STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: November 8, 2017)

EAST GREENWICH FIREFIGHTERS ASSOCIATION, LOCAL 3328, IAFF, AFL-CIO, WILLIAM PERRY, MIKE JONES, MATT HOWARD, ANDREW CAMPBELL and ROB WARNER, in their capacities as Executive Board Members of Local 3328, and on behalf of the members of Local 3328 and JAMES M. PERRY	:	
v.	:	**C.A. No. KC-2017-0898**
GAYLE CORRIGAN, in her capacity as TOWN MANAGER OF THE TOWN OF EAST GREENWICH, LINDA DYKEMAN, in her capacity as FINANCE DIRECTOR OF THE TOWN OF EAST GREENWICH, THE EAST GREENWICH TOWN COUNCIL, and SUZANNE CIENKI, SEAN TODD, ANDREW DEUTSCH, NINO GRANATIERO, and MARK SCHWAGER, in their official capacities as members of the East Greenwich Town Council	:	

DECISION

MCGUIRL, J. Plaintiffs East Greenwich Firefighters Association, Local 3328, IAFF, AFL-CIO and James M. Perry (FF Perry) filed a Complaint for declaratory and injunctive relief, as well as a Motion for a Temporary Restraining Order against Defendants—Gayle Corrigan (Corrigan), in her official capacity as the Town Manager of East Greenwich; Linda Dykeman, in her official capacity as Finance Director of the Town of East Greenwich; and the East Greenwich Town Council, by and through its President, Suzanne Cienki (Town Council or EGTC)—alleging

violations of the Open Meetings Act (OMA), G.L. 1956 §§ 42-46-1 et seq., the Town of East Greenwich Home Rule Charter (Town Charter), and the Collective Bargaining Agreement (CBA).

The Superior Court issued a Temporary Restraining Order in this matter on August 30, 2017. Defendants were ordered to (1) continue to provide FF Perry with health insurance coverage while he is on Injured on Duty Leave as defined in section 22 of the CBA; (2) continue to provide FF Perry with his full compensation pursuant to G.L. 1956 § 45-19-1, pending further Order of the Court or a decision on the merits of Plaintiffs' Complaint; and (3) consolidate the matter for hearing and advance the matter on the calendar. (TRO 1-2.)

A jury-waived trial commenced on September 18, 2017. On Friday, September 22, 2017 both parties rested. On October 2, 2017, both parties presented closing arguments. The Defendants, at that time, raised several jurisdictional issues and defenses, one of which—contending that Plaintiffs failed to name all indispensable parties—the Court found to have merit. On the next day, October 3, 2017 each party submitted post-trial memoranda. The parties returned on October 13, 2017 for a hearing on Plaintiffs' Motion to Amend the Verified Complaint to name additional parties, which this Court granted. At that time, Plaintiffs filed an Amended Verified Complaint. Defense counsel accepted service on Defendants' behalf and requested additional time to present witness testimony. This Court granted Defendants' request and allowed both parties to call additional witnesses. On October 17, 2017, Defendants presented witness testimony from East Greenwich Town Council Vice President Sean Todd and East Greenwich Town Council Member Andrew Deutsch. That same day, both parties again rested. This Court now issues a Decision in this matter pursuant to its jurisdiction under G. L. 1956 §§ 9-30-1 et seq., G. L. 1956 §§ 8-2-13 and 8-2-13.1, and § 42-46-8(c).

I

Jurisdiction

A

Uniform Declaratory Judgments Act

Pursuant to § 9-30-1 of the Uniform Declaratory Judgments Act, the court "upon petition, following such procedure as the court by general or special rules may prescribe, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Our Supreme Court has held that the purpose of the Uniform Declaratory Judgments Act is to "facilitate the termination of controversies." Fireman's Fund Ins. Co. v. E.W. Burman, Inc., 120 R.I. 841, 845, 391 A.2d 99, 101 (1978). "[T]he decision to grant a remedy under the Declaratory Judgments Act is purely discretionary." Lombardi v. Goodyear Loan Co., 549 A.2d 1025, 1027 (R.I. 1988) (citing Emp'rs' Fire Ins. Co. v. Beals, 103 R.I. 623, 628, 240 A.2d 397, 401 (1968)). As a result, the Uniform Declaratory Judgments Act bestows broad jurisdiction on the trial courts to issue declaratory relief. Sec. 9-30-1; see also Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997) (stating that the trial court's "decision to grant or to deny declaratory relief under the Uniform Declaratory Judgments Act is purely discretionary"). A party may be entitled to declaratory relief even though alternative methods of relief are available. Taylor v. Marshall, 119 R.I. 171, 180, 376 A.2d 712, 717 (1977).

II

Standard of Review

In a non-jury trial, '"the trial justice sits as a trier of fact as well as of law."' Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). '"Consequently, [the trial justice] weighs and considers the evidence, passes upon

the credibility of the witnesses, and draws proper inferences."' Id. (quoting Hood, 478 A.2d at 184). The trial justice may also "'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" DeSimone Elec., Inc. v. CMG, Inc., 901 A.2d 613, 621 (R.I. 2006) (quoting Walton v. Baird, 433 A.2d 963, 964 (R.I. 1981)). Furthermore, "[w]hen rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" Parella, 899 A.2d at 1239 (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998)). Indeed, the trial court is not required to "'categorically accept or reject each piece of evidence in [its] decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to support his rulings."' Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008) (quoting Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 102 (R.I. 2006)).

III

Statement of Issues

In this case, the Court must essentially determine four issues: (1) whether the Court has jurisdiction over the parties; (2) whether FF Perry was properly terminated under any provision of the Town Charter or the CBA; (3) whether FF Perry materially misrepresented himself or lied on his resume and whether there was any valid basis for his termination; and (4) whether the Town Council violated the OMA when it appointed Corrigan as Acting Town Manager and Town Manager.

IV

Findings of Fact

The Town of East Greenwich (Town) is a municipal corporation having a Town Charter and is a Council-Manager form of government. The Town has a municipal fire department, following the dissolution of the East Greenwich Fire District and the incorporation of the Fire District into the Town in July 2014.

In 2016, the Town implemented the "Town of East Greenwich Fire Department Lateral Transfer Procedures," which established a hiring process for firefighters transferring from other fire departments. (Pls.' Ex. 1.) The stated reasons were to promote the hiring of experienced firefighters that intended to remain at the East Greenwich Fire Department (EGFD). The EGFD wanted to avoid going through the hiring and training process, to ultimately have the new hires seek employment elsewhere. (Tr. 29, Sept. 18, 19, and 20, 2017) (Tr. I). In accordance with the procedures, the EGFD posted the job position and requested applicants submit an application or resume. (Pls.' Ex. 2.) FF Perry applied to the EGFD as a prospective lateral transfer from the Coventry Fire Department, where he had been a career firefighter for seventeen years; serving as Lieutenant for the seven years leading up to his transfer. (Pls.' Exs. 4, 5.) FF Perry had also worked as a per diem dispatcher with the EGFD since November 2014.

In response to the job posting, FF Perry submitted an application and resume though both were not required. (Pls.' Ex. 2.) FF Perry's resume contained the following section:

> **"CERTIFICATIONS**
> ***"FF Level 1 & 2 NFPA 1001-1002 (Coventry Fire Academy***
> ***" Core Hazmat Operations and Mission-Specific PPE***
> ***"Confined Space Awareness***
> ***" ICS/FEMA 100, 200, 241, 242, 301, 700, 800***
> ***"Electric and propane vehicle safety***
> ***"RI CDL Class-A License"***
>
> ***State of RI EMT-Cardiac***
> ***Endotracheal Intubation***
> ***ACLS***

(Pls.' Ex. 4.) Thereafter, in May of 2016, an interview panel consisting of Captain Ken Montville, Captain Thomas Mears, Deputy Chief Michael Sullivan, and Union Executive Board Member Matthew Howard—along with Chief McGillivray and the Town's Director of Human Resources—interviewed FF Perry. Subsequent to that interview, FF Perry had a second interview with the former Town Manager, Chief McGillivray, and the Director of Human Resources. (Tr. I 195-96.) On August 2, 2016, the Town appointed FF Perry to the EGFD as a probationary firefighter.[1] (Pls.' Ex. 7.)

During the eleven months FF Perry served as a probationary firefighter, he successfully completed trainings and received excellent reviews from his supervisors on three separate evaluations, two of which were completed by Chief McGillivray. On June 30, 2017, FF Perry suffered a work-related injury while assisting a patient on a rescue call. As a result of the injury he sustained, FF Perry sought medical treatment from a physician who advised him that he was then not capable of performing his job duties with his injury. After filing his paperwork with the Town, the Town acknowledged FF Perry's injury and subsequently placed FF Perry on "Injured on Duty Leave" (IOD) on July 1, 2017. Since that date, the Town has continued paying FF Perry's required salary and benefits pursuant to § 45-19-1 and through the court Order.

In June of 2017, the Town posted a notice of a special Town Council meeting scheduled for 8:00 a.m. on June 19, 2017 (June 19 meeting). (Pls.' Ex. 12.) The notice contained only one agenda item, which indicated that there would be an "Executive Session" and that the session would be "[c]losed pursuant to RIGL 42-46-5(a)(1) and 42-46-5(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 . . . . " Id. (emphasis added). During the executive session at the June

[1] Ultimately, EGFD hired six firefighters as lateral transfers.

19, 2017 meeting, the Town Council voted to appoint Gayle Corrigan as "Acting Town Manager."[2]

A regularly scheduled meeting of the Town Council was held on July 24, 2017. The Town posted an agenda containing one item related to the Town Manager position: "Discussion of Town Manager position." (Pls.' Ex. 19) (emphasis added). At that meeting, in open session, the Town Council voted in favor of a "[m]otion to remove the designation of 'acting' as it relates to the appointment of Gayle Corrigan as the Town Manager." (Pls.' Ex. 20.) The Town Council then voted to go into an executive session where the Town Council members and Corrigan agreed upon an Employment Agreement. (Defs.' Ex. X.)

As Town Manager, Corrigan began a review of the EGFD's Lateral Hiring Procedures and its six lateral hires. It is undisputed that Corrigan did not agree with lateral hiring as a business practice. In early August 2017, a meeting was held at which Corrigan met with Chief McGillivray. Corrigan asked Chief McGillivray questions about FF Perry. She asked why FF Perry was hired as FF Perry's brother, William Perry, was a Lieutenant with the EGFD. She questioned whether such hiring violated the Town's alleged anti-nepotism policy. Chief McGillivray informed Corrigan that Lieutenant Perry received an advisory opinion from the Rhode Island Ethics Commission upon the request of the Director of Human Resources. (Tr. 358-59, Sept. 20 and 21, 2017) (Tr. II). Corrigan told Chief McGillivray that she herself had conducted an audit of the six lateral transfers' personnel files. She found that three of the six did not have Firefighter Level 1 and 2 certificates in his personnel file. Corrigan later requested that

[2] Corrigan's appointment as Acting Town Manager is reflected in the notes taken by the Town Solicitor during the executive session. There are no open session minutes or any official minutes or recordings from any portion of the June 19, 2017 meeting.

Chief McGillivray send her any certificates he had for three of the six lateral transfers, including FF Perry, by the end of the day on Thursday, August 17, 2017.

On Tuesday, August 15, 2017, before complying with Corrigan's request, Chief McGillivray was out of work on leave. He originally notified the former Chief of Staff that he would be out from August 15 until August 29, 2017. Chief McGillivray notified Corrigan that Captain Mears would be filling in as Acting Fire Chief until his return. Although Chief McGillivray's initial notice stated that he would return to work on August 29, 2017, Chief McGillivray sent a subsequent notice to the Town on Friday, August 18, 2017, which Corrigan received, stating that he would be returning to work the following Monday, August 21, 2017, earlier than originally planned.

Despite Chief McGillivray's impending return on Monday, the Town Council scheduled a special meeting for Saturday, August 19, 2017 at 8:45 a.m. to appoint an Acting Fire Chief. The meeting's agenda contained only one item, "[a]ppointment of acting Fire Chief pursuant to Charter Section 109-1(B), until August 29, 2017." (Pls.' Ex. 28.) (emphasis added). According to the notes from that meeting taken by the Town Solicitor, the Town Council appointed Captain Mears as Acting Fire Chief for "operations." (Pls.' Ex. 29.)

Later that day, at approximately 10:18 p.m., Corrigan sent an e-mail to FF Perry stating that he had been dismissed from his position as a probationary firefighter—two or three days before the end of FF Perry's probationary term.

1

Defendants' Challenges of the Court's Jurisdiction

During closing argument, Defendants asserted that the Court lacks jurisdiction to decide this matter. Defendants claimed four bases for lack of jurisdiction: (1) the East Greenwich

Firefighters Association, Local 3328, IAFF, AFL-CIO (the Union) could not bring suit as an entity; (2) the Court lacks subject matter jurisdiction over Plaintiffs because Plaintiffs failed to name all Town Council members as indispensable parties; (3) the East Greenwich Firefighters Association, Local 3328, IAFF, AFL-CIO (the Union) and FF Perry lack standing to bring claims against the Town Council under the OMA; and (4) the Union's remedies are only available through arbitration.

a

FF Perry's Standing

The Defendants first argue that FF Perry does not have standing because he is not considered to be an "aggrieved party" under the OMA. Section 42-46-8(a) of the OMA grants standing to "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of [the] chapter . . . ." An aggrieved party has the right to file a complaint with the attorney general, § 42-46-8(a), or retain private counsel for purposes of suing in superior court. Sec. 42-46-8(c). "A party acquires standing either by suffering an injury in fact or as the beneficiary of express statutory authority granting standing. The OMA contains a broad grant of statutory standing." Tanner v. Town Council of E. Greenwich, 880 A.2d 784, 792 (R.I. 2005). The Supreme Court of Rhode Island has held "[i]n statutory standing cases . . . the analysis consists of a straight statutory construction of the relevant statute to determine upon whom the Legislature conferred standing and whether the claimant in question falls in that category." Id. at 792 n.6 (citation omitted). "In conducting this analysis, [a court does] not look at the eventuality of success on the merits but, rather, at whether a party is arguably within the zone of interests to be protected or regulated by the statute in question." Id.

Although "aggrieved" is not directly defined in the OMA, this Court finds that FF Perry is an aggrieved party under the construct of the OMA since Corrigan's appointment as Town Manager put Corrigan in a position to terminate FF Perry, and FF Perry was ultimately terminated from the EGFD as a result. See Duffy v. Sarault, 702 F. Supp. 387, 394 (D.R.I. 1988), aff'd, 892 F.2d 139 (1st Cir. 1989) ("It is difficult to imagine a situation in which a person is more aggrieved than when his or her job is abolished.").[3]

b

Union's Standing

Moreover, Defendants assert that the Union lacks standing because it is not registered with the Rhode Island Secretary of State as a corporation. In support of this argument, Defendants claim that the Union's corporate status was revoked in 2009. Defendants, however, have submitted no evidence of this revocation. Nonetheless, this Court rejects this argument since unions are distinguishable from corporations.

Under G.L. 1956 § 28-8-1, a union may bring suit on behalf of union members:

> "Suits or actions at law for the violation by an employer of contracts of employment between the employer and his or her employees who are represented by a labor union as their legally constituted bargaining agent, and whose rights and duties as employees are set forth in a collective bargaining agreement between the employer and labor union, as the legal representative of the employees, may be brought in the name of the union for the benefit of the employees."

[3] The Court notes that even if it found that the Union lacked standing, it would nevertheless determine the merits of the case. See R.I. Ophthalmological Soc'y v. Cannon, 113 R.I. 16, 25, 317 A.2d 124, 129 (1974) ("The court has, on occasion, overlooked the question of standing and proceeded to determine the merits of a case because of the substantial public interest in having the matter resolved.").

Moreover, § 28-8-2 also states, "[l]abor organizations may sue as a legal entity for the benefit and on behalf of the employees whom they represent in the superior court of the state of Rhode Island having jurisdiction of the parties."

The Defendants admitted that the Union is the exclusive bargaining agent for the employees of the EGFD. In addition, Plaintiffs filed an Amended Verified Complaint adding Mike Jones, Matt Howard, Andrew Campbell, and Rob Warner—the Executive Board Members of the Local 3328—as representatives of the Union. Furthermore, this Court has already found that FF Perry has standing under the OMA. Therefore, because FF Perry has standing to bring suit, this Court finds that the Union also has standing pursuant to § 28-8-1.

c

Indispensable Parties

The Defendants also argue that the Court lacks jurisdiction because Plaintiffs did not name all indispensable parties. Specifically, Defendants contend that Plaintiffs were required to join all members of the Town Council, each in his official capacity—namely, Town Council President Sean Todd and Town Council members Andrew Deutsch, Nino Granatiero, and Dr. Mark Schwager.

Pursuant to the Uniform Declaratory Judgments Act, "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." Sec. 9-30-11. Our Supreme Court, in Sullivan, held "plaintiffs' failure to join all [] city council members as parties to the lawsuit is fatal to their declaratory-judgment action." 703 A.2d at 754. Moreover, "[a] court may not assume subject-matter jurisdiction over a declaratory-judgment action when a plaintiff fails to join all those necessary and indispensable parties who

have an actual and essential interest that would be affected by the declaration." Rosano v. Mortg. Elec. Registration Sys., Inc., 91 A.3d 336, 340 (R.I. 2014) (affirming the hearing justice's decision to dismiss the action because of the plaintiff's failure to join all indispensable parties that had an actual and essential interest in the matter). The Sullivan Court explicitly stated that it

> '"would neither excuse nonjoinder nor allow the appearance of fewer than all board members to constitute representation of all the board members who had an interest in that controversy-especially because it was not impracticable (because of board size or unavailability for service of process) for the plaintiff mayor to have joined all interested board members."' Sullivan, 703 A.2d at 754 (quoting In re City of Warwick, 97 R.I. at 298, 197 A.2d at 289).

To name the additional parties, Plaintiffs have made a Motion to Amend the Verified Complaint. It is well settled that in Rhode Island, the court "assumes a liberal position with respect to the amendment of pleadings under Rule 15, and 'affords great deference to the trial justice's ruling on a motion to amend.'" Catucci v. Pacheco, 866 A.2d 509, 513 (R.I. 2005) (citing Kenney v. Providence Gas Co., 118 R.I. 134, 140, 372 A.2d 510, 513 (1977) (quoting Normandin v. Levine, 621 A.2d 713, 715 (R.I. 1993))). "[The Court] ha[s] long held both that the decision about whether to permit a party to amend his or her pleading is one that is left exclusively to the sound discretion of the trial justice and that we shall not disturb that decision unless it constitutes an abuse of discretion." Normandin, 621 A.2d at 715.

Pursuant to § 9-30-11 and our Supreme Court precedent in Sullivan, this Court granted Plaintiffs' Motion for Leave to Amend the Verified Complaint to join the four Town Council members who were not individually named as Defendants. See Super. R. Civ. P. 15. On October 13, 2017, Plaintiffs cured any jurisdictional defect by filing an Amended Verified Complaint including all five Town Council members in their official capacities as Defendants.

d

Arbitration Clause

The final jurisdictional argument asserted by Defendants in their closing argument is that under § 46-8 of the CBA, "[i]f an agreement [on the grievance] cannot be reached to the satisfaction of the [Union] . . . [it] shall request arbitration of the grievance . . . [t]he selection of the arbitrator and conduct of the proceedings shall be govern[ed] by the [AAA rules]. The decision of the arbitrator shall be final and binding." (Defs.' Post-Tr. Mem. 9.) Defendants contend that FF Perry is bound by the terms of the CBA, and thereby the arbitration clause, because the Union has secured counsel on FF Perry's behalf—in other words, FF Perry is a member of the Union and subject to the terms of the CBA. Id.

The Rhode Island Supreme Court in City of Newport v. Local 1080, Int'l Ass'n of Firefighters, AFL-CIO (City of Newport v. Local 1080) determined that retired firefighters were not subject to the grievance process included in the collective bargaining agreement because "the parties did not intend to arbitrate disputes regarding retiree healthcare . . . ." 54 A.3d 976, 982 (R.I. 2012). The court held that "such disputes must be resolved, if at all, judicially rather than through arbitration." Id. Commenting on City of Newport v. Local 1080, our Supreme Court in Providence Sch. Bd. v. Providence Teachers Union, Local 958, AFT, AFL-CIO stated: "[w]e determined that several provisions of the collective-bargaining agreement compelled this conclusion, including the provision defining the terms 'member,' 'employee,' and 'fire fighter' in such a way that plainly excluded retired firefighters." 68 A.3d 505, 510 (R.I. 2013) (citing City of Newport v. Local 1080, 54 A.3d at 981).

Upon reviewing the CBA in the instant matter, this Court finds that the grievance procedures found in § 46-8 of the CBA do not apply to firefighters on probationary status.

Section 1-2 of the CBA states: "The Town of East Greenwich recognizes the East Greenwich Fire Fighters Association Local 3328, International Association of Fire Fighters, AFL-CIO as the exclusive bargaining agent for all permanent employees of the East Greenwich Fire Department . . . ." (Defs.' Ex. B.) Section 9-1 of the CBA provides: "Every employee appointed to a position in the service of the East Greenwich Fire Department shall be required to complete a probation period of twelve (12) months before obtaining permanent status." Id. A reading of both provisions indicates that the CBA is the exclusive bargaining agent for all permanent employees, but firefighters must complete a probation period of twelve months before obtaining permanent status. See City of Newport v. Local 1080, 54 A.3d at 982.

It is undisputed that FF Perry was still on probationary status when he was terminated. Based on the language contained within §§ 1-2 and 9-1 of the CBA, this Court finds that firefighters on probationary status are not considered to be permanent firefighters, and therefore, the CBA is not the exclusive bargaining agent for probationary firefighters. Consequently, § 46-8 is not applicable to this matter, which must, as a result "be resolved, if at all, judicially rather than through arbitration." City of Newport v. Local 1080, 54 A.3d at 982.

1

Authority to Terminate FF Perry Under the Town Charter or CBA

At issue is whether the Town Charter or CBA provided Corrigan with the authority to terminate FF Perry from his employment as a probationary firefighter. The parties have argued that under the Town Charter and the CBA, there are four distinct methods to terminate an employee.

a

Town Charter § C-109.2(A)(2)

> "At the time of their permanent appointment, all members of the [Fire] 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.**" (Defs.' Ex. G) (emphasis added).

Corrigan sent FF Perry a termination letter pursuant to § C-109.2(A)(2) of the Town Charter—Plaintiffs' Exhibit 30—in which Corrigan wrote:

> "Dear Mr. James Perry:
>
> "This letter is to inform you that, pursuant to my authority under the Town of East Greenwich Home Rule Charter, § C-109.2(A)(2), you are hereby removed and dismissed from your position as a probationary firefighter with the East Greenwich Fire Department effective immediately." (Pls.' Ex. 30.)

Section C-109.2(A)(2) of the Town Charter was the only basis cited by the Town in the letter terminating FF Perry.

The Plaintiffs allege that Corrigan violated § C-109.2(A)(2) of the Town Charter when she terminated FF Perry without the recommendation of the Fire Chief. Specifically, Plaintiffs assert that § C-109.2(A)(2) does not grant the Town Manager the unilateral authority to terminate a probationary firefighter. Instead, they maintain, the provision explicitly requires that the Town Manager must receive a recommendation from the Fire Chief before terminating a probationary firefighter. Thus, Plaintiffs contend FF Perry's termination under Town Charter § C-109.2(A)(2) is invalid. The Town has argued that Corrigan had some inherent special power as the Acting Fire Chief for "administrative purposes."

The Rhode Island Supreme Court has held that "when construing a municipal charter, the usual rules of statutory construction apply." Providence Teachers Union Local No. 958 v.

Napolitano, 554 A.2d 641, 643 (R.I. 1989) (citing Coventry Sch. Comm. v. Richtarik, 122 R.I. 707, 713, 411 A.2d 912, 915 (1980)). Moreover, it is well settled that "the provisions of city charters should be construed so as to give, so far as possible, reasonable meaning and effect to all parts of the section in question." Carter v. City of Pawtucket, 115 R.I. 134, 138, 341 A.2d 53, 56 (1975). However, "when the language of the statute is clear and unambiguous, the court must interpret it literally, giving the words of the statute their plain and ordinary meanings." Labor Ready Ne., Inc. v. McConaghy, 849 A.2d 340, 345 (R.I. 2004). Based on the plain and ordinary meaning of the words contained within the provision and by applying their reasonable meaning, it is evident that § C-109.2(A)(2) of the Town Charter clearly requires that a Town Manager receive the recommendation of the Fire Chief to terminate a probationary firefighter. Carter, 115 R.I. at 138, 341 A.2d at 56.

Although Corrigan cited Town Charter § C-109.2(A)(2) as the provision granting her the authority to terminate FF Perry, it is undisputed that Corrigan never received a recommendation to terminate FF Perry from Chief McGillivray or Acting Fire Chief Mears. (Tr. I 46-47, 142.) It is undisputed that Corrigan never even attempted to discuss the termination with Chief McGillivray or Acting Fire Chief Mears before she terminated FF Perry. Id.

Since Corrigan terminated FF Perry without any recommendation from the Fire Chief, the Town has argued that Corrigan had some authority to act as Acting Fire Chief. Apparently, in this instance, in order to attempt to effectuate that grant of authority, the Town set up a special Town Council meeting to appoint an Acting Fire Chief. The Plaintiffs question whether Chief McGillivray's absence from August 15 through August 29, 2017—only two weeks—falls within the definition of an "extended absence or disability" to necessitate the appointment of an Acting Fire Chief. Fire Chief McGillivray and Captain Mears both testified that throughout the duration

of their individual careers with the EGFD, they had never heard of the Town Council calling a special meeting to appoint an Acting Fire Chief. (Tr. I 43, 47, 156-58.)

Section C-109.1(B) of the Town Charter states: "In case of the extended absence or disability of the Fire Chief, the Town Manager shall appoint an Acting Fire Chief with the approval of the Town Council." (Defs.' Ex. G.) (Emphasis added.) On Friday, August 18, 2017, the day before the meeting, Corrigan was aware that Chief McGillivray would be returning to work the following Monday, August 21, 2017. (Tr. II 434.) Notably, § C-87 of the Town Charter—the provision dictating when an Acting Town Manager shall be designated—quantifies a temporary leave as a period of time less than thirty-five consecutive days: "[T]he Town Manager shall designate, subject to approval of the Town Council, a qualified officer of the Town to exercise the powers and perform the duties of Town Manager during his or her temporary absence or disability for a period of 35 consecutive days or less." (Defs.' Ex. G.) This was the first and only time the Town Council appointed an Acting Fire Chief. Defendants rely on § C-109.1(B) of the Town Charter to support their contention that the special meeting of the Town Council held on August 19, 2017 was necessary to appoint an Acting Fire Chief.

The Town Council convened a special Town Council meeting on Saturday, August 19, 2017 at 8:45 a.m. Despite the notice stating, "Appointment of acting Fire Chief," (Pls.' Ex. 28) the Town Council voted to appoint Captain Mears as Acting Fire Chief "for operational purposes." Fire Chief McGillivray and Captain Mears testified that they had never heard of being an Acting Fire Chief for operational or administrative purpose. See Tr. I 43, 47, 156-58. In fact, Captain Mears testified that Corrigan informed him through text message, phone call, and voicemail that the Town Council designated him Acting Fire Chief. Id. at 157-58. Captain Mears asserts he did not know he was appointed Acting Fire Chief "for operations" until it was

elicited through testimony in this matter. Id. Although her text message and the voicemail do not include the "operational purpose" language, Corrigan claims that she told Captain Mears he was Acting Fire Chief for "operations only" during a phone call for which there is no record. (Tr. II 570.)

Corrigan testified that since Captain Mears was appointed Acting Fire Chief "for operations only," she then—through her authority as Town Manager—would serve as Acting Fire Chief "for administrative purposes"; whereby she retained all administrative responsibilities and authority of the Fire Chief. See Tr. II 430. Pursuant to Corrigan's reasoning, in Chief McGillivray's absence, she had the authority to terminate FF Perry under § C-109.2(A)(2) of the Town Charter because she as the Town Manager had her own recommendation as the Acting Fire Chief "for administrative purposes." There has been no other evidence presented that Corrigan undertook any administrative task aside from terminating FF Perry as Acting Fire Chief for "administrative purposes."[4]

The Defendants rely on the Town Manager's general administrative powers under the Town Charter to support Corrigan's authority to act as Fire Chief. Section C-109.1(A) of the Town Charter provides: "The Fire Chief and Deputy Fire Chief shall be appointed by the Town Manager with the approval of the Town Council." (Defs.' Ex. G.) Moreover, § C-85 of the Town Charter designates the "Powers and Duties" of the Town Manager. Section C-85 states, in relevant part:

[4] In an e-mail sent by Chief McGillivray, he indicated that Captain Mears would be performing the duties of the Fire Chief with the exception of payroll in his absence. (Pls.' Ex. 25; Tr. I 50.) Defendants presented no evidence that Corrigan performed the payroll duties for the EGFD during Chief McGillivray's absence. In fact, in Corrigan's termination letter to FF Perry, Corrigan instructed FF Perry to speak with Captain Mears to coordinate the return of property belonging to the EGFD. This statement seems to undermine the Town's assertions that Corrigan was responsible for performing administrative duties. (Pls.' Ex. 30.)

> "The Town Manager shall be the chief administrative officer of the Town. With the consent of the Town Council he or she may head one or more departments. He or she shall be responsible to the Town Council for the proper administration of all affairs of the Town and to that end has power and shall be required to:
>
> "A. Appoint and, when necessary for the good of the service, suspend or remove any officer, including department heads and employees of the Town, except as otherwise provided by this Charter or law or personnel ordinance. All appointments, suspensions and removals of departments and officers made by the Town Manager shall be subject to the approval of a majority of all members of the Town Council."

Nowhere in either source of authority cited does it state that the Town Manager has the power to appoint herself as Acting Fire Chief without at least the approval of the Town Council. Id. Nowhere in the Town Charter or the CBA has the Town drawn a distinction between an Acting Fire Chief "for operations" and an Acting Fire Chief "for administrative purposes." There is also no evidence that Corrigan received the Town Council's approval to act as the Acting Fire Chief for "administrative purposes."

This Court finds Corrigan did not properly terminate FF Perry under § C-109.2(A)(2) of the Town Charter. Corrigan did not receive the recommendation from either the Fire Chief or Acting Fire Chief as required by the Town Charter. The Town's argument that Corrigan could appoint herself Acting Fire Chief for "administrative purposes"—a position that does not exist—without any authority from the Town Council so that she could then recommend, to herself as Town Manager, that FF Perry be fired is not persuasive to this Court and somewhat absurd. See Carter, 115 R.I. at 138, 341 A.2d at 56 (holding that city charters should be construed to give "reasonable meaning and effect" to all parts of the provision in question).

b

Collective Bargaining Agreement § 9-2

> "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." (Defs.' Ex. B.) (emphasis added).

In their arguments, Defendants note that § 9-2 of the CBA also grants the Town Manager the authority to terminate probationary firefighters.

It is well settled that when a court is tasked with interpreting a contract, it must first determine whether "the language of a contractual agreement is plain and unambiguous" and, if so, "its meaning should be determined without reference to extrinsic facts or aids." Clark-Fitzpatrick, Inc. v. Gill, 652 A.2d 440, 443 (R.I. 1994). "In determining whether a contract is clear and unambiguous, the document must be viewed in its entirety and its language be given its plain, ordinary and usual meaning." Paradis v. Greater Providence Deposit Corp., 651 A.2d 738, 741 (R.I. 1994). "In applying this standard, [our Supreme Court] has consistently held that a contract is ambiguous only when it is reasonably and clearly susceptible of more than one interpretation." Id. Accordingly, § 9-1 of the CBA clearly and unambiguously provides that the Town Manager may terminate a probationary firefighter only when the Fire Chief and the Town agree that the quality of the firefighter's work does not merit the continuation of his or her employment. Id.

Here, there was no evidence presented to suggest that the quality of FF Perry's work did not merit continuation. Corrigan never made that argument, nor, based on the testimony, could she have done so with any evidence in support. In her review of FF Perry's personnel file, Corrigan learned that FF Perry placed first in the interview process and performed well on his job performance evaluations. (Pls.' Ex. 8.) Included in FF Perry's personnel file were three

evaluations completed by supervisors during his probationary period. One evaluation completed by Chief McGillivray on January 10, 2017 stated that FF Perry "[c]ompletes all assigned duties/tasks without prompting"; that FF Perry "[s]hows pride in his work! Always first to get to daily duties"; and is a "[v]ery positive and excellent worker!" Id. Another evaluation completed by Chief McGillivray in May of 2017 stated that FF Perry showed "[e]xcellent work ethic. Non-stop; [s]ets a great example"; that FF Perry was "thorough in accomplishing all tasks/duties assigned"; and that he "does an excellent job and I wouldn't be surprised if this person becomes a leader in the future." Id. A third evaluation by Lieutenant Grady from August 11, 2017, only eight days before FF Perry's termination, stated that FF Perry "has a great deal of experience in [his] field and eager to attend repeat/additional training" and that he "performs Fire/EMS duties professionally with confidence and little to no supervision." Id. Corrigan also knew from his personnel file that FF Perry had twenty-seven years of experience as a firefighter at the time he applied for a position with the EGFD. This experience included seven years as a Lieutenant with the Coventry Fire District where he assisted in the training of new firefighters. (Tr. I 170; Tr. II 580.)

CBA § 9-2 establishes two requirements to terminate a probationary firefighter: (1) the Fire Chief and the Town agree that the firefighter should be dismissed and (2) the quality of the firefighter's work is not such as to merit continuation of employment. The first requirement of § 9-2 of the CBA was not met since it is undisputed that Corrigan did not have a recommendation from either Chief McGillivray or Acting Fire Chief Mears. It is also undisputed that FF Perry was certainly qualified to perform his job; evidenced by his nearly twenty-eight years of fire service and the excellent reviews he received on his evaluations from his superiors as a probationary firefighter with the EGFD. The quality of FF Perry's work did not warrant

dismissal. Accordingly, Corrigan lacked the authority to terminate FF Perry under § 9-2 of the CBA.

c

Town Charter § C-109.2(B)

> "Any member of the **permanent Department**, below the rank of Fire Chief and Deputy Fire Chief, **may be dismissed by the Town Manager with the approval of the Town Council** in accordance with the General Laws of Rhode Island." (Defs.' Ex. G.) (emphasis added).

Plaintiffs also argue that Corrigan did not have proper authority under § C-109.2(B) of the Town Charter to terminate FF Perry. The plain and clear language of § C-109.2(B) applies only to permanent members of the EGFD and requires that the Town Manager receive approval from the Town Council. It is undisputed that FF Perry was on probationary status at the time he was terminated. It is also undisputed that Corrigan did not have the approval of the Town Council to terminate FF Perry. Section C-109.2(B) of the Town Charter is not applicable to a probationary employee and, in any event, would have required the Town Council's approval, which Corrigan did not have. Clearly, Corrigan did not have the authority to terminate Firefighter Perry under § C-109.2(B). See Paradis, 651 A.2d at 741; Clark-Fitzpatrick, Inc., 652 A.2d at 443.

d

Collective Bargaining Agreement § 45-1

> "An employee may be dismissed at any time **for just cause** ascertained **after careful and factual consideration**. An employee who is dismissed shall, at the time of his dismissal, be given a written explanation of the reason(s) for his dismissal, and if later reinstated, shall be compensated for all back pay and benefits which would have been afforded him had he not been dismissed." (Defs.' Ex. B.) (emphasis added).

Defendants further assert that § 45-1 of the CBA granted Corrigan the authority to terminate FF Perry.

A plain and ordinary reading of § 45-1 of the CBA provides a basis for terminating permanent firefighters and does not refer to firefighters on probation. See Clark-Fitzpatrick, Inc., 652 A.2d at 443. Consequently, this Court does not find that this section applies to FF Perry. Nevertheless, since Defendants have argued just cause, for the purposes of discussion, this Court will address the provision as if it is applicable to firefighters on probationary status. The language within this provision of the CBA plainly and unambiguously indicates that an employee may be terminated if the Town can provide "just cause" for the termination after "careful and factual consideration." Defs.' Ex. B; see Paradis, 651 A.2d at 741. The Court will, therefore, consider whether Corrigan acted in accordance with the CBA requirements; specifically, whether her actions were supported by "just cause" after "careful and factual consideration."

The Town, in 2016, instituted lateral transfer procedures and hiring practices. The former Town Manager, the Town Council, and Chief McGillivray had all supported the lateral transfer procedures because lateral hiring would decrease the amount of spending on overtime compensation and promote employee retention. (Tr. I 28-29.) The Town drafted job requirements, created a pay schedule and training program, and hired six firefighters—who left other employment to join the EGFD, trained for six weeks, and worked for EGFD for nearly a full year.

Corrigan's initial involvement with the Town began when her company, Providence Analytics, was hired by the Town to conduct a fiscal analysis of the school department and, eventually, the entire municipality. (Tr. II 439-40.) Corrigan stated that her analysis revealed a

structural deficit and, in her professional opinion, the lateral transfer procedures were a major contributing factor. Id. at 508. Corrigan further testified that her prior work experiences, along with the results of her analysis, led her to disagree with the lateral transfer process as a business practice for many reasons, including financial impact and diversity concerns. Id. at 421-24.

Once Corrigan became Acting Town Manager, she began an actual review of the lateral transfer procedures as part of the "One Town" restructuring plan, developed by Corrigan. Id. at 501. Corrigan began her own "audit" of only the six lateral transfers' files; she did not review the files of any other EGFD firefighters. Id. at 470.

At this time, Corrigan knew or should have known from the files that FF Perry met all of the job requirements established by the EGFD Lateral Hiring Procedures. These requirements were contained in the "Conditional Job Offer" sent to FF Perry on August 2, 2016:

> "All employees hired for the position of Firefighter/EMT shall meet the following requirement[s] prior to an official job offer:
> "1. Be a citizen of the United States of America.
> "2. Pass a pre-employment drug test and physical examination by physicians chosen and paid for by said Department.
> "3. Be at least eighteen (18) years of age.
> "4. Be a licensed Rhode Island EMT-C or higher and maintain Rhode Island EMT-C certification as a condition of continued employment.
> "5. Pass a National and State criminal background check (RIGL 45-2-3.4) and motor vehicle history.
> "6. Possess a valid driver's license." (Pls.' Ex. 7.)

Furthermore, the "Conditional Job Offer" contained an additional requirement of submitting proof of "a duly licensed Rhode Island EMT-C." Id. This language is also reflected in CBA § 11, "New Employees." (Defs.' Ex. B.) Corrigan admitted that she believed FF Perry met these requirements as well as the requirements set forth in the Lateral Transfer Procedures:

> "2. The resumes/applications will be reviewed by the Director of Human Resources and Fire Chief . . . .

> "3. An interview team consisting of the Deputy Chief, a Union Representative, and 2 Captains using the Town's scoring system and selected interview questions will interview those chosen.
> "4. The resumes/applications will be reviewed by the interview team.
> . . . .
> "6. The Town Manager shall interview/review the top candidates prior [to] a conditional offer of employment.
> . . . .
> "9. If the candidate has not passed a RIAFC Physical Performance Assessment (PPA) within the last 12 months, at the time of application, they will be required to complete and pass the next PPA to maintain their employment . . . ." (Pls.' Ex. 1; Tr. II 411-12.)

Nowhere does the EGFD or State law require that a firefighter must be certified in Firefighter Level 1 and 2 to the NFPA 1001 standards—or, more importantly, possess a paper certificate for such certifications.

In order to further evaluate the issues involving FF Perry's certificates, a discussion of the history and practices of the fire service and firefighter training in Rhode Island is needed. At trial, Captain Howard Tighe of the Portsmouth Fire Department and the current Chairperson of the Rhode Island Fire Education Training Coordinating Board provided testimony regarding firefighter training practices in Rhode Island. (Tr. I 81, 84.) Said testimony was corroborated, in large part, by every other firefighter who testified at trial.

Captain Tighe testified that historically and until the early 2000s, most Rhode Island fire departments trained new firefighters in-house and did not provide any paperwork upon completion. Id. at 111-12. He further testified that Rhode Island does not have any statutory training requirements. Id. at 102. Firefighter Level 1 and 2 are the basic guidelines used to train entry level firefighters. Id. at 83. Firefighter Level 1 and 2 teaches new firefighters basic fire chemistry, classes of fire, how to fight fires in certain types of occupancies, hazardous material situations, etc. Id. at 101. "It's [a] basic training or basic bible of how to be a firefighter . . . ." Id. at 25-26, 101. In the early 2000s, Rhode Island fire departments began using a standardized

training mechanism developed by the National Fire Protection Agency (NFPA). The NFPA establishes the standard for professional qualifications for firefighters, which local governments and fire departments began to adopt. Id. at 61, 295-96. The NFPA sets the curriculum standards for basic training that firefighters receive before becoming a full-time firefighter. Id. at 25, 61, 83. The NFPA 1001 standard identifies the minimum job performance requirements for firefighters whose duties are primarily structural in nature. (Tr. II 394-95.) The NFPA 1002 standard identifies the minimum job performance requirements for firefighters who drive and operate fire apparatus. Id. at 395.

Chief McGillivray explained that "[f]irefighter [Level] 1 and [Level] 2 is [NFPA] 1001 training. That's kind of the basic training every firefighter gets before he becomes a full time firefighter." (Tr. I 25.) He further indicated that historically, firefighters "used to say firefighter 1 and 2 . . .," which meant firefighters had NFPA 1001 and NFPA 1002 training; "[NFPA] 1002 is actually a separate certification . . . for pump operation[] now." Id. at 35. "[NFPA] 1001 is [Firefighter] Level 1, [Firefighter] Level 2. That stays within the 1001 standard." Id. Mark Pare, Director of the Rhode Island Fire Academy, testified that "[f]irefighter 1 and 2 are the levels of training which are contained within the NFPA [1001] standard" (Tr. II 394.) NFPA 1002 is a separate standard from Firefighter Level 1 and 2 that establishes the standard for "fire apparatus driver . . . professional qualifications." Id. at 395.

Currently, most departments use "canned" training materials to internally train new hires in Firefighter Level 1 and 2. (Tr. I 83.) Once the new hires complete training, they are considered certified in Firefighter Level 1 and 2. To this day, Rhode Island does not require firefighters to be certified in Firefighter Level 1 and 2. Id. Captain Tighe estimated about eighty-five percent of fire departments in Rhode Island still develop and enforce their own

individual training requirements, while the remaining fifteen percent receive training through the Rhode Island Fire Academy. Id. at 121. Over the last few years, a developing trend emerged whereby more fire departments have been using the Fire Academy more often to train new hires. (Tr. II 397.) Rhode Island did not have a municipal fire academy program until March of 2017 and has only had two graduating classes. (Tr. I 85, 133.) "[T]he majority of the departments, especially in the '90's [] would have internal courses, because there was really no program [] set up for municipal fire departments at the Fire Academy." Id. at 85.

Captain Tighe also testified that prior to this new trend, firefighter training could only be through individual departments. Id. Even though now most fire departments want their firefighters to be certified in Firefighter Level 1 and 2 and utilize the Fire Academy, individual fire departments are still free to train their own firefighters. Id. at 120-21. Captain Tighe was unable to testify as to the number of fire departments that do internal training and provide physical certificates upon completion. Id. at 126. The decision to provide physical certificates to firefighters who successfully complete training through a local fire department, therefore, remains with the fire chief of that department. Id. at 121. The evidence was overwhelming that it was common practice for firefighters in Rhode Island to receive training and be certified in Firefighter Level 1 and 2 and never receive a physical certificate upon completion. Captain Tighe along with Chief McGillivray, Captain Mears, and Lieutenant Perry testified that they did not personally receive certificates after joining the fire service and completing their in-house training. Id. at 26, 96, 138, 297. Captain Tighe explained individual departments were responsible to train their own personnel.

Captain Tighe explained that a major issue developed when firefighters "who had done internal [training] programs, who had been certified and working for years, and been promoted

up through the ranks," wanted to take advanced training courses—to become a fire instructor, for example—but did not have a certificate to validate their training. Id. at 108. This issue was very common in the fire service. Id. at 85.

Historically, the firefighters seeking to take advanced training courses were not allowed to do so because they had trained with their individual fire department and were not given certifications. To remedy the problem and to allow firefighters to take the advanced training courses, the Rhode Island Fire Education Training Coordinating Board established the "equivalency program" and subsequently the "challenge process." Id. at 108. Typically, firefighters with ten or more years of experience utilized the challenge process or the equivalency program since the certification issue commonly affected firefighters within that group. Id. at 87-88. Captain Tighe explained:

> "[I]n order to take advanced programs, [firefighters] need[] [] [Firefighter Level 1 and 2] prerequisites. The easiest way . . . to certify people who had been in the fire service 10, 15, 20, 25 years [was] to take into consideration what [internal training] they had done [] and [with] the verification of the local fire chief, [the Rhode Island Fire Education Training Coordinating Board] would give [firefighters] the equivalency paperwork for firefighter [Level] 1 and 2 and allow them to continue their education." Id. at 87.

After submitting their resume, with the signature of approval of the current fire chief of the department where the firefighter completed his or her initial training, "the Rhode Island Fire Academy [issued a letter] saying 'based upon your experience and your work history, you meet the equivalency of firefighter [Level] 1 and 2 . . .' and use[d] that as a prerequisite to get into an advanced class." Id. at 127. Eventually, after the equivalency program closed, the Fire Education Training Board offered the challenge process. Id. at 86. The challenge process was

an examination offered to firefighters throughout the State that challenged the Firefighter Level 1 examination. Id. Upon completion, firefighters were able to take advanced courses. Id.

Having reviewed the history and practice of firefighter training in Rhode Island, the Court refers to § 45-1 of the CBA, which requires that there must be "careful and factual consideration" before an employee may be terminated for "just cause." This Court must also examine Corrigan's efforts to investigate the alleged "lies" and "material misrepresentations" made by FF Perry on his resume.

Corrigan explained that her investigation into the lateral transfers began in early August of 2017, when she requested paperwork from Chief McGillivray regarding the lateral transfer procedures. (Tr. II 552.) A few weeks later, a meeting between Corrigan, Chief McGillivray, and the Town Solicitor was held to discuss the CBA and the lateral transfers. (Tr. I 39-40.) During the meeting, Corrigan specifically inquired about FF Perry. Id. at 56. On August 11, 2017, Corrigan sent Chief McGillivray an e-mail stating that she completed an audit of the six lateral transfers' personnel files. (Pls.' Ex. 23.) She indicated that three of the six lateral transfers did not have certificates in their files to support that they were certified in Firefighter Level 1 and 2. Id. She concluded the e-mail by requesting that Chief McGillivray produce evidence of the three firefighters' certifications, including FF Perry's, by the following Thursday, August 17, 2017. Id. Corrigan testified that she did not receive the requested documents from Chief McGillivray by that Thursday because he went out on leave. (Tr. II 552.) After learning that Chief McGillivray was out of work, Corrigan contacted the Rhode Island Fire Academy to request records regarding any certifications the lateral hires had obtained through the Academy. (Defs.' Ex. W.) Without receiving a response from either Chief McGillivray or the Fire Academy, Corrigan

considered her investigation completed and issued FF Perry's termination letter, just two days later.[5] (Tr. II 552-53.)

During her testimony at trial, Corrigan testified that there was "no question [Firefighter Perry] was certified or trained in Firefighter [Level] 1 and 2, but, not in NFPA 1001 – 1002." Id. at 411-12. Based on Corrigan's testimony regarding her prior work experience with the fire service—having worked with five fire chiefs as the Chief of Staff in Central Falls and as the District Manager of the Coventry Fire District—Corrigan knew or should have known the common practices for firefighter training in Rhode Island, as well as how those practices differ from training in other work fields. Id. at 491-92. Through her employment history, Corrigan had many opportunities to work with members of the fire service in Central Falls, the Central Coventry Fire District, and Woonsocket. Id. at 548-49. It is obvious to the Court that Corrigan knew or should have known local fire departments, in the past, did not provide certificates as proof of completion, which is why processes such as the equivalency program and challenge process were developed.

The Court cannot help but note other efforts that due diligence would have required. Corrigan testified to the following: (1) that she did not attempt to reach out to the Coventry Fire Department where FF Perry indicated he had received his Firefighter Level 1 and 2, NFPA 1001-1002 training to verify his qualifications, id. at 554; (2) she did not attempt to contact other possible sources of information from the Town's hiring process, such as the former East

[5] On Wednesday, August 23, 2017, the Rhode Island Fire Academy received an e-mail from the Chief Clerk of the EGFD, which stated: "Please find enclosed the request from the Town Manager." (Defs.' Ex. W.) (emphasis added). On that same day, an hour later, the Rhode Island Fire Academy provided a spreadsheet containing a list of any classes the lateral transfers had taken with the Rhode Island Fire Academy. Id. Corrigan testified that the information provided by the Rhode Island Fire Academy confirmed the conclusions she drew from her investigation. (Tr. II 523.) Corrigan also testified that she asked for the information prior to August 23, 2017; however, there was no evidence presented to support that claim. Id. at 521.

Greenwich Town Manager and the former Human Resources Director, who took part in the lateral transfers' application and interview process, id.; (3) she did not consult with members of the EGFD, including Captain Mears, who sat on FF Perry's interview panel, id. at 471; (4) she did not request any information from the members of the Firefighters Union Executive Board, id. at 553; (5) she did not speak with her former colleagues from either the Central Falls Fire Department or the Central Coventry Fire Department, id.; (6) she did not speak with any fire departments that she knew had dealt with similar issues arising from the lack of certificates, such as the Woonsocket Fire Department, id. at 521; (7) she never attempted to discuss qualifying FF Perry through either the equivalency program or the challenge process—even though FF Perry would have met the requisite qualifications according to testimony from Chief Warren of the Coventry Fire Department, id. at 554-56, and Captain Tighe (Tr. I 81); (8) Corrigan never considered whether the other firefighters in East Greenwich had "certificates" even though she considered it a liability issue (Tr. II 547); (9) Corrigan never attempted to contact FF Perry prior to his dismissal, id. at 553; and (10) Corrigan never told Chief McGillivray that FF Perry would be fired if his certificates were not given to Corrigan by Thursday, August 17, 2017. Id. at 474-75.

Based on the minimal and incomplete information gathered during her "investigation," without considering the seemingly logical simple efforts that could have been undertaken to obtain further information, Corrigan sent FF Perry a termination letter, via e-mail, at 10:15 p.m. on Saturday, August 19, 2017. (Pls.' Ex. 30.) The termination letter was issued in such haste due to Chief McGillivray's return on Monday, August 21, 2017 and FF Perry's status as a probationary firefighter ending within days. Setting aside the lack of professionalism displayed by the Town with respect to the manner in which FF Perry was terminated, this Court finds

without question based on the credible evidence before it that Corrigan did not engage in "careful and factual consideration," as required by § 45-1 of the CBA before terminating FF Perry for "just cause." See Paradis, 651 A.2d at 741; Clark-Fitzpatrick, Inc., 652 A.2d at 443.

2

Valid Basis for Terminating FF Perry

The Court next considers whether there was a valid basis for terminating FF Perry. As stated in her letter to FF Perry, as well as her in-court testimony, Corrigan believed that FF Perry lied on his resume by materially misrepresenting that he possessed certificates when he listed "F[irefighter] Level 1 & 2 NFPA 1001-1002 (Coventry Fire Academy)." (Pls.' Ex. 4.) A misrepresentation is defined as "any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts." Halpert v. Rosenthal, 107 R.I. 406, 413, 267 A.2d 730, 734 (1970). A misrepresentation is considered material when it is "likely to affect the conduct of a reasonable man with reference to a transaction with another person." Id. Relying on that definition, this Court finds Corrigan's accusation that FF Perry materially misrepresented himself and lied on his resume to be unfounded.

Corrigan advanced a number of theories regarding FF Perry's alleged "lies" and "misrepresentations." Corrigan stated that FF Perry lied when "[h]e said he had certifications that he did not indeed possess." (Tr. II 419.) She went on to claim that she issued FF Perry's termination letter because she "could not verify he had the certifications that he stated on his resume." Id. at 522. Corrigan also stated that FF Perry incorrectly stated that he met the certifications for NFPA 1001 and 1002. Id. at 420.

On his resume, FF Perry listed "F[irefighter] Level 1 & 2 NFPA 1001-1002 (Coventry Fire Academy)" under the heading "Certifications." (Pls.' Ex. 4.) The word "certification" is defined as "the state of being certified." Merriam-Webster Collegiate Dictionary (11th ed. 2004). Being "certified" is defined as "complying or meeting specified requirements or standards." Id. A certification is distinguishable from a certificate, which is "[a] written assurance, or official representation, that some act has or has not been done, or some event occurred . . . ." Black's Law Dictionary, (10th ed. 2010). Therefore, it is clear that being certified does not necessarily require possession of a certificate. FF Perry's resume listed a number of certifications, only some of which he received physical certificates for and provided with his EGFD application.[6] (Defs.' Ex. E.) FF Perry also testified that he included the words "Coventry Fire Academy" to indicate where he trained and became certified in Firefighter Level 1 and 2. (Tr. I 191.)

On his resume, FF Perry listed the heading "Certifications"; under that, he wrote "FF Level 1 & 2 NFPA 1001-1002 (Coventry Fire Academy). (Pls.' Ex. 4.) Captain Tighe testified that in his experience—as Chairperson of the Rhode Island Fire Education Training Coordinating Board and as an interviewer on numerous interview panels—he had "seen similar resumes or paperwork submitted." (Tr. I 94.) To him, it meant that a firefighter "completed an internal program and met that standard of firefighter 1 and 2, which was commonplace with the majority of the fire departments . . . in that time period." Id. Captain Tighe further explained that he had "seen similar resumes or paperwork submitted that people list under Certification," and he did

[6] Corrigan only detailed her concern for the Firefighter Level 1 and 2, NFPA 1001 and 1002 certificates; she never inquired into any of the other certifications that FF Perry listed on his resume and for which he did not provide physical certificates.

not think "that[] [is] an uncommon practice that people put that information of where they took the program, because there's so much confusion . . . ." Id.

When specifically asked what the language on FF Perry's resume meant to him, Captain Tighe testified that "[i]t mean[t] [Firefighter Perry] took an internal program [with the] Coventry Fire Academy." Id. at 129. During his testimony, Chief McGillivray also answered that FF Perry's resume "means [Firefighter Perry] got his firefighter [Level] 1 and 2 training at a Coventry fire academy . . . he got his basic firefighter training at the Coventry Fire Academy." Id. at 33. Captain Tighe also confirmed that based on his training, education, and experience he would not consider the resume to be misleading. Id. at 130.

A reasonable person could deduce the meaning of the language contained within FF Perry's resume. Not only did FF Perry not write that he had Firefighter Level 1 and 2 certificates on his resume, but he also never told anyone he had the certificates. In his interview, FF Perry stated that when he completed Firefighter Level 1 and 2 training with the Coventry Fire Academy, he was advised he met the standard and was certified. Id. at 190. He explained that he listed certifications to indicate that he was certified in Firefighter Level 1 and 2, not to indicate that he had paper certificates. Id. FF Perry testified that he "never listed [he] had a certificate from the Fire Academy or anything like that." Id. at 221. When asked about the questions raised by the Town's Human Resources Director during his interview regarding the certificates, FF Perry testified that he told her, "I did not receive a certificate from my employer." Id.

Chief McGillivray and Captain Mears both testified that FF Perry disclosed during his interview that he did not have physical certificates for Firefighter Level 1 and 2. Id. at 35, 158. Chief McGillivray testified that during FF Perry's interview, "he said he did not have physical certificates for the training but that he had received it as part of his employment with the

Coventry Fire District." Id. at 32. Captain Mears confirmed that FF Perry never said that he had certificates: "He said he had trained through Coventry Fire [Academy]. He never said he had certificates. He said he didn't have certificates." Id. at 159. Captain Mears additionally stated that during FF Perry's interview, "the Human Resources Director asked questions and [Firefighter Perry] explained he had [Firefighter Level 1 and 2] training with [the] Coventry Fire [Academy], but because of the paperwork and the Chief at the time not doing recordkeeping, [] he couldn't get the certificate." Id. at 138. FF Perry also stated that during the interview Captain Mears told the Director of Human Resources, "back then it was common practice that a lot of departments didn't give you a certificate." Id. at 221.

Captain Mears also testified that it did not surprise him that FF Perry did not have the paper certificates. Id. at 138. He testified that he was familiar with the process because the same issue regarding certificates happened to him when he started with the EGFD. Id. Despite Captain Mears' having completed training, the EGFD did not provide him with a paper certificate—even though he "[a]bsolutely" considered himself trained in Firefighter Level 1 and 2. Id.

Chief McGillivray also stated that not receiving a physical certificate "was common practice." Id. at 74. When asked whether it was alarming that FF Perry wrote that he had a certification on his resume but did not possess the physical certificate, Chief McGillivray testified, "No . . . Like I said, it was common practice you got on-the-job-training, you got certified and went to work." Id. Similarly, Captain Tighe stated "[t]hat was like I indicated . . . very commonplace in that era where people would take that internal program and say [they] met that curriculum. It was very common." Id. at 129.

Furthermore, every firefighter that testified at trial agreed that FF Perry was qualified in Firefighter Level 1 and 2. Chief McGillivray also stated that he believed FF Perry when he said he had been trained in Firefighter Level 1 and 2, NFPA 1001-1002 and that the practice was "standard back . . . in the day . . . every fire department that I've belonged to, my personal experience is that they give you the training, they give you the job." Id. at 32-33. Captain Tighe also testified that FF Perry would have "[a]bsolutely" satisfied the requirements of the equivalency program or the challenge process based on his training, experience, and number of years in the fire service. Id. at 128. Further, Chief Warren, the current Fire Chief of the Coventry Fire Department—where FF Perry received his Firefighter Level 1 and 2 training—testified that, if requested, he would have verified that FF Perry successfully completed Firefighter Level 1 and 2 training to the NFPA 1001 standard. (Tr. II 579, 581.) Additionally, FF Perry successfully completed NFPA 1002 training, which involved training with the fire trucks and equipment. (Tr. I 176.)

Moreover, those present during FF Perry's interview also agreed that FF Perry was qualified for the position. As required by the Lateral Transfer Procedures, FF Perry was interviewed by a team consisting of Captain Ken Montville, Captain Thomas Mears, Deputy Chief Michael Sullivan, and Union Executive Board Member Matthew Howard. (Pls.' Ex. 1.) Chief McGillivray and the Director of Human Resources were also present during FF Perry's interview. (Tr. I 31-32.) Using both the interview questions and the Town's scoring system, the interview panel scored FF Perry higher than all other interviewees. (Pls.' Ex. 1.) Additionally, Chief Warren provided further evidence of FF Perry's qualifications when he stated that FF Perry was even asked while serving as a Lieutenant with the Coventry Fire District to assist with the basic training of new firefighters. (Tr. II 580.)

In light of the overwhelming evidence presented, this Court finds that FF Perry did not misrepresent or lie about his qualifications on his resume. FF Perry did not write that he had certificates. FF Perry was honest and forthcoming with the interview panel. During the interview when FF Perry was asked about his certificates by the Director of Human Resources, FF Perry openly disclosed that he did not have physical certificates and it was explained that firefighters commonly did not receive certificates. There were no further concerns raised by the interview panel or by the former Town Manager in the second interview.

In spite of this testimony, Corrigan still argued in her testimony that FF Perry lied on his resume. By then, she was not disagreeing that FF Perry was certified in Firefighter Level 1 and 2. But, she disagreed that his certification met the NFPA 1001 standard. Corrigan could provide no explanation for this opinion, even though it was in contrast to all other expert testimony. Corrigan then finally suggested that his certification was not verifiable. This Court finds that opinion to be also incorrect. FF Perry's training was verifiable either through the testimony of the witnesses—including Coventry Fire Chief Warren and Captain Tighe—or through the equivalency program or challenge process.

It is clear from the evidence that (1) FF Perry did not lie on his resume or misrepresent a material fact—he never used the word "certificate"; (2) the reference to "(Coventry Fire Academy)" on FF Perry's resume was very common and clear to any firefighter; (3) a reasonable person with any knowledge of firefighter training practices knew or should have known that the language contained within FF Perry's resume meant that he successfully completed Firefighter Level 1 and 2 training through the Coventry Fire Academy; (4) FF Perry stated in his interview that he did not have physical certificates; (5) the lack of physical certificates was common

practice in Rhode Island firefighter training; (6) there is no question FF Perry was both qualified and certified; and (7) FF Perry's certifications were verifiable.

This Court finds the Town's claims that FF Perry intentionally misrepresented himself and that he lied on his resume to be unwarranted toward a first responder who has dedicated himself to the fire service for twenty-eight years. There was no valid basis to terminate FF Perry.

3

Open Meetings Act Violation

> ***"It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy."*** Sec. 42-46-1.

In an effort to achieve its intended goal, the OMA requires that "[a]ll public bodies shall give written notice of their regularly scheduled meetings . . ." and "supplemental written public notice of any meeting within a minimum of forty-eight (48) hours . . . before the date." Sec. 42-46-6(a) and (b). "This [supplemental] notice shall include the date the notice was posted; the date, time, and place of the meeting; and a statement specifying the nature of the business to be discussed." Sec. 42-46-6(b). Moreover, "the burden shall be on the public body to demonstrate that the meeting in dispute was properly closed pursuant to, or otherwise exempt from the [OMA] . . . ." Sec. 42-46-14.

The Court emphasizes, "[i]t is well settled that when the language of a statute is clear and unambiguous, [the] Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996). "Moreover when [the Court] examine[s] an unambiguous statute, 'there is no room for statutory construction and [the Court] must apply the statute as

written.'" State v. DiCicco, 707 A.2d 251, 253 (R.I. 1998) (quoting In re Denisewich, 643 A.2d 1194, 1197 (R.I. 1994)). The Rhode Island Supreme Court has consistently stated that "[the Court's] purpose is to 'determine and effectuate the Legislature's intent and [] attribute to the enactment the meaning most consistent with its policies or obvious purposes.'" Tanner, 880 A.2d at 796 (quoting Keystone Elevator Co. v. Johnson & Wales Univ., 850 A.2d 912, 923 (R.I. 2004)).

In Tanner, our Supreme Court held that the OMA requires

> "a public body provide supplemental notice, including a 'statement specifying the nature of the business to be discussed,' obligates that public body to provide fair notice to the public under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public of the nature of the business to be discussed or acted upon." Id. at 797.

In that case, the Court found that the Town Council's agenda item stating, "Interviews for Potential Board and Commission Appointments," followed by a list of names of potential appointees and the times of their scheduled interview "[did] not reasonably describe the purpose of the meeting or the action proposed to be taken . . . ." Id. at 798. Based on the OMA's explicit purpose stated in § 42-46-1, the Court reasoned, "the Legislature intended to establish a flexible standard aimed at providing fair notice to the public . . ." Id. at 796. Ultimately, the court held that the town failed to provide adequate notice to the public since "the notice implies that the town council would not vote on the appointments, but rather conduct interviews, i.e., gather information from the potential appointees." Id. at 798.

In Anolik v. Zoning Bd. of Review of Newport, our Supreme Court held that the "action taken by the zoning board . . . [was] declared null and void" for failing to "comply with the [notice] standards established by the Open Meetings Act." 64 A.3d 1171, 1176 (R.I. 2013). The Court found that "there is no indication in the agenda item that any action would be taken . . . the

agenda item simply indicates that a communication had been received . . . ." Id. at 1175-1176. As a result, the Court decided that the OMA had been violated stating: "Having considered whether, viewing the totality of the circumstances, the agenda item 'fairly inform[ed] the public of the nature of the business to be discussed or acted upon,' it is [the Court's] opinion that the agenda item at issue did not comply with the standards established by the Open Meetings Act." Id. at 1176 (citing Tanner, 880 A.2d at 797).

This Court looks to the meetings of June 19 and July 24, 2017 regarding compliance with the Open Meetings Act and the Town Charter.

a

East Greenwich Town Council Meeting

June 19, 2017

The agenda, in its entirety, posted by the Town for the meeting held on June 19, 2017—Plaintiffs' Exhibit 12—states:

> *"(1) Call to Order and Pledge of Allegiance to the American Flag*
>
> *"(2) Executive Session*
>
> *"(a) Closed pursuant to RIGL 42-46-5(a)(1) and 42-46-5(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, provided that such person affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting, and for discussion concerning evaluation of legal rights/claim(s), including resolution of the same."*

The East Greenwich Town Clerk, Leigh Carney, testified that no minutes were taken during the open session of the June 19, 2017 Town Council meeting. (Tr. II 603-04.) Notes taken during executive session on June 19, 2017—Defendants' Exhibit AA—as represented by the Town Solicitor acting as the "Acting Town Clerk" mentioned:

> *"When the Open Session resumed, Solicitor D'Agostino was asked to report on the actions taken in Closed Session and he reported the votes. A motion to*

> *adjourn was made by Councilor Deutsch, seconded by Council Vice President Todd and unanimously approved. The meeting adjourned at 9:30 AM."*

The Town Solicitor's notes from that meeting also include:

> *"A discussion was had among the Council as to who should be appointed to serve [as Town Manager]. A motion to appoint Gayle A. Corrigan, Acting Town Manager was made by Council Vice President Todd, seconded by Councilor Deutsch. As part of the discussion, Councilor Schwager noted his objection to the appointment. The vote was 3:1, with Councilor Schwager in the negative. A decision was made to begin a search process for a permanent Town Manager, which was approved on a motion by Councilor Deutsch, seconded by Councilor Schwager and unanimously approved.*
>
> *"A motion was made by Councilor Deutsch, seconded by Council Vice President Todd, to close the Closed/Executive Session and seal the minutes pursuant to RIGL § 42-46-4(b) and to [r]econvene to Open Session. The vote was unanimous."*

OMA § 42-46-6(b) Violation

The June 19, 2017 special meeting of the EGTC violated the OMA § 42-46-6(b) by failing to provide adequate notice to the public of the nature of the business to be discussed. Section 42-46-6(b) of the OMA requires notice that contains "a statement specifying **the nature of the business** to be discussed." (Emphasis added.) The notice of the meeting indicates that a discussion would be held concerning "the job performance, character, or physical or mental health of a person in the employ of the Town of East Greenwich." (Pls.' Ex. 12.) The Town Council did discuss such business and approved a severance package with the then Town Manager, Thomas Coyle.

The Town Council, however, also discussed and voted on a topic in executive session regarding the appointment of an Acting Town Manager. This was not noticed on the meeting agenda.[7] The Town Council members knew that Town Manager Coyle would be leaving at some point. He had cleaned out his office by June 18, 2017, and they had a signed separation agreement at the 8:00 a.m. meeting on June 19, 2017. (Tr. 60-61, Oct. 17, 2017.) The Town

[7] The Town Clerk testified that if she had been told that there was going to be a vote regarding the Town Manager position, she would have included it on the meeting's agenda. (Tr. II 621.)

Council President had discussed the position with Gayle Corrigan (Tr. II 528) and the Director of Public Works (Tr. 55-56, Oct. 17, 2017) prior to the meeting, yet no notice was given to the public. Defendants have argued that the vote to appoint an Acting Town Manager was necessary so that they would have someone in the position in case of an emergency. The Defendants cite the Emergency Management Agency (EMA), as an aspect of the Town Manager's job, is to support the Town Council's actions, even though that is not included in the Town Charter's job description. Moreover, there is also no part of the Town Charter which requires that the Town Manager serve as the EMA Director. Specifically, the Town argues that it was necessary to appoint an Acting Town Manager at that meeting so that the Town was not left without an EMA Director for any period of time. (Tr. 26, Oct. 17, 2017.) Alternatively, Plaintiffs argue that the Town had two deputy EMA Directors to handle emergencies, in addition to the Fire Chief and the Chief of Police.

The Town Council certainly has the right to appoint its own candidate to any position after notice to the public. An emergency meeting can be held under OMA § 42-46-6(c) to take actions needed to address an unexpected occurrence to protect the public. A special meeting could have also been scheduled within forty-eight hours.

The appointment of the Town Manager in a Council-Manager form of government is the single biggest decision a Town Council makes. It is among the highest paid employee positions in the Town. The citizens of the Town have great interest in such an appointment, and such actions and discussions should be done before the public. It contravenes the Legislature's intent in enacting the OMA to allow local governments to make such important decisions behind the curtain of an executive session: "It is essential to the maintenance of a democratic society that public business be performed in an open and public manner . . ." Sec. 42-46-1. The agenda item

in the instant matter, taking into consideration the totality of the circumstances, does not reasonably describe the purpose of the meeting or the action proposed to be taken—it, in fact, provides much less of a description of the Town Council's proposed actions than the agenda item in Tanner, 880 A.2d at 798; see also Anolik, 64 A.3d at 1175-76.

OMA § 42-46-5 Violation

At the June 19, 2017 meeting, the EGTC further violated the OMA, namely § 42-46-5, by discussing and voting on the appointment of an Acting Town Manager in an executive session. Under § 42-46-3, "[e]very meeting of all public bodies **shall be open to the public** unless closed pursuant to §§ 42-46-4 and 42-46-5." (Emphasis added.) Section 42-46-5(a)(1) permits executive sessions for the "discussions of the **job performance**, **character**, or **physical or mental health** of a person or persons" employed by the Town. (Emphasis added.) This Court believes the taking of the within action was improper for an executive session and did not fit within any exception of the OMA. A discussion about Corrigan's job performance in executive session would be permissible; however, no such discussions occurred since Corrigan was not a Town employee at that time. The Town Council therefore violated the OMA § 42-46-5 by discussing and voting in executive session on a matter—the appointment of an Acting Town Manager—that should have been discussed and voted upon in public session.

OMA § 42-46-7 Violation

The EGTC also violated the OMA § 42-46-7 by not keeping a record of the June 19, 2017 meeting. Section 42-46-7 requires:

> "(a) All public bodies **shall keep written minutes of all their meetings**. The minutes shall include, but need not be limited to:
> "(1) The date, time, and place of the meeting;
> "(2) The members of the public body recorded as either present or absent;
> "(3) A record by individual members of any vote taken; and

> "(4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.
> "(b)(1) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty-five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier . . . ." (Emphasis added.)

The Town Clerk testified that she has been the Town Clerk for the Town since 2009. The Town Clerk stated that her job responsibilities include attending all Town Council meetings as well as creating a written record of any votes or pertinent information handled during the meetings. (Tr. II 583.) She has testified that no minutes or audio recordings were made of that meeting by her in either open or executive session. Id. at 612, 616-17. The Town Solicitor took notes during the executive session and at the conclusion of the open session. Id. at 608. Those notes had not been posted or presented to the Town Council for approval in four months.[8]

The OMA makes clear that "[i]t is essential . . . business be performed in an open and public manner and that the citizens be advised of and aware of . . . the deliberations and decisions that go into the making of public policy." Sec. 42-46-1. Based on a plain and ordinary reading of the language contained in § 42-46-7, written minutes must be kept to protect the public and hold local governments accountable for their decisions. Accent Store Design, 674 A.2d at 1226.

In light of the evidence presented, this Court concludes that the Town Council violated the OMA by failing to record any minutes from the June 19, 2017 meeting. Additionally, the

[8] On October 17, 2017, after Defendants rested for the first time, the Town Solicitor presented to the Court "draft open session meeting minutes" from the June 19, 2017 meeting. The Town Solicitor indicated that the Town Council intended to vote to approve the "draft minutes" at the next Town Council Meeting.

Town Council voted to seal the Town Solicitor's notes from the executive session, thus preventing the dissemination of any information to the public about the decision to appoint Gayle Corrigan to the Town's most important position.[9]

i

Town Charter Violations

June 19, 2017 Meeting

Additionally, Plaintiffs allege that the Town Council violated sections of the Town Charter at the June 19, 2017 meeting. Our Supreme Court has held that "[t]he provisions of a town charter are the organic law of the town with respect to municipal affairs." Borromeo v. Personnel Bd. of Bristol, 117 R.I. 382, 385, 367 A.2d 711, 713 (1977). As such, "[i]t is the accepted rule that the provisions of city charters should be construed so as to give, so far as possible, reasonable meaning and effect to all parts of the section in question." Carter, 115 R.I. at 138, 341 A.2d at 56. "When a court is called upon to construe the provisions of a town charter, the rules of statutory construction apply." Borromeo, 117 R.I. at 386, 367 A.2d at 713 (citing Angel v. Murray, 113 R.I. 482, 486, 322 A.2d 630, 633 (1974)). Therefore,

> "when [the Court] interpret[s] the meaning of a charter provision, [the Court] appl[ies] the same de novo standard of review that [the Court] use[s] when faced with questions of statutory construction. When [the Court] do[es] so, [the Court] give[s] the words of a charter provision 'their usual and ordinary meaning.'" Town of

[9] In Plaintiffs' Post-Trial Memorandum, Plaintiffs assert that the Town failed to approve and timely provide to the public Town Council meeting minutes from June 15, 19, 26, and July 10, 11 and 24, 2017. (Pls.' Post-Tr. Mem. 23-24.) Specifically, Plaintiffs contend "[n]one of these minutes were provided 'within thirty-five (35) days of the meeting or the next regularly scheduled meeting, whichever is earlier.'" Id. (citing § 42-46-7(b)(1)). Plaintiffs stated that they repeatedly requested meeting minutes, and none were provided prior to trial. (Pls.' Pre-Tr. Mem. 18.) Plaintiffs also cite to the Town Clerk's testimony revealing that meeting minutes are not published to the public online until they are approved by the Town Council. (Pls.' Post Tr. Mem. 24 n.20.)

> Johnston v. Santilli, 892 A.2d 123, 127 (R.I. 2006) (internal citations omitted).

Moreover, in construing a town charter, if a general provision conflicts with a special provision, which

> "relat[es] to the same or to a similar subject, the two (2) provisions shall be construed, if possible, so that effect may be given to both; and in those cases, if effect cannot be given to both, the special provision shall prevail and shall be construed as an exception to the general provision." G.L. 1956 § 43-3-26.

Thus, our Supreme Court has explained, "the general rule of statutory construction clearly provides that when a statute of general application conflicts with a statute that specifically deals with a special subject matter, and when the two statutes cannot be construed harmoniously together, the special statute prevails over the statute of general application." Whitehouse v. Moran, 808 A.2d 626, 629-30 (R.I. 2002).

Town Charter § C-64 Violation

The EGTC violated Town Charter § C-64. Section C-64 of the Town Charter states: "**[n]o official vote on any matter** shall be taken at any meeting which is **not open to the public**." (Emphasis added.) The reasonable meaning of the provision is that official votes are taken only at meetings which are open to the public. See Carter, 115 R.I. at 138, 341 A.2d at 56. Thus, the provision assures that the Town Council conducts its important business before its constituents. At the same time, § 42-46-5(a)(1) of the OMA provides that executive sessions are sometimes necessary to effectuate town business such as "discussions of the job performance, character, or physical or mental health" of the Town's employees. Sec. 42-46-5(a)(1). It is well settled that when a general provision and a special provision "cannot be construed harmoniously together, the special statute prevails . . . " Whitehouse, 808 A.2d at 629. Here, the special Town Charter provision—that states that votes shall be taken at meetings which are open to the

public—prevails over the general OMA provision, which allows votes that fall within the exceptions of the OMA to be taken in closed session. See Borromeo, 117 R.I. at 385, 367 A.2d at 713 (emphasis added). The Town Council voted to appoint Corrigan as Acting Town Manager in an executive session. Even though the vote was reported out, it was not voted on in a public meeting pursuant to the requirements of Town Charter § C-64. Accordingly, the Town Council's vote in executive session violated § C-64 of the Town Charter.

Town Charter § C-67(F) Violation

The EGTC also violated § C-67(F) of the Town Charter. Section C-67(F) of the Town Charter provides in relevant part that the Town Council may

> "[i]n the event that the Town Manager is at any time absent or unable to perform the duties . . . or in the event that the Town Manager resigns or is removed from office or if for any other reason a vacancy exists, [] **designate an officer of the Town**, other than a Town Council member, to serve as Town Manager with all the powers and duties of the Town Manager until . . . a successor to the Town Manager has assumed the duties of the officer." (Defs.' Ex. G) (emphasis added).

Giving the language of § C-67(F) its reasonable meaning, it is clear that the Town Council must designate an officer of the Town as Acting Town Manager if the Town Manager resigns or is removed from office. See Carter, 115 R.I. at 138, 341 A.2d at 56. Corrigan testified that prior to the Town Council's vote appointing her as Acting Town Manager at the June 19, 2017 meeting, she was neither an officer nor an employee of the Town. (Tr. II 439.) Corrigan stated that before becoming the Acting Town Manager, she was a consultant for the Town through her company, Providence Analytics. Id. Based on the reasonable meaning of § C-67(F) of the Town Charter and the testimony given by Corrigan, the Town Council violated § C-67(F) of the Town Charter since Corrigan was not an officer of the Town at the time she was appointed Acting Town Manager.

Town Charter § C-63(B) Violation

The EGTC additionally violated Town Charter § C-63(B). Section C-63(B) of the Town Charter reads:

> "A special meeting of the Town Council shall be called by the Town Clerk at the request of the Council President or a majority of the members of the Town Council. Written notice of a special meeting shall be delivered to each member at least 48 hours prior to the time of such meeting. The Town Council may meet upon shorter notice by unanimous consent of its members, which shall be entered in the records of proceedings. The purpose of a special meeting shall be stated in the notice of the meeting, and **no business shall be transacted at any special meeting other than that which has been stated**." (Defs.' Ex. G) (emphasis added).

Based on the plain and ordinary meaning of § C-63(B), the Town Council may call special meetings, but those meetings must be properly noticed—pursuant to the OMA—and the only business that may be conducted during a special meeting is that which is contained in the notice. Stated differently, the Town Council may only handle business that is listed on the agenda.

At the June 19, 2017 meeting, the Town Council appointed Corrigan as the Acting Town Manager. The agenda listed only one executive session item with no other information pertaining to the appointment of an Acting Town Manager. (Pls.' Ex. 12.) The Town Council exceeded the scope of the executive item listed on the agenda, which indicated that the Town Council would have "discussions concerning the job performance, character, or physical or mental health of a person in the employ of the Town of East Greenwich." Id. Discussing and voting to appoint Corrigan as the Acting Town Manager violated § C-63(B) of the Town Charter as it was not properly noticed on the agenda.

b

East Greenwich Town Council Meeting

July 24, 2017

The agenda posted for the Town Council meeting held on July 24, 2017—Plaintiffs' Exhibit 19—provides, in relevant part:

> *"(6) New Business*
>
> *"(h) Discussion of Town Manager position*
>
> *"(10) Executive Session*
>
> *"(a) Closed pursuant to RIGL 42-46-5(a)(1), sessions pertaining to discussion of the job performance, character, or physical or mental health of persons in the employ of the Town of East Greenwich. The counsel affirmatively asserts that such persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting."*

The open session meeting minutes from that meeting—Plaintiffs' Exhibit 20—provides:

> "*(h) Discussion of Town Manager position*
>
> ***"Motion to remove the designation of 'acting' as it relates to the appointment of Gayle Corrigan as the Town Manager***
>
> . . . .
>
> *"President Cienki clarified that the appointment would not stop the process of searching for a full-time Town Manager but rather just eliminate the term 'acting.'*
>
> *"Solicitor D'Agostino reiterated that the Town Charter allows for the Town Council to appoint and/or remove the Town Manager at any time with or without cause and without appeal.*
>
> . . . .
>
> *"Councilor Schwager stated that the intent of the Charter is not being followed as far [as] the appointment of an officer of the Town as the 'acting' Town Manager to serve until the search process was completed and a permanent replacement was appointed. Without a formal contract in place with Ms. Corrigan, he is unsure how she is getting paid. He requested codifying an agreement with her before the search process begins. President Cienki replied that Council will address those concerning in Executive Session.*
>
> . . . .
>
> ***"Andrew Deutsch/Nino Granatiero/Motion Carried***

"Ayes: Cienki, Deutsch, Granatiero, Schwager."

The open session minutes also include:

> *"(10) Executive Session*
>
> > *"(a) Closed pursuant to RIGL 42-46-5(a)(1), sessions pertaining to discussion of the job performance, character, or physical or mental health of persons in the employ of the Town of East Greenwich. The Council affirmatively asserts that such persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.*
>
> . . . .
>
> ***"Motion to go into Executive Session per RIGL 42-46-5 (a) (2) for sessions pertaining to collective bargaining or litigation.***
>
> . . . .
>
> ***"Motion to close the Executive Session, seal the Executive Session minutes and return to Open Session***
> ***"Nino Granatiero/Andrew Deutsch/Motion Carried***
> ***"Ayes: Cienki, Deutsch, Granatiero, Schwager***
> ***"Motion to adjourn***
> ***"Mark Schwager/Andrew Deutsch/Motion Carried***
> ***"Ayes: Cienki, Deutsch, Granatiero, Schwager."***

The Town Solicitor's notes from the executive session—Defendants' Exhibit AA—state:

> "T*he next item discussed was convened pursuant to RIGL § 42-46-5 (a)(1), sessions pertaining to discussion of the job performance concerning the Town Manager, including engagement and remuneration terms. A term sheet was presented by the Solicitor and discussed by the Council, including the release of information to the public, through the Town's website. A motion was made to approve the Term Sheet by Council Member Granatiero, seconded by Council Member Deutsch, and approved by a vote of 3:1 (Councilor Schwager voted "nay".).*
>
> *"A motion was made by Council Member Granatiero, seconded by Council Member Deutsch to close the Closed/Executive Session and seal the minutes pursuant to RIGL § 42-46-4 (b) and to Reconvene to Open Session. The vote was unanimous.*
>
> *"Upon reconvening, the vote to approve the engagement of Gayle A. Corrigan as Town Manager, removing the "acting" designation and to confirm the Term Sheet was disclosed.*
>
> *"A motion to adjourn was made by Council Member Schwager, seconded by Council Member Deutsch and unanimously approved. Council President Cienki adjourned the meeting at 11:51 PM.*"

OMA § 42-46-6(b) Violation

The EGTC violated the OMA § 42-46-6(b) by failing to provide adequate notice to the public of its intention to remove the "Acting" from Town Manager and vote to appoint Gayle Corrigan the Town Manager. Section 42-46-6(b) of the OMA requires "a statement specifying **the nature of the business** to be discussed." (Emphasis added.)

The agenda from the July 24, 2017 meeting contained one item relating to the Town Manager position: "Discussion of Town Manager position." (Pls.' Ex. 19.) However, Corrigan testified that between July 1 and July 10, 2017, she had negotiated the terms of her employment as Town Manager with the Town Solicitor, and he had prepared a document in anticipation of its approval at the July 10, 2017 Town Council meeting. (Tr. II 533-34.) She testified, "I was ready to agree with it on July 10th meeting [sic] . . . . So it was prepared on my side, and there was going to be an executive . . . session planned." Id. at 535. Thereafter, while in open session at the July 24, 2017 meeting, the Town Council voted in favor of removing the word "Acting" from Corrigan's title—leaving only the words "Town Manager." In executive session, the Town Council voted on the terms of Corrigan's already negotiated employment contract. The agenda item containing "[d]iscussion of Town Manager position" clearly did not adequately provide a reasonable description of the actions that the Town Council intended to take so as to fairly inform the public. [10] See Tanner, 880 A.2d at 797-98 (holding that notice "reasonably must describe the purpose of the meeting or the action proposed to be taken" and "fairly inform the public of the nature of the business to be discussed").

[10] Lieutenant William Perry testified that he attended the July 24, 2017 meeting. (Tr. II 325.) He indicated that if the Town Council properly noticed its intention to appoint Corrigan as Town Manager at that meeting, he would have encouraged public presence to protest her appointment. Id. at 326.

OMA § 42-46-5 Violation

The EGTC violated the OMA § 42-46-5 by improperly convening an executive session for a vote on the Town Manager's contract pursuant to the exceptions to the OMA. Section 42-46-3 requires that "[e]very meeting of all public bodies **shall be open to the public** unless closed pursuant to §§ 42-46-4 and 42-46-5." (Emphasis added.) Section 42-46-5(a)(1) permits executive sessions for the "discussions of the **job performance**, **character**, or **physical or mental health** of a person or persons . . ." (Emphasis added.) The Town Council held an invalid executive session for the purpose of discussing matters which should have been addressed before the public; particularly, the Town Council's approval of Corrigan's already negotiated contract. Sec. 42-46-5; Defs.' Ex. BB. Under § 42-46-5, the Town Council certainly could have discussed her job performance or the terms of her contract including her salary and benefits in executive session—there is no record of such a discussion and no witness testified to any such discussion. The vote to approve Corrigan's already negotiated and agreed-upon contract, should have been done in open session.

The Court remains mindful that the OMA's intention is to ensure that "public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy." Sec. 42-46-1. As the employment contract was already negotiated, it was not a topic for executive session.

OMA § 42-46-7 Violation

The EGTC did not violate OMA § 42-46-7 by failing to keep a record of the July 24, 2017 meeting. Section 42-46-7 requires "[a]ll public bodies **shall keep written minutes of all their meetings.**" (Emphasis added.) The Town Council did not violate the OMA. The Town

Council kept minutes and recorded the meeting until the executive session. The Town Solicitor presented his notes from the executive session. Again, the Town Solicitor's notes were inconsistent with the Town Clerk's open session minutes. Inaccuracy is not a violation of the OMA. This Court notes the unexplained discrepancies in the meeting minutes from the open session and the meeting notes represented by the Town Solicitor from the executive session at the July 24, 2017 meeting. (Pls.' Ex. 20; Defs.' Ex. BB.) The Town Clerk testified that she had been dismissed from the July 24, 2017 meeting prior to the Town Council going into executive session. (Tr. II 587.) The Town Clerk testified that the Town Solicitor recorded notes during the executive session after she was excused. Id.

The minutes prepared by the Town Clerk indicate that the Town Council voted in open session to remove the "acting" designation from Corrigan's title prior to going into executive session. Then the Town Council convened in executive session, and, upon reconvening in open session, the Town Council immediately voted to adjourn. (Pls.' Ex. 20.) However, the executive session notes prepared by the Town Solicitor reveal a slightly different version of events. According to the Town Solicitor's notes, after concluding the executive session and reconvening in open session, "the vote to approve the engagement of Gayle A. Corrigan as Town Manager, removing the 'acting' designation and to confirm the Term Sheet was disclosed." (Defs.' Ex. BB.) After publically disclosing the votes that took place in executive session, the Town Council voted to adjourn the meeting. Id.[11]

[11] It is disputed whether the terms of Corrigan's contract were reported after they were agreed to and voted on in executive session. Lieutenant Perry testified that he attended the July 24, 2017 Town Council meeting and remained at the meeting after the Town Council convened in executive session. (Tr. II 326.) He stated that around midnight, he witnessed Town Council members leave the meeting without first reconvening in open session. Id. at 327-28. Lieutenant Perry's testimony contradicts the notes taken by the Town Solicitor and the Town Council

i

Town Charter Violations

July 24, 2017 Meeting

Plaintiffs allege further violations of the Town Charter during the July 24, 2017 meeting.

Town Charter § C-64 Violation

With respect to the July 24, 2017 meeting, the EGTC violated Town Charter § C-64. Section C-64 of the Town Charter states: "**No official vote on any matter** shall be taken at any meeting which is **not open to the public**." (Emphasis added.) The reasonable meaning of the provision ensures transparency between the Town Council and the public by requiring all official votes be taken only at meetings which are open to the public. See Carter, 115 R.I. at 138, 341 A.2d at 56. The Town Council voted to approve Corrigan's contract at the July 24, 2017 meeting in executive session—despite having already negotiated the terms of Corrigan's contract prior to that meeting—preventing transparency between the Town Council and the public. Although it is unclear whether the Town Council's vote approving Corrigan's contract was reported to the public in open session, the Town Council violated Town Charter § C-64 by voting on the contract in executive session.

Town Charter § C-82 Violation

The EGTC did not violate Town Charter § C-82. A reading of this section of the Town Charter and the quorum provision of the OMA is ambiguous. Section C-82 of the Town Charter states: "The Town Manager shall be appointed by **a majority vote of all Town Council members**." It is unclear from the language of this particular section whether all council members are required to vote on appointing the Town Manager, or if all that is required is a majority of

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members' testimony, which indicate that the Town Council did, in fact, go back into open session before adjourning. (Tr. 328; Defs.' Ex. BB.)

votes of the Town Council in favor of the appointment, regardless of whether all council members vote. Section C-64 of the Town Charter states "[a] Town Council quorum shall be a majority of its members. A majority of the members present at any legal meeting may determine any matter legally before them . . . ." Regarding quorums and voting, our Supreme Court has stated, "[i]n the absence of persuasive circumstances or a statutory directive to the contrary, it is a well-recognized principle that a majority constitutes a quorum, and if a quorum is present the legislative, judicial or administrative body has authority to act in those matters coming within its jurisdiction." Bray v. Barry, 91 R.I. 34, 41, 160 A.2d 577, 581 (1960); see also Fargnoli v. Cianci, 121 R.I. 153, 171, 397 A.2d 68, 77 (1979) (stating "[it] is [a] well-established common-law principle that a majority constitutes a quorum, and if a quorum is not present, a legislative body cannot act because any action taken in the absence of a quorum is a nullity").

The Town Council consists of five members, only four of which were present at the July 24, 2017 meeting when the Town Council voted to appoint Corrigan as Town Manager: Town Council President Cienki and Council Members Deutsch, Granatiero, and Schwager. (Pls.' Ex. 20.) As it is written, under § C-82 of the Town Charter, the Town Manager must be appointed by a majority vote of all members. However, four out of the five council members were present at the July 24, 2017 meeting, clearly constituting a quorum. See Bray, 91 R.I. at 41, 160 A.2d at 581. Pursuant to the language in § C-82 of the Town Charter, the quorum had the authority to vote to appoint Corrigan as Town Manager. Id. Three out of the four council members present voted in favor of appointing Corrigan as the Town Manager. Thus, "[a] majority of the members present . . . determine[d] a[] matter legally before them," and Plaintiffs' argument that Corrigan's appointment violated § C-82 of the Town Charter fails. (Defs.' Ex. G.) This Court pauses to note that the three members who voted in favor of appointing Corrigan were not only a "majority of

the members present," but were also a majority of the board. Four out of five council members voted, and three voted in favor of the appointment. Thus, three out of five members of the Town Council voted in favor of the appointment.

c

The EGTC Pattern of Conduct Regarding the Open Meetings Act

This Court will discuss other meetings held around that same time to reveal a pattern of conduct. Those meetings were held on June 26, July 10, and August 19, 2017.

i

June 26, 2017 Meeting

The agenda posted for the Town Council meeting held on June 26, 2017—Plaintiffs' Exhibit 13— states, in pertinent part:

> *"(10) New Business*
>
> *"(c) Discussion for search process for Town Manager*
>
> *"(14) Executive Session*
>
> *"(b) Closed pursuant to RIGL 42-46-5(a)(2), sessions pertaining to collective bargaining or litigation, specifically to discuss legal implications related to municipal collective bargaining agreement obligations and common-law/statutory obligations of the Town."* (Emphasis added.)

The executive session minutes from the June 26, 2017 meeting did not reveal any information relevant to this matter. However, the open session minutes from that meeting—Plaintiffs' Exhibit 20— provided:

> *"(c) Discussion for search process for Town Manager*
>
> *"[c]ouncilors discussed the creation of a process to search for a new Town Manager including criteria and timeline. A discussion about the Town's relationship with Mr. Corrigan [sic] was deferred to Executive Session."* (Emphasis added.)

The Town's discussion of its intent to create a search process for the Town Manager position is misleading. The Town Council promoted the appearance of having the intention to utilize a search process for the position, all the while negotiating a contract with Corrigan to be executed at the July 10, 2017 meeting. With respect to the June 26, 2017 meeting, this Court does not find that it is in the spirit of the OMA to have discussions pertaining to "the Town's relationship" with Corrigan in executive session. (Pls.' Ex. 20.) It is clear that the Town Council is attempting to skirt around the requirements of the OMA by only entertaining discussions regarding Corrigan and the Town Manager position in executive session.

There are also apparent inconsistencies between the open session minutes and the executive session minutes; the open session minutes indicate that "[a] discussion about the Town's relationship with M[s]. Corrigan was deferred to Executive Session," yet, the executive minutes do not reflect any such discussion. Id.

ii

July 10, 2017 Meeting

The agenda for the meeting that occurred on July 10, 2017—Plaintiffs' Exhibit 14—contains the following;

> *"(7) New Business*
>
> *"(f) Discussion of Town Manager position.*
>
> *"(12) Executive Session*
>
> *"(a) Closed pursuant to RIGL 42-46-5(a)(1), sessions pertaining to discussion of the job performance, character, or physical or mental health of persons in the employ of the Town of East Greenwich. The counsel affirmatively asserts that such persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting."* (Emphasis added.)

Corrigan's testimony indicates that at the July 10, 2017 meeting, the Town Council intended to execute her contract. (Tr. II 535.) Corrigan testified that she and the Town Solicitor

had prepared and reviewed the contract sometime between July 1 and July 10, 2017. Id. at 534. Corrigan stated that she was ready to enter into the agreement at the July 10, 2017 meeting, which was clearly not indicated on that meeting's agenda. Id. at 535.

The minutes from the July 10, 2017 meeting further show that the agenda did not comply with the standard established by our Supreme Court in Tanner as it did not reasonably describe the actions that the Town Council intended to take at that meeting. 880 A.2d at 798. The public comment section of the meeting minutes from July 10, 2017 indicate that the public presented with questions regarding the hiring process for the Town Manager position:

> *"William Higgins commented that several items Ms. Corrigan was quoted as saying would be on the agenda are not; specifically related to . . . the search process for seeking and hiring a new Town Manager. He questioned why votes that were taken in Executive Session on June 26th (as reported in the Providence Journal, June 30th) pertaining to current and potentially future employees were not disclosed and why proper notice was not given to those employees. Also, the hiring of Ms. Dykeman as the Finance Director . . . .*
>
> . . . .
>
> *"Roberta Anderson, 32 Atherton Road, commented that as an older resident she is very upset by the way things have transpired in Town. She was concerned about a possible conflict of interest with Ms. Corrigan being paid as an outside consultant and now being hired as the Town Manager. She asked that the Financial Town Meeting is added to a referendum.*
>
> *"Solicitor D'Agostino explained that matters related to a particular person are not appropriate for discussion during the public comment portion of an open meeting."* (Pls.' Ex. 15) (emphasis added).

The nature of the public discussion at that meeting provides further evidence of the fact that the items listed on the agenda did not fairly inform the public that the Town Council intended to appoint Corrigan to the position. At that time, the Town Solicitor and Corrigan had prepared and reviewed a contract that the Town Council intended to execute, while the notice stated only that the Town Council would be discussing the Town Manager position.

Moreover, Town Council Vice President Sean Todd's testimony may conflict with the meeting minutes. In his testimony, Vice President Todd stated that the July 10, 2017 meeting

abruptly ended after the pledge of allegiance. (Tr. 92, Oct. 17, 2017.) Both the meeting minutes and testimony from other witnesses indicate that the meeting erupted into discord during the public comment section.

Taking into consideration that notice must reasonably describe the actions that the Town Council intends to take during a meeting, it is evident that the Town Council again did not provide proper notice of its intended actions with regard to the Town Manager position. See Tanner, 880 A.2d at 798. The agenda for the July 10, 2017 meeting did not reasonably describe its intentions to enter into a contract with Corrigan at that meeting.

iii

August 19, 2017 Meeting

The Town Council's agenda for the August 19, 2017 meeting—Plaintiffs' Exhibit 28—contained only one item:

> *"(1) New Business*
>
> *"(a) Appointment of acting Fire Chief pursuant to Charter Section 109-1(B), until August 29, 2017."*

The open session minutes of the August 19, 2017 meeting stated:

> *"After the pledge, Council President address [sic] the single item of New Business, specifically, the appointment of acting fire chief pursuant to Town Charter section 109.1(B). A motion to appoint senior Captain Mears as Acting Fire Chief for operations until such time as Chief McGillivray returns was made by Councilor Granatiero, seconded by Councilor Schwager."* (Pls.' Ex. 29.)

Notwithstanding the issues already addressed by this Court regarding the peculiar nature of the August 19, 2017 meeting with respect to FF Perry, the meeting appears to comply with the requirements of the OMA and indicates that the Town Council can prepare proper notice when it wishes to do so. See §§ 42-46-1 et seq.

Town's Record Keeping Practices

There is no requirement that minutes under the OMA have to be taken by a town clerk or any specified individual or town official. Section C-89 of the Town Charter does designate that responsibility under the powers and duties of the Town Clerk. Section C-89 of the Town Charter states:

> "The Town Clerk shall be the Clerk of the Town Council, Clerk of the Probate Court, Clerk of the Board of Canvassers, and the Recorder of Deeds. It shall be the Duty of the Town Clerk to:
>
> "A. Make a permanent record of all proceedings and certify by signature all actions of the aforesaid bodies[.]" (Defs.' Ex. G.)

The Town Clerk testified to the practice and policy of the Town Council, the Town Clerk, and minutes. The Town Clerk attends all Town Council meetings both in open and executive session. During a meeting, the Town Clerk takes minutes of the meeting, then types the meeting minutes, and submits the minutes to the Town Council to vote on their approval. (Tr. II 607.) In addition to the minutes, the Town Clerk makes an audio recording of the entire meeting. Id. at 616. The Town Clerk testified that this had been the usual practice for the past eight years until the Town Council meeting held on June 15, 2017. Id. The Town Clerk explained that in all the time she has served as Town Clerk, she had never been dismissed from any Town Council meeting or executive session, and the Town Solicitor had never been the one to produce the minutes from a Town Council meeting. Id. at 598, 608.

At the June 15, 2017 Town Council meeting, for the first time since the Town Clerk was appointed to her position, the Town Council President dismissed the Town Clerk from the executive session. Id. at 598. The Town Clerk testified that she did not know exactly why she had been dismissed from that meeting but that she assumed "it was due to the sensitive nature of

the matters being discussed" by the Town Council in executive session—personnel matters involving the former Town Manager. Id. at 584, 598.

When asked about the minutes from the June 19, 2017 Town Council meeting, the Town Clerk testified that she did not attend that meeting. Id. at 584. She stated she did not attend the meeting because the Town Council planned on discussing the same matters at that meeting as those discussed at the June 15, 2017 meeting, four days prior. Id. Since the same "sensitive" matters were being discussed, the Town Clerk believed she did not need to be present. Id. at 598. The Town Clerk confirmed that there were no open session minutes or audio recordings from that meeting but that the Town Solicitor had taken notes during the executive session. Id. at 604.

The Town Clerk went on to testify that she attended the open session of the following Town Council meeting held on June 26, 2017. Id. at 586. She stated that she was again dismissed by the Town Council President and the Town Manager when the Town Council went into executive session. Id. The Town Clerk explained that she planned on attending the executive session but was unsure of whether she would be dismissed due to her prior dismissals. Id. at 599. She approached the Town Council President and Town Manager and asked if she was needed during the executive session to which they replied, she "was all set to go home." Id. at 599-600. The Town Clerk stated that no one asked her if the Deputy Town Clerk was available to attend the executive session in her absence. Id. at 613.

On July 10, 2017, the Town Clerk was out on medical leave and did not attend the meeting. Id. at 593-94. The Deputy Town Clerk attended the meeting in her place, but the meeting adjourned early due to public discord. Id. at 594. The Town Clerk testified that the Deputy Town Clerk attempted to prepare the draft minutes from that meeting. Id. This Court has

already found that the minutes are inconsistent with Town Council Vice President Sean Todd's testimony that the meeting abruptly ended after the pledge of allegiance.

Once again, at the July 24, 2017 meeting, the Town Council dismissed the Town Clerk upon convening in executive session. Id. at 587. After asking the Town Council President whether she should stay, the Town Council President told her she was not needed, the Town Solicitor would be taking minutes during the executive session. Id. at 618. The Town Clerk testified that she did not return to the Town Council meeting after being dismissed, and therefore, the open session minutes do not reflect the Town Council reconvening in open session. Id. Instead, the Town Solicitor took notes during the executive session, which indicate that the Town Council reconvened in open session—those notes are the only record from the meeting as no audio recordings were made. Id.

At the Town Council meeting on September 11, 2017, the Town Clerk was again told that she was not needed in executive session. Id. at 600. The Town Clerk testified she insisted on staying and taking the minutes for the executive session, but she was subsequently dismissed after only one item was taken up. Id. The Town Clerk stated that she was told the reason for her dismissal was that "no more votes [were] being taken." Id.

The unique circumstances surrounding the aforementioned meetings offer further evidence of the Town's pattern of conduct surrounding the Town's dealings with Corrigan and her appointment as Acting Town Manager and Town Manager, evidencing the Town's lack of respect for the spirit and intention of the OMA.

V

Allegations Unsupported by Evidence at Trial

There were several allegations generally raised by Plaintiffs in their pleadings, testimony, and arguments that this Court does not find are supported by evidence.

i

Anti-Nepotism Policy

During trial, there was discussion of whether Lieutenant Perry and FF Perry's working together at the EGFD was a violation of an anti-nepotism policy located in the Town's personnel manual. The Town's anti-nepotism policy passed by resolution in 1982 and is included in the Town's personnel manual. The policy provides:

> "Section D. Nepotism
> "Applicants for employment, promotion, transfer, or any other change of working status, who have members of their immediate family working for the Town, shall have their applications considered by the Town Manager on the following basis:
>
> "1) New hires may not be hired in a department where an immediate family member is already employed.
>
> "2) If in the best interests of the Town, an individual may be promoted within his current department regardless of any immediate family member being part of that same department.
>
> "3) An individual may not transfer or be promoted to another department if the other department has a member of his or her immediate family already employed." (Defs.' Ex. U.)

This policy is not included in either the Town Charter or the CBA. (Tr. II 622, 623.) The Town Clerk testified that the Town's personnel manual was located in her office; however, she was now unaware of where that copy is. Id. at 605. This Court heard further evidence from the Town Clerk that she "[could not] say [whether] [the charter] actually refers to a personnel manual" and that she was not aware of the manual being incorporated into any type of Town

ordinance. Id. at 623. There was no testimony offered as to whether any employees were notified of or familiar with the policy.

The anti-nepotism policy, in fact, is not discussed in either the Town Charter or the Town Code. (Defs.' Ex. G.) Section C-19 of the Town Charter does address "Conflicts of interest." The provision states, in relevant part:

> "(A)(1) No member of the Town Council, School Committee, nor the Town Manager, nor any officer or employee of the Town shall (a) make a contract with the Town (with the exception of his or her own contract of employment), or (b) receive any commission, discount, bonus, gift, contribution, or award from, or any share in, the profits of any person making or performing such contract . . .
>
> . . . .
>
> "(B) No Town officer or employee shall accept any gratuity or thing of value from any person who has business with the Town . . . . No Town officer or employee of the Town shall sell, give or loan equipment, property or supplies belonging to the Town . . . to any person or organization without authorization in writing from the Town Manager." Id.

Nowhere within that section is an anti-nepotism policy incorporated or referenced. Similarly, the CBA does not contain language similar to that found in the anti-nepotism policy.

Lieutenant Perry testified that the Director of Human Resources suggested that Lieutenant Perry receive an advisory opinion from the Rhode Island Ethics Commission to avoid potential issues with the anti-nepotism policy arising from Lieutenant Perry and FF Perry working together as brothers. (Tr. II 359-60.) Lieutenant Perry went on to testify that he eliminated any concerns related to the anti-nepotism policy by obtaining the requested advisory opinion—even though he personally knew of two brothers working as patrolmen for the East Greenwich Police Department who were not asked to do the same. (Pls.' Ex. 10; Tr. II 360-61.)

Although the Town's anti-nepotism policy was discussed at trial, there is insufficient evidence to support any findings regarding it, and the policy was not a basis for FF Perry's termination. Consequently, comment by this Court is unnecessary. FF Perry was terminated because of an alleged material misrepresentation. Nowhere in Corrigan's letter terminating FF Perry did she reference a violation of the anti-nepotism policy, which is thus of no moment. This Court will not make any findings regarding a violation of the policy as it is not a basis for FF Perry's termination, and there was insufficient evidence offered to support such a finding.

ii

Allegations of Bias and Retaliation

At the outset of trial, Plaintiffs asserted that Corrigan's actions were driven by her biases against the Perry family and the EGFD's hiring of lateral transfers. Plaintiffs maintained that numerous acts by Corrigan and the Town Council towards FF Perry, Lieutenant Perry, Lieutenant Perry's wife, and the EGFD lateral transfers were retaliatory efforts based on personal biases against the firefighters. Plaintiffs cite to many alleged incidents in support of their accusation: (1) Corrigan's budget review and investigation of the EGFD; specifically, a slide show presentation in which she stated the lateral hiring process was a "short-sighted employment practice"; (2) Lieutenant Perry's e-mail to Town Council President Cienki requesting a meeting to discuss what Lieutenant Perry felt to be an "unprovoked attack on the firefighters" in Corrigan's slide show; (3) Town Council President Cienki's statement that she was unhappy that the Town had hired lateral transfers and calling David Gorman the former Union President of the Coventry Firefighter's Union a "sociopath" even though she had never met him and the Town Council President's statement to Lieutenant Perry that she would "cut [his] [expletive] balls off and feed them to [his] dog" if he did not keep the firefighters in line; (4) the Town Council's

sharing a document on the Town's Facebook page that listed the Town employees' salaries, highlighting Lieutenant Perry's salary as well as other members of the Firefighters' Union; (5) the Town Council's posting a notice on the Town's website and publishing an e-mail to those who subscribed to the Town's e-mail list that stated a Town Council meeting had adjourned due to the "tremendous discord and disruption from members of the Firefighters Union and NEA"; (6) Lieutenant Perry's filing an internal complaint against the Town Council stating, "[a]s Union President, please know I am reluctant to file this complaint as I fear for retaliation against myself, my family, and my fellow firefighters"; (7) the rehiring of Kristin Henrikson—a former Town employee who previously sued the Union and the Town—instead of Lieutenant Perry's wife for a position as the Clerk of the EGFD; (8) Mrs. Perry's Rhode Island Commission for Human Rights complaint against the Town in which she referred to the Town's actions as retaliation against her and Lieutenant Perry; (9) a letter dated August 17, 2017 (the same day the Town Council posted notice of the August 19, 2017 special meeting) sent by Lieutenant Perry to the Town Solicitor stating that Lieutenant Perry still feared retaliation from the Town and that he would pursue other avenues of relief if necessary.

Even though Plaintiffs raised these claims of retaliation and bias in their pleadings, there was insufficient evidence presented to this Court in support of the accusations. Accordingly, this Court will not address these claims as there are other avenues of relief available to the Plaintiffs.

VI

Termination while on IOD

The Plaintiffs assert that FF Perry is entitled to continue to receive his salary and benefits while he is IOD and unable to work due to his on-the-job injury. Pursuant to § 45-19-1 of the Rhode Island General Laws:

> "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 . . ."

In enacting § 45-19-1, the IOD statute, "the Legislature intended to 'provide greater work-related-injury benefits to certain public employees whose jobs require them to serve the state or its municipalities, often in dangerous situations.'" McCain v. Town of N. Providence ex rel Lombardi, 41 A.3d 239, 244 (R.I. 2012) (quoting Hargreaves v. Jack, 750 A.2d 430, 433 (R.I. 2000)). Our Supreme Court has consistently "declared that the IOD statute 'is a substitute for workers' compensation and affords greater protection to injured police officers and firefighters' than other benefit schemes, including the state Workers' Compensation Act." Hagenberg v. Avedisian, 879 A.2d 436, 441 (R.I. 2005) (quoting Webster v. Perrotta, 774 A.2d 68, 80 (R.I. 2001)).

Defendants argue that FF Perry's termination does not constitute incapacitation under § 45-19-1. Moreover, Defendants contend that a firefighter is not entitled to a salary payment for a work-related injury if the firefighter is not otherwise entitled to employment. In support of their argument, Defendants cite to Aiudi v. Pepin to suggest that FF Perry is not entitled to his salary since he is no longer employed. 417 A.2d 320 (R.I. 1980).

The facts in Aiudi, however, are distinguishable from those in the instant matter. In Aiudi, a police officer suffered a work-related injury for which he received salary and medical compensation. Id. at 321. While he was on leave, the police department suspended him and filed charges for "conduct-unbecoming-an-officer." Id. at 320. The charges involved numerous

incidents of the plaintiff, while working as a security guard at a supermarket, stealing groceries and other items from the store. Id. at 320-21. The charges were ultimately sustained, and the plaintiff was terminated. Id. at 321. Due to the circumstances of the plaintiff's dismissal, the Court held, "[s]alary . . . [becomes] payable only if, at the time of the demand, the officer would have been eligible to receive a salary." Id.

Unlike the plaintiff's conduct in Aiudi, FF Perry was not charged with any acts of misconduct. The alleged reason for FF Perry's termination is that he made a material misrepresentation on his resume—he failed to provide a physical certificate. The issue here—determining whether a probationary firefighter is entitled to receive continued benefits when that firefighter has been wrongfully terminated while on IOD—appears to be an issue of first impression. As the Court has found that Corrigan lacked both proper authority and just cause to terminate FF Perry, the Court need not address the issue of the Town continuing to provide benefits to FF Perry while he is on IOD.

VII

Relief

Open Meetings Act – Appointment of Town Manager

With respect to the OMA, § 42-46-8(d) provides:

> "The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the Act]. In addition, the court may impose a civil fine not exceeding five thousand dollars ($5,000) against a public body or any of its members found to have committed a willful or knowing violation of this chapter," and "award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust." Sec. 42-46-8(d).

Based on the compelling and credible evidence before it, this Court finds that the Town's appointment of the Town Manager misled the public. The Plaintiffs argued that the Town's efforts were designed to secure Corrigan's appointment as Town Manager and minimize public opposition. Irrespective of the intent, the Town Council did not provide notice to the public, which limited the public's opportunity to attend Town Council meetings and be heard. Instead of allowing the people of East Greenwich to be a part of the Town's appointment process, the Town circumvented the requirements of the OMA to make decisions related to the Town's most important appointed position that should have been subject to public scrutiny. In essence, the purpose of the OMA is to hold the Town Council accountable for the decisions it makes on the public's behalf.

Accordingly, declaratory judgment shall enter for Plaintiffs against the EGTC for the Town Council's violation of the OMA. Pursuant to its authority under § 42-46-8 of the OMA, this Court declares the Town Council's vote on June 19, 2017 appointing Corrigan as Acting Town Manager null and void. This Court further declares the Town Council's vote on July 24, 2017 to remove the term "Acting" from Corrigan's designation and appointing her as Town Manager, as well as the Town Council's vote to approve the terms of Corrigan's contract in executive session, null and void.

Validity of FF Perry's Termination

Regardless of Corrigan's authority to act as Town Manager, on the compelling and credible evidence presented, this Court finds that there was no valid basis to terminate FF Perry. The new Town Manager did not approve of the process under which FF Perry was hired. She certainly had a right to that viewpoint. The new Town Manager did not like it that FF Perry did not have a "certificate." At the same time, she could not fire him for that reason since a

certificate was not required for the job. As a result, the Town Manager accused him of lying and fraudulently insinuating whether he said he had a certificate. FF Perry did not lie. He never said he had a certificate—in fact, he stated that he did not. The claim that he somehow said or wrote he did on his resume is false. He wrote certifications and indicated he received those certifications through the Coventry Fire Academy. FF Perry explained why he wrote it the way he did—to explain how he was trained. Testimony showed that was a common way to write it on a resume, and it was not misleading. The Town Manager was wrong. FF Perry did not lie. FF Perry did not misrepresent anything. This Court finds it somewhat shocking that after hearing all of the credible testimony in the trial that contradicts her opinion, the Town Manager continues her inexplicable attitude and accusations regarding FF Perry.

FF Perry is a twenty-eight-year veteran of the fire service. He is injured due to his care and treatment of a patient during a rescue call. He deserves better than he received from his employer, the Town of East Greenwich. Corrigan had no valid basis to terminate FF Perry. As a result of this Decision, FF Perry is ordered reinstated to his position with the EGFD as Corrigan's actions on behalf of the Town are hereinafter null and void.

Town Charter Violations

Furthermore, for the reasons contained herein, this Court declares that the Town Council violated the Town Charter. Whereas there are no penalties included in the Town Charter, the Court is not going to assess any penalties. The Court will leave it to the citizens of the Town.

Open Meetings Act - Attorney's Fees

In Tanner, our Supreme Court held "the OMA affords three possible remedies for a violation of its provisions—attorney's fees, injunctive relief, and/or a civil fine . . . ." and that a prevailing plaintiff is entitled to a "mandatory award of reasonable attorney's fees unless such an

award would be unjust." 880 A.2d at 799-800 (citing Solas v. Emergency Hiring Council, 774 A.2d 820, 825 (R.I. 2001)). Our Supreme Court instructed with respect to the remedy of attorney's fees under the OMA: "attorney's fees are a remedy under the OMA; the OMA clearly indicates that the Legislature intended the courts to consider the myriad of circumstances involved with providing public notice of meetings and instructed the courts to rely upon tenets of justice and fairness in fashioning an award of attorney's fees." Id. (citing Edwards v. State, 677 A.2d 1347, 1349 (R.I. 1996)).

Moreover, the OMA places "the burden of bringing forth evidence of special circumstances on a defendant who seeks to avoid the remedy of attorney's fees; however, the court also must consider inherent tenets of justice and fairness in determining the amount, ensuring that the remedy is 'proportional to the breach and the effect thereof.'" Id. (citing Edwards, 677 A.2d at 1349). Here, the myriad of circumstances surrounding the Town's appointment of the Town Manager warrants the award of attorney's fees. See id. Defendants have brought forth no evidence of special circumstances which would dissuade this Court from awarding attorney's fees to the Plaintiffs. Accordingly, this Court awards reasonable attorney's fees to the Plaintiffs.

Open Meetings Act – Civil Fines

In determining whether to assess fines against the Town, the Court considers the violations already discussed and the pattern of conduct during this short period of time. During this time, the Town Council appointed an Acting Town Manager and Town Manager and approved a contract for the Town Manager, all in executive session. The people of the Town were entitled to hear their representatives' discussions and their reasoning for voting on Corrigan's appointment and for Corrigan's compensation package. In the meetings at which

appointments were made, the Town Council did not provide any notice of their intention to vote for the Town Manager or approve her contract. The Town Council voted for the appointment and contract behind closed doors. The Town Council did not always keep minutes of their meetings or an audio recording.

The notices provided for the meetings held on June 19 and July 24, 2017 were misleading. The Town Clerk, for the first time, was excluded and dismissed from some Town Council meetings and all executive sessions. Minutes were not properly recorded or maintained; they were inconsistent. It is impossible to view this period of time as anything but willful attempts to violate the OMA.

Under the OMA, the imposition of a civil fine is predicated on willful or knowing violations. Section 42-46-8 allows for the imposition of a civil fine not exceeding $5000 when "a public body or any of its members [are] found to have committed a willful or knowing violation . . . " It is apparent that the Town Council willfully and knowingly violated the OMA. The Town's conduct directly contravened the Legislature's intent in enacting the OMA, which is that "public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy." Sec. 42-46-1.

Public service is an honor. Public officials are voted upon and trusted to represent their constituents and make decisions for them. The process is done in the light, not in the dark. The people have the right to hear those officials' explanations, their decisions, and their votes. The OMA importantly "safeguard[s] the public's interest in knowing and observing the workings of its governmental bodies." Tanner, 880 A.2d at 797.

This Court finds that Defendants committed five willful and knowing violations of the OMA. With respect to the June 19, 2017 Town Council meeting, these violations are (1) failing to provide proper notice under § 42-46-6; (2) improperly voting in executive session under § 42-46-5; and (3) failing to keep meeting minutes under § 42-46-7, and with respect to the July 24, 2017 Town Council meeting, these violations are (4) failing to provide adequate notice under § 42-46-6; and (5) improperly voting in executive session under § 42-46-5. Accordingly, pursuant to § 42-46-8 of the OMA, this Court shall impose a $1000 fine for the violations committed at the June 19, 2017 meeting and a $1000 fine for the violations committed at the July 24, 2017 meeting. Prevailing counsel shall prepare the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**East Greenwich Firefighters Association, Local 3328, IAFF, AFL-CIO, et al. v. Gayle Corrigan, et al.**
CASE NO:	**KC-2017-0898**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**November 8, 2017**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Elizabeth A. Wiens, Esq.**
For Defendant:	**David M. D'Agostino, Esq.**