestation, the Employer imposed a new eligibility criteria for paid IOD leave in violation of Article XVI, Section 2.

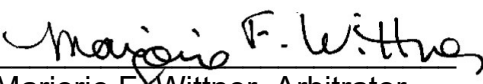
AWARD AND REMEDY

The Employer DID NOT violate Article XXI, Section 7 when it revised Form 1 by adding injury diagrams and codes, a Medical Release, or an acknowledgement of criminal prosecution for making willfully false statements.

The Employer DID violate Article XXI, Section 7 when it unilaterally revised Form 2 to include the four checkboxes that appear in the section "Return Ability." The Employer is directed to rescind these changes and to rely upon the procedures set forth in Article XXI, Section 7 for obtaining information regarding a firefighter's injury or accident and for making determinations as to whether or not a firefighter is fit for full or light duty or whether the firefighter remains disabled from any duty.

The Employer violated Article XVI, Section 2 when it unilaterally revised Form 1 to include a release of medical records and an acknowledgement of criminal prosecution for making willfully false statements on that form. The Employer is directed to rescind those changes.

I finally direct the City to make whole any firefighter harmed by these changes since September 22, 2025.


Marjorie F. Wittner, Arbitrator
August 12, 2026