STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: DECEMBER 14, 2012)

TOWN OF NORTH KINGSTOWN	:	
	:	
v.	:	
	:	**C.A. No. WC-2012-0542**
NORTH KINGSTOWN FIREFIGHTERS, LOCAL 1651, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO; RAYMOND FURTADO, in his official capacity as President of LOCAL 1651; and MICHAEL SCANLON, in his official capacity as Secretary of LOCAL 1651	:	

DECISION

STERN, J. Before the Court are a number of petitions filed by Plaintiff Town of North Kingstown, which seek, inter alia, to stay arbitration proceedings that are presently scheduled between Plaintiff Town of North Kingstown and Defendant International Association of Firefighters, Local 1651. These petitions include both Plaintiff's Motion to Stay the 2011-2012 Interest Arbitration in C.A. No. WC-2012-0542, Plaintiff's Motion to Stay the Arbitrations of Certain Firefighter Grievances in C.A. No. WC-2012-0368, and a number of requests for declaratory relief pursuant to the Uniform Declaratory Judgments Act, R.I. Gen. Laws §§ 9-30-1 et seq. Several other requests have been made relative to these related cases but only the two above-referenced issues have been fully briefed. However, for clarity, this Court limits this Decision to the merits of the Plaintiff's Motion to Stay the 2011-2012 Interest Arbitration in C.A. No. WC-2012-0542 and the declaratory relief requested relative to those issues.

I

Facts and Travel[1]

The Town of North Kingstown ("Plaintiff" or "the Town") and the International Association of Firefighters, Local 1651, AFL-CIO ("Defendant" or "the Union") have long been parties to collective bargaining agreements ("CBAs"). The most recent CBA was effective from July 1, 2007 to June 30, 2010. The parties, unable to reach an agreement, submitted their unresolved issues to interest arbitration in accordance with the Fire Fighters Arbitration Act ("FFAA"). This ultimately resulted in an arbitration award dated August 9, 2011, which extended the terms of the CBA from July 1, 2010 to June 30, 2011, pursuant to certain amended terms and conditions.

Prior to that award, the Union wrote the Town Manager requesting that collective bargaining negotiations commence for a new CBA that would be effective starting July 1, 2011. That request was made on February 23, 2011; however, the parties did not commence collective bargaining negotiations within the ten-day period required by R.I. Gen. Laws § 28-9.1-6. Rather, the parties first met on October 28, 2011[2] to negotiate a successor agreement. These negotiations continued on November 14, 18, 29, 30, and December 5, 2011. No agreement was reached by the end of the December 5, 2011 meeting.

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[1] For a more in-depth explanation of the factual underpinnings of this case, refer to this Court's previous Decision in C.A. No. WC-2012-0127 dated May 23, 2012. See Int'l Ass'n of Firefighters v. Town of N. Kingstown, No. WC-2012-0127, 2012 WL 1948338 (Super. Ct. May 23, 2012). That Decision invalidated an ordinance on the grounds that the ordinance (1) was passed in violation of the Town of North Kingstown's Town Charter and (2) conflicted with certain provisions of the Fire Fighters Arbitration Act, R.I. Gen. Laws §§ 28-9.1-1 et seq. Id.

[2] Certain documents filed with the Court in this case indicate that the parties first met to negotiate on October 27, 2011; however, the Motion to Stay Arbitration notes that "[t]he Union subsequently acknowledged that the first date of bargaining was October 28, 2011 rather than October 27, 2011." Mot. to Stay Arbitration at 13 n. 11.

The Town then sought to introduce an ordinance that would significantly change the firefighters' wages, hours, and terms and conditions of employment. The first reading of the ordinance occurred at a Town Council meeting on December 19, 2011. Following this first reading, two additional negotiation sessions took place between the parties—on December 20, 2011 and January 18, 2012. The ordinance was subsequently amended and passed by a three-to-two vote of the Town Council. After notice from the Town to the Union that it intended to implement the ordinance beginning March 4, 2012, the parties had one final negotiation session on February 23, 2012. However, the parties remained unable to reach an agreement on the unresolved issues.

A

The Former Action

As a result of the parties' inability to reach an agreement and the Town's imminent implementation of the ordinance, the Union filed suit on February 28, 2012.[3] The Union requested that this Court issue a Temporary Restraining Order and Preliminary Injunction restraining the Town from implementing the Ordinance. The Union's Verified Complaint sought: (1) a declaratory judgment invalidating the ordinance; (2) a declaratory judgment that the Town had violated the FFAA and the State Labor Relations Act ("SLRA") and that the ordinance was preempted by those acts; and (3) injunctive relief. After considering the Union's request, this Court denied the request for a temporary restraining order and scheduled the matter for a preliminary injunction hearing. The Town also filed a Motion to Dismiss the Verified Complaint on March 15, 2012. That motion was made pursuant to both Rule 12(b)(6) for failure

[3] That case was filed as C.A. No. WC-2012-0127.

to state a claim upon which relief can be granted and Rule 12(b)(1) for lack of subject matter jurisdiction.

At the preliminary injunction hearing, both the Town and the Union had witnesses testify and submitted documentary evidence over several hearing sessions. Each side subsequently submitted briefs and oral arguments were entertained by this Court on April 24, 2012. In its Decision dated May 23, 2012, this Court denied the Town's Motion to Dismiss on both the Rule 12(b)(1) and Rule 12(b)(6) arguments. See Int'l Ass'n of Firefighters, WC-2012-0127, 2012 WL 1948338 (Super. Ct. May 23, 2012). The Court did, however, find the Town's ordinance invalid for having been passed in violation of the Town Charter. See id. Furthermore, the Court found that, even if the ordinance had been properly passed, it was nonetheless invalid "because it conflict[ed] with the FFAA by imposing changes to wages, hours, and terms and conditions of employment without first bargaining to agreement or following the FFAA's statutory arbitration procedures." Id. The Court declined to issue a preliminary injunction because the ordinance had been invalidated, leaving nothing to be enjoined by the Court and, therefore, making the issue moot.

After the Court found the ordinance to be invalid, the Town did not return to the prior wages, hours, and terms and conditions of employment. Rather, the Town continued use of the terms and conditions unilaterally imposed by the invalidated ordinance. The Town's rationale for not returning to the pre-ordinance status was its position that an ordinance was not necessary to implement these unilateral changes. More specifically, the Town's position was that it has the inherent right to unilaterally change the relationship between the Town and the Union because the Union failed to request interest arbitration of unresolved issues within the time frame delineated by the FFAA—located at R.I. Gen. Laws § 28-9.1-7—and the CBA had expired.

Furthermore, the Town argued that the Union forfeited its right to collectively bargain in the first instance due to the Union's failure to comply with the forfeiture provision of the FFAA, located at R.I. Gen. Laws § 28-9.1-13.

B

The Instant Action

At the time, a request was pending by the Union for interest arbitration. The Town filed a Verified Complaint and Petition to Stay Arbitration in C.A. No. WC-2012-0542.[4] That Verified Complaint was filed on September 5, 2012. According to this Verified Complaint, the Union had filed an unfair labor practice charge with the SLRB on June 14, 2012. Verified Compl. ¶ 40. That charge sought "to order the Town to participate in statutory interest arbitration proceedings." Id. ¶ 42 (internal quotations omitted).

The SLRB issued a Complaint against the Town on August 2, 2012, alleging that the Town violated state statutes when it "unilaterally changes terms and conditions of employment, including hours and wages, without bargaining to impasse and without exhausting all statutory dispute resolution mechanisms under the [FFAA]." Id. ¶¶ 47-48. The Town, therefore, filed the Verified Complaint seeking a declaratory judgment of the parties' rights and the SLRB's jurisdiction (or lack thereof) as well as a stay of the arbitration proceedings. Id. ¶¶ 50, 74. The Town subsequently filed an Amended Complaint and Petition to Stay Arbitrations[5] on September

[4] This Verified Complaint and Petition dealt with the rights of the parties in interest arbitration. Interest arbitration is defined as "[a]rbitration that involves settling the terms of a contract being negotiated between the parties; esp., in labor law, arbitration of a dispute concerning what provisions will be included in a new collect-bargaining agreement." Black's Law Dictionary 100 (7th ed. 1999).

[5] The Petition to Stay Arbitrations was properly filed pursuant to R.I. Gen. Laws § 28-9-13, which states, in pertinent part:

24, 2012. Both the Union and the Town have filed substantial memoranda addressing the issues involved in these cases.

As there are multiple actions filed before this Court—containing more than thirty issues for which the parties requested declaratory relief, all involving the relationship between the Town and the Union—the Court held a conference. The purpose of the conference was, in accordance with Rule 16 of the Superior Court Rules of Civil Procedure, to simplify and clarify the issues and schedule a timeframe to resolve the major legal issues involved in these cases.[6] The Court ordered the parties to attempt to agree on the five most significant legal issues that will assist in resolving the cases before the Court. The parties agreed to the five legal issues and, in accordance with a scheduling order, the parties have fully briefed the first two issues. The first of these issues, as addressed by the Court in this Decision, is whether or not interest arbitration may proceed under the FFAA based on an interpretation of the FFAA's provisions.

> "If a notice has been personally served on the party of an intention to conduct the arbitration pursuant to the provisions of a contract or submission specified in the notice, *the issues specified in this subdivision may be raised only by a motion for a stay of the arbitration*, notice of which motion must be served within ten (10) days after the service of the notice of intention to arbitrate. . . . The arbitration hearing shall be adjourned upon service of the notice pending the determination of the motion. Where the opposing party, either on a motion for a stay or in opposition to the confirmation of an award, sets forth evidentiary facts raising a substantial issue as to the making of the contract or submission or the failure to comply with it, an immediate trial of the issue shall be had. In the event that the opposing party is unsuccessful he or she may, nevertheless, participate in the arbitration if the arbitration is still being carried on. Any party may, on or before the return day of the notice of application, demand a jury trial of the issue." G.L. 1956 § 28-9-13(2) (emphasis added).

[6] Rule 16 states that "the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider" things such as the "simplification of the issues" and any "other matters as may aid in the disposition of the action." Super. R. Civ. P. Rule 16.

II

Analysis

In analyzing the issues of forfeiture and waiver—as raised by the Town—when determining the availability of interest arbitration under the FFAA, the Court keeps in mind the public policy considerations that prompted the passage of the FFAA. Those policies are best captured in the purpose behind the FFAA as stated in the act itself. In pertinent part, R.I. Gen. Laws § 28-9.1-2 states:

> "The protection of the public health, safety, and welfare demands that . . . all employees of any paid fire department in any city or town not be accorded the right to strike or engage in any work stoppage or slowdown. This necessary prohibition does not, however, require the denial to these municipal employees of other well recognized rights of labor such as the right to organize, to be represented by a labor organization of their choice, and the right to bargain collectively concerning wages, rates of pay, and other terms and conditions of employment." G.L. 1956 § 28-9.1-2.

Thus, firefighters are accorded a right to interest arbitration to make up for their inability to effect change in other ways, such as the right to strike that is afforded to other workers. Furthermore, the general policy of the State of Rhode Island is "to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self organization, and designation of representatives of their own choosing for the purposes of collective bargaining, . . . free from the interference, restraint, or coercion of their employers." G.L. 1956 § 28-7-2. For this reason, this Court notes the sensitivity and importance of issues arising under the FFAA, both for the firefighters and for the towns they serve.

A

Forfeiture

The Town argues, in its supporting documents, that the Union forfeited its right to engage in negotiations with the Town for the purpose of creating a new CBA. On this topic, Rhode Island law states:

> "Whenever wages, rates of pay, or any other matter requiring appropriation of money by any city or town are included as a matter of collective bargaining conducted under the provisions of this chapter, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the corporate authorities *at least one hundred twenty (120) days before the last day on which money can be appropriated by the city or town* to cover the contract period which is the subject of the collective bargaining procedure." G.L. 1956 § 28-9.1-13 (emphasis added).

Under the plain meaning of this provision, 120 days' notice must have been given by the Union of the request for collective bargaining. See id.

Here, the Court need not reach the issue of which day was "the last day on which money can be appropriated by the city or town to cover the contract period" because it is clear that the Union did not give the required notice prior to the 120-day time frame. The Town argues that this fact is fatal to the Union's case. In so arguing, the Town relies on Town of Tiverton v. Fraternal Order of Police Lodge 23, 118 R.I. 160, 372 A.2d 1273 (R.I. 1977).[7] In that case, the Rhode Island Supreme Court determined that the purpose of the 120-day notice requirement is "to afford the town sufficient time to consider matters affecting town finances." Town of Tiverton, 118 R.I. at 164, 372 A.2d at 1275. Ultimately, the Court determined that the 120-day

[7] The Court notes that this case was decided under the Municipal Police Arbitration Act, R.I. Gen. Laws § 28-9.2-1 et seq., rather than the provisions of the FFAA. However, as a practical matter, the relevant provision of the Municipal Police Arbitration Act is identical to § 28-9.1-13 of the FFAA. Therefore, this Court views the Rhode Island Supreme Court's interpretation of that statutory language—as found in Town of Tiverton—as controlling in the present case.

notice requirement is mandatory rather than directory "and failure to comply is judged fatal." Id. at 165, 372 A.2d at 1276.

This Court finds that the Rhode Island Supreme Court's interpretation of the 120-day notice requirement in Town of Tiverton is conclusive on the issue of forfeiture. Based on a direct application of the holding in that case, it would seem as though the Union's failure to comply with the statute is fatal to the Union's ability to collectively bargain. See id. at 166, 372 A.2d at 1276. Indeed, this Court finds that the Union's notice was defective under the plain language of R.I. Gen. Laws § 28-9.1-13. However, as the Court noted in Town of Tiverton, lack of timely notice means only that "the town was not obliged to negotiate" on issues falling under the statute. Id. This language is not prohibitive of such negotiations. Here, by contrast, there is no dispute that the Town actually engaged in negotiations with the Union on a wide range of issues, all after receipt of the Union's defective notice.

In a similar case under the FFAA, the Rhode Island Supreme Court determined that "[b]ecause the parties initiated collective bargaining negotiations for purposes of entering into a new agreement, we therefore assumed that bargaining was appropriately initiated in compliance with § 28-9.1-13." Lime Rock Fire Dist. v. R.I. State Labor Relations Bd., 673 A.2d 51, 53 (R.I. 1996). Other Rhode Island cases have followed this precedent, assuming that notice did not violate R.I. Gen. Laws § 28-9.1-13 where there was evidence of actual negotiation between the parties. See e.g., Town of Coventry v. State Labor Bd., Nos. PC-1992-0980 & PC-1996-0118, 1996 WL 936955 (Super. Ct. July 12, 1996). In Town of Coventry, the Superior Court noted:

> "Even though neither [of] the transcript[s] . . . contain documentation that such written notice was sent within the appropriate time period, Union Exhibit 3 dated October 5, 1990, which is part of the 1992 Hearing Record, purports to be the original 'Ground Rules for Contract Negotiations' containing eighteen provisions for conducting the negotiations, the dates for the negotiating period, the names of the Union and Town negotiating teams, and is signed by the Town and the Union,

> *supporting the conclusion that the Town and the Union were negotiating the terms of a new contract to cover the period July 1, 1990, through June 30, 1991, within the meaning of 28-9.1-13*." Id. (emphasis added).

Under such an analysis, this Court holds that "[b]ecause the parties initiated collective bargaining negotiations for purposes of entering into a new agreement," the Union's defective request to engage in such negotiations is not fatal to the Union's ability to collectively bargain. See Lime Rock, 673 A.2d at 53.

In support of this holding, this Court notes that the purpose of the relevant provision is "to afford the town sufficient time to consider matters affecting town finances." Town of Tiverton, 118 R.I. at 164, 372 A.2d at 1275. Here, the Town was not obliged to engage in collective bargaining with the Union following the Union's defective request; however, the Town actually engaged in such negotiations. Thus, it is clear that the Town was not deprived of "sufficient time to consider matters affecting town finances." Once the Town engaged in collective bargaining with the Union, it was bound to follow the other provisions of the FFAA, including those requiring unresolved issues to be submitted to interest arbitration.[8] See G.L. 1956 § 28-9.1-7.

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[8] Although it was not raised in the parties' pleadings or supporting documents, this Court notes that further support of its holding on the issue of forfeiture can be found in the doctrine of estoppel. Estoppel is defined as a "bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true." Black's Law Dictionary 570 (7th ed. 1999).

As discussed in subsequent sections of this Decision, parties must typically exhaust their chosen remedy. See Cipolla v. R.I. Coll., Bd. of Governors for Higher Educ., 742 A.2d 277, 282 (R.I. 1999) ("Once [the union] entered the grievance procedure, [it] had selected the remedy to adjudicate [its] claim, and [the union] should have pursued that remedy to its conclusion."). Therefore, the Town's actions by engaging in collective bargaining may have been sufficient to invoke that doctrine because the Union, in reliance on the Town's actions, ultimately forfeited its right to seek an alternative remedy. See id.

Indeed, the Rhode Island Supreme Court has noted that "in an appropriate factual context the doctrine of estoppel should be applied against public agencies to prevent injustice and fraud

B

Waiver

This Court has determined—in the preceding section of this Decision—that the Union did not forfeit its ability to engage in collective bargaining because the Town became bound by the provisions of the FFAA once it actually engaged in collective bargaining negotiations with the Union. Now, this Court must decide whether there was a violation of the terms of R.I. Gen. Laws § 28-9.1-7 that resulted in a waiver of the parties' rights to engage in interest arbitration on unresolved issues. This waiver issue arises solely based on the Rhode Island Supreme Court's holding in Lime Rock Dist. v. R.I. State Labor Relations Bd., 673 A.2d 51 (R.I. 1996). In that case, the Court held that a union had waived its right to pursue interest arbitration under the FFAA because it did not submit unresolved issues to arbitration within the proper time frame. See Lime Rock, 673 A.2d at 54.

1

Interpretation of R.I. Gen. Laws § 28-9.1-7

In Lime Rock, the Rhode Island Supreme Court interpreted R.I. Gen. Laws § 28-9.1-7 as creating a thirty (30) day time frame during which the union was required to submit its unresolved issues to arbitration. See id. The statute states:

> "In the event that the bargaining agent and the corporate authorities are unable, within thirty (30) days from and including the date of their first meeting, to reach an agreement on a contract, any and all unresolved issues shall be submitted to arbitration." G.L. 1956 § 28-9.1-7.

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where the agency or officers thereof, *acting within their authority*, made representations to cause the party seeking to invoke the doctrine either to act or refrain from acting in a particular manner to his[, her, or its] detriment." Romano v. Ret. Bd. of Employees' Ret. Sys. of R.I., 767 A.2d 35, 39 (R.I. 2001) (quoting Ferrelli v. Dept. of Emp't Sec., 106 R.I. 588, 594, 261 A.2d 906, 910 (1970)) (internal quotations omitted). However, this Court need not make a final determination of these issues in this Decision and merely notes that these doctrines weigh in favor of this Court's present interpretation of R.I. Gen. Laws § 28-9.1-13.

Under R.I. Gen. Laws § 28-9.1-3, a separate provision of the FFAA, unresolved issues are defined as:

> "any and all contractual provisions which have not been agreed upon by the bargaining agent and the corporate authorities within the thirty (30) day period referred to in § 28-9.1-7. Any contractual provision not presented by either the bargaining agent or the corporate authority within the thirty (30) day period shall not be submitted to arbitration as an unresolved issue; provided, that if either party or both parties are unable to present their respective proposals to the other party during the thirty (30) day period, they shall have the opportunity to submit their proposals by registered mail by midnight of the 30th day from and including the date of their first meeting." G.L. 1956 § 28-9.1-3.

Here, there are a number of contractual provisions that were not agreed upon by the Union and the Town "within the thirty (30) day period referred to in § 28-9.1-7." Id. This is clear from the fact that the parties' first meeting in a series of negotiation sessions took place on October 28, 2011 and the last such meeting did not take place until February 23, 2012—well outside the thirty day period—and no unresolved issues were submitted to arbitration in the interim.

Additionally, it is important to note that this Court is bound by the precedential effect of Lime Rock and must, therefore, follow the interpretation applied to these statutes by the Rhode Island Supreme Court. Based on that interpretation of the FFAA's provisions, the Court holds that all unresolved issues were required to be submitted to arbitration within thirty (30) days from the first negotiation session between the parties. See Lime Rock, 673 A.2d at 54 ("[W]e construe the statute to provide that the parties could present unresolved issues to arbitration within thirty days of [their first meeting]."). Here, the first meeting between the parties took place on October 28, 2011 and, therefore the unresolved issues must have been submitted to arbitration within thirty (30) days from that date.

The Union argues that the parties mutually agreed to extend the period for negotiations. In Lime Rock, the Court extended the thirty (30) day deadline pursuant to R.I. Gen. Laws

§ 28-9.1-7 to thirty (30) days from the date to which the parties had expressly agreed to extend their negotiations. See Lime Rock, 673 A.2d at 54 (finding that the deadline for submitting issues was not until June 29, 1992 "[b]ecause the parties agreed by mutual consent to extend the period of negotiations to May 29, 1992"). Here, by contrast, there is no evidence that the parties expressly agreed to either any particular time frame for negotiations or an extension of such a time frame to a particular point. Thus, without an express agreement to create—and subsequently to alter—a specific timeframe for negotiations, this Court is unable to extend the deadline imposed by the FFAA, as interpreted in Lime Rock. Therefore, this Court finds that the Union has waived its rights to interest arbitration under the FFAA.

2

Application of R.I. Gen. Laws § 28-9.1-7

Having determined that there was a waiver of the Union's right to engage in interest arbitration based on the statutory interpretation found in Lime Rock, this Court must now determine whether that statutory burden is shouldered solely by the Union or equally by both the Union and the Town. This Court engages in the task of interpreting the statute based on the well-settled rules of statutory construction.

When interpreting a statute, the Court's "ultimate goal is to give effect to the purpose of the act as intended by the Legislature." Ryan v. City of Providence, 11 A.3d 68, 70-71 (R.I. 2011) (quoting D'Amico v. Johnston Partners, 866 A.2d 1222, 1224 (R.I. 2005)) (internal quotations omitted). To determine the purpose of an act and the intent of the Legislature in enacting it, the Court must make "an examination of the language, nature, and object of the statute." Id. at 71 (quoting Berthiaume v. Sch. Comm. of Woonsocket, 121 R.I. 243, 247, 397 A.2d 889, 892 (1979)) (internal quotations omitted). In making such an examination of a statute,

the Court must "first attempt to see whether or not the statute in question has a plain meaning and therefore is unambiguous; in that situation we simply apply the plain meaning to the case at hand." Chambers v. Ormiston, 935 A.2d 956, 960 (R.I. 2007) (citing State v. DiCicco, 707 A.2d 251, 253 (R.I. 1998); Pacheco v. Lachapelle, 91 R.I. 359, 361-62, 163 A.2d 38, 40 (1960)).

The plain meaning of a statute is found by giving the words of the statute their ordinary meaning "in the absence of statutory definition or qualification." Chambers, 935 A.2d at 961 (citing Pacheco, 91 R.I. at 362, 163 A.2d at 40). However, it is crucial to statutory interpretation that the Court "consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Ryan, 11 A.3d at 71 (quoting Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994)). Only when a statute is found to be ambiguous is the Court required to "engage in a more elaborate statutory construction process, in which process [the Court] frequently employ[s] the canons of statutory construction." Chambers, 925 A.2d at 960 (citations omitted).

Here, this Court finds R.I. Gen. Laws § 28-9.1-7 to be unambiguous and, therefore, will apply the plain meaning of the statute to the facts of the cases presently before the Court. This plain meaning is ascertained only by an examination of the statute within the greater context of the FFAA. The statute itself states only that "any and all issues shall be submitted to arbitration." G.L. 1956 § 28-9.1-7. There is no indication in the wording of that provision as to which party is required to bear the burden of submitting unresolved issues to arbitration. Other provisions throughout the FFAA—including R.I. Gen. Laws §§ 28-9.1-6,[9] 28-9.1-8,[10] and

[9] R.I. Gen. Laws § 28-9.1-6 states, in pertinent part:

> "*It shall be the obligation of the city or town*, acting through its corporate authorities, to meet and confer in good faith with the representative or representatives of the bargaining agent within ten (10) days after receipt of written

28-9.1-13[11]—explicitly state when only one party bears a particular burden. Thus, where the language of a statute within the FFAA does not place an obligation squarely on a single party, it can be inferred that the obligation found in that particular provision is meant to be placed equally on both parties.

Based on such an application of the statute's plain meaning, this Court holds that R.I. Gen. Laws § 28-9.1-7 is equally applicable to both the Union and the Town. Such an application means that, under the Rhode Island Supreme Court's holding in Lime Rock, both the Union and the Town were required to submit unresolved issues to arbitration within thirty (30) days of the parties' first meeting on October 28, 2011. See Lime Rock, 673 A.2d at 54. However, neither the Union nor the Town submitted those unresolved issues to arbitration. Therefore, this Court holds that both parties have waived their rights to engage in interest arbitration related to their collective bargaining negotiations. See id. As such, both the Union and the Town must now wait until the "window opens again" for interest arbitration. If interest arbitration is properly

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> notice from the bargaining agent of the request for a meeting for collective bargaining purposes." (Emphasis added.)

[10] R.I. Gen. Laws § 28-9.1-8 states, in pertinent part:

> "Within five (5) days from the expiration of the thirty (30) day period referred to in § 28-9.1-7, *the bargaining agent and the corporate authorities shall each select and name one arbitrator* and subsequently shall immediately notify each other in writing of the name and address of the person selected." (Emphasis added.)

[11] R.I. Gen. Laws § 28-9.1-13 states, in pertinent part:

> "Whenever wages, rates of pay, or any other matter requiring appropriation of money by any city or town are included as a matter of collective bargaining conducted under the provisions of this chapter, *it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the corporate authorities* at least one hundred twenty (120) days before the last day on which money can be appropriated by the city or town to cover the contract period which is the subject of the collective bargaining procedure." (Emphasis added.)

requested during the statutory time period, in accordance with the FFAA, the process will go forward. But what is the relationship between the Union and the Town pending the results of such interest arbitration? This is one of the questions answered by the subsequent sections of this Decision.

C

Practical Effects of Waiver

This Court has determined that both the Union and the Town waived their right to submit unresolved issues to interest arbitration. The Court is now faced with the task of outlining the practical effects of that holding on each party by analyzing what, if any, alternative remedies may be available to the parties. Then, it will be important for this Court to discuss what terms and conditions, if any, exist between the parties that have been carried over from their expired CBA while the parties pursue any available remedies.

1

Rights of the Parties

As this Court stated in the preceding sections of this Decision, both the Union and the Town have waived their rights to submit unresolved issues to interest arbitration. As such, both parties are drastically limited in the availability of alternative remedies. This is due to the doctrine of election of remedies and the FFAA. Election of remedies is defined as "[a] claimant's act of choosing between two or more concurrent but inconsistent remedies based on a single set of facts." Black's Law Dictionary 537 (7th ed. 1999). It is also said to "bar[] a litigant from pursuing a remedy inconsistent with another remedy already pursued." Id. "[T]he doctrine of election of remedies is equitable in nature and has at its core the salient purpose of preventing

unfairness to the parties." Accordingly, in a similar case to the one presently before this Court, the Rhode Island Supreme Court stated:

> "Once [the union] entered the grievance procedure, [it] had selected the remedy to adjudicate [its] claim, and [the union] should have pursued that remedy to its conclusion." State Dept. of Envtl. Mgmt. v. State Labor Relations Bd., 799 A.2d 274, 278 (R.I. 2002) (quoting Cipolla, 742 A.2d at 282) (internal quotations omitted).

In finding that the union in that case was barred from seeking a remedy with the SLRB, the Court held that "the doctrine of election of remedies is applicable to actions taken and heard by the [SLRB] in the same manner as a complaint for judicial relief." Id. at 279.

This is particularly true in cases arising under the FFAA. In Lime Rock, the "union sought relief before the SLRB, alleging unfair labor practices . . . [but] the SLRB was without jurisdiction to consider the charge inasmuch as the specific mechanism for resolving disputes under the FFAA is through arbitration." Lime Rock, 673 A.2d at 54. In a separate Superior Court case arising under the FFAA, it was concluded that a particular issue was "an unresolved issue that arose during valid negotiations between the [u]nion and the [t]own within the meaning of 28-9.1-3(3), and therefore, *the [u]nion's exclusive remedy was to seek arbitration under G.L. 28-9.1-7 within thirty (30) days of the end of their negotiating period*." Town of Coventry v. State Labor Bd., Nos. PC-1992-0980 & PC-1996-0118, 1996 WL 936955 (Super. Ct. July 12, 1996) (emphasis added). In that case, "the Board was without jurisdiction to hear and adjudicate the dispute" because the union had not pursued its exclusive remedy to its conclusion. Id.

Thus, the Union's alternative remedies are limited not only by its failure to properly pursue interest arbitration to its conclusion but also by the fact that such interest arbitration is the exclusive mechanism for resolving disputes under the FFAA. See id.; see also Lime Rock, 673 A.2d at 54. The Union, therefore, is barred from pursuing its claim against the Town with the

SLRB, insofar as the claim arises out of the unresolved issues between the parties, as defined by R.I. Gen. Laws § 28-9.1-3.

Because R.I. Gen. Laws § 28-9.1-7 applies equally to both parties, however, the preceding determination that the Union is unable to seek resolution of the parties' unresolved issues by the SLRB does not end this Court's analysis. This Court must now determine the Town's ability to seek alternative remedies regarding the parties' unresolved issues. As with the Union, once the Town engaged in collective bargaining pursuant to the FFAA, the Town's available remedies were limited insofar as "the specific mechanism for resolving disputes under the FFAA is through arbitration." Lime Rock, 673 A.2d at 54.

The policy behind the passage of the Rhode Island State Labor Relations Act, R.I. Gen. Laws § 28-7-1 et seq., is the protection of employees and their ability to collectively bargain with their employers. See G.L. 1956 § 28-7-1 et seq. That statute, in pertinent part, states:

> "As the modern industrial system has progressed, there has developed between and among employees and employers an ever greater economic interdependence and community of interest which have become matters of vital public concern. Employers and employees have recognized that the peaceable practice and wholesome development of that relationship and interest are materially aided by the general adoption and advancement of the procedure and practice of bargaining collectively as between equals. It is in the public interest that equality of bargaining power be established and maintained. It is likewise recognized that *the denial by some employers of the right of employees freely to organize and the resultant refusal to accept the procedure of collective bargaining substantially and adversely affect the interest of employees, other employers, and the public in general*." G.L. 1956 § 28-7-2 (emphasis added).

Thus, it is typically only unions that would seek to file a claim with the SLRB against towns and not vice versa; however, either party is permitted to file such a claim with the SLRB. See G.L. 1956 § 28-7-21 (allowing charges to be brought that either "any employer or public sector employee organization" has engaged in unfair labor practices); G.L. 1956 § 28-9.1-6 ("An unfair labor practice charge may be complained of by either the employer's representative or the

bargaining agent to the state labor relations board.") Thus, it is not only the Union but also the Town that is barred from seeking a remedy with the SLRB due to the waiver of its right to pursue interest arbitration under the FFAA.

Here, in lieu of seeking a remedy with the SLRB, the Town has taken it upon itself to unilaterally change the terms and conditions of their ongoing relationship with the Union. The central legal argument by the Town is that when the Union waived interest arbitration under the FFAA, the FFAA ceased to apply and the Town could take whatever unfettered unilateral action it desired under its home rule charter.[12] This Court finds that the Town, also having the affirmative obligation of submitting unresolved issues to arbitration under R.I. Gen. Laws § 28-9.1-7, is similarly limited following the waiver of its right to pursue that remedy and cannot then pursue unilateral changes to the employer/employee relationship.

Aside from the election of remedies doctrine, the Town is incorrect in its interpretation of the FFAA. This Court is prohibited from endorsing such an argument based on "the principle that 'statutes should not be construed to achieve . . . absurd results.'" Ryan, 11 A.3d at 71 (quoting Berthiaume, 121 R.I. at 24, 397 A.2d at 892). The Town may not like the statutory

[12] Art. I, Sec. 102 of the Town's Charter provides:

> "The town shall have all powers of local self-government and home rule and all powers possible for a town to have under the constitution of this state, together with all the implied powers necessary to carry into execution all the powers granted. The town shall have such additional powers as now or hereafter may be granted to the town by the laws of the state. All powers of the town shall be exercised in the manner prescribed by this Charter, or if not so prescribed, then in such manner as shall be provided by ordinance or resolution of the council."

However, despite this broad home rule language, this Court finds that the FFAA applies to the situation, regardless of the parties' waivers of their rights to submit unresolved issues to interest arbitration. See City of Cranston v. Hall, 116 R.I. 183, 186, 354 A.2d 415, 417 (1976) (The FFAA "applies equally to all cities and towns and is, therefore, an act of general application that supersedes a controverting home rule charter provision.").

scheme, as enacted by the Legislature; however, its options are limited to interest arbitration if the parties cannot agree on a new CBA, not dictating the terms going forward. If the Town waives its right to interest arbitration, as it did here, there must either be an agreement between the Town and the Union to go forward with interest arbitration—irrespective of the waiver—or the Town must wait until the interest arbitration opens again. In so holding, this Court notes that such a limitation is in line with the stated statutory purposes of both the FFAA and the State Labor Relations Act in protecting parties' ability to collectively bargain against the actions of employers who would seek to circumvent those rights in one way or another. See G.L. 1956 §§ 28-7-2, 28-9.1-2.

2

Which (If Any) Terms Apply

This Court has now determined that both the Union and the Town waived their ability to submit unresolved issues to interest arbitration and that such waiver limits either party's ability to seek alternative remedies—either from the SLRB or self-crafted—of those unresolved issues. However, the next question is as follows: What terms and conditions, if any, apply to the relationship between the parties following the expiration of their previous CBA? This Court now addresses that issue.

As previously discussed, the State Labor Relations Act was passed to provide employees with the ability to collectively bargain with their employers. See G.L. 1956 § 28-7-2. Accordingly, when parties fail to reach agreement on the terms of a new CBA following the expiration of a former CBA, the Rhode Island Supreme Court has stated:

> "If a dispute should arise between the parties concerning the effect of the failure to enter into a new agreement and whether or not the terms and conditions of an expired agreement should be controlling pending the negotiation and execution of a new agreement, the tribunal to make such a determination is the State Labor

> Relations Board . . . . *If the union should contend that the terms of an expired agreement should apply until a new agreement should be reached, its remedy would be to file an unfair labor practice complaint with the State Labor Relations Board pursuant to the terms of § 28–7–13*. The Superior Court would have jurisdiction only to review the decision of the State Labor Relations Board pursuant to § 42–35–15. In short, the Superior Court does not have original jurisdiction of the question to determine what, if any, agreement is in force between the committee and the union." Warwick Sch. Comm. v. Warwick Teachers' Union, Local 915, 613 A.2d 1273, 1276 (R.I. 1992) (emphasis added).

According to the language of Warwick Sch. Comm., the proper remedy "would be to file an unfair labor practice complaint with the [SLRB]." Id. This remedy can be pursued by either party. See G.L. 1956 § 28-7-21 (allowing charges to be brought that either "any employer or public sector employee organization" has engaged in unfair labor practices); G.L. 1956 § 28-9.1-6 ("An unfair labor practice charge may be complained of by either the employer's representative or the bargaining agent to the state labor relations board."); see also Coventry Fire Dist. v. R.I. State Labor Relations Bd., No. PC-2004-5950, 2005 WL 6063512 (Super. Ct. June 27, 2005) (reviewing a decision of the SLRB based on a charge against a union by the fire district). Thus, this Court does not have jurisdiction to determine "what, if any, agreement is in force between the [Town] and the [U]nion" in this case. Id.

This lack of jurisdiction requires submission of this issue to the SLRB. The parties' waiver of their right to interest arbitration, as discussed in this Decision, is not prohibitive of filing such a claim with the SLRB because the claim would be to determine "the effect of the failure to enter into a new agreement and whether or not the terms and conditions of an expired agreement should be controlling pending the negotiation and execution of a new agreement." Id. By contrast, the parties to this dispute have only waived their rights related to interest arbitration—or alternative remedies—of their "unresolved issues" that arose during their collective bargaining negotiation in late 2011, as defined by R.I. Gen. Laws § 28-9.1-3.

But what terms and conditions apply between the parties until the SLRB can make that determination and it can be enforced by the Superior Court? Can a Town unilaterally say—after the CBA has expired and while properly demanded interest arbitration is ongoing—that the firefighters will now work 30% more hours and receive a 20% cut in hourly pay? Can the Union refuse to work non-overtime shifts unless the firefighters are paid overtime pay, or tell the Town that the firefighters are taking four additional holidays this year? Of course not.

Ultimately, and hopefully quickly, the SLRB will determine whether or not the terms and conditions of the expired CBA remain in effect. However, this does not change the fact that both the Union and the Town waived the statutory interest arbitration process under the FFAA. As a result, neither the Union nor the Town has the ability to make changes to the employer/employee relationship until interest arbitration is completed and implemented. Through this Decision, the Court is not determining whether or not the terms and conditions of the prior CBA remain in effect. Rather, the Court—based on the parties' election of remedies and the terms of the FFAA—is prohibiting each side from making unilateral changes to the employer/employee relationship without proceeding through the statutory process as mandated by the FFAA.

III

Public Policy Considerations

"[J]udges must be constantly aware that their role, while important, is limited. They do not have a commission to solve society's problems, as they see them, but simply to decide cases before them according to the rule of law."[13]

The FFAA represents a public policy decision made by our State's elected representatives in both the Legislative and Executive branches. From a public policy perspective, it provides for the uninterrupted provision of emergency services in the State, as it denies firefighters the traditional right to strike, which is generally afforded to unionized employees. See G.L. 1956 § 28-9.1-2. On the other hand, it significantly restricts the Town by not allowing it to implement changes to wages, hours, and other terms and conditions of employment outside of compliance with the FFAA or through a CBA.[14] See id. § 28-9.1-6 (requiring the Town to bargain with the Union and memorialize any agreement in writing). In effect, without the agreement of a third party, in this case the arbitrators, many changes cannot be effectuated by the Town unilaterally. The Town and the Union are bound in perpetuity to the ultimate decision of an unelected arbitrator as to certain issues if a CBA cannot be reached.[15]

This process is markedly different than in the private sector, state employee collective bargaining, the Municipal Employees Arbitration Act,[16] and the School Teachers' Arbitration

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[13] State v. Lead Indus. Ass'n, Inc., 951 A.2d 428, 436 (quoting Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States; Hearing on S. 109-158 Before the S. Comm. on the Judiciary, 109th Cong. 66 (2005) (statement of Hon. John G. Roberts, Jr., United States Supreme Court Justice)).

[14] Interest arbitration is, in fact, the "most common public sector device for resolving bargaining disputes" where other solutions have proved ineffective. Charles B. Craver, *The Judicial Enforcement of Public Sector Interest Arbitration*, 21 B.C. L. Rev. 557, 558 (1980).

[15] Id. at 557 (noting that the "intervention of outside neutrals" is often required where "parties are themselves unable to achieve a satisfactory accommodation of their competing interests").

[16] R.I. Gen. Laws §§ 28-9.4-1 et seq.

Act.[17] In other areas, the employer has the ability to implement changes to the employment relationship after proceeding through a statutory process, which may include bargaining, mediation, arbitration, or impasse procedures.

This lack of ultimate control over the economic terms of the employer/employee relationship presents a highly charged issue in tough economic times. In good economic times, parties are typically able to agree to a CBA that is advantageous to both parties in the short term. In tough economic times, when the Town believes it is only in a position to ask for concessions, it is far less likely that an agreement will be reached.

The actions of the Town in this case may seem extreme to some, as it is now effectively saying "I've had all I can stands, I can't stands no more."[18] The Town may not agree with the State that, from a public policy point of view, the prohibition of firefighter strikes is worth delegating—to unelected arbitrators—the Town's authority to enter into an agreement with its firefighters.

The only relief for the Town, other than challenging the constitutionality of the FFAA[19] or changing the state statute is for the Town to look to the Judicial branch of state government. "Judge, if you agree with our interpretation of the FFAA, we can disregard it and do whatever we believe is necessary." The problem is that the interpretation the Town asks the Court to give to the FFAA is inconsistent with the clear precedent relating to the rules of statutory construction. See Ryan, 11 A.3d at 71 ("statutes should not be construed to achieve . . . absurd

[17] R.I. Gen. Laws §§ 28-9.3-1 et seq.

[18] Popeye (the sailor man) who occasionally proclaimed: "That's all I can stands, 'cause I can't stands no more." See http://www.youtube.com/watch?v=h97kbv4mbsc.

[19] The Rhode Island Supreme Court has previously held that the appointment of an arbitrator pursuant to the FFAA does not constitute an "unconditional delegation" of power but rather a delegation that is "confined by reasonable norms or standards" sufficient to meet this State's constitutional requirement. City of Warwick v. Warwick Regular Firemen's Ass'n, 106 R.I. 109, 118, 256 A.2d 206, 211 (1969).

results") (internal quotations omitted). It is not the role of the Judicial branch to issue an interpretation because the Judge may agree or disagree with the public policy implications of a statute duly passed by our State's elected representatives.[20]

If the Town believes that the FFAA is an incorrect expression of public policy, it must go back to the State's Legislative and Executive branches and amend or repeal the statute. Times change and public policy perspectives change. The FFAA became law in 1961, almost 52 years ago. There have been some amendments to the FFAA, but for the most part it remains the same. Is it a good idea to revisit a statute like this after fifty plus years? That may or may not make perfect sense to our elected leaders. However, at the end of the day, our State's elected officials are the appropriate individuals to make this public policy determination.

IV

Declaratory Relief

The Uniform Declaratory Judgments Act, R.I. Gen. Laws §§ 9-30-1 et seq. gives this Court the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." G.L. 1956 § 9-30-1. "The decision to grant or to deny declaratory relief under the Uniform Declaratory Judgments Act is purely discretionary." Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997) (quoting Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997) (internal quotations omitted)). However, if granted, "[t]he declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree." G.L. 1956 § 9-30-1.

[20] The Court is bound by the law and can provide justice only to the extent that the law allows. Law consists for the most part of enactments that the General Assembly provides to us. Indeed, the Rhode Island Supreme Court has stated that the judiciary's "duty [is] to determine the law, not to make the law." City of Pawtucket v. Sundlun, 662 A.2d 40, 57 (R.I. 1995).

Here, the parties have requested a declaration regarding the nature of their relationship and their available rights based on the surrounding circumstances, as previously discussed in this Decision. More specifically, the Town seeks declaratory relief that: (1) the SLRB is without subject matter jurisdiction over the Complaint in ULP-6088; (2) the Town's actions in implementing unilateral changes to the structure of the employer/employee relationship were lawful; (3) the arbitration panel has exclusive jurisdiction to determine the effects of said unilateral changes; (4) the Union waived its right to submit unresolved issues to interest arbitration under the FFAA; and (5) the interest arbitration panel has no jurisdiction to decide any unresolved issues existing between the Town and the Union.

This Court has already addressed these requests for declaratory relief within the context of this Decision; however, for the sake of clarity, this Court will address these requests directly. Thus, in response to the Town's five requests for declaratory relief in this case—and in light of the Court's analysis of each of the issues involved—this Court now makes the following declarations, pursuant to R.I. Gen. Laws § 9-30-1, regarding the "rights, status, and other legal relations" between the parties:

(1) The Town's actions in implementing unilateral changes to the wages, hours, and terms and conditions of employment, were unlawful, as in violation of the doctrine of election or remedies and the terms of the FFAA.

(2) This Court finds that the SLRB, and not this Court, has jurisdiction over the subject matter of the Complaint in ULP-6088 insofar as it is necessary to determine which terms and conditions have existed between the parties since the expiration of the previous CBA.

(3) The arbitration panel does not have jurisdiction to determine the effects of said unilateral changes, as those changes are invalid and must be undone.[21]

(4) Both the Union and the Town waived their rights to submit unresolved issues to interest arbitration under the FFAA, pursuant to R.I. Gen. Laws § 28-9.1-7.

(5) The interest arbitration panel has no jurisdiction to decide any unresolved issues existing between the Town and the Union because interest arbitration—pursuant to the terms of the FFAA—was waived by the parties for the fiscal year 2011-2011.

As previously stated, "such declarations shall have the force and effect of a final judgment or decree." G.L. 1956 § 9-30-1.

V

Conclusion

The Court is fully aware of the ramifications of this Decision, especially as it relates to the Town. The Town, prior to obtaining a declaratory ruling from this Court, unilaterally implemented sweeping changes to the employer/employee relationship. These changes included increasing the length of firefighters' shifts from twelve (12) to twenty-four (24) hours, increasing the number of hours each firefighter works per week, and decreasing the firefighters' hourly pay. The Town now will be required to "unring the bell" and—as to wages, hours, and other terms

[21] As noted in this Court's previous decision in C.A. No. WC-2012-0127 dated May 23, 2012, "the platoon structure of the Fire Department is a management right that may be properly asserted at the expiration of the CBA." Int'l Ass'n of Firefighters, No. WC-2012-0127, 2012 WL 1948338 (Super. Ct. May 23, 2012). Therefore, that right does not fall within scope of this declaration. By contrast, however, this Court restates its determination that the changes to wages and hours made by the Town were not "solely an effect of that management change from four (4) to three (3) platoons." Id. Accordingly, all unilateral changes to wages, hours, and other terms and conditions of employment do fall within the scope of this declaration and are, therefore, invalidated and must be undone.

and conditions of employment—go back to the state that existed pre-unilateral implementation. This Court recognizes that this process will be a large and costly undertaking. Furthermore, the Town may also be required to compensate the firefighters for the period since those unilateral changes were made.

This Court is also fully aware that the issue of unilateral implementation of changes to terms and conditions under the FFAA is one of first impression. Therefore, this Court will stay this Decision for thirty (30) days to give both the Union and the Town the opportunity to either consent to an Order implementing this Decision or request a stay, or other appropriate relief as may be appropriate from the Rhode Island Supreme Court.