AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration between:	*	
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 902	*	Case No. 01-25-0004-5434
and	*	
CITY OF MALDEN	*	

BEFORE: Mary Jeanne Tufano, Arbitrator

APPEARANCES:

For IAFF, LOCAL 902: Patrick N. Bryant, Esq.

For CITY OF MALDEN: John J. Clifford, Esq.

DECISION AND AWARD

INTRODUCTION

The undersigned was appointed pursuant to the procedures of the American Arbitration Association and the agreement of the parties to hear an arbitration arising out of a grievance filed by the International Association of Firefighters (IAFF), Local 902 (Union) against the City of Malden (City or Employer). The Union and the Employer are parties to a collective bargaining agreement that provides for final and binding arbitration of certain grievances. A hearing was held on June 9, 2026 in Malden, Massachusetts, at which time both parties and their representatives were present. Briefs were submitted by the parties, and the hearing was declared closed thereafter.

ISSUE

Did the City violate Articles XVI and XXI, Sections 3 and 7, of the collective bargaining agreement when it denied Firefighter [redacted] injured on duty leave benefits on July 29, 2025?

If so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

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 as 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 provisions shall remain in full force and effect.

Section 4. This Agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by the transfer or assignment or either party hereto.

ARTICLE XXI

Sick Leave

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Section 3. Sick leave shall accrue at the rate of 15 days per year.

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Section 7.

A. Injury Leave/Limited Duty: 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 city 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 to return to 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 [redacted] 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, who, at the city's expense, shall examine the employee and render a written 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 twenty-one (21) days after they exchange 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 twenty-one (21) day period, whichever comes first, the physician shall be jointly selected from a list of physicians established or suggested 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 his/[redacted] 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 paid injury leave if such employee refuses to return to the duty approved by such independent physician. The opinion of third physician shall be final and binding on the parties as to the issue of disability. His/[redacted] determination shall not be subject to the grievance/arbitrations provisions of this agreement. No injury leave benefits shall be granted for any period after an employee has retired or been pensioned in accordance with law of for any period after

a physician jointly designated as set forth above determines that the incapacity no longer exists. The City shall furnish a job description of any proposed light duty assignment to the examining physicians.

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FINDINGS OF FACT[1]

The grievant, [redacted] has been a firefighter (FF) with the Malden Fire Department since in or about October 2018. FF [redacted] has been certified as an EMT for approximately ten years and worked for Cataldo Ambulance for a year prior to joining the Malden Fire Department. FF [redacted] is currently assigned to [redacted] shifts, from 7:00 AM to 7:00 AM, with a schedule of 24 hours on, 24 hours off, 24 hours on, then 5 days off.

FF [redacted] had spinal fusion surgery when [redacted] for a scoliosis correction, which was resolved by the surgery. Prior to the Fall of 2025, FF [redacted] did not have any other back surgery. FF [redacted] had a medical examination before joining the Malden Fire Department, with no concerns regarding [redacted] back noted.

During [redacted] shifts, Engine 2 typically responds to medical aid calls along with the police and EMTs, including car accidents, alarm activations and box alarms. The number of calls per shift can be anywhere from four to twelve calls, depending on the day. FF [redacted] gear can weigh as much as seventy pounds, including such things as bunker gear, a helmet and a set of irons. The Fire Department is generally the first on the scene for a medical call and assesses the patient and determines how to help. When the ambulance arrives, the firefighters assist in getting the patient on the stretcher and into the ambulance. If the patient is on the second or third floor of a home, a stair chair is used to carry them down the stairs, which requires two people, one at the top and one at the bottom.

[1] Findings of fact are based on the testimony of witnesses and documentary evidence, with any discrepancies

On May 4, 2024, FF [redacted] sustained an injury, muscle strain to [redacted] lower back, during a medical call. Engine 2 responded to the call and found a patient sitting on the floor, uninjured. FF [redacted] got behind the patient, put [redacted] arms under the patient's arms and lifted [redacted] from the ground. FF [redacted] reported the injury to [redacted] supervisor, Lt. Shankel, the following morning when the injury started to present itself and was instructed to complete a Form 1 injury report, which FF [redacted] did. FF [redacted] self-treated the strain with rest, heat and ibuprofen, and it ultimately resolved itself. FF had experienced lower back pain related to work on other occasions, but had similarly self-treated with stretching, heat and ibuprofen.

Sometime in late 2024, Chief Stephen Froio had a conversation with FF [redacted] and others about the amount of sick leave they were using. The Chief advised FF [redacted] that he would be monitoring [redacted] sick leave thereafter.

On January [redacted], FF [redacted] as part of Engine 2, responded to an alarm for medical aid at approximately 2:00 AM. At the time of the call, FF [redacted] had been sleeping. It took approximately three to four minutes to get to the residence. The firefighters found a morbidly obese woman in a tiny bedroom on the second floor of a "hoarding-type" apartment, with the bed packed with items on all sides. The woman was in cardiac arrest and had to be moved from the bed onto the floor. Once FF [redacted] and the lieutenant realized the woman did not have a pulse, they both tried to grab [redacted] body and move [redacted] to the floor. FF [redacted] had to stand over the woman to start compressions until the bed was moved out of the way so [redacted] could kneel beside [redacted] FF [redacted] continued CPR until the medics arrived and put in an IV and drugs and ultimately called medical control to receive orders to terminate resuscitation efforts when it was clear that the woman could not be brought back. The firefighters cleaned up all their supplies, restocked

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noted.

everything they used and returned to the station.

At the time, FF [redacted] noticed something in [redacted] lower back, although [redacted] adrenalin was still pumping from the cardiac arrest situation, and [redacted] took Motrin and laid down and then got off shift. FF [redacted] filed an injury report form, which included a medical records release, on or about January 16, 2025, when [redacted] continued to experience lower back pain, although [redacted] checked off on the form that [redacted] did not plan to seek medical attention. FF [redacted] again self-treated with heating pads, ibuprofen and stretching. FF [redacted] found [redacted] lower back pain tolerable with [redacted] five days off schedule, as well as resting and stretching and did not report [redacted] lower back pain during [redacted] annual physical on March 25, 2025. Medical notes from the March 2025 visit included: "Back/spine: symmetric, nontender, normal ROM, no spinous process tenderness, no CVA tenderness."

After approximately sixteen weeks, FF [redacted] usual methods of self-treatment were not working, the pain was not going away, and it was interfering with [redacted] work and life. FF [redacted] called [redacted] primary care doctor at Elliot Family Medicine at Bedford to obtain a referral to a neurospine doctor and stated that [redacted] was experiencing lower back pain and felt a clicking, with increased symptoms in the previous month. The telephone encounter recorded in FF [redacted] medical records for May 13, 2025 stated:

> Pt explained that when [redacted] n in high school, [redacted] has scoliosis and needed to has [redacted] spine fused with a rod. [redacted] state it was [redacted] lower spine, and [redacted] is not sure where exactly. Post [redacted] needed to have a moderated amount of PT.
> Pt noted that [redacted] has a very physical job. [redacted] has been having pain and hearing a clicking a clicking in [redacted] lower back for the last 3-4 weeks. [redacted] has to lift a lot with [redacted] job, and it has cause a moderate amount of spasms. [redacted] states that it hurts to sit, just about [redacted] buttock. Pain is up to a 5/10. With 600 mg of Motrin it is down to 2-3/10. Occasionally there is pain in the left hip. [redacted] denies pain down either leg. No report of numbness or tenderness. No fevers. NO incontinence of bowel or bladder. Pt is very concerned esp with the clicking sound [redacted] is hearing. OV requested.

After an office visit the same day, FF [redacted] primary care doctor ordered x-rays and lab work

and made a referral to the [redacted] for further evaluation. Medical notes of the visit included:

> [redacted] presents today c/o low back pain. Onset increased symptoms about 1 month ago. Pain is in the lower back region, just above the buttock. [redacted] hears and feels a clicking sound in [redacted] back in addition to pain. Pain radiates into the hips L>R. No weakness/numbness down legs. No pain down down legs. No abdominal pain, NV or urinary symptoms.
>
> [redacted] has a physically demanding job as a firefighter. Denies any other known back injury.

Medical notes following the visit included:

> [redacted] presents today c/o L low back pain and bilat hip pain L/R h/o scoliosis surgery with rod in back, requesting follow up with spine center d/t ongoing pain, clicking sensation in back with the following finding on last xray done in 2022: "The tip of the T11 screw is absent, unchanged dating back to 2005."
> Will obtain xray LS and bilat hip
> Referral to NH neurospine institute for further evaluation of low back pain s/p scoliosis surgery.
> Recommend ice/heat use. NSAID use pm pain.

FF [redacted] low back x-ray showed that the spine hardware was in place, but the distal end of the T11 screw was missing/not visualized, and the hip x-rays showed some inflammatory changes. Lab work ordered returned with normal results.

FF [redacted] saw a neurosurgeon, Dr. Adrian Thomas, beginning in June 2025. FF [redacted] reported to Dr. Thomas that [redacted] was a firefighter and did a lot of lifting.

Dr. Thomas requested another set of x-rays, which revealed nothing obvious, and recommended physical therapy. FF [redacted] continued to work throughout this time, going on medical calls and doing lifting and using 70+ pounds of equipment, and continued self-treatment with stretching, resting, heating pad and ibuprofen. FF [redacted] was able to go home after shifts and rest and not do anything physical and could recuperate after five days off. FF [redacted] did not have any outside employment and no activity in [redacted] personal life that involved heavy lifting.

Notes from FF [redacted] first physical therapy visit on June 26, 2025 included:

> Subjective hx: [redacted] presents to therapy today with referral for lumbar DDD. [redacted] has a significant hx for T11-L2 anterior thoracic fusion due to scoliosis. [redacted] is now experiencing left LBP with increased symptoms since April 2025. [redacted] reports lifting at work have felt some low back discomfort in the past but usually it goes away on its own. In April [redacted] low back discomfort was more constant and less muscular.
> Went to see Dr. Thomas—
> Xrays of lumbar spine show stable fusion and slight retrolisthesis at L4-5 and L5-S1. [redacted] reports pain has increased and was prescribed meloxicam without any improvement. Was given a prednisone taper which did help calm things down. Reports pain is actually now on the right side.

Notes from FF [redacted] second physical therapy session on July 2, 2025 included FF [redacted] report that [redacted] pain score was 7: 'I have had a good couple of days but just got out of work and last was miserable. Pain down right leg and tingling down right leg." FF [redacted] reported a pain score of 7 and increasing at [redacted] third PT session on July 8, 2025, at which time [redacted] physical therapy was put on hold. That day, on July 8, 2025, Dr. Thomas ordered an MRI and advised FF [redacted] to cease working, which [redacted] did.

FF [redacted] had an MRI on or about July 24, 2025. The MRI results indicated a 12 x 15 millimeter herniation in [redacted] lower back impinging on a nerve. Dr. Thomas saw FF [redacted] on or about July 28, 2025 and recommended a steroidal injection, which FF [redacted] had in August and which provided some relief for twenty-four hours, followed by intolerable pain. Dr. Thomas thereafter recommended a discectomy or right L5-S1 disc excision, which took place on October 3, 2025. FF [redacted] was cleared to return to work on or about October 20, 2025 for light duty and dispatch, after which Dr. Thomas cleared [redacted] for full duty on or about November 17, 2025.

FF [redacted] had with [redacted] at [redacted] visit with Dr. Thomas a Form 2, the form for a doctor to complete after an employee files an injury report, but [redacted] had been unable to get clarification from the Chief's office whether [redacted] should use the form, so [redacted] put [redacted] visit through health insurance. After Dr. Thomas advised FF [redacted] to remain out of work, FF [redacted] had a conversation

with Assistant Chief Dunn and told him that [redacted] was going to be out on injured on duty (IOD) leave. FF [redacted] understood that Assistant Chief Dunn reached out to Chief Froio, who said that [redacted] could not use IOD leave. FF [redacted] called in sick to the on-duty deputy, Deputy Buchanan, on July 10, 2025, and told him that [redacted] could not come in due to a back injury and explained that the Chief said it could not be IOD leave. Deputy Buchanan marked FF [redacted] out on sick leave.

FF [redacted] had a conversation with Chief Froio on or about July 29, 2025, in which the Chief told [redacted] that it had been too long since [redacted] had filled out the incident report in January 2025. FF [redacted] did not submit any medical records at that time, nor did the Chief request any. FF [redacted] was not sent for a fitness for duty examination or to a Town doctor to determine whether [redacted] injury was work related. The Chief denied the IOD leave, because he determined that there was no proof that it was an injury while on duty, where there was no Form 1 for the July 10, 2025 call in. The Chief understood that there was a Form 1 in January 2025 but disagreed that it was related.

FF [redacted] was out of work beginning July 10, 2025. [redacted] sick leave was exhausted as of September 5, 2025. From September 5, 2025 until [redacted] returned to work in late October 2025, FF [redacted] shifts were covered by other employees working [redacted] shifts, or "swaps", such that FF [redacted] owed shifts to the employees who had worked [redacted] shifts.

The Union filed a grievance on August 14, 2025, due to the Chief's denial of FF [redacted] injury leave. The City denied the grievance, leading to the instant arbitration.

Dr. Thomas provided the following letter, dated February 22, 2026, in support of FF [redacted] IOD leave request:

> This is Dr. Adrian Thomas dictating a narrative for patient Sarah [redacted] date of birth October 27, 1986. I am a board-certified orthopedic spine surgeon with 15 years of experience.

Ms. [redacted] was referred to me as a result of a back injury that happened on January 15, 2025. I initially saw [redacted] in June 2025. I have received [redacted] relevant medical records from when I initially saw [redacted] in June 2025 until I made [redacted] an as needed follow-up in January 2026.

Ms. [redacted] submitted an injury report that stated that [redacted] initially started having lower back pain and tightness in January 15, 2025 after lifting a 300 pound patient. [redacted] initially addressed the back pain with over-the-counter medications and heat and rest and continued to work after the injury. When the pain persisted [redacted] saw [redacted] primary care doctor in May 2025. [redacted] was referred to New Hampshire NeuroSpine Institute in June 2025 and saw me. I gave [redacted] a referral to physical therapy which [redacted] performed diligently but was unsuccessful. MRI of the lumbar spine was done in July 2025 which showed a large right L5-S1 disc extrusion impinging the right S1 nerve root. [redacted] had a right S1 transforaminal epidural steroid injection in August 2025 that gave the patient 100% relief of the pain for 1 day then then pain came back to preinjection levels. I saw [redacted] September 10, 2025 and scheduled [redacted] for surgery which would be a right L5-S1 disc excision. [redacted] underwent a right L5-S1 disc excision at the Minimally Invasive Surgery Center of New England on October 3, 2025 without complication. 2 weeks after surgery patient was doing well. [redacted] was given a referral to start outpatient physical therapy at that time. [redacted] was seen 6 weeks after surgery on 11/27/2025 and [redacted] was doing well physical therapy. At that time [redacted] was cleared to go back to full duty. I saw [redacted] January 26, 2026 which was 3 months after [redacted] surgery. [redacted] completed physical therapy was doing [redacted] home exercise program. At that time [redacted] was experiencing some mild left sided back pain that would resolve with [redacted] home exercise program. [redacted] was made as needed at that time.

In my opinion, with some reasonable degree of medical certainty, Ms. [redacted] back pain and herniation more likely than not occurred in the performance of [redacted] job and directly due to [redacted] lifting a 300 pound patient. Since [redacted] had not seen any providers for [redacted] back pain or leg pain prior to the injury, [redacted] low back pain was not a pre-existing condition and the herniation could result from such leavy lifting. It is unlikely that someone who was symptom-free prior to the injury has any other explanation for the herniation and pain.

Ms. [redacted] treatment and prognosis are good and the patient has been made add as needed and [redacted] was discharged back to full duty without any restrictions.

If you have any questions please do not hesitate to call.

POSITIONS OF THE PARTIES

UNION

The Union alleges that it provided sufficient evidence that work was a substantial contributing factor to FF [redacted] disc herniation for purposes of Article XXI, Section 7 and G. L.

c.41, Section 111F, which was specifically incorporated into the collective bargaining agreement. The Union points to various case law under Section 111F and the workers' compensation statute, G. L. c.152, which it alleges establishes that gradually developed injuries are compensable as well as those caused by sudden incidents, as long as the asserted injury is a substantial contributing factor in causing the disabling condition.

The Union argues that it has met its burden of establishing by a preponderance of the evidence all the elements of a claim for worker's compensation benefits and points to the evidence in the form of FF [redacted] medical records, testimony and the opinion from Dr. Thomas. The Union alleges that such evidence establishes that FF [redacted] disc herniation of a bone impinging on a nerve root, more likely than not occurred within the performance of [redacted] job. The Union points to the evidence that FF [redacted] lifted a morbidly obese patient on January 15, 2025, felt a sharp pain in [redacted] back, which [redacted] believed at the time was a muscular spasm similar to what [redacted] had experienced in the past rather than a more serious injury, and promptly reported the incident by filing a notice of injury form with [redacted] supervisor and self-treated with heat, pain relievers and stretching. FF [redacted] sought medical attention when [redacted] back pain had not resolved several months later and ultimately learned after an MRI that [redacted] injury that [redacted] thought was muscular or a remnant of [redacted] former surgery, was in fact neurological, caused by the impingement of [redacted] spine on a nerve root. The Union relies on Dr. Thomas's opinion, based on his expertise and medical examination of FF [redacted] that FF [redacted] back pain and herniation more likely than not occurred in the performance of [redacted] job and directly due to [redacted] lifting of a 300 pound patient. The Union further alleges that, regardless of whether the January 2025 injury in and of itself was a substantial contributing factor of FF [redacted] disc herniation, one can infer that FF [redacted] work, which consisted of lifting heavy equipment and obese patients, significantly

contributed to or exacerbated [redacted] herniation.

The Union dismisses the defenses raised by the City, primarily that FF [redacted] request for leave was received several months after the injury and that [redacted] injury necessarily resolved itself once FF [redacted] returned to work, as being unsupported by contract language, department rules, past practice and common sense. The Union points out that Chief Froio simply denied FF [redacted] claim, without requesting or requiring documentation to explain the nexus between [redacted] Form 1 notice of injury filing and absences, and that FF [redacted] continuing to struggle to work despite the back pain [redacted] was experiencing is not dispositive of [redacted] claim under worker's compensation law. The Union distinguishes a 2023 Arbitration Award denying a claim for IOD leave as based on different facts that provides no basis for denying IOD leave to FF [redacted]

The Union disputes the City's assertion that the absence of a specific mention of FF [redacted] January 2025 injury in the medical record of [redacted] annual exam in March 2025 supports that the injury either was not discussed or that the January 2025 incident was not a significant contributor to [redacted] herniation or disability. The Union argues that it carried its burden, through evidence of documented injury reports of lower back pain, a physically laborious job involving heavy lifting, medical records affirming that the work increased [redacted] pain, a physician's statement and FF [redacted] own testimony, to establish that the disc herniation occurred within the performance of FF [redacted] job, which was unrefuted by any credible evidence offered by the City. The Union requests that the grievance be sustained, and that the City be required to make FF [redacted] whole by restoring paid leave used from July to November 2025, reclassification of compensation during this time as IOD on revised W-2 forms, and an appropriate remedy for shift exchanges, such as through compensable leave or overtime payments, with interest.

EMPLOYER

The City alleges that, while it does not deny that FF [redacted] suffered from a back issue and had a legitimate medical issue with [redacted] back, there is no evidence to show that FF [redacted] back injury in July 2025 was related to [redacted] January 16, 2025 injury report or any other injury while on duty. The City points to FF [redacted] medical records, which the City alleges contain no indication that [redacted] back condition was related to the Form 1 injury report on January 16, 2025, and FF [redacted] testimony that [redacted] continued to manage [redacted] back pain with heat, stretching, and ibuprofen for approximately sixteen weeks following the incident and made no complaints of back pain during [redacted] annual physical examination on March 25, 2025. The City further points to the medical records' lack of mention of the January 2025 back injury when FF [redacted] sought treatment beginning in May 2025 nor any mention of a specific injury at work during the physical therapy in June and July 2025. The City alleges that the contemporaneous medical records contain no evidence linking [redacted] May 2025 complaints and ultimate finding of a herniated disc, or [redacted] subsequent July 2025 request for IOD benefits, to the incident reported in January 2025.

The City argues that Chief Froio was correct when denying FF [redacted] request to change [redacted] July 10, 2025 sick leave to IOD status, where FF [redacted] was familiar with the IOD leave process but did not provide Chief Froio any medical records that showed [redacted] July 2025 leave was due to an injury sustained in the performance of duty, as required by the collective bargaining agreement, [redacted] checked off "sickness" rather than "on duty injury" on [redacted] leave request, and [redacted] most recent injury report was filed in January 2025, approximately six months before FF [redacted] first sought IOD leave. The City further argues that, where Dr. Thomas did not provide a letter opining that FF [redacted] back condition was likely related to lifting a patient in January 2025 until February 22, 2026, based on the information available to him in July 2025, Chief Froio had no

basis to conclude that FF [redacted] condition resulted from an injury sustained in the performance of duty.

The City relies on a previous arbitration decision, in which an arbitrator found that the City did not violate the CBA when it denied the grievant IOD status when he did not properly or timely submit documentation causally connecting a December 2020 back surgery to a January 2017 injury. The arbitrator in that case found that there was insufficient evidence to conclude that it was more likely than not that the grievant's surgery was necessitated by the injury and examined certain factors that the City argues point to a similar conclusion in this case, where FF [redacted] did not provide a medical opinion linking [redacted] condition to a work related injury until seven months after the grievance was filed, FF [redacted] did not seek medical treatment after the January 2025 incident, did not mention it during [redacted] March 2025 physical and did not recall speaking to [redacted] physician about the injury. The City further points to the lack of evidence of a nexus in the medical records, the fact that Dr. Thomas was not FF [redacted] initial treating physician, and his treatment notes do not support the opinion in his February 2026 letter. The City requests that the grievance be denied.

DISCUSSION

There is no dispute that the parties have incorporated the requirements of Mass. Gen. Laws Chapter 41, Section 111F into their collective bargaining agreement at Article XXI, Section 7. The City's failure to grant injury leave without loss of pay to an employee incapacitated for duty due to an injury sustained in the performance of their duty would thus constitute a violation of the parties' collective bargaining agreement and is a proper subject for arbitration. The issue in this case centers on whether FF [redacted] injury was sustained in the performance of [redacted] duties, such that the City's failure to grant [redacted] injured on duty (IOD) leave

violated the parties' contract.

As the Union points out, Massachusetts case law under Chapter 41, Section 111F provides the applicable guidance for analyzing the issue here. The Union has the burden of establishing, by a preponderance of the evidence, the requisite causal connection between the injury and the workplace. A disabling injury qualifies under Section 111F even if a condition of work or an incident at work aggravates a preexisting health issue and the disabling injury is not the result of a sudden incident. See Willis v. Board of Selectmen of Easton, 405 Mass. 159 (1989) (Court upheld claim that firefighter injured his back due to performance of his duties when he injured his back while changing a tire on a fire truck, even though he did not seek medical treatment until two months later, he was found to suffer from degenerative disc disease and a Town physician disputed the causal connection, where the back injury aggravated his condition.)

Analyzing the evidence under the Chapter 41, Section 111F framework establishes that there is sufficient evidence in the record to determine that FF [redacted] was injured in the performance of [redacted] duties. There is no dispute that FF [redacted] injured [redacted] back such that [redacted] filed an IOD incident report in both May 2024 and more recently on January 16, 2025, both reporting that [redacted] sustained a muscle strain and/or experienced lower back pain as a result of lifting people in the course of medical aid calls. There is also no dispute that FF [redacted] duties regularly require [redacted] to lift heavy equipment during [redacted] shifts.

FF [redacted] did not miss any work as a result of [redacted] back injury in January 2025, did not seek medical treatment for four months, and did not complain about [redacted] back at [redacted] annual physical examination in March 2025. However, FF [redacted] credibly testified that [redacted] kept [redacted] lower back pain tolerable during this time period by self-treating with stretching, applying heat at work and

at home and taking ibupropen and was helped by having a schedule that included five days off. FF [redacted] began seeking medical assistance when [redacted] could no longer tolerate [redacted] back pain beginning in May 2025 but did not stop working until advised by [redacted] physician to do so in July 2025. Once [redacted] physician advised [redacted] to stop working, FF [redacted] inquired about recording [redacted] leave as IOD leave upon reporting [redacted] absence but was informed through the chain of command and ultimately in a direct conversation with Chief Froio that [redacted] could not take IOD leave but was required to use sick leave, due to the delay between [redacted] January incident report and when [redacted] sought medical attention.

In [redacted] physician encounters beginning in May 2025, FF [redacted] regularly reported, and [redacted] medical records noted, the demanding physical nature of [redacted] job. Medical records for FF [redacted] May 13, 2025 visit indicated that [redacted] reported:

> Pt noted that [redacted] has a very physical job. [redacted] has been having pain and hearing a clicking in [redacted] lower back for the last 3-4 weeks. [redacted] has to lift a lot with [redacted] job, and it has cause[d] a moderate amount of spasms.

The physician assistant also noted: "[redacted] has a physically demanding job as a firefighter."

When FF [redacted] was ultimately able to see a neurosurgeon, Dr. Adrian Thomas, in June 2025, he first prescribed physical therapy, which was not successful, and thereafter conducted an MRI. Notes from FF [redacted] physical therapy visit on June 26, 2025 include:

> [redacted] reports lifting at work and have felt some low back discomfort in the past but usually goes away on its own. In April [redacted] low back discomfort was more constant and less muscular.

Notes from FF [redacted] second physical therapy session on July 2, 2025 included FF [redacted] report that [redacted] pain score was 7: 'I have had a good couple of days but just got out of work and last was miserable. Pain down right leg and tingling down right leg." FF [redacted] reported a pain score of 7 and increasing at [redacted] third PT session on July 8, 2025, at which time [redacted] physical therapy

was put on hold. That day, on July 8, 2025, Dr. Thomas ordered an MRI and advised FF [redacted] to cease working, which [redacted] did.

In addition to FF [redacted] credible testimony about [redacted] injury, supported by [redacted] statements made to [redacted] health care providers beginning in May 2025, the causal relation of FF's injury to [redacted] workplace is supported by Dr. Thomas' opinion, furnished in February 2026:

> In my opinion, with some reasonable degree of medical certainty, Ms. [redacted] back pain and herniation more likely than not occurred in the performance of [redacted] job and directly due to [redacted] lifting a 300 pound patient. Since [redacted] had not seen any providers for [redacted] back pain or leg pain prior to the injury, [redacted] low back pain was not a pre-existing condition and the herniation could result from such leavy lifting. It is unlikely that someone who was symptom-free prior to the injury has any other explanation for the herniation and pain.

The Town reasonably points to the four-month lag between when FF [redacted] filed [redacted] injury report in January and first sought medical treatment in May, the lack of mention of the January injury in [redacted] medical records and specifically during [redacted] March physical exam. However, the evidence supports that FF [redacted] consistently discussed the lifting required by [redacted] work in connection with [redacted] back pain, and that the time lag until [redacted] sought treatment was due to the fact that [redacted] was trying to self-treat to manage the pain and not miss any work. There is no evidence of any other activity that may have caused FF [redacted] injury, and [redacted] credibly testified without rebuttal that [redacted] did not have any outside employment or activity in [redacted] personal life that involved heavy lifting. Although the City faults FF [redacted] for not submitting medical records or a physician's report pursuant to the Malden Fire Department Rules and Regulations, FF [redacted] included a medical release form with [redacted] January 2025 injury report and there is no evidence that the Chief or anyone in the Fire Department requested and/or reviewed any medical records in making the determination that FF [redacted] injury was not work-related. In addition, although Dr. Thomas' medical opinion is dated February 2026 and clearly in furtherance of the grievance and arbitration, it is sufficiently consistent with contemporaneous medical notes, and the record

contains no competing medical evidence regarding causation.

The City's reliance on a previous arbitration decision, in which the arbitrator found the Chief's denial of IOD leave for a firefighter was not a contract violation, is misplaced. In that case, there was a nearly four-year gap between an on the job back injury for which the firefighter did not miss work, after which he was asymptomatic, and a back injury while off duty, leading to a diagnosis of disc herniation and back surgery for which the firefighter sought IOD leave. Unlike in this case, there was no corroborating evidence that the firefighter's symptoms had gotten progressively worse, and the arbitrator found a lack of corroborating information in the physician's causation opinion. An arbitrator's failure to find that a preponderance of the evidence supported IOD leave in a previous case is not dispositive of a review of evidence establishing different and distinguishable facts in this case.

The evidence in this case established by a preponderance of the evidence that FF [redacted] suffered a work-related injury in January 2025, which was exacerbated by [redacted] continued lifting and working in a physically demanding job. The evidence supports that FF [redacted] injury and its exacerbation, which ultimately led to a diagnosis of disc herniation and required surgery, was work-related and for which [redacted] was entitled to injury on duty leave for the period of [redacted] absence.

The appropriate remedy for the City's contract violation is to make FF [redacted] whole, by placing [redacted] in the position [redacted] would have been in had the City not denied [redacted] IOD leave. A make whole remedy in this case includes restoring to FF [redacted] all paid leave used beginning July 10, 2025 until [redacted] return to work and reclassifying [redacted] compensation during this time as IOD leave. Where FF [redacted] also worked shifts for others after [redacted] return because they had filled [redacted] shifts when [redacted] leave had run out, which [redacted] would not have had to do had the City granted [redacted] IOD leave, providing compensable time to FF [redacted] for the time [redacted] worked the swapped

shifts is consistent with a make whole remedy and will be awarded.[2]

AWARD

The undersigned arbitrator having been designated in accordance with the arbitration agreement entered into by the above-named parties and having duly heard the proofs and allegations of the parties, AWARDS as follows:

The City violated the Collective Bargaining Agreement when it did not grant FF [redacted] injured on duty leave during the period [redacted] was absent from work from July 10, 2025 until [redacted] return to work.

The City shall make FF [redacted] whole by restoring to FF [redacted] all paid leave used from July 10, 2025 until [redacted] return to work, reclassifying [redacted] compensation during this time as injured on duty leave, and providing compensable time to FF [redacted] for the time [redacted] worked shifts for others who had worked shifts for [redacted] while [redacted] was absent.

The grievance is sustained.

Mary Jeanne Tufano
Arbitrator

September 2, 2026

[2] Although any monetary payments would include interest, pursuant to the requirement set out in Todino v. Wellfleet, 448 Mass. 234, 241 (2007), there does not appear to be any monetary compensation due here.