



The EMTs and Paramedics of Local 2507

Affiliated with District Council 37, American Federation of State, County & Municipal Employees, AFL-CIO
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CIVIL SERVICE SETTLEMENT

Dear Members:

This letter will explain the background of the proposed civil service settlement with the Health and Hospitals Corporation and the City of New York. This settlement is very important to each and every member's future at EMS. It marks the first time in almost thirty years of civil service title restructuring that a such an offer has been made to any group of reclassified employees.

This letter deals with complex issues that relate to a six year long court battle. Please read this and the proposed settlement carefully. But before we get into the actual settlement, let's take the issue of civil service from the top.

WHAT IS CIVIL SERVICE?

Civil Service systems exist in the federal government and in many state governments in the United States. Although they differ from state to state, they are all supposed to protect the civil service employee from the politics of governmental administration. They are supposed to choose employees based on merit and fitness for their respective jobs. In addition, they are supposed to offer advancement to their employees through promotional tests that are again based on merit and fitness. Finally, they are also supposed to protect the civil service employee from being fired by government for purely political reasons by giving the accused employee a "due process" hearing on specific charges.

Needless to say, what's outlined above is a pretty tall order for any system. But before the civil service system came into being about a century ago, when a new political party gained power every public employee's job hung in the balance. So while nobody would claim that the civil service system is perfect, it a lot's better than the "spoils" system it replaced.

Turning specifically to New York State, the civil service system here has been undergoing attack by the politicians for some time. Leading the charge is none other than Mayor Koch. Our mayor has stated for the public record that he would eliminate civil service protections entirely if he got the chance. In the meantime, Koch has done everything in his power to get around civil service law in this state. The primary way the Mayor has accomplished this is by doubling the number of provisional employees working for the City of New York.

Under the law, these provisionals are supposed to be hired only on a temporary basis while civil service tests are in preparation. **PROVISIONALS, NO MATTER HOW LONG THEY ARE ON THE JOB, HAVE NO CIVIL SERVICE JOB PROTECTIONS, PERIOD.** Meanwhile, the Mayor, by delaying the civil service exams for as long as possible, gets to hire and fire the provisionals at will for years on end.

CIVIL SERVICE AND JOB PROTECTION:

Let's say that Joe EMT filed for civil service when he came on the job and has now completed his one year probationary period. This means that Joe EMT is now a permanent employee and can no longer be fired by EMS except for cause. This is not to say that EMS can't fire Joe EMT for misconduct—but it does mean that EMS will have to have something good on Joe EMT to fire him.

Once Joe EMT becomes a permanent employee, EMS must follow the disciplinary procedures outlined in our contract and in civil service regulations. At their most serious level, these disciplinary procedures include a formal hearing where management has the burden of proof and Joe EMT is represented by counsel. Any penalty imposed on Joe EMT by EMS as a result of that hearing is reviewable by the HHC Personnel Review Board, which has, on occasion, reduced the penalty imposed.

Contrast this with what I said about provisionals not having rights above—EMS doesn't have to give a provisional a hearing of any sort before they terminate you because you are not covered by civil service procedures. They don't even need a good case against you because they aren't required to prove anything in order

to dismiss a provisional. In short, there are virtually no procedures available to protect a provisional's job.

There are other important job protections that a permanent employee enjoys as well. Say that Jane EMT suffers a line of duty injury. As a permanent employee, EMS must keep her job open for Jane EMT to return to. Not so with a provisional. EMS will instead often try to force the provisional out of the agency using one excuse or the other.

Even more importantly, if Jane EMT, as a permanent employee, is unable to return to duty, Jane EMT will be able to apply to the NYC retirement system for pension benefits in addition to the standard Worker's Compensation benefits. These aren't easy to get, but if they are granted, the pension benefits are payable for as long as the disability exists. The provisional, meanwhile, is simply out of luck pension-wise no matter how bad the injury happens to be or how he or she got it.

The above briefly illustrates why the City and EMS/HHC would rather keep everyone in EMS a provisional. This is why the Local advises each and every member to register for civil service as soon as possible. This way a new member will minimize time spent as a provisional or probationary employee on the way to permanent civil service status.

EMS AND CIVIL SERVICE:

But what does an explanation of civil service have to do with the McAllan v. City lawsuit? Plenty...

If we looked back at EMS in early 1982 we would find four separate uniformed titles:

Ambulance Corpsman [EMT],
Paramedic Ambulance Corpsman [EMT-IV],
Supervising Ambulance Corpsman [Lt.], and
Chief Supervising Ambulance Corpsman [Cpt.].

Each of these titles were classified as open competitive civil service titles. The problem facing the EMS workforce was just what I explained about provisionals above--the City had only given one civil service test in the Ambulance Corpsman title in 1979. The other three titles had never had a civil service test prepared for them. As a result, most employees in EMS in the early 80's were serving provisionally in the agency.

Those few who had permanent status in a lower EMS title were often serving provisionally as a supervisor or a Paramedic. [100% of the Paramedics and Captains were serving provisionally in 1982--approximately 95% of the Lieutenants were provisionals as well.] As I outlined above, EMS could mess around with a provisional any time they wanted to. EMS management created their own "Promotion Board" to chose exactly who they wanted to promote--provisionally, of course. Then, once the provisional supervisors had been made by EMS, EMS would threaten them with instant demotion if they didn't follow the company line exactly.

It's obvious that EMS/HHC was getting over good on the civil service system--and had been for years on end. But EMS talked a good line--they had most EMS employees believing that as soon as the budget crisis eased they would give civil service tests for all of us. Worse, in the early 80's EMS also had the advantage of an ineffective leadership in Local 2507 who were not anxious to push for an end to any of EMS' civil service violations.

Finally, in 1982, I and other activists in the Local prevailed on the Local leadership to have DC 37 file a lawsuit in State Supreme Court to end EMS' unlawful civil service practices. The suit was an easy winner--the judge would order tests in the four titles above and we would finally get the job protections we deserved. But not so fast--the Local quietly allowed the suit to be buried by marking it off calendar without the membership's permission.

This left myself and my three Co-Petitioners with only one choice--to go it alone in State Supreme Court. This is what we did--even though none of us had any legal experience. But, as you could guess, EMS/HHC wasn't going to let us stop their civil service violations easily. Instead, the HHC officials who then in charge threw a legal roadblock at the Petitioners to try to preserve as much of their provisional system as possible.

MCALLAN v. CITY:

This suit was filed in late 1982. The lawsuit simply sought a court order forcing the City to give civil service tests in each of the four original EMS titles. Rather than letting the lawsuit be submitted on the original four titles, the City and HHC sought an adjournment and hastily reclassified the EMS civil service titles before going back to court. The type of reclassification used combined the former EMS civil service titles and is known as "broadbanding". This type of reclassification had survived repeated court challenges by other unions whose titles had been reclassified in the same way.

The reclassification, which is a management right in New York State, created the broadbanded titles of Emergency Medical Service Specialist Level 1 [which encompassed the former Ambulance Corpsman title] and Level 2 [which encompassed the former Paramedic title]. At the supervisory level the Supervising Emergency Medical Service Specialist Level 1 title became the equivalent of the old Supervising Ambulance Corpsman title while Level 2 encompassed the old Chief Supervising Ambulance Corpsman title. These titles were the same as the former EMS titles with one important difference—Level 2 of each of the titles dropped out of the Civil service system. That meant that EMS could promote who they wanted from Level 1 to Level 2 of their respective title without giving a promotional exam and likewise could demote Level 2 members back to Level 1 of their respective title without giving a hearing. In other words, only Level 1 of each of the titles remained in the civil service system under the broadbanding order.

All of the Petitioners were promptly branded as "dissidents" and blamed publicly for causing the reclassification of titles. When the suit was submitted for decision after the broadbanding order was signed, HHC and the City sought to have the suit dismissed by promising to obey civil service law as it applied to the new titles in the future. Of course the Petitioners strongly opposed the City's efforts to bury the old EMS titles. The question of whether the former EMS titles were properly reclassified under New York State law became the centerpiece of the McAllan v. City litigation.

On the positive side, the legal pressure the lawsuit brought on the City did result in another civil service test being given for EMSS-1's in 1983. (HHC had reverted back to the old game of hiring pure provisionals and keeping them as provisionals for years on end in between entry level exams. Open filing for the EMSS-1 title would not start for another three years—and then only under federal court pressure.) Similarly, in 1983 the City was forced to give the first promotional civil service written exam ever held in EMS for the title SEMSS-1. That's why all Lt.'s in EMS today are civil service. [As this letter was being prepared, the results of the 1988 civil service test for Lt. were announced. It means that more civil service promotions to the title of Lt. will be made shortly.]

Meanwhile, I with the help of Paramedic Barbara Taylor, worked to keep up with the flurry of legal papers the City filed against us. We won against the City in their effort to have the suit dismissed. Later Supreme Court Justice Allen Murray Myers ordered trial on the issue of whether the City and HHC had acted in "good faith" in reclassifying the EMS titles. This meant that we would have the opportunity to prove in court that the City and HHC deliberately tried to get over on the EMS workforce by reclassifying the EMS titles when they did. Needless to say, this partial victory drove the City crazy.

The City attorneys immediately sought permission to appeal the judge's order for trial. After permission was granted, an appeal was filed by the City in the Appellate Division of State Supreme Court. Then the City sat back and waited to see whether we Petitioners could get it together in this high level court. After months of preparation, I was given the privilege of actually arguing our case before five State Supreme Court Justices in May of 1985. And, in the proudest accomplishment of all my legal efforts, I won a unanimous decision upholding the order for trial against the City and its attorneys.

While the lawsuit was working its way up in the courts, the leadership of Local 2507 changed hands. The new leadership wanted to help the Petitioners in the ongoing civil service battle. So, with the Petitioners' agreement, George Engstrom, who had been elected President of Local 2507 in 1984, joined the suit with then Secretary-Treasurer Mike Stein. The Local assigned Mr. Terry Meginniss, who is outside counsel to the Local, to handle the Local's part of the case. This is why you see the Local as a separate party in this lawsuit.

After the Appellate Division victory, the lawsuit went into a lengthy discovery phase and was finally marked ready for trial in late 1987. However, trial was delayed at that time when the case was re-assigned to different judges because of court calendar problems.

When I was elected President in 1987, settlement discussions were held with EMS, HHC and the City. They did not result in an agreement at that time because the former EMS administration held fast to their demand for a promotion board method of making promotions in EMS. It was only after EMS' new Executive Director, Mr. Thomas Doyle, came on board that the civil service agreement you hold in your hand was made possible.

PROPOSED SETTLEMENT:

Up front, it must be said that the settlement we worked out is not 100% of what we would like. But, no settlement ever is. On the positive side, though, it does return civil service procedures to EMS titles now—not years in the future. Remember that for the Local to ultimately reverse the reclassification order through the Courts it would take a finding that we proved bad faith at trial AND another victory upholding this in the Appellate Division of State Supreme Court. It might even require yet an additional victory in the New York State Court of Appeals.

In short, it would take years to accomplish these steps with no guarantee of success. I and my Co-Petitioners have always felt that we have a strong case

against the City. I still feel that way. However, I do not believe that we have a classic "smoking gun" case. I believe the City has a similar opinion of our chances in court and that this uncertainty has in fact allowed this compromise to be struck between the parties.

First of all, the agreement specifies that everyone who is permanent in the EMSS-1 title will be automatically permanent in the new Emergency Medical Services Specialist-EMT title. Members who are on probation now in the EMSS-1 title will receive credit for probationary time served when the new title is created. In short, every member who has civil service status now will keep it under the proposed settlement.

In addition, the settlement returns the Paramedic Title to full civil service status. The agreement directs HHC to establish a "'continuous filing training and experience examination' for the Emergency Medical Services Specialist-Paramedic title within 90 days of the execution of this Stipulation." This would work the same way the EMT open filing works now—you would have to have valid state certification as an AEMT-4 along with your driver's license and high school diploma to apply.

There is a drawback to the creation of this new title—Paramedics will have to serve a probation in the new title. But there is a big difference in this probation if you are already permanent in the EMSS-1 title. If Peter Medic is now permanent as an EMSS-1 under the current system he will remain permanent as an EMS employee under the agreement. That means that Peter Medic could not be fired for "failing" the Paramedic probation—the worst that could happen is Peter Medic could be demoted to his EMT level title by EMS. But, the way things stand now, that's exactly what EMS can do to any medic at any time without a hearing no matter how long he's been a Paramedic. Once Peter Medic finished the probationary period in the new title system, he would be permanent as a EMSS-Paramedic and could not be demoted except for cause after a civil service hearing. [By the way, if a Paramedic enters EMS from the outside without prior permanent status he or she would have to serve a regular job probation in the Paramedic Title in the usual manner.]

The Cpt. title is treated differently under this agreement. The reason for this is simple—the City Department of Personnel strongly opposed returning the Captain title to full civil service status. So once again, a compromise was struck. The compromise was made part of the Stipulation as the attached Appendix. A few members have questioned this arrangement for Captains as not giving them fully separate civil service status. And simply put, there is merit to that criticism.

With that said, however, both myself and Mr. Meginness worked hard to prepare an appendix which adopts almost all of the important civil service protections for the EMS Captain title. These protections would apply at once to the current EMS Captains. They would also apply to EMS Lieutenants who are promoted to the Captain title once their probationary period is completed in the higher title. [The agreement parallels existing HHC civil service procedures in the preparation of a promotion list, selection of one of three top scoring candidates off that list, probationary service procedures for members promoted to Captain, and so forth.]

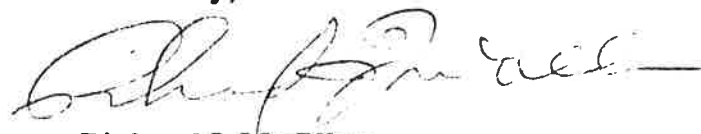
But most important of all, the agreement provides for an objective testing method that will lead to the creation of a proper promotional list for Captain. Another important feature is that the Captain Title will become a tenured position within HHC and that no tenured Captain could be demoted except for cause after a formal hearing. [Such demotion would be reviewable at the HHC Personnel Review Board or Court in the same way that any other civil servant's demotion would be reviewable.] All of these protections would be enforceable in court if the need arose.

Finally, as part of this settlement, I am obligated to withdraw the civil service complaints that I initiated in a parallel lawsuit that is now pending in Federal Court. But, if HHC or the City intentionally goes back on this agreement before 1996, both of these suits could be re-activated if necessary. So, if this agreement is ratified, there is a fair amount of protection against the proposed EMS title structure being changed again by the City or HHC for years to come.

Also included in this package is a memo from Mr. Meginness that explains this settlement in legal terms. In addition, there is a letter reviewing the proposed settlement that I requested from Ms. Joan Kiok, who is also an outside counsel to the Local.

In closing, I urge you to vote in favor of this proposed settlement simply because I think it's a good settlement of issues that have remained unsettled for years on end. Please take the time to let the Local know what you think by voting on this very important issue. Thank you.

Sincerely,



Richard J. McAllan
President