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Judge Upholds Arbitrator's Order to Replace Aging FDNY Trucks

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THE NEW YORK CITY Fire Department must abide by the terms of a contract with the FDNY officers' union that it remove fire trucks and other vehicles from front-line duty before they turn 11 years old, a state judge has ruled.

Acting Supreme Court Justice Kathryn Freed in Manhattan said in *Matter of Hagan v. City of New York*, 152070/2013, that she agreed with the determination of arbitrator Alan Viani that the city must abide by the replacement policy as stipulated in the collective bargaining agreement with Local 854 of the Uniformed Fire Officers Association.

Freed rejected the city's argument that Viani formulated a "totally irrational interpretation" of the bargaining pact with the union, which represents 2,500 chief officers, lieutenants and captains as well as supervising fire marshals and medical officers.

"The City's vehement opposition to the [vehicle] Safety Standards Provision is disingenuous and patently ridiculous, considering the fact that said provision has been a component of the CPA in excess of forty years," Freed wrote. "More importantly, the City obviously agreed to the incorporation of this provision via the collective bargaining process."

The city tried to argue that the vehicle replacement policy was antithetical to the public policy goal of providing adequate fire protection to residents. As such, the court has the power to overrule an arbiter whose ruling "violates a strong public policy," the city argued, citing *Matter of New York City Tr. Auth. v. Transport Workers' Union of Am, Local 100, AFL-CIO*, 6 NY3d 332 (2005).

The city estimated that strict enforcement of the contract provisions would put 13 of 350 fire engines and other emergency firefighting vehicles operated by the FDNY out of use, endangering the lives of residents and FDNY personnel.

But Freed wrote that Viani's interpretation of the contract language on retiring older fire trucks "does not contravene, but actually promotes public policy, by helping maintain the safety of the public as well as firefighters by insuring that out-of-date vehicles and equipment will be replaced by state-of-the-art, sound equipment."

"The Court believes that responding to any emergency with faulty equipment is decidedly a more dangerous proposition" than having to do without a relatively small percentage of the force's vehicles—about 3 percent—while the FDNY awaits replacement vehicles.

The latest contract between the firefighter officers union and the city technically says there is a "ten-year replacement policy" in effect for fire trucks and other heavy fire-fighting equipment.

But Alexander Hagan, head of the fire officers association, said the longstanding Safety Standards Provision has been interpreted over the years to mean heavy equipment is replaced within 10 years and 364 days of when it was put into service.

Freed did not accept the city's argument, also rejected by Viani, that the collective bargaining agreement only obligated the city to be in the process of replacing 10-year-old equipment and not actually have the newer equipment in place in order to be in compliance with the contract.

In his Oct. 30, 2012, ruling, Viani sustained the union's claim of a contract violation and ordered the FDNY not to use heavy vehicles older than 11 years except when responding to fire calls.

According to Hagan, less than half the emergency calls the FDNY responds to each year are fires. He said fire trucks and other rescue vehicles are more likely to be called in response to medical calls, car crashes and utility emergencies.

Hagan said all New Yorkers should be concerned about having aging fire trucks responding at high speeds to emergencies when they should have been taken out of service earlier. "It is a real safety issue," he said. "It is not like pushing a Chevy Volt around at 40 mph. At 40 mph, these things [fire trucks] could crush a Sherman tank."

Hagan said the potential danger of old or poorly maintained emergency vehicles was illustrated in January 2009, when a Boston firefighter was killed when the ladder truck he was riding in lost its brakes at the bottom of a hill and smashed into an apartment house.

Hagan said Monday he had a meeting with the city's fire commissioner, Salvatore Cassano, since Freed's July 25 ruling and believes a deal can be made to get all over-age trucks out of service.

"We are hopeful that a mutually satisfactory resolution of this issue can be arrived at," Hagan said in an interview.

Richard Bethiel led a team of **Pryor Cashman** lawyers representing the union.

Former assistant corporation counsel Asad Rizvi argued for the city.

"We are reviewing the decision and considering our options," Eric Eichenholtz, the corporation counsel's chief of labor and employment law, said in a statement. The arbitrator's ruling will not go into effect while the city decides what to do.