

**BEFORE THE BOARD OF TRUSTEES OF THE
GLENVIEW POLICE PENSION FUND**

IN THE MATTER OF THE)
SURVIVING DEPENDENT’S)
BENEFITS OF:)
)
OFFICER OWEN MASTERTON)
APPLICANT,)
)
AND)
)
VILLAGE OF GLENVIEW)
INTERVENOR)

DECISION AND ORDER ON REMAND

The Board of Trustees of the Glenview Police Pension Fund (“Pension Board”), pursuant to the provisions of Article 3 of the Illinois Pension Code, 40 ILCS §5/3-101 et seq., renders the following decision and order on remand concerning the surviving dependent’s benefits of Officer Owen Masterton (“Applicant”).

After remand by the circuit court of Cook County, hearings were held before the Pension Board on July 24, 2019 and July 30, 2020. At these hearings, the Applicant was represented by legal counsel, Mr. David Stepanich. The Intervenor, Village of Glenview, was represented by legal counsel, Mr. James Powers and Mr. Paul Denham.

In reaching its decision, the Pension Board carefully considered all of the testimony that was elicited at the hearing and has reviewed all of the exhibits that were made a part of the administrative record. The Pension Board has considered all the evidence, testimony, and arguments presented by both the Applicant and the Intervenor. To the extent that any arguments, findings, and conclusions submitted by the Applicant or Intervenor are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that the testimony of witnesses or documentation submitted is not in accord with the findings herein, such testimony or documentation is not credited.

A. ULTIMATE CONCLUSIONS AND FINDINGS OF FACT

Based upon a preponderance of the evidence in the administrative record, the Pension Board makes the following findings of fact:

1. Officer Masterton's tragic death due to lymphocytic myocarditis leading to arrhythmia and sudden death was not a line of duty death as contemplated under Section 3-112(e) of the Illinois Pension Code.
2. The act of attending roll call does not constitute an act of police duty, inherently involving special risk, not ordinarily assumed by citizens in

ordinary walks of life, as required under Section 5-113 of the Illinois Pension Code.

3. Assuming arguendo, that attending roll call was an act involving inherently special risk not ordinarily assumed by citizens in ordinary walks of life, there has been no evidence presented to the Board that would establish that attendance of roll call was required by the laws of the State of Illinois, or the ordinances or Rules and Regulations of the Glenview Police Department, or that it was a special assignment, or that it was an act of heroism, as required under Section 5-113 of the Illinois Pension Code.

4. ██████████ is a dependent child, and entitled to continue his dependent children's benefits, survivor benefits, under Section 3-112(c) until attainment of age 18.

5. The Board will adopt and incorporate by reference all documents contained in the administrative record filed in *Masterton v. Village of Glenview Police Pension Board, et. al.*, Cook County Case No. 2018CH3503, and the interlocutory appeal filed with the First District Appellate Court pursuant to Illinois Supreme Court Rule 306A6, captioned *Village of Glenview v. Masterton*, Case No. 1-19-797, and make these part of the proceedings as if fully set forth therein.

B. APPLICABLE STATUTORY PROVISIONS

The following provisions of the Illinois Pension Code have application:

40 ILCS 5/3-112 Pension to survivors.

(a) Upon the death of a police officer entitled to a pension under Section 3-111, the surviving spouse shall be entitled to the pension to which the police officer was then entitled. Upon the death of the surviving spouse, or upon the remarriage of the surviving spouse if that remarriage terminates the surviving spouse's eligibility under Section 3-121, the police officer's unmarried children who are under age 18 or who are dependent because of physical or mental disability shall be entitled to equal shares of such pension. If there is no eligible surviving spouse and no eligible child, the dependent parent or parents of the officer shall be entitled to receive or share such pension until their death or marriage or remarriage after the death of the police officer.

(c) Upon the death of a police officer while in service, having at least 10 but less than 20 years of service, a pension of 1/2 of the salary attached to the rank or ranks held by the officer for one year immediately prior to death shall be payable to the survivors in the sequence provided in subsection (a) of this Section. If death occurs as a result of the performance of duty, the 10 year requirement shall not apply and the pension to survivors shall be payable after any period of service.

(e) The pension of the surviving spouse of a police officer who dies (i) on or after January 1, 2001, (ii) without having begun to receive either a retirement pension payable under Section 3-111 or a disability pension payable under Section 3-114.1, 3-114.2, 3-114.3, or 3-114.6, and (iii) as a result of sickness,

accident, or injury incurred in or resulting from the performance of an act of duty shall not be less than 100% of the salary attached to the rank held by the deceased police officer on the last day of service, notwithstanding any provision in this Article to the contrary.

40 ILCS 5/3-114.1 Disability pension – Line of duty

(a) If a police officer as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty, is found to be physically or mentally disabled for service in the police department, so as to render necessary his or her suspension or retirement from the police service, the police officer shall be entitled to a disability retirement pension equal to the greatest of (1) 65% of the salary attached to the rank on the police force held by the officer at the date of suspension or retirement, (2) the retirement pension that the police officer would be eligible to receive if he or she retired (but not including any automatic annual increase in that retirement pension), or (3) the pension provided under subsection (d), if applicable.

A police officer shall be considered “on duty” while on any assignment approved by the chief of the police department of the municipality he or she serves, whether the assignment is within or outside the municipality.

40 ILCS 5/5-113. Act of duty

"Act of duty": Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of this State or by the

ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman.

C. STATEMENT OF FACTS

Preliminary Matters

1. Officer Owen Masterton was a regular member of the Glenview Police Department and a participant in the Glenview Police Pension Fund. (App. Ex. 1, p.163-87).¹
2. Officer Owen Masterton started his employment with the Glenview Police Department on June 26, 1995. (App. Ex. 1, p.163).
3. Officer Owen Masterton died on December 6, 2014. (App. Ex. 4, p.462).
4. At the time of his death, Officer Owen Masterton had 19 full years of creditable service with the Glenview Police Pension Fund. (App. Ex. 1, p.163-87).

¹ References to testimony from the hearing transcript will be cited as (Tr.__). All transcript references refer to the hearing of July 30, 2020, unless otherwise noted. References to the Pension Board's exhibits contained in the administrative record will be cited as (Bd. Ex.__, p.__). References to Applicant's exhibits will be cited as (App. Ex.__, p.__). References to Intervenor exhibits will be cited as (Int. Ex.__, p.__).

5. At the time of his death, Officer Owen Masterton was 42 years of age. (App. Ex. 4, p.462).

6. Officer Owen Masterton was divorced at the time of his death. (App. Ex. 1, p.194-207).

7. Officer Owen Masterton had one dependent child, Michael Masterton, who is the beneficiary in this case. (App. Ex. 1, p.185).

Circumstances Surrounding Death / Roll Call on December 6, 2014

8. Officer Masterton had complained of abdominal pain for a few days preceding his death on December 6, 2014. (App. Ex. 5, p.474). On December 6, 2014 Officer Masterton complained of abdominal pain and not feeling well right before roll call. (Id.).

9. On December 6, 2014 at 6:32 pm, Officer Owen Masterton was attending roll call inside the Glenview Police Station. Other officers were present in the room with him and witnessed what they described as an “unknown medical emergency”. (App. Ex. 3, p.440 & 454).’

10. Officer Masterton was seated in a chair, he began to lean backwards in the chair, slumped his body, started coughing, and his body became rigid. (Id.).

11. Fellow officers placed Masterton on the ground so they could provide patient care. They observed that Masterton was turning blue in the face and noticed that he did not appear to be breathing. (Id.).
12. The officers contacted radio dispatch, requested an ambulance, and began CPR. (Id.).
13. Fellow officers applied an Automated External Defibrillator (AED) to Masterton; which advised and delivered a shock. His fellow officers continued CPR until the arrival of Glenview Fire & Rescue personnel. (Id.).
14. Glenview Fire Department arrived on scene at 6:37pm. They noted that PD officers were performing CPR, and had an AED attached to Masterton with two shocks applied. (App. Ex. 8, p.528-29).
15. Glenview Fire noted that their monitor showed Masterton in ventricular tachycardia at 6:37pm, which changed to ventricular fibrillation at 6:41pm. They administered epinephrine five times without response, vasopressin once without response, attempted intubation twice without success, attempted a king tube once without success, and defibrillated Masterton five times without response. (App. Ex. 8, p.528-29).
16. Officer Masterson was then transported via ambulance to the Glenbrook hospital, he received treatment in the emergency room, but could not be saved. Officer Masterton was pronounced dead at 7:37pm by an ER doctor. (App. Ex. 3, p.440).

Medical Reports

Cook County Medical Examiner

17. A postmortem examination of Officer Owen Masterton was conducted by the Cook County Medical Examiner's office. Dr. Steven M. White, MD, PhD, Assistant Medical Examiner, provided a diagnosis and opinion concerning the cause of death as follows:

18. Diagnoses:

- I. lymphocytic myocarditis
- II. pulmonary congestion and edema
- III. hepatomegaly with fatty change
- IV. congestive splenomegaly,
- V. congestive renomegaly
- VI. mild cerebral edema
- VII. BMI equals 37.7 kg/m,
- VIII. Focal area of hemorrhage on the tongue

19. Opinion:

"The death of this 42-year-old white male, Owen Masterton, is due to lymphocytic myocarditis. Lymphocytic myocarditis is most commonly associated with a viral infection (though it can be caused by other infections and autoimmune diseases) and produce damage to cardiac myocytes (heart muscle), leading to an arrhythmia and sudden death."

20. Manner of Death: Natural.

(App. Ex. 5, p.466-67).

The Pension Board's Independent Medical Examiners and Records Review

21. The Pension Board contracted with INSPE Associates to select three physicians with the appropriate medical specialty, to conduct a medical records review and provide their opinions. (Bd. Ex. B).

22. The Pension Board's decision to select three physicians through INSPE, for the purpose of conducting medical records review was addressed at the hearing on July 24, 2020, without objection from any party. (Hearing Transcript of July 24, 2019, p.86-107).

23. The three physicians chosen to conduct reviews were: Dr. Mark B. Lampert, M.D; Dr. Richard A. Feely, D.O.; and Dr. Timothy J. McDonough, M.D. (Bd. Ex. C,D,E).

24. Each physician was provided with a copy of relevant medical records and other records listed in Bd. Ex. B, p.61-62.

25. Each physician was provided a letter explaining what questions the Pension Board wanted answered, and the legal standard established in 40 ILCS 5/3-112(e). (Bd. Ex. B, p.59).

26. Each physician rendered a written opinion and provided a copy of their curriculum vitae. (Bd. Ex. C, D, E).

Dr. Mark B. Lampert, M.D

27. Dr. Lampert is a licensed physician and surgeon in both Illinois and Indiana. He has multiple board certifications, to include: National Board of Medical Examiners, American Board of Internal Medicine for Internal Medicine, American Board of Internal Medicine for Cardiovascular Disease, Certification Council in Nuclear Cardiology.

28. Dr. Lampert provided the following opinions:

29. “Within a reasonable degree of medical certainty, it is my opinion that Officer Masterton's death was not the result of sickness, accident, or injury incurred in or resulting from performance of an act of duty.” (Bd. Ex. C, p.64).

30. “While the officer was present on the job for roll call during the moment of his sudden death, he was not performing an act of duty.” (Bd. Ex. C, p.64).

31. “Officer Masterton died from a lethal cardiac arrhythmia (ventricular fibrillation) triggered by a case of asymptomatic lymphocytic myocarditis eventually found at autopsy.” (Bd. Ex. C, p.64).

32. “As has already stated by others who reviewed this case, myocarditis is an inflammatory disease of the heart that can often go undetected and its initial presenting symptom can be sudden cardiac death due to a lethal cardiac arrhythmia.” (Bd. Ex. C, p.64).

33. Dr. Lampert discounted the review articles that suggested a link between shift work and cardiovascular disease. He pointed out that the article did not suggest shift workers were at increased risk for lymphocytic myocarditis specifically, but referred to an increased risk of coronary disease and myocardial infarction, neither of which was found at the time of officer Masterton's autopsy. (Bd. Ex. C, p.64).

34. Dr. Lampert disagreed with to the opinion of Applicant's Doctor (Dr. Feldman) who opined that shift work had a causal relationship to Owen Masterton's death. Dr. Lampert countered by indicating that shift work is a common occurrence and lymphocytic myocarditis is not, so any attempt to suggest causation in this case is not appropriate. (Bd. Ex. C, p.65).

Dr. Richard A. Feely, D.O.

35. Dr. Feely is a licensed physician in Indiana, Missouri, Illinois and Florida. He holds several board certifications to include American Board of Osteopathic Family Practice, American Board of Disability Evaluating Physicians, American Osteopathic Board of Special Proficiency in Manipulative Medicine, American Board of Forensic Examiners, American Board of Quality Assurance and Utilization Review Physicians, American Board of Independent Medical Examiners, American Board of Medical Acupuncture.

36. Dr. Feely provided the following opinions:

37. "Officer Masterton's death of lymphocytic myocarditis, pulmonary congestion and ventricular tachycardia was not a result of sickness, accident or injury occurred in, or resulting from performance of an act of duty." (Bd. Ex. D, p.85).

38. "His cardiac condition occurred while on duty, but not as a result of injury, accident or sickness that was documented to have "occurred in the act of duty"." (Id.).

39. "In other words, if he had a sickness, it was not diagnosed and temporally related to his job nor treated immediately prior to December 6, 2014, the date of his cardiac arrest." (Id.).

40. Dr. Feely noted that Officer Owen Masterson was diagnosed with a right bundle branch block in 2011 and addressed claims that working the night shift for years may have contributed to Officer Owen Masterton's obesity and stress. He commented that there is minimal evidence submitted documenting officer Masterton's stress, only his obesity. He also noted that his pre-existing right bundle branch block of his heart may have been caused by a virus, bacteria, or fungi, but there is no proof any of these things occurred in an act of duty. (Bd. Ex. D, p.86).

41. He indicated that right bundle branch block may occur for no known cause. Lymphocytic myocarditis has a number of potential causes, none of

which are provided as evidence within the documents submitted, let alone to provide further evidence that the exposure to any pathogen had a temporal relationship to an act of duty.

42. Dr. Feely concluded: "In conclusion, it is with a reasonable degree of medical probability, it is my professional opinion that the cause of death of Officer Owen Masterton, lymphocytic myocarditis was natural and not temporally or causatively related to his "act of duty" while working for the Glenview police department. This conclusion listed above is reasonably, and directly, related to the documentation provided, evidence found in peer reviewed scientific literature and my own knowledge, skills and abilities as a board-certified osteopathic physician." (Bd. Ex. D, p.86).

Dr. Timothy J. McDonough, M.D.

43. Dr. McDonough is licensed by the National Board of Medical Examiners. He is board certified by the American Board of Internal Medicine in Internal Medicine, Cardiovascular Disease and Interventional Cardiology.

44. Dr. McDonough provided the following opinion:

45. "It is my opinion that the records reviewed indicate that Ofc. Masterton most likely died of an arrhythmia related to lymphocytic myocarditis, that is most likely related to the aftereffects of a viral infection,

but the acuity is not something that can be determined. The two days of nonspecific symptoms prior to his arrest are of uncertain significance.” (Bd. Ex. E, p.106).

46. “It is my opinion that it is unlikely that officer Masterson's death was a result of "a sickness, accident or injury incurred In or resulting from performance of an active duty.”” (Id.).

Applicant Medical Opinions

Dr. J. Scott Denton, M.D.

47. Curriculum vitae information was not provided for Dr. Denton, however, his letterhead shows that he is certified by the American Board of Pathology in Forensic, Anatomic and Clinical Pathology. (App. Ex. 9, p.541).

48. Dr. Denton submitted a letter to Lt. Brent Wick of the McLean County Sheriff's Office, with respect to his opinion on the cause of Officer Masterton's death. (App. Ex. 9, p.541-42).

49. The letter indicates that Dr. Denton was providing an opinion as to whether or not Officer Masterton's death would fall within the criteria established under the bylaws of the Illinois Police Memorial Committee for a line of duty death. (Id.).

50. Dr. Denton addressed the Committee's bylaws in his letter and the standards established within those bylaws. Those standards are different from the standards of the Illinois Pension Code. (Id.).

51. Dr. Denton misstated facts within his letter. He indicated "Officer Masterton reportedly became unresponsive and died from a sudden cardiac event, or a fatal arrhythmia during the morning briefing. The evening before he reportedly responded to a physically stressful law enforcement situation while on-duty." (App. Ex. 9, p.541-42). Evidence in the record indicates that the roll call occurred at 6:30pm on the evening of December 6, 2014, not in the morning. (App. Ex. 3, p.440 & 454). Dr. Denton did not specify what he was referring to when he spoke of a "physically stressful law enforcement situation while on duty". (Id.). While the record contains a police department call log showing Officer Masterton responded to several various calls on the preceding shift, there is no record of physically stressful activity. (App. Ex. 3, p.420).

52. Dr. Denton rendered an opinion indicating: "After consideration of the above information, it is my opinion that officer Masterton's physical exertion while on-duty hours before he died aggravated or caused further recent heart cell death in the setting of his underlying myocarditis. This microscopically identified recent heart cell death likely caused his sudden fatal cardiac arrhythmia hours after the physical on-duty event noted in the

police report. Therefore, his stressful physical on-duty exertion and his sudden cardiac death are medically related.” (Id.).

Dr. William J. Oetgen, M.D., F.A.C.P.

53. Dr. Oetgen rendered an Independent Medical Record Review Opinion for PSOB Disability Claim #2015-87, which is a claim for benefits under the Federal Public Safety Officer’ Benefit Act, pursuant to 28 C.F.R. §32.0 et. seq. (App. Ex. 6, p. 481-483).

54. Dr. Oetgen specifically addressed the Federal definition of a “Heart Attack” as defined in 28 C.F.R. §32.3(1) & (2) when rendering his opinion. He indicated that Officer Masterton’s death did not fit the definition of “myocardial infarction” as provided by §32.3(1), however, it did fit the definition of a “cardiac event” as defined in §32.3(2) because that definition provides for a pathological condition of the heart, such as lymphocytic myocarditis, to be included. (Id.).

55. In his opinion, Dr. Oetgen stated: “I understand the enclosed law and regulations governing findings of death in the PSOB program, and my opinion reflects the legal standards contained therein, and that all above conclusions are to a degree of medical certainty.” (Id.).

56. The legal standards governing the Federal Public Safety Officer' Benefit Act is not the same standard found in the Illinois Pension Code. (28 C.F.R. §32.0 et. seq. & 40 ILCS 5/3-101 et. seq.).

57. Curriculum vitae information was not provided for Dr. Oetgen; his report did not indicate his field of practice or certification(s). (App. Ex. 6, p. 481-483).

Dr. Stuart Feldman, D.O., FACEP

58. Dr. Feldman submitted an opinion letter to the Applicant's attorney concerning the death of Officer Owen Masterton. (I. Ex. 12, p.638-641).

59. Dr. Feldman opined: "After reviewing the records available to me, it is my opinion that the cause of Officer Masterton's death is directly related to his duties as an officer with the Glenview Police Department. His shift-work left him susceptible to a viral illness, which in turn had an uncommon but well known cardiac complication. The inherent stress of his occupation may [emphasis supplied] have increased his overall risk of cardiac events. Slight delays in optimal care at the time of his event are attributed to the uniform required to be worn while on-duty and likely contributed to his death. Delay in obtaining a definite airway by EMS providers likely limited the resuscitation efforts due to the prolonged hypoxia. Ultimately, his death should be considered as a death in the line of duty." (I. Ex. 12, p.641).

60. Dr. Feldman's report does not indicate what standard of law or legal definition was used in determining what constitutes a death in the line of duty. (I. Ex. 12, p.638-641).

61. Curriculum vitae information was not provided for Dr. Feldman. (Id.).

Intervenor Doctor

Dr. Peter A. Santucci, M.D., FACC, FAHA, FHRS

62. Dr. Santucci submitted a letter to the Intervenor's attorney concerning the death of Officer Masterton (I. Ex. 1, p.552-554).

63. In his letter, Dr. Santucci concludes that Officer Masterton's death resulted from lymphocytic myocarditis. Dr. Santucci indicated it is generally not possible to determine the source of the myocarditis; he indicated that a viral cause is likely, but not fully proven in this case. (Id.).

64. Dr. Santucci disagreed with Dr. Stuart Feldman's claims that shift work created a higher risk for myocarditis. He pointed out that the studies referenced an increase in cardiovascular disease and myocardial infarction, which is different than myocarditis. (Id., p.553).

65. Dr. Santucci concluded that "it is not possible to determine whether or to what degree Officer Masterton's death was work related." (Id.).

66. Curriculum vitae information was not provided for Dr. Santucci. (Id.).

Other Relevant Benefits

Public Safety Officer's Benefit Act

67. The Applicant was awarded \$339,310.00 by the U.S Department of Justice under the Federal Public Safety Officers' Benefit Act. (App. Ex. 11, p.549-50).

68. Officer Owen Masterton's death was covered as a line of duty death pursuant to a Federal provision found in 34 USC 10281(k), which creates a line of duty presumption for death by heart attack occurring within 24 hours after duty activity. (Id.).

69. Article 3 of the Illinois Pension Code does not have a comparable provision to the standard found in 34 USC 10281(k). (40 ILCS 5/3-101 et seq.).

70. Benefits received under the Public Safety Officers' Benefit Act are not subject to offset under the Illinois Pension Code. (App. Ex. 11, p.550).

Workers Compensation

71. No claims were made regarding workers compensation in this case. (Tr. 62).

Illinois Court of Claims

72. The Applicant made an application to the Illinois Court of Claims, but that claim was denied. (Tr. 65-66).

Pension Benefits

73. On January 2, 2015, Applicant's attorney Craig S. Mielke sent an email to the Pension Board's attorney inquiring as to whether the Glenview Police Pension Board could commence payment of an undisputed 50% non-duty pension while the medical examiner was determining the cause of Officer Masterton's death. (App. Ex. 1, p.231-232).

74. The Pension Board's attorney responded the Pension Board could commence payment to a surviving minor child on an interim basis, without prejudice, to any line of duty death survivor claim. (Id.).

75. On February 18, 2015, less than three months after Officer Masterton's death, the Pension Board voted to grant "survivorship" (non-disability) benefits to Officer Masterton's minor child, until he turned eighteen. (App. Ex. 1, p.234-235).

76. Since that date, the Applicant has been receiving a survivor's pension from the Glenview Police Pension Fund, in the amount of \$48,270.46 annually. This amount represents 50% of Officer Masterton's annual salary,

which is payable for a non-line-of-duty death, pursuant to 40 ILCS 5/3-112(c). (App. Ex. 1, p.219).

77. Two years later, on February 3, 2017, Applicant's attorney, David Stepanich, filed a request for a hearing before the Pension Board and requested the Pension Board "review its determination to award a 50% pension to survivors under 40 ILCS 5/3-112(c) , and award a pension pursuant to 40 ILCS 5/3-114.1(a) (sic) of the Pension Code" (I. Ex. 3, p.574). Section 5/3-114.1 is a line of duty disability pension, not a survivor pension benefit provision. Officer Masterton had not applied for disability benefits prior to his death.

78. At the hearing on July 30, 2020, the Applicant requested a 100% survivors' pension pursuant to 40 ILCS 5/3-112(e). (Tr. 17-18).

79. Through counsel, the Applicant indicated that the request is for a 100% survivors' pension, however, that the benefit would terminate upon the Applicant attaining 18 years of age. (Tr. 60-62).

D. ANALYSIS OF CLAIM

The burden of proving entitlement to pension benefits rests with the applicant. *Daily v. Bd. of Trustees of the Springfield Police Pension Fund*, 251 Ill.App.3d 119 (4th Dist. 1993); *Wall v. Schaumburg Police Pension Bd.*,

178 Ill.App.3d 438 (1st Dist. 1989); *Evert v. Firefighters' Pension Fund of Lake Forest*, 180 Ill.App.3d 656 (2d Dist. 1989). Due to their personal knowledge of the peculiar physical and emotional demands of being a police officer, the members of a police pension board are in the best position to determine whether an Applicant is fit for duty or qualified for membership or benefits. *Sanders v. Board of Trustees*, 112 Ill. App. 3d 1087, 1091 (4th Dist. 1983).

When deciding pension claims, it is particularly within the province of the pension fund board of trustees to resolve any conflicts presented by the evidence and to determine the credibility of witnesses. *Peterson v. Bd. of Trustees of the Des Plaines Firemen's Pension Fund*, 54 Ill.2d 260 (1st Dist. 1973). The courts do not substitute their judgment for that of the pension board in such matters. *Peterson v. Board of Trustees*, 5 Ill.App.3d 180, 184 (1st. Dist. 1971). The findings and conclusions of an administrative agency on questions of fact are deemed prima facie true and will not be disturbed unless they are against the manifest weight of the evidence. *Alm v. Lincolnshire Police Pension Bd.*, 352 Ill.App.3d 595, 597 (2d Dist. 2004); 735 ILCS 5/3-110. The Pension Board's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Roszak v. Kankakee Firefighters' Pension Bd.*, 376 Ill.App.3d 130, 138 (3d Dist. 2007). "It is not sufficient that there are mere conflicts in the testimony or that an

opposite conclusion might be reasonable; since the weight of the evidence and the credibility of the witnesses are within the province of the administrative agency, there need be only some competent evidence in the record to supports its finding.” *Id.* at 139 (citing *Evert*, 180 Ill.App.3d at 660).

Elements of the Claim

The Applicant is seeking benefits under 40 ILCS 5/3-112(e). (Tr. 17).

To establish a claim for benefits under this section, an applicant has the burden to prove:

- He or she is a surviving spouse of a police officer who dies on or after January 1, 2001;
- The Police Officer died prior to beginning receipt of either a retirement or disability pension;
- The death was a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty.

The first element, status as a surviving spouse, will be assumed for the purpose of this decision and order to comply with the remand in Cook County Case No. 2018 CH 3503, however, the Pension Board reserves the right to argue in future proceedings that the Applicant was not a “surviving spouse” within the meaning of 40 ILCS 5/3-112(e). The second element is

undisputed, Officer Owen Masterton died prior to receiving either a retirement or disability pension. The final element is the matter in dispute here - whether or not the death was “*a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty*”. This has two parts, there must be both an “act of duty” and causation, such that the death must be incurred in, or result from, the officer’s performance of the “act of duty”.

The Definition of “Act of Duty” found in 40 ILCS 5/5-113 Applies to this Case.

During the hearing both the Applicant and the Intervenor agreed that the definition of “act of duty” as applied in 40 ILCS 5/5-113 applies in Article 3 cases, such as the instant one. (Tr. 23). This is also the holding of the Illinois Supreme Court in *Robbins v. Bd. of Trustees of Carbondale Police Pension Fund of City of Carbondale, Ill.*, 177 Ill. 2d 533, 540 (1997). In *Robbins*, the Court found that Article 3 of the Pension Code did not define “act of duty”, and reading the Code as a whole, applied the definition found in Article 5, specifically 40 ILCS 5/5-113. (Id.).

Case Law Pertaining to “Line of Duty Disability” Cases shall be Instructive in this Case.

At hearing, the parties also agreed that “line of duty disability” case law should be instructive in determining what constitutes an “act of duty”, since there is a lack of reported case law pertaining to line of duty deaths. (Tr. 24-25). The statute pertaining to “line of duty disabilities” (40 ILCS 5/3-114.1) uses the same language – “*as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty*” – that is found in §3-112(e).

1.
ATTENDING ROLL CALL WAS
NOT AN “ACT OF DUTY”.

An officer does not perform an “act of duty” merely by being in uniform and on duty. *Sarkis v. City of Des Plaines*, 378 Ill.App.3d 833, 837 (1st Dist. 2008); *English v. Northfield Police Pension Board*, 172 Ill.App.3d 344, 347 (1st Dist. 1988); *Morgan v. Retirement Board of the Policemen’s Annuity and Benefit Fund*, 172 Ill.App.3d 273, 275 (1st Dist. 1988); *Jones v. Board of Trustees of the Police Pension Fund of the City of Bloomingdale*, 384 Ill.App.3d 1064 (4th Dist. 2008). In *Robbins v. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill.2d. 533 (1997), the Illinois Supreme Court set a definite standard for determining when a police

officer's illness or injury is "incurred in," or "results from" the performance of an act of duty under §3-114.1 of the Illinois Pension Code. The Illinois Supreme Court held that the term "act of duty" under 40 ILCS 5/3-114.1 should be construed in accordance with 40 ILCS 5/5-113. That provision defines "act of duty" as follows:

Act of duty: Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of this State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman." 40 ILCS 5/5-113.

"Not all police work involves special risks." *Summers v. Ret. Bd. of Policemen's Annuity & Ben. Fund of City of Chicago*, 2013 IL App (1st) 121345, ¶ 46. In cases where the court found an act of duty, the officer was engaged in activity that involved the "protection of the public." *Id.* at ¶44. The Pension Board reaches its decision by focusing on the capacity in which the Officer was acting when injury or death occurred. *Merlo v. Orland Hills Police Pension Bd.*, 383 Ill. App. 3d 97, 102, (1st Dist. 2008).

In the instant case, Officer Masterton was seated in a chair attending roll call. Roll call is a meeting where a supervisor addresses the shift at the beginning of their day, provides a daily briefing and issues work

assignments. No evidence was presented to show why this particular roll call was different from any other. This incident was witnessed by other Glenview police officers and documented in Glenview Police Report #2014-00036594. (Bd. Ex. 3, p.440). That Report indicates Officer Masterton was seated in a chair in the mailroom, when he began to lean backward, slump his body in the chair, started coughing, and suffered a medical emergency. While the event is tragic, the act does not meet the statutory requirement. Citizens in the ordinary walks of life would have meetings with their supervisor to receive information and work assignments and would sit in chairs during such meetings.

In an analogous case, an officer suffered a disabling injury when a chair rolled out from under him as he was at his desk taking a police report from a citizen. The Court concluded that the injury did not occur in the performance of an “act of duty”. The Court explained:

“While no civilian occupation may involve completing police reports, countless civilian occupations do involve the completion of reports of one type or another. Moreover, we take judicial notice of the fact that, while completing such reports, many civilians sit or attempt to sit in chairs. As such, we cannot say that completing police reports, albeit a function peculiar to police officers, inherently involves special risk not ordinarily assumed by a citizen in the ordinary walks of life.” *Morgan v. Ret. Bd. of the Policemen's Annuity & Ben. Fund*, 172 Ill. App. 3d 273, 276 (1988).

Even in cases where officers were performing police type duties, such as issuing citations, that did not rise to the level of an “act of duty”:

Both filling out a report and exiting a car to place a notice or flyer are acts that ordinary citizens assume. Numerous civilian occupations involve filling out citations and placing them where the violator will see them. In fact, White acknowledged that parking regulations are enforced by Aurora employees who are not police officers. Moreover, like the Morgan court, we take judicial notice of the fact that, while completing such citations, many civilians exit automobiles. As such, we cannot say that placing a citation on a vehicle inherently involves a special risk not ordinarily assumed by citizens in the ordinary walks of life

White v. City of Aurora, 323 Ill. App. 3d 733, 736 (2001).

No evidence was presented to demonstrate that Officer Masterton was performing an “act of police duty inherently involving special risk not ordinarily assumed by a citizen in the ordinary walks of life” as required by §5-113, when he attended roll call on the date of his death. The act of sitting in roll call was not an act involving “protection of the public.” *Summers v. Ret. Bd. of Policemen's Annuity & Ben. Fund of City of Chicago*, 2013 IL App (1st) 121345, ¶ 44

2.
ROLL CALL WAS NOT MANDATED BY
LAW, ORDINANCE, OR REGULATION.

Pursuant to the Pension Code, an “act of duty” involves a special risk which is “imposed on a policeman by the statutes of this State or by the ordinances or police regulations of the city” or “by a special assignment” or “any act of heroism”. 40 ILCS 5/5-113.

An example of the legal mandate was provided by the Second District Appellate Court in *Harroun v. Addison Police Pension Bd.*, 372 Ill. App. 3d 260 (2007).

“In attempting to subdue a suspected criminal, [Harroun] was clearly engaged in an act inherently involving special risk not encountered by ordinary citizens. In addition, he was performing a duty specifically imposed by statute. Although the parties have not cited section 107–16 of the Code of Criminal Procedure of 1963, we note that under that provision “[i]t is the duty of every policeman, when a criminal offense or breach of the peace is committed or attempted in his or her presence, forthwith to apprehend the offender and bring him or her before a judge, to be dealt with according to law.” 725 ILCS 5/107–16 (West 2000).

It makes no difference that plaintiff was not on duty. A police officer “ ‘is always obligated to attempt to prevent the commission of crime in his presence,’ ” and “ ‘any action taken by him toward that end, even in his official off-duty hours, falls within the performance of his duties as a police

officer.’ ” *Id.* at 264; citing *Garner v. City of Chicago*, 319 Ill.App.3d 255, 262, (2001) & *Banks v. City of Chicago*, 11 Ill.App.3d 543, 550, (1973).

In the instant case, no evidence was presented to show that roll call was required by the laws of the State of Illinois, the ordinances or Rules and Regulations of the Glenview Police Department, nor that it was not a special assignment or an act of heroism as required by §5-113 of the Illinois Pension Code.

3.
OFFICER MASTERTON’S DEATH WAS NOT
INCURED IN OR RESULTING FROM AN ACT OF DUTY.

Assuming arguendo, that attending roll call was an “act of duty”, there has been no evidence presented to the Board that would establish a causal link between the roll call and the death of Officer Masterton, as required by the Pension Code.

“In order to succeed in a claim for a line-of-duty disability pension, plaintiff must establish a causal connection between plaintiff’s condition and an act of police service.” *Ryndak v. River Grove Police Pension Bd.*, 248 Ill. App. 3d 486, 489 (1993); *Olson v. City of Wheaton Police Pension Board* 153 Ill.App.3d 595, (1987). “The plain meaning of the phrase “incurred in or resulting from the performance of an act of duty” is that the injury must be incurred in or result from an act of duty. Therefore, plaintiff needed to show

causation, i.e., the disabling condition was caused or aggravated during the performance of a job-related task.” *Daily v. Bd. of Trustees of Police Pension Fund of Springfield, Ill.*, 251 Ill. App. 3d 119, 125 (1993) citing: *English v. Village of Northfield*, 172 Ill.App.3d 344, 347 (1988).

The First District Appellate Court has held that an applicant has the burden to prove causation:

“In this case, we believe there is sufficient evidence in the record to support the Board's finding that the plaintiff failed to prove that his disability is the result of a stroke suffered as a result of the performance of his duties as a police officer or resulting from the performance of an act of duty as a police officer. As early as October 15, 2009, Dr. Alberts noted that the mechanism of the plaintiff's stroke “is of unclear etiology.” Dr. Munson also found that the plaintiff's stroke did not have a clear etiology and went on to state that there is “no evidence” that his stroke was the result of on-duty activities. Admittedly, Dr. Schneck opined that there is some association between the plaintiff's occupation and his subsequent cerebral ischemic stroke. Nevertheless, it was the Board's function to resolve the conflict in medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill.2d 249, 253, 38 Ill.Dec. 133, 403 N.E.2d 221 (1980); *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill.App.3d 297, 315, 327 Ill.Dec. 333, 901 N.E.2d 1066 (2009). In this case the Board found Dr. Munson's opinion credible and relied upon it to support its finding on causation, and we are unable to find, based upon the record before us, that an opposite conclusion is clearly apparent. *City of Springfield*, 388 Ill.App.3d at 315, 327 Ill.Dec. 333, 901 N.E.2d 1066.”

Swanson v. Bd. of Trustees of Flossmoor Police Pension Fund, 2014 IL App (1st) 130561, ¶ 31.

In the instant case, even if the Board were to assume that attending roll call was an “act of duty”, the Applicant would still need to establish a link between Officer Masterton’s death and his attendance at roll call. To this end, the Board would need evidence that Officer Masterton’s death from lymphocytic myocarditis was caused by, or contributed to, by his attendance at roll call. The great weight of the evidence shows an absence of any such link.

The roll call incident was witnessed by several police officers and documented in a police report. The report indicated that Officer Masterton suffered an unknown medical emergency while sitting in a chair, that his fellow officers rendered aid, performed CPR, and used an AED in an attempt to resuscitate him. There is nothing in the police report to indicate anything from or during roll call caused his death. While the absence of this is not dispositive, if his fellow officers observed something in roll call that caused his death, it likely would have been documented in the report. Instead, the police report paints a picture of an officer sitting in a chair, inside the police station, when he was suddenly and unexpectedly overcome by a medical problem, thereafter receiving treatment consistent with a cardiac emergency.

Medical reports from several different physicians were admitted to the record. There is clearly a conflict in evidence within these reports.

These reports were originally generated for various reasons and included:

- Dr. Steven M. White, MD, PhD, Cook County Medical Examiner
- Dr. Mark B. Lampert, M.D., Pension Board IME
- Dr. Richard A. Feely, D.O., Pension Board IME
- Dr. Timothy J. McDonough, M.D., Pension Board IME
- Dr. Peter A. Santucci, M.D., FACC, FAHA, FHRS, Intervenor
- Dr. J. Scott Denton, M.D., Illinois Police Memorial Committee
- Dr. William J. Oetgen, M.D., F.A.C.P., Federal Public Safety Officer' Benefit Act
- Dr. Stuart Feldman, D.O., FACEP, Applicant

Dr. Steven M. White, rendered his report on behalf of the Cook County Medical Examiner's office. He indicated the manner of death was natural and opined:

"The death of this 42-year-old white male, Owen Masterton, is due to lymphocytic myocarditis. Lymphocytic myocarditis is most commonly associated with a viral infection (though it can be caused by other infections and autoimmune diseases) and produce damage to cardiac myocytes (heart muscle), leading to an arrhythmia and sudden death."

Dr. White's report has a special level of credibility the Board believes should carry greater weight than all the other doctors. This is because Dr. White was the only doctor that performed a physical examination of the body; all other doctors rendered opinions based on records review. Furthermore, as a pathologist working on behalf of the Cook County Medical Examiner, Dr.

White was not hired by, and has no connection to, any party to this action. Of particular note is the fact that none of the other doctors challenged his diagnoses of “lymphocytic myocarditis”. In fact, there is a concurrence with Dr. White’s opinion that lymphocytic myocarditis was the cause of death. Dr. White indicated the death was natural, and made no connection to Officer Masterton’s employment or any act of duty.

The three Pension Board physicians also carry great weight in this decision, and the Pension Board exercises its discretion in placing greater weight on those physicians’ opinions and conclusions. All three of the Pension Board’s physicians were provided with copies of all relevant documents and were asked to answer the specific questions posed by the Pension Board. In this regard, these physicians had a greater focus on the issue before the Board. Additionally, none of these physicians had a connection to the Applicant or Intervenor, and each provided their curriculum vitae, which allows the Pension Board to consider their level of expertise within their field of practice.

Dr. Mark B. Lampert, M.D. opined:

“Within a reasonable degree of medical certainty, it is my opinion that Officer Masterton's death was not the result of sickness, accident, or injury incurred in or resulting from performance of an act of duty.” “As has already stated by others who reviewed this case, myocarditis is an inflammatory disease of the heart that can often go undetected and its initial presenting symptom can be sudden cardiac death due to a lethal cardiac arrhythmia.”

Dr. Richard A. Feely, D.O. opined:

“In conclusion, it is with a reasonable degree of medical probability, it is my professional opinion that the cause of death of Officer Owen Masterton, lymphocytic myocarditis was natural and not temporally or causatively related to his “act of duty” while working for the Glenview police department. This conclusion listed above is reasonably, and directly, related to the documentation provided, evidence found in peer reviewed scientific literature and my own knowledge, skills and abilities as a board-certified osteopathic physician.”

Dr. Timothy J. McDonough, M.D. opined:

“It is my opinion that the records reviewed indicate that Ofc. Masterton most likely died of an arrhythmia related to lymphocytic myocarditis, that is most likely related to the aftereffects of a viral infection, but the acuity is not something that can be determined. The two days of nonspecific symptoms prior to his arrest are of uncertain significance.”

“It is my opinion that it is unlikely that officer Masterson's death was a result of "a sickness, accident or injury incurred In or resulting from performance of an active duty.””

Dr. Peter A. Santucci, M.D., FACC, FAHA, FHRS, rendered an opinion on behalf of the Intervenor. Dr. Santucci opined that Officer Masterton’s death resulted from lymphocytic myocarditis, indicating it is generally not possible to determine the source of the myocarditis, but that a viral cause is likely. Dr. Santucci disagreed with Dr. Feldman’s claim that shift work created a higher risk for myocarditis. He pointed out that the studies referenced an increase in cardiovascular disease and myocardial infarction, which is different than myocarditis. Ultimately, Dr. Santucci

concluded that “it is not possible to determine whether or to what degree Officer Masterton’s death was work related”.

Dr. J. Scott Denton, M.D. provided an opinion letter concerning Officer Masterton’s cause of death. However, Dr. Denton’s opinion was made with respect to whether or not Officer Masterton’s death would fall within the criteria established under the bylaws of the Illinois Police Memorial Committee for a line of duty death, his opinion does not address the Illinois Pension Code, which has a different standard. Additionally, Dr. Denton misstated facts related to timing of the roll call, indicating it was a morning briefing when it was actually in the evening. This is material because he drew a correlation between the death and the timing of physically stressful law enforcement activity from the prior shift. Dr. Denton opined that Officer Masterton’s myocarditis was aggravated by his on-duty activity from the prior shift, thus it was medically related to his death.

Dr. William J. Oetgen, M.D., F.A.C.P., rendered an opinion concerning Officer Masterton’s death. His opinion was rendered for the US Justice Department to make a determination under the Federal Public Safety Officer’ Benefit Act, and pursuant to 28 C.F.R. §32.0 et. seq. Dr. Oetgen’s decision was based on the Federal law standard, he even conceded this by stating: “I understand the enclosed law and regulations governing

findings of death in the PSOB program, and my opinion reflects the legal standards contained therein". Dr. Oetgen ultimately opined that Officer Masterton's death was considered a "line of duty death" for purposes of the Federal PSOB, but his opinion turned on the Federal definition of a "Heart Attack" as defined in 28 C.F.R. §32.3(1) & (2) to reach that conclusion. The standard found in the Illinois Pension Code is different from the Federal standard.

Dr. Stuart Feldman, D.O., FACEP, rendered an opinion on behalf of the Applicant. Dr. Feldman opined: "After reviewing the records available to me, it is my opinion that the cause of Officer Masterton's death is directly related to his duties as an officer with the Glenview Police Department." Dr. Feldman indicated that shift-work left Masterton susceptible to a viral illness, which in turn caused cardiac complications. He pointed to the inherent stress of his occupation, and that it may have increased the overall risk of cardiac events. Dr. Feldman also indicated that delays in optimal care were attributed to the uniform required to be worn while on-duty and likely contributed to Masterton's death. Dr. Feldman's report does not indicate what standard of law or legal definition was used in determining what constitutes a line of duty death, nor does it contain curriculum vitae.

Dr. Feldman's opinion was challenged by Dr. Lampert who indicated that reported links between shift work and cardiovascular disease did not

suggest shift workers were at increased risk for lymphocytic myocarditis specifically, but referred to an increased risk of coronary disease and myocardial infarction, neither of which was found at the time of officer Masterton's autopsy.

The causal relationship presented by Dr. Feldman is tenuous at best, but even if accepted would not carry the burden needed. Even if the Pension Board were to believe that shift work, job stress, and wearing a uniform was linked to Officer Masterton's death, the Applicant would still need to show an "act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life". Citizens in the ordinary walks of life work shifts, have stressful jobs, and wear uniforms, they may not be exactly the same, but there is not enough distinction to say there is an inherently special risk within these categories.

The Pension Board is tasked with the duty to resolve conflicts in the evidence and make a factual finding. For the reasons stated above, the Board exercised its discretion and placed greater weight on the opinions of Drs. White, Lampert, Feely and McDonough. Having considered the evidence, the Pension Board finds that, even if attending roll call were to be considered an "act of duty", the Applicant has not met the burden to show a causal link between the roll call and Officer Masterton's death.

Other Death Benefits

The Applicant submitted evidence to show he was awarded \$339,310.00 by the U.S. Department of Justice for a claim under the Federal Public Safety Officers' Benefit Act. This was based on a Federal ruling that Officer Masterton's death was in the "line of duty". The mere fact that Federal benefits were provided does not bind the Pension Board or require a similar finding. The Pension Board was not a party to that action, and the claim was made under a Federal law with a different legal standard than the Illinois Pension Code. Furthermore, the Applicant has not asserted any form of issue preclusion.

At hearing, testimony was elicited indicating Applicant filed a similar claim in Illinois, but it was denied by the Illinois Court of Claims. The distinction may be found in the two different statutes - the Federal Public Safety Officers' Benefit Act is found at 34 USC 10281 and the Illinois Line of Duty Compensation Act is found at 820 ILCS 315. The Federal law contains a 24-hour presumption for cardiac cases (34 USC 10281(k); this presumption does not exist in Article 3 of the Illinois Pension Code. Additionally, the Federal Code provides a definition for "Heart Attack", which distinguishes between a "myocardial infarction" and a "cardiac event", providing coverage for both. (28 C.F.R. §32.3(1)&(2)). This definition was specifically addressed by Dr. Oetgen as the reason why he determined

Officer Masterton's death to be included as a line of duty death under the Federal standard. A similar definition does not exist under the Illinois Pension Code.

The Applicant is Entitled to Continue his Dependent Children's Benefits Under Section 3-112(c) until Age 18.

On February 18, 2015, the Pension Board voted to grant "survivorship" (non-disability) benefits to Officer Masterton's minor child, until he turned eighteen. Since that date, the Applicant has been receiving a survivor's pension from the Glenview Police Pension Fund, in the amount of \$48,270.46 annually. This amount represents 50% of Officer Masterton's annual salary, which is payable for a non-line-of-duty death, pursuant to 40 ILCS 5/3-112(c). The payment of this benefits was made "without prejudice" to the Applicant's ability to seek a higher rate. Benefits received under the Federal Public Safety Officers' Benefit Act are not subject to offset under the Illinois Pension Code, meaning the Applicant is entitled to keep both without reduction.

E. CONCLUSIONS

1. The Board of Trustees of the Glenview Police Pension Fund has jurisdiction over the survivor's claim filed by Applicant.

2. Attending roll call was not an "act of duty" within the meaning of 40 ILCS 5/5-113.

3. Attending roll call was not mandated by law, ordinance, or regulation.

4. Officer Masterton's death was not incurred in or resulting from an act of duty.

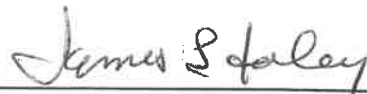
5. The Applicant is not entitled to a 100%, line-of-duty, surviving spouse pension under 40 ILCS 5/3-112(e) of the Pension Code, because Officer Owen Masterton's death was not incurred in or resulting from the performance of an "act of duty", as defined by the Illinois Pension Code.

6. The Applicant is entitled to a 50% survivors' pension under 40 ILCS 5/3-112(c) of the Pension Code.


IT IS THEREFORE ORDERED:


That a certificate of payment be issued to Applicant, or continued if already issued, pursuant to §5/3-133 of the Illinois Pension Code, stating Applicant's entitlement to a non-line-of-duty survivors pension benefit, pursuant to 40 ILCS 5/112(c), effective December 6, 2014, subject to any offsets as required by 40 ILCS 5/3-114.5 of the Pension Code, until the Applicant attains 18 years of age.

**BOARD OF TRUSTEES OF THE
GLENVIEW POLICE PENSION FUND**

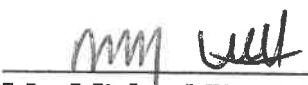


Mr. James Foley, Trustee


Mr. Rob Francois, Trustee


Mr. Kevin Christell, Trustee


Mr. George Colis, Trustee


Mr. Michael Untiedt, Trustee

DATED: November 10, 2020

THIS IS A FINAL AND APPEALABLE DECISION. THIS DECISION CAN BE REVIEWED IN THE CIRCUIT COURT BY FILING A COMPLAINT FOR ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE DATE THAT A COPY OF THIS DECISION WAS SERVED UPON THE PARTIES AFFECTED THEREBY.