



### Parties

1. Plaintiff East Greenwich Firefighters Association, Local 3328, IAFF, AFL-CIO is the exclusive bargaining agent for all permanent employees of the East Greenwich Fire Department except the Chief.

2. Plaintiff James Perry (“FF Perry” or “Perry”) was hired as a firefighter by the Town of East Greenwich on August 22, 2016.

3. FF Perry is a resident of Warwick, Rhode Island.

4. The Town of East Greenwich is a municipal corporation organized and existing under the laws of the State of Rhode Island.

5. The East Greenwich Town Council is the governing body of the Town of East Greenwich.

6. Susan Cienki is the President of the Town Council.

7. Corrigan is the Town Manager of East Greenwich. She is sued in her official capacity.

8. Dykeman is the Finance Director for the Town of East Greenwich and is sued in her official capacity.

### Jurisdiction

9. Jurisdiction of the Complaint for Declaratory Judgment is vested in the Superior Court pursuant to R.I. Gen. Laws § 9-30-1 et. seq.

10. Jurisdiction of the Request for Injunctive Relief is vested in the Superior Court pursuant to R.I. Gen. Laws § 8-2-13 and § 8-2-13.1.

11. Jurisdiction over the claims under the OMA is vested in the Superior Court pursuant to R.I.G.L. § 42-46-8(c).

## Facts

### *The Invalid Appointments of Gayle Corrigan as Acting Town Manager and Town Manager*

12. On June 19, 2017 at 8:00 a.m., the East Greenwich Town Council (“EGTC”) held a special meeting in closed session.

13. The notice of the meeting provides contained one agenda item:

#### Executive Session

(a) Closed pursuant to RIGL 42-46-5(a)(a1) and 4204605(a)(2), discussions concerning the job performance, character, or physical or mental health of a person in the employ of the Town of East Greenwich.

14. Despite repeated requests, no minutes of the meeting have been posted.

15. Upon information and belief, the Town Council voted in executive session at that meeting to 1) to approve a separation agreement with its Town Manager Thomas Coyle and 2) appoint Gayle Corrigan as Acting Town Manger.

16. No notice was provided that the Town Council intended to appoint an Acting Town Manager.

17. On July 24, 2017, the Town Council voted 4-0 to remove the word “Acting” from Acting Town Manager Gayle Corrigan’s title.

18. No notice was provided that the Town Council intended to appoint a Town Manager at that meeting.

19. Not all Council Members were present for the vote. Vice President Sean Todd was absent.

### *Gayle Corrigan’s Dismissal of FF Perry*

20. On or about February 29, 2016, the Town of East Greenwich posted an advertisement for lateral transfers.

21. Upon information and belief, the Town sought lateral transfers in an effort to recruit experienced, trained firefighters.

22. Perry submitted an application for employment as a lateral transfer. At the time of his transfer, Perry was employed as a Lieutenant at the Coventry Fire District.

23. Pursuant to the Town of East Greenwich Lateral Transfer Procedures, Perry's application and resume were reviewed by the Director of Human Resources and the Fire Chief. He was then scheduled for an interview.

24. Perry's resume contains the following, listed under the heading *Certifications*:  
"FF Level 1 & 2 NFPA 1001-1002 (Coventry Fire Academy)."

25. The NFPA 1001 (Firefighter I and II) standard identifies the minimum job performance requirements for career and volunteer fire fighters whose duties are primarily structural in nature and the purpose of this standard shall be to ensure that persons meeting the requirements of this standard who are engaged in firefighting are qualified. NFPA 1002 identifies the minimum job performance requirements for career and volunteer fire fighters who drive and operate fire apparatus.

26. While employed as a firefighter for the Coventry Fire District for seventeen years, Perry easily met the minimum job performance requirements contained in NFPA 1001 and 1002. However, as is not uncommon, Perry was never given a formal "certificate" by the Coventry Fire District.

27. Perry's total years of service as a firefighter at the time he applied for a position with the Town of East Greenwich was twenty-seven (27) years.

28. On or about May 11, 2016, Perry was interviewed by Captain Ken Montville, Captain Thomas Mears, Deputy Chief Michael Sullivan and Union executive board member

Mathew Howard. The Director of Human Resources and the Fire Chief, Raymond McGillivray were present for the interview as well.

29. During his interview, Perry was specifically asked whether he had received a certificate for completing Firefighter Level 1 & 2, NFPA 1001-1002. Perry informed the interview committee that he has undergone the training required for Firefighter Level 1 & 2, NFPA 1001-1002, but he was not given a written certificate by the Coventry Fire District when he satisfied the requirements approximately sixteen years before.

30. The interview committee advised Perry that they did not require a certificate, but if he had one, they would put it in his file.

31. Perry was also informed by the interview committee that it was obvious he met the basic requirements of FF1 and FF2 since he had been a firefighter for twenty seven years, the last seven serving as a Lieutenant.

32. Further, FF1 and FF2 were not job requirements since all new employees must complete those requirements during their training period with the Town of East Greenwich.

33. Perry was appointed to the East Greenwich Fire Department on August 22, 2016.

34. During his eleven months as a probationary firefighter with the Town of East Greenwich, Perry received excellent reviews in nearly every category, including Work Ethic, Attitude and Interpersonal Skills, Quality of Work, and Fire/Emergency Scene Performance. Perry received a rating of *Good* in all other categories.

35. Perry's most recent Evaluation Form provides, *inter alia*, that he is "eager to work" and a "productive member on shift," "reports early for duty," is "confident and trustworthy," "consistently seek out additional tasks on [his] own initiative, maintaining a cleaned apparatus and [taking] pride in quality of work," and "performs Fire/EMS duties

professionally with confidence [needing] no supervision. Member performs duties with control remaining calm and level headed.”

36. His quality of work clearly merited the continuation of his employment. In fact, his supervisor noted “I think [he] does an excellent job and I wouldn’t be surprised if [he] becomes a leader in the future.”

37. On June 30, 2017, Perry suffered a work-related injury when he was lifting a patient that had suffered a seizure. He immediately filed the required paperwork with the Town and sought treatment from a physician, who advised him that he was not capable of performing his duties as a firefighter at that time.

38. Perry submitted the required medical records to the Town.

39. The Town recognized Perry’s injury as occurring in the performance of his duties and, as such, from July 1, 2017 to the present, the Town has continued to pay Perry his salary and benefits as required by R.I.G.L. § 45-19-1.

40. Pursuant to the collective bargaining agreement between the Union and the Town of East Greenwich (“CBA”), Perry’s probationary period was schedule to terminate at the end of the day August 21, 2017. At that point, had Perry not been dismissed, he would have become a permanent firefighter as defined in the CBA.

41. Pursuant to Section 9-2 of the CBA,

An employee may be dismissed at any time during the probation period when, **in the judgment of the Chief** and the Town, **the quality of his work** is not such as to merit continuation of employment.

42. Section 22-1 of the CBA provides, in pertinent part,

Any full-time employee who sustains an injury and/or who contracts an illness in the line of duty shall receive such benefits as are provided by the statutes of the State of Rhode Island for the illness or injury or until such time that a disability retirement settlement is agreed upon.

43. The Town of East Greenwich Home Rule Charter, § C-109.2(A)(2) provides, in relevant part,

At the time of their permanent appointment, all members of the Department shall have served for a period of not less than 12 months in probationary status, during which time they may be removed by the Town Manager, with or without cause, **upon the recommendation of the Fire Chief.**

44. In the event of a conflict between the Charter and the CBA, the CBA shall control.

45. On August 17, 2017, the Town of East Greenwich posted an agenda for a special meeting (“Special Meeting”) at 8:45 a.m. on August 19, 2017. The only item on the agenda was to appoint an Acting Fire Chief.

46. At the time the meeting was posted, Chief Russell McGillivray was scheduled to be off work for two weeks. In his absence, he designated the senior captain, Thomas Mears, to be Acting Chief.

47. On August 18, 2017, Chief McGillivray notified Corrigan and the Town Council that he would return to work on August 21, 2017.

48. Prior to the Special Meeting, on social media, President Perry vocally opposed Corrigan’s choice for Acting Chief. President Perry was able to garner support from hundreds of taxpayers, firefighters and other concerned citizens at the Town Council meeting.

49. Although no meeting was necessary to appoint an Acting Chief, the Town Council called the meeting to order at approximately 8:40 a.m. on Saturday, August 19, 2017. The Town Clerk had not been asked to attend and was therefore not present.

50. Upon information and belief, the purpose of the meeting was to appoint an Acting Fire Chief of Corrigan's choosing so that she could dismiss Perry and other firefighters "upon the recommendation of said Acting Fire Chief."

51. As a result of the outpouring of support for President Perry and the firefighters, upon information and belief, the Town Council decided not to confirm Corrigan's choice for Acting Fire Chief, but instead confirmed Captain Thomas Mears.

52. Captain Mears was already serving as Acting Fire Chief during Chief McGillivray's absence.

53. On August 19, 2017 at 10:18 p.m., Town Manager Gayle Corrigan notified the Union President, William Perry, by e-mail that, "pursuant to [her] authority under the Town of East Greenwich Home Rule Charter, § C-109.2(A)(2), [Perry] is hereby removed and dismissed from [his] position as a probationary firefighter with the East Greenwich Fire Department effective immediately."

54. FF Perry was not notified by the Town of his dismissal until August 23, 2017 at approximately 9:30 a.m.

55. Corrigan lacks the authority to dismiss Perry or any probationary firefighter under the Charter without the approval and recommendation of the Fire Chief.

56. Neither the Fire Chief, Russell McGillivray, nor the Acting Fire Chief, Cpt. Thomas Mears, recommended to the Town Manager that Perry be removed. In fact, upon information and belief, both Chief McGillivray and Cpt. Mears support the appointment of Perry as a permanent firefighter.

57. In support of Perry's immediate removal, Corrigan wrote that

the Town has discovered that you made material misrepresentations regarding your qualifications as a firefighter as part of your probationary hiring process.



Specifically, you represented on documents submitted to the Town that you possess Firefighter Level 1 & 2 NFPA 1001-1002 Certifications, which you do not possess... We will be mailing your final paycheck to your home address.

58. Despite dismissing Perry for “material misrepresentations,” prior to dismissing Perry, Corrigan did not speak with him, nor attempt to obtain any explanation from Perry, the Chief, the Acting Chief or any of the individuals who interviewed Perry.

59. Perry made no “material misrepresentations regarding [his] qualifications as a firefighter as part of [his] probationary hiring process.”

60. Corrigan’s dismissal of Perry violates the CBA, the Town Charter and State law.

61. At the time of his dismissal, and at the time of the filing of this Complaint, Perry remains incapacitated from his job as a firefighter due to a work-related injury.

62. Perry will suffer irreparable harm if the Town, through Corrigan and Dykeman, are permitted to stop providing Perry with the salary and medical benefits he is entitled to under the CBA and R.I.G.L. § 45-19-1.

## CAUSES OF ACTION

### COUNT I

#### **Uniform Declaratory Judgment Act, R.I.G.L. § 9-30-1 et. seq. (Town of East Greenwich Home Rule Charter, § C-82)**

63. Plaintiffs hereby incorporates Paragraphs 1 through 62 as though fully set forth herein.

64. The Town of East Greenwich Home Rule Charter, § C-82 provides, “The Town Manager shall be appointed by a majority vote of all Town Council members.” (Emphasis added).

65. On July 24, 2017, only four of the five Town Council members were present and voted to remove the term “Acting” from Acting Town Manager Gayle Corrigan’s title.

66. Pursuant to § C-82, Corrigan's appointment as Town Manager is invalid.

67. Any decisions Corrigan made in her capacity as Town Manager are invalid and unenforceable.

WHEREFORE, Plaintiffs request relief as hereinafter set forth.

## COUNT II

### **Violation of the Rhode Island Open Meetings Act, R.I.G.L. §42-46-1 et seq.**

68. Plaintiffs hereby incorporates Paragraphs 1 through 67 as though fully set forth herein.

69. The EGTC failed to give notice that it intended to appoint an Acting Town Manager at its June 19, 2017 meeting in violation of R.I.G.L. § 42-46-6.

70. The EGTC failed to give notice that it intended to appoint a Town Manager at its July 24, 2017 meeting in violation of R.I.G.L. § 42-46-6.

71. The EGTC failed to discuss and vote on its appointment of an Acting Town Manager in open session at its June 19, 2017 meeting in violation of R.I.G.L. § 42-46-3.

72. The EGTC failed to keep and provide written minutes of its meetings of June 15, 19 and 26, July 10, 11, and July 24, 2017 in violation of R.I.G.L. § 42-46-7.

73. For the foregoing reasons, Corrigan's appointments as Acting Town Manager and Town Manager shall be declared null and void and all actions she took in her capacity as Town Manager revoked and/or invalidated.

WHEREFORE, Plaintiffs request relief as hereinafter set forth.

COUNT III

**Uniform Declaratory Judgment Act, R.I.G.L. § 9-30-1 et. seq.  
(Town of East Greenwich Home Rule Charter, § C-109.2(A)(2))**

74. Plaintiffs hereby incorporates Paragraphs 1 through 73 as though fully set forth herein.

75. The Town of East Greenwich Home Rule Charter, § C-109.2(A)(2) provides, in relevant part,

At the time of their permanent appointment, all members of the Department shall have served for a period of not less than 12 months in probationary status, during which time they may be removed by the Town Manager, with or without cause, **upon the recommendation of the Fire Chief.**

76. Corrigan violated § C-109.2(A)(2) of the Charter when she dismissed Perry without the recommendation of the Fire Chief.

WHEREFORE, Plaintiffs request relief as hereinafter set forth.

COUNT IV

**Uniform Declaratory Judgment Act, R.I.G.L. § 9-30-1 et. seq.  
(R.I.G.L. § 45-19-1)**

77. Plaintiffs hereby incorporates Paragraphs 1 through 76 as though fully set forth herein.

78. R.I.G.L. § 45-19-1 provides, in pertinent part,

whenever any ... fire fighter, ... of any city, town, fire district, or the state of Rhode Island is wholly or partially incapacitated by reason of injuries received or sickness contracted in the performance of his or her duties ..., the respective city, town, fire district, ... **shall, during the period of the incapacity, pay the ... fire fighter, ... the salary or wage and benefits** to which the ... fire fighter ... would be entitled had he or she not been incapacitated, and shall pay the medical, surgical, dental, optical, or other attendance, or treatment, nurses, and hospital services, medicines, crutches, and apparatus for the necessary period.

79. Perry is a fire fighter of the Town of East Greenwich who was partially incapacitated by reason of injuries received in the performance of his duties.

80. Perry remains incapacitated.

81. The Town of East Greenwich is obligated to continue, during the period of the incapacity, to pay Perry his full salary and benefits.

82. Corrigan's August 19, 2017 letter provides that she will mail his "final paycheck to [his] home."

83. Upon information and belief, the Town intends to terminate the health benefits of Perry, his wife and their young son on August 31, 2017.

84. The Town's failure and refusal to continue to compensate Perry during his incapacity violates § 45-19-1.

WHEREFORE, Plaintiffs requests relief as hereinafter set forth.

#### COUNT V

#### **Injunctive Relief**

85. Plaintiffs hereby incorporates Paragraphs 1 through 84 as though fully set forth herein.

86. As a direct and proximate result of the Town's violation of R.I.G.L. § 45-19-1, Perry will suffer irreparable harm.

87. Without injunctive relief, Perry will be unable to afford health insurance for himself, his wife and his young son.

88. Without injunction relief, Perry will be unable to pay his mortgage, his car payment, his living expenses and his son's school expenses.

89. Due to Perry's work-related injury, he is unable to work his part-time job.

90. Absent intervention by this Court, the Town will be free to violate R.I.G.L. § 45-19-1, without consequence, undermining the purpose of the statute.

91. Plaintiffs have a likelihood of success on the merits.

92. Plaintiffs have no adequate remedy at law.

93. The balancing of equities requires that the requested relief be granted.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Honorable Court:

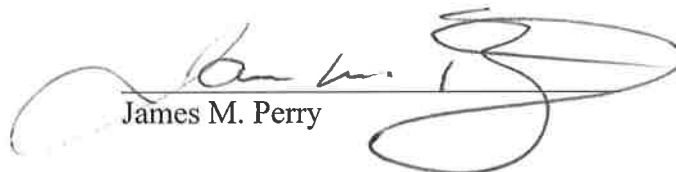
1. Issue a Declaratory Judgment that the Town's dismissal of Perry violates the Town Charter;
2. Issue a Declaratory Judgment that Gayle Corrigan's appointment as Acting Town Manager and Town Manager is invalid;
3. Declare null and void all actions taken by Corrigan since her invalid appointment as Acting Town Manager;
4. Issue a Declaratory Judgment that Town is required to pay Perry injured on duty payments in accordance with R.I.G.L. § 45-19-1 during his incapacity;
5. Temporarily and Permanently enjoin the Town from failing to provide Perry with injured on duty payments in accordance with R.I.G.L. § 45-19-1 during his incapacity;
6. Order the Town to reinstate Perry and make him whole for any damages as a result of the Town's illegal action;
7. Award Plaintiffs their costs and attorney's fees; and
8. Award such other relief as the Court deems just and proper.

VERIFICATION

I have read the allegations of the foregoing Complaint and they are true and correct to the best of my knowledge, information and belief.



\_\_\_\_\_  
Lt. William Perry  
President, Local 3328



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James M. Perry

Plaintiffs ,  
By their attorney,

/s/ Elizabeth Wiens  
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