

PAUL A. DOUGHTY, individually and as President :
of LOCAL 799 OF THE INTERNATIONAL :
ASSOCIATION OF FIREFIGHTERS, A.F.L.-C.I.O., and :
LOCAL 799 OF THE INTERNATIONAL :
ASSOCIATION OF FIREFIGHTERS, A.F.L.-C.I.O., :
Plaintiffs, :

Vs. : C.A. No. PC 2015-

JORGE ELORZA, in his official capacity as Mayor of :
the City of Providence, THE CITY OF PROVIDENCE, :
by and through its treasurer, James J. Lombardi, III, :
and the PROVIDENCE FIRE DEPARTMENT, through :
the Providence Commissioner of Public Safety, :
Steven Pare, :
Defendants. :

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Introductory Statement and Statement of Jurisdiction

1. This is an action for injunctive and declaratory relief filed by the plaintiffs, Paul A. Doughty, individually and in his capacity as President of Local 799 of the International Association of Firefighters, A.F.L.- C.I.O., and Local 799 of the International Association of Firefighters, A.F.L.- C.I.O. (hereinafter "Local 799"). The basis of this action is the defendants' unilateral alteration of the hours and salary of members of the Providence Fire Department during the term of the current collective bargaining agreement, in violation of Rhode Island law, specifically, the Firefighters Arbitration Act ("FFAA"), Rhode Island General Laws § 28-9.1-1, *et seq.*. The plaintiffs here claim that the defendants' unilaterally alteration of the hours and salary of members

of the Providence Fire Department constitutes a violation of the collective bargaining agreement between the City and Local 799.

As Local 799 and the City are parties to an existing collective bargaining agreement, this Court has jurisdiction of this matter under the Uniform Declaratory Judgments Act, Rhode Island General Laws § 9-30-1, *et seq.*. Local 799 has the authority under Rhode Island General Laws § 28-8-1, *et seq.* to bring suit on behalf of its members for anticipated breaches of the existing collective bargaining agreement.

Parties

2. The plaintiffs are Paul A. Doughty, who brings this action individually and in his capacity as President of Local 799 of the International Association of Firefighters, A.F.L.-C.I.O., and Local 799 of the International Association of Firefighters, A.F.L.-C.I.O. (“Local 799”). Local 799 is the recognized bargaining representative for all sworn members of the Providence Fire Department up to and including the rank of Battalion Chief and is a signatory to the current collective bargaining agreement (“CBA”) by and between Local 799 and the City of Providence.

3. Jorge Elorza is the current Mayor of the City of Providence and is named in this lawsuit in his official capacity.

4. The City of Providence is a municipal corporation organized under a Home Rule Charter and is named through its Treasurer, James J. Lombardi, III.

5. The Providence Fire Department is a subdivision of the City of Providence and is responsible for implementing the wages, rates of pay, hours, working conditions, and all other terms and conditions of employment provisions set forth in the current CBA

by and between Local 799 and the City. The Providence Fire Department is named here by and through the Commissioner for Public Safety, Steven Pare.

Factual Allegations

6. At all times pertinent hereto, Local 799 and the City of Providence were the signatories to a certain collective bargaining agreement that is due to expire on June 30, 2017.

7. The CBA contains provisions concerning the wages, rates of pay, hours, working conditions, and all other terms and conditions of employment for the Providence Fire Department.

8. Under the terms of the CBA, Providence Firefighters work two ten (10) hour days, followed by two fourteen (14) hour nights.

9. In order to implement the shift structure contained in the CBA, the Providence Fire Department has established four (4) groups.

10. Presently, the work week for Providence Firefighters is an average of 42 hours per week.

11. The salary structure for “line firefighters”, Emergency Medical Service (“EMS”) personnel, Fire and Rescue Lieutenants and Fire and Rescue Captains is based upon an average work week of 42 hours per week.

12. Certain sworn Providence Fire Department employees who do not work fighting fires have different shift structures and work schedules. Those different shift structures and work schedules are not an issue in this lawsuit.

13. The plaintiffs learned on May 20, 2015, that the City of Providence will unilaterally implement a shift change by eliminating one of the four (4) shifts under the

CBA and by establishing a three (3) shift structure. effective July 1, 2015.

14. As a result of the City's proposed unilateral change in shift structure, the hourly work week of Providence Firefighters will be increased from 42 to 56 hours per week, contrary to the provisions of the existing CBA.

15. As a result of the City's proposed unilateral change in wages, rates of pay, hours, working conditions, and all other terms and conditions of employment sworn members of the Providence Firefighters will work more hours per week for the same salary, a *de facto* decrease in their salaries.

16. The plaintiffs have filed this action anticipating that the defendants will breach the provisions of the existing CBA between Local 799 and the City, effective July 1, 2015.

17. In filing this action, the plaintiffs request that the Court issue a declaration as to whether the grievance, or "rights" arbitration provisions of the collective bargaining agreement, or the interest arbitration provisions of the Firefighters Arbitration Act ("FFAA"), Rhode Island General Laws § 28-9.1-1, *et seq.*, apply to the anticipatory breach of the collective bargaining agreement outlined herein.

18. Under the FFAA, specifically, Rhode Island General Laws § 28-9.1-4, the plaintiffs and the individual membership of Local 799 have the "have the right to bargain collectively with their respective cities or towns and be represented by a labor organization in the collective bargaining as to wages, rates of pay, hours, working conditions, and all other terms and conditions of employment."

19. Article XVI of the CBA provides for a grievance procedure which provides for the resolution of "[a]lleged grievances of the members of the bargaining

unit in respect to wages, rates of pay or other terms and conditions of employment arising under this contract or in connection with the interpretation thereof.”

20. Prior to announcing the proposed unilateral in the shift structure of the Providence Fire Department, and the resulting changes in wages, rates of pay, hours, working conditions, and all other terms and conditions of employment the City did not bargain with the plaintiffs or afford the plaintiffs with a meaningful opportunity to bargain concerning the effects of the shift change.

21. Under a recent decision of the Rhode Island Supreme Court in the matter of Town of North Kingstown v. International Association of Firefighters, AFL-CIO, Local 1651, et al, No. 2013-44 Appeal (January 9, 2015), the Rhode Island Supreme Court affirmed that a municipality has the obligation to bargain concerning the effects of a change in the shift structure of a fire department.

22. In the North Kingstown decision, the Rhode Island Supreme Court held that a municipality and a firefighters union must resort to the Firefighters’ Arbitration Act, Rhode Island General Laws § 28-9.1-1, *et seq.*, for interest arbitration to determine and decide the effects of a management unilateral decision to change shift structure on the wages, rates of pay, hours, working conditions, and all other terms and conditions of employment.

23. In this case, the provisions of the Firefighters’ Arbitration Act do not apply as there is currently in existence a valid, fully-ratified collective bargaining agreement.

24. As a result, there exists substantial uncertainty and a valid controversy as to whether the grievance, or “rights”, arbitration provisions of the collective

bargaining agreement or the interest arbitration provisions set forth in the Firefighters' Arbitration Act apply to the facts of this case.

25. The plaintiffs maintain that they have the right under the collective bargaining agreement to arbitrate as to both the breach of the contract as to unilateral alterations in the hourly and pay structure of the contract, and as to the effects of any changes in the change in the shift structure of the Providence Fire Department on wages, rates of pay, hours, working conditions, and all other terms and conditions of employment.

26. The unilateral alteration of the hourly and salary structure of the Providence Fire Department has deprived the plaintiffs of the right to meaningfully bargain as to the effects of change in shift structure on mandatory subjects of bargaining under the FFAA, specifically, wages, rates of pay, hours, working conditions, and all other terms and conditions of employment

27. As a result of the defendants' unilateral alteration of the overtime and salary structure of the Providence Fire Department, the plaintiffs will suffer irreparable harm in the form of a permanently-lost opportunity to meaningfully bargain as to the effects of the change in shift structure.

28. The defendants' actions in making a unilateral change in the overtime and salary structure of the CBA during the term of a valid collective bargaining agreement is invalid in light of binding decisions of the Rhode Island Supreme Court, including the North Kingstown decision referenced above.

29. The defendants' actions in making a unilateral change in the overtime and salary structure of the CBA during the term of a valid collective bargaining agreement is

invalid in light of the Firefighters Arbitration Act, Rhode Island General Laws § 28-9.1-1, *et seq.*.

30. In unilaterally altering the wages, rates of pay, hours, working conditions, overtime and other terms and conditions of employment of the Providence Fire Department during the term of the applicable CBA, the defendants have unconstitutionally impaired the plaintiffs' contract rights under the Contract Clause provisions of both the United States and Rhode Island Constitutions.

31. At the present time, a controversy exists between the parties as to whether or not the interest arbitration provisions of the Firefighters' Arbitration Act ("FFAA"), Rhode Island General Laws § 28-9.1-1, *et seq.*, or the grievance, or "rights" arbitration provisions of the CBA apply to the facts of this case.

32. The plaintiffs have requested from the City financial information relating to the City's proposed changes in the wages, rates of pay, hours, working conditions, overtime and other terms and conditions of employment of the Providence Fire Department.

33. As of the date of this complaint being filed, the plaintiffs have not received the requested financial information and cannot meaningfully evaluate the City's proposed changes to the wages, rates of pay, hours, working conditions, overtime and other terms and conditions of employment of the Providence Fire Department at this time.

Count One
Uniform Declaratory Judgments Act
RIGL § 9-30-1, et seq.

34. The plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth above in paragraphs one through thirty-three in Count One.

35. As a result of the defendants' anticipated breach of the Collective Bargaining Agreement by altering the hourly and salary structure of the CBA, the plaintiffs are likely to suffer irreparable harm in the form of a permanently-lost opportunity to bargain as to both the effects of the alteration in shift structure on the wages, rates of pay, hours, working conditions, overtime and other terms and conditions of employment of the Providence Fire Department.

36. Because the City made the decision to alter the shift structure of the Providence Fire Department, during the existence of a valid CBA, predicated the decision on a ruling by the Rhode Island Supreme Court in Town of North Kingstown v. International Association of Firefighters, AFL-CIO, Local 1651, et al, No. 2013-44 Appeal (January 9, 2015), the plaintiffs have been deprived of an opportunity to meaningfully seek an arbitral remedy because a legitimate controversy exists as whether the grievance, or "rights" arbitration provisions of the CBA, or, conversely, the interest arbitration provisions of the FFAA, Rhode Island General Laws, § 28-9.1-1, et seq., apply to this dispute.

37. The plaintiffs would suffer irreparable harm if they had to simultaneously prepare for two separate arbitral proceedings: grievance arbitration under the CBA and interest arbitration under the FFAA.

38. The plaintiffs seek a declaratory judgment from this Honorable Court which finds that the grievance, or “rights” arbitration provisions of the CBA afford the plaintiffs a remedy to address the effects of the City’s unilateral alteration of the wages, rates of pay, hours, working conditions, and all other terms and conditions of employment set forth in the CBA.

WHEREFORE, the plaintiffs demand the following relief against the defendants, jointly and severally:

1. That this Court issue a temporary restraining order enjoining the defendants from unilaterally implementing the change in shift structure pending meaningful negotiations and arbitration under the CBA, pursuant to Rhode Island General Laws § 8-2-13.1.

2. That this Court issue a preliminary injunction enjoining the defendants from unilaterally implementing the change in shift structure pending meaningful negotiations and arbitration under the CBA, pursuant to Rhode Island General Laws § 8-2-13.1.

3. That this Court issue a declaratory judgment determining that the plaintiffs are entitled to arbitrate under the grievance, or “rights” provisions of the CBA, all of the effects of the City’s unilateral decision to alter the shift structure of the Providence Fire Department, including the effect of the change in shift structure on wages, rates of pay, hours, working conditions, and all other terms and conditions of employment and such other provisions of the collective bargaining agreement as may be affected by the change in shift structure.

4. That this Court, pursuant to the provisions of Rhode Island General Laws § 9-24-7, certify to the Rhode Island Supreme Court the question of whether the plaintiffs may pursue any alleged breach of contract under the grievance and arbitration provisions of Article XVI of the CBA or whether the provisions of the Firefighters' Arbitration Act, Rhode Island General Laws § 28-9.1-1, *et seq.*, must be utilized by Local 799 and the City of Providence exclusively.

5. That in the event that the City implements the anticipated shift change, that the plaintiffs be awarded damages for breach of contract, based on the financial effects that the shift change has on the wages, rates of pay, hours, working conditions, and all other terms and conditions of employment of Providence Firefighters.

6. That the plaintiffs be awarded such other and further relief as may be deemed appropriate under the circumstances.

7. That the plaintiffs be awarded attorney's fees and costs.

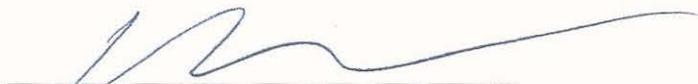
The Plaintiffs,
By their attorney,

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VERIFICATION

I, Paul A. Doughty, having been duly sworn, hereby make affidavit and depose that:

1. I am a plaintiff in this matter.
2. I am employed as a Firefighter with the City of Providence and I am the President of Local 799 of the International Association of Firefighters, AFL-CIO.
3. I have reviewed this complaint.
4. To the best of my knowledge, everything stated in this complaint is true.



Paul A. Doughty

Subscribed to and sworn to before me in Providence, Rhode Island on the 12th
day of June, 2015.