STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

[Filed: August 23, 2018]

TOWN OF EAST GREENWICH, RHODE ISLAND,	:	
Plaintiff,	:	
	:	
	:	
VS.	:	**C.A. No. KC-2017-1276**
	:	
	:	
EAST GREENWICH FIRE FIGHTERS ASSOCIATION LOCAL 3328, I.A.F.F., AFL-CIO, by and through, WILLIAM PERRY, in his official capacity as President of the EAST GREENWICH FIRE FIGHTERS ASSOCIATION LOCAL 3328, I.A.F.F., AFL-CIO, and MATT HOWARD, in his official capacity as Secretary of the EAST GREENWICH FIRE FIGHTERS ASSOCIATION LOCAL 3328, I.A.F.F., AFL-CIO,	:	
Defendants.	:	

DECISION

MCGUIRL, J. Plaintiff Town of East Greenwich, Rhode Island (Plaintiff or the Town) filed a Complaint for declaratory relief, as well as a Motion for Judgment on the Pleadings against Defendant East Greenwich Fire Fighters Association Local 3328, I.A.F.F., AFL-CIO (the Union) requesting that this Court declare—pursuant to its authority under the Uniform Declaratory Judgments Act—that the Town has a "non-delegable management right" to reorganize the structure of the East Greenwich Fire Department (EGFD) from its existing four platoon structure to a three platoon structure. In its Complaint, Plaintiff urges this Court to declare that the Town

Charter grants the authority to restructure the EGFD to the Town and that such authority may not be: (1) bargained away; (2) delegated to an arbitrator; or (3) restricted by contract.

Plaintiff initially moved for judgment on the pleadings on March 9, 2018. Two separate hearings were held—on May 24, 2018 and June 19, 2018, respectively—on the merits of each party's argument regarding whether the Town has a "non-delegable management right" to reorganize the EGFD. This Court now issues a Decision in this matter pursuant to its jurisdiction under G. L. 1956 §§ 9-30-1 *et seq*. and G. L. 1956 § 8-2-13.

I

Facts and Travel

The Town of East Greenwich is a municipality with a Town Council/Town Manager form of government. (Am. Compl. ¶ 10.) The Union is a labor organization and the exclusive bargaining agent for all permanent employees of the EGFD, except for the Chief and the Deputy Chief. *Id.* ¶¶ 2, 3.

On or about March 15, 2016, the Town and the Union executed a Collective Bargaining Agreement (CBA) which includes several provisions concerning the pay, benefits and other terms and conditions of employment for the Town's firefighting and rescue personnel assigned to a "four platoon system." (Pl.'s Ex. A.) The CBA is the result of negotiations between the Union and Town representatives. The CBA is set to expire in June of 2019. *Id.*

In the CBA, the parties explicitly agreed to a four platoon system and at least twenty-one separate sections of the CBA—including sections concerning wages, shift schedule, and overtime—expressly apply to employees assigned to a four platoon system. *Id.* "By operating the Fire Department with a four-platoon system, the Town [agreed to] separate[] its line fire suppression and emergency rescue personnel into four groups, or platoons." (Am. Compl. ¶ 23)

(Ex. A §§ 10, 61.) The Town also agreed, *inter alia*, (1) to permit firefighters to bid to particular platoons where they will work an average of forty-two hours per week; (2) to a work schedule for each firefighter of two ten-hour days, followed by two fourteen-hours nights, followed by four days off; (3) to specific hourly rates; and (4) to pay firefighters time-and-one-half their hourly rate when they work outside their regular shift schedule. (Ex. A §§ 26, 36, 39.) Finally, the parties agreed that the firefighters' pay would not be docked when they are representing the interests of their fellow bargaining unit members. Under the CBA, any dispute between the parties regarding conditions of employment shall be determined by an arbitrator. *Id.* § 46.

The Town alleges that it intends to reorganize the EGFD and implement a three platoon structure, rather than the current four platoon structure as is delineated in the CBA. Although very few facts have been included in the pleadings with respect to the initial notice of the Town's intent to reorganize and the subsequent negotiations arising therefrom, the Union, in its initial objection to the Town's Motion for Judgment on the Pleadings, provided a rather extensive history as to this development. The Town, in its Reply in Further Support of its Motion for Judgment on the Pleadings, objected to these facts as prejudicial and unsupported but ultimately did not deny or contradict them. Though this "history" is not established as part of the record, it may be helpful in terms of understanding context. The Union provided the following:

> "On December 5, 2017, the Union and Town met to discuss some pending grievances. During the meeting, one of the Town's attorneys . . . gave [fire fighter] Lt. Perry a letter from [the Town Manager] dated the same day. The letter provides that [the Town Manager] discussed her intentions 'with the Council to reorganize the line firefighting rescue division into a three-platoon, 56-hour workweek structure.' According to the letter, the Council authorized her to engage in negotiations over the effects of 'that reorganization prior to its full implementation. . . .'
>
> "On December 6, 2017, the Union and Town reached a tentative agreement whereby the Town agreed that it <u>would not reorganize</u>

> the fire department in exchange for certain concessions from the Union. In addition, the Town agreed to extend the collective bargaining agreement an additional two years, and provide wage increases. (Emphasis added).
>
> "On December 11, 2017, [one of the Town's Attorneys] sent two documents to a representative from the Rhode Island State Association of Firefighters "reflecting our tentative agreement in East Greenwich." One week later, on December 18, 2017, the Town filed the instant lawsuit. . . .
>
> "On January 3, 2018, the Union . . . went to Town Hall for the scheduled meeting . . . . Before the Union could provide the Town representatives with written copy of the tentative agreement, [the Town Manager] advised the Union that there was no deal. She asserted that on December 18, 2017, in executive session, the Town Council unanimously rejected nearly every single promise it had made the Union at the December 6, 2017 bargaining session." (Emphasis in original).

A significant portion of the decision to reorganize the EGFD was first raised on December 5, 2018, in which a letter from the Town Manager detailed her intentions to reorganize, and it appears negotiations ensued. Just under a month later, on January 3, 2018, it appears the issue of reorganization was decided and off the table without any discussion or negotiation with the Union. Although these facts are not agreed upon, there are letters—provided to this Court from the Union—documenting such. This history, of course, only goes to the issue of negotiations undertaken—or not undertaken—regarding the decision to reorganize the EGFD.

The Town now alleges that "[t]he Town Manager has decided to exercise her non-delegable statutory power, responsibility and obligation to reorganize the Fire Department into a three-platoon structure, and she has received approval and obtained authority from the Town Council to commence negotiations over the effects of the decision to implement the three-platoon structure." (Am. Compl. ¶ 47.)

Subsequent to a conference in chambers, in which the issue of justiciability was brought to light,[1] the Town Council took a vote relevant to the issues of justiciability and ripeness. The Council ultimately voted to accept the Town Manager's recommendation to reorganize the EGFD from its current four platoon structure to a three platoon structure. The Town Council also noted that, although they had voted to implement the reorganization of the EGFD, they would nonetheless hold the reorganization in abeyance pending this Court's decision on Plaintiff's pending motion. The Union agreed that it was in the best interest of both parties to hold the implementation in abeyance until a decision had been rendered.

The Town now alleges that "[a] controversy exists between the Town and the Union concerning the Town's assertion of management right to decide to implement three-platoon structure in the Town's Fire Department." *Id.* ¶ 51. The Town brings this action for declaratory judgment to resolve disputes and have declared the rights, status and other legal relations of and between the Town and the Union concerning the Town's assertion of its fundamental and non-delegable management rights to decide the organizational structure, the size and the appropriate staffing levels of the EGFD.

[1] When Plaintiff's Motion for Judgment on the Pleadings was first presented, it did not appear that a justiciable controversy yet existed. Although Plaintiff alleged that the Town Manager had received approval from the Town Council to commence negotiations over the proposed reorganization, it was unclear whether the Town Manager had been given approval by the Town Council to actually implement the reorganization, a necessary step in creating a justiciable controversy. Because "[a] declaratory-judgment action may not be used for the determination of abstract questions or the rendering of advisory opinions," Plaintiff was required to first obtain the necessary vote before this Court could evaluate the merits of the motion in front of it. *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997) (internal citation and quotations omitted.)

II

Standard of Review

A

Uniform Declaratory Judgments Act

A declaratory judgment '"is neither an action at law nor a suit in equity but a novel statutory proceeding . . . ."' *Northern Trust Co. v. Zoning Bd. of Review of Town of Westerly*, 899 A.2d 517, 520 n.6 (R.I. 2006) (quoting *Newport Amusement Co. v. Maher*, 92 R.I. 51, 53, 166 A.2d 216, 217 (1960)). Our Supreme Court recognizes that the Uniform Declaratory Judgments Act (UDJA) "vests the Superior Court with the 'power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.'" *Malachowski v. State of Rhode Island*, 877 A.2d 649 (R.I. 2005) (citations omitted) (quoting § 9-30-1); *see also Sullivan*, 703 A.2d at 750 (stating that trial court's "decision to grant or to deny declaratory relief under the [UDJA] is purely discretionary[]"). "This power is broadly construed, to allow the trial justice to 'facilitate the termination of controversies.'" *Bradford Assocs. v. R.I. Div. of Purchases*, 772 A.2d 485, 489 (R.I. 2001) (quoting *Capital Properties, Inc. v. State*, 749 A.2d 1069, 1080 (R.I. 1999)).

It is well settled that a justice of the Superior Court has discretion to grant or deny declaratory relief under the UDJA. *Sullivan*, 703 A.2d at 751 (citing *Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket School Comm.*, 694 A.2d 727, 729 (R.I. 1997) and *Lombardi v. Goodyear Loan Co.*, 549 A.2d 1025, 1027 (R.I. 1988)). '"A decision to grant or deny declaratory relief is addressed to the sound discretion of the trial justice and will not be disturbed on appeal unless the record demonstrates a clear abuse of discretion or the trial justice

committed an error of law."' *Imperial Cas. & Indem. Co. v. Bellini*, 888 A.2d 957, 961 (R.I. 2005) (quoting *Hagenberg v. Avedisian*, 879 A.2d 436, 441 (R.I. 2005)).

It is the function of the trial justice to undertake fact-finding and then decide whether declaratory relief is appropriate. *Providence Lodge No. 3, Fraternal Order of Police v. Providence External Review Auth.*, 951 A.2d 497, 502 (R.I. 2008). "It is well-established that 'the findings of fact of a trial justice, sitting without a jury, will be given great weight and will not be disturbed absent a showing that the trial justice overlooked or misconceived material evidence or was otherwise clearly wrong."' *Id.* (quoting *Casco Indemnity Co. v. O'Connor*, 755 A.2d 779, 782 (R.I. 2000)). In a nonjury action where a special master has been appointed, the trial justice "shall accept the master's findings of fact unless clearly erroneous." Super. R. Civ. P. 53(e)(2).

The UDJA "gives a broad grant of jurisdiction to the Superior Court to determine the rights of any person that may arise under a statute not in its appellate capacity but as part of its original jurisdiction." *Canario v. Culhane*, 752 A.2d 476, 479 (R.I. 2000) (citing *Roch v. Garrahy*, 419 A.2d 827, 830 (R.I. 1980)). Additionally, the UDJA '"neither imposes an unflagging duty upon the courts to decide declaratory judgment actions nor grants an entitlement to litigants to demand declaratory remedies."' *Pardee v. Consumer Portfolio Servs., Inc.*, 344 F. Supp. 2d 823 (D.R.I. 2004) (quoting *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488, 493 (1st Cir. 1992)). Thus, the purpose of such declaratory judgment actions "is to render disputes concerning the legal rights and duties of parties justiciable without proof of a wrong committed by one party against another, and thus facilitate the termination of controversies." *Millett v. Hoisting Eng'rs' Licensing Div. of the Dep't of Labor*, 119 R.I. 285, 377 A.2d 229 (1977) (citing 1 Anderson, *Actions for Declaratory Judgments* § 4 (2d ed. 1951) (citations omitted). Such a purpose of the

UDJA is valuable in that "[i]t is designed to enable litigants to clarify legal rights and obligations before acting upon them." *Ernst & Young v. Depositors Econ. Prot. Corp.*, 45 F.3d 530 (1st Cir. 1995).

B

Judgment on the Pleadings

A Rule 12(c) Motion for Judgment on the Pleadings provides a trial court with the ability to dispose of a case early in the litigation process "when the material facts are not in dispute . . . and only questions of law remain to be decided." *Haley v. Town of Lincoln*, 611 A.2d 845, 847 (R.I. 1992) (citation omitted). The Court is restricted to a review of the alleged facts presented in the pleadings in a manner most favorable to the nonmoving party. *Id.* As such, the allegations made in the nonmoving party's pleadings are deemed true for the purpose of the motion. *Haley*, 611 A.2d at 847; *see also Centerville Builders, Inc. v. Wynne*, 683 A.2d 1340, 1342 (R.I. 1996). However, "allegations that are more in the nature of legal conclusions rather than factual assertions are not necessarily assumed to be true." *DiLibero v. MERS*, 108 A.3d 1013, 1016 (R.I. 2015).

"If a judgment on the pleadings is to be given, it is because it is apparent beyond a reasonable doubt that a trial would be of no use in determining the merits of the plaintiff's claim for relief." *Haley*, 611 A.2d at 849; *see also* 1 Robert B. Kent et al., *Rhode Island Civil and Appellate Procedure* § 12:13 (2016-2017) (when made by the defendant, a motion for judgment on the pleadings attacking the sufficiency of the complaint is "in effect, a motion to dismiss for failure to state a claim"). Thus, "[a] Rule 12(c) motion is tantamount to a Rule 12(b)(6) motion, and the same test is applicable to both." *Chariho Reg'l School Dist. v. Gist*, 91 A.3d 783, 787 (R.I. 2014) (citation omitted). If a Rule 12(c) motion is "made by the plaintiff, the motion is

analogous to a demurrer to the answer in that it tests the legal sufficiency thereof. The plaintiff can succeed with such a motion only if the answer admits the material allegations of the complaint and sets forth no affirmative" defenses. 1 Robert B. Kent, *Rhode Island Civil and Appellate Procedure: Rules of Civil Procedure With Commentaries* § 12:13 (2016-2017) "If the answer contains both denials and affirmative defenses, the plaintiff desiring to test the sufficiency of the latter . . . cannot obtain judgment on the pleadings in the face of defendant's denials." *Id.*

The Court has held that the "availability of a Rule 12(c) motion to terminate litigation is severely limited in light of the rules of pleading employed by the Superior Court of Rhode Island." *Haley*, 611 A.2d at 848. "The plaintiff is not required to plead the ultimate facts that must be proven in order to succeed on the complaint." *Id.* "All that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted." *Id.*; *see* Friedenthal, Kane, and Miller, *Civil Procedure* §§ 5.7 and 5.8 at 252-56 (West 1985). "The policy behind these liberal pleading rules is a simple one: cases in our system are not to be disposed of summarily on arcane or technical grounds." *Haley*, 611 A.2d at 848. "In light of the simplified pleadings permitted under Rule 8, however, it is most unusual that the information contained on the face of the pleadings will alone be sufficiently definite and complete to allow the court to grant a Rule 12(c) motion." *Id.*

"The standard to be applied to a Rule 12(c) motion is 'restrictive,' particularly when 'the questions of law applicable to the controversy are fact intensive."' *Heritage Healthcare Servs., Inc. v. Beacon Mut. Ins. Co.*, 109 A.3d 373, 377 (RI. 2015), citing *Haley*, 611 A.2d at 847-48. The court must accept that "[t]he factual allegations contained in the nonmovant's pleadings are

admitted as true for purposes of the motion," and "[a]ll proper inferences . . . are to be drawn in favor of the nonmovant." *Haley*, 611 A.2d at 847.

Further, "[a] motion seeking judgment on the complaint may only be granted if all of the defenses raised in the answer are legally insufficient." *Qwest Commc'ns Corp. v. City of Berkeley*, 208 F.R.D. 288, 291 (N.D. Cal. 2002) (citing William W. Schwarzer et al., *Federal Civil Procedure Before Trial* § 9:328). A plaintiff is not entitled to judgment on the pleadings if the answer raises issues of fact or an affirmative defense which, if proved, would defeat plaintiff's recovery. *General Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989).

III

Analysis

A

Legislative Motive

With respect to Count I of the Complaint, and after review of the pleadings and parties' arguments, there appear to be no questions of fact remaining. Rather, only questions of law—pertaining to whether the Town has a management right to reorganize the fire department during the life of a valid CBA—are left to be resolved.

The only question of fact raised at this stage was that of the Town's motivation in seeking to reorganize the EGFD. The Union argues that the State Labor Relations Board (SLRB) has jurisdiction over this issue—given that a number of pending grievances exist before the SLRB pertaining to the reorganization—and therefore, the Town's motive in reorganizing the EGFD is relevant. In support of its argument, the Union points to a number of labor relations board cases—involving both the National Labor Relations Board (NLRB) and the SLRB—to suggest

that a Town's motivation in reorganizing a department is pertinent to the validity of said reorganization.[2] Essentially, the Union alleges that the Town's primary motivation is merely to

[2] In *RGC (USA) Mineral Sands, Inc. v. NLRB*, 281 F.3d 442 (4th Cir. 2002), the Court explained:

> "The principle that otherwise lawful acts can be rendered unlawful when motivated by improper intentions is widely accepted and appears repeatedly throughout the law. For example, the otherwise legal act of giving a gift to a public official only becomes bribery when the giver intends for the gift to influence a decision. *See* 18 U.S.C. § 201 (2001). Likewise, otherwise legal adverse employment action is rendered illegal when motivated by race, color, religion, sex, or national origin. *See* 42 U.S.C. §§ 2000e *et seq*. (2001); *Spriggs v. Diamond Auto Glass*, 165 F.3d 1015, 1020 (4th Cir. 1999). Even assuming that [the Employer] was within its rights under the collective bargaining agreement to unilaterally impose shift assignments, [the Employer] cannot act with the intent to punish or discourage protected concerted activity. . . . An employer could retaliate against workers for protected activity so long as the employer retaliated by acting within its powers under the collective bargaining agreement."

Additionally, in *State of R.I. Dep't of Labor and Training v. The R.I. State Labor Relations Bd.*, No. 98-1467, 1999 WL 997693, at *7 (Oct. 22, 1999), this Court (Sheehan, J.) held:

> "Whether an employer's actions constitute § 8(a)(3) violations turns on the employer's primary motivation. *See generally NLRB v. Transp. Mgmt. Corp.*, 462 U.S. 393, 397-403, 103 S. Ct. 2469, 2472-75, 76 L.Ed. 2d 667 (1983). If the goal is to discourage union activity, there is a violation. If there is no anti-union motive, or if the same action would have been taken based on some other, non-discriminatory, motive, there is no violation."

Similarly, in *Bd. of Eng'rs, Anthony Fire Dep't, Coventry Fire Dist. v. R.I. State Labor Relations Bd.*, C.A. No. 90-1351, 1995 WL 941372, at *10 (Jan. 9, 1995) (hereinafter *Coventry Fire District*), this Court (Darigan, J.) found that:

> "It is true that an employer may discharge an employee for a good reason, bad reason or even no reason, but only absent a showing of anti-union motivation. . . . [A] discharge or suspension is an unfair labor practice if the employee's protected conduct is a substantial or motivating factor for the action, or the action is based in whole or part on antiunion animus." (internal citations omitted).

retaliate against the Union and certain firefighters and that such motivation is relevant in analyzing the merits of this motion.

The Union contends that the Town cannot exercise its statutory or managerial right to reorganize for the purpose of interfering with the existence of a bargaining unit, namely the Union. The Union believes that Plaintiff violated Section 13 of the State Labor Relations Act (SLRA)[3] when its Town Manager recommended reorganizing the EGFD—laying off six lateral

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[3] G.L. 1956 § 28-7-13 provides in pertinent part:

> "(3) Dominate or interfere with the formation, existence, or administration of any employee organization or association, agency, or plan which exists in whole or in part for the purpose of dealing with employers concerning terms or conditions of employment, labor disputes, or grievances, or to contribute financial or other support to any such organization, by any means . . .
>
> "(5) Encourage membership in any company union or discourage membership in any labor organization, by discrimination in regard to hire or tenure or in any term or condition of employment; provided that nothing in this chapter precludes an employer from making an agreement with a labor organization requiring membership in that labor organization as a condition of employment, if that labor organization is the representative of employees as provided in §§ 28-7-14 – 28-7-19.
>
> "(6) Refuse to bargain collectively with the representatives of employees, subject to the provisions of §§ 28-7-14 – 28-7-19, except that the refusal to bargain collectively with any representative is not, unless a certification with respect to the representative is in effect under §§ 28-7-14 – 28-7-19, an unfair labor practice in any case where any other representative, other than a company union, has made a claim that it represents a majority of the employees in a conflicting bargaining unit. . . .
>
> "(8) Discharge or otherwise discriminate against an employee because he or she has signed or filed any affidavit, petition, or complaint or given any information or testimony under this chapter. . . .

transfers as a result—and the Town Council, without performing any type of investigation or fiscal impact statement, approved the recommendation.

However, this Court finds the Union's argument as to this point unpersuasive. In this instance, the Town is simply asking the Court to declare whether it has the legal authority to exercise its statutory power to reorganize the EGFD from a four platoon structure to a three platoon structure. This is purely a question of statutory and contract interpretation that requires no inquiry into any legislative motive.

It is well settled in Rhode Island that the motive of individual legislators is irrelevant to the validity of certain legislation. "[A] valid exercise of legislative power will not be invalidated because certain legislators may have had invalid motives . . . when the legislation in question was enacted." *R.I. Liquor Stores Ass'n v. Evening Call Pub. Co.*, 497 A.2d 331, 335 (R.I. 1985). Only when a legislative act has declared purpose in the legislation will Rhode Island courts look to legislative intent, and even then, courts accept that stated purpose rather than delve into the minds of each individual legislator. *Id.*; *Town of Warren v. Bristol Warren Reg'l Sch. Dist.*, 159 A.3d 1029, 1040 (R.I. 2017).

As the Town points out, a rule that permits inquiry into legislative motive is impractical and would lead courts to an unrealistic attempt to determine the intent of an entire legislative body through the various motives of each individual decision maker. *See Morrison v. Lamarre*, 75 R.I. 176, 65 A.2d 217, 224 (1949) ("Courts have nothing to do with the motives of legislators, nor the reasons they may have for passing the law."); *Holmes v. Farmer*, 475 A.2d 976, 988-89 (R.I. 1984) (Kelleher, J., concurring) ("Legislators with evil motives can be part of a group that

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> "(10) Do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce employees in the exercise of the rights guaranteed by § 28-7-12."

passes sound legislation, whereas legislators who have been motivated by the purest of intentions have been known to adopt legislation that has failed to pass constitutional muster.").

It should also be noted that "'[i]nquiry by the court into the actions or motivations of the legislators in proposing, passing, or voting upon a particular piece of legislation falls clearly within the most basic elements of legislative privilege."' *Marra v. O'Leary*, 652 A.2d 974, 975 (R.I. 1995) (quoting *Holmes*, 475 A.2d at 984). The Union's position that discovery is necessary to question the motives of each individual legislator on the Town Council would clearly violate the principles of legislative immunity and the protections afforded to municipal legislators in the Rhode Island and United States Constitutions, given that legislators and those who perform an integral role in the legislative process are entitled to absolute legislative immunity from suit for actions that fall within the parameters of their positions. *Maynard v. Beck*, 741 A.2d 866, 871-72 (R.I. 1999).

Finally, this Court finds that the Union fails to recognize the distinction between legislative acts and executive acts in arguing whether the Town's motivation to reorganize the EGFD is relevant to the present motion. In this case, the Town Council clearly voted in its legislative capacity to reorganize the EGFD from a four platoon structure to a three platoon structure. No executive action was taken. In making its argument on motive, however, the Union fails to distinguish and seems to equate executive acts with legislative acts, in that it only cites to cases that primarily address the motive behind an executive act and the implications such motive may have on those decisions. *See, e.g., RGC (USA) Mineral Sands, Inc.*, 281 F.3d at 445 (executive decision to change shift assignments); *State of R.I. Dep't of Labor and Training*, 1999 WL 997693, at *7 (executive decision to fill and not fill computer programmer positions); *Coventry Fire Dist.*, 1995 WL 941372, at *10 (executive decision to terminate employee). As a

result, this Court is unpersuaded by the Union's argument that inquiries into the legislative motive of the Town Council are necessary to decide the instant motion.

This Court will not consider the motivation of the Town Council in electing to reorganize the EGFD. As such, it appears that only questions of law—namely, whether the Town has a non-delegable right to reorganize the EGFD during the life of a valid CBA—and no questions of fact, remain before this Court.

B

Count I—The Town's Management Right to Reorganize and the Violation of the Collective Bargaining Agreement

At the outset it is important to note that, although certain case law in this state seems to come close to the facts of this particular case, none appear to be directly on point. As such, this appears to be a case of first impression; that is, whether a town may exercise its management right to reorganize a fire department during the life of a valid collective bargaining agreement. But having said that there is no clear precedent to resolve the controversy does not mean that we are without guiding principles articulated which guide this Court.

By its express terms, the CBA is a collective bargaining agreement that includes several provisions concerning the pay, benefits and other terms and conditions of employment for the Town's firefighting and rescue personnel assigned to "the four platoon system." (Am. Compl. ¶ 32.) At least twenty-one separate Sections of the 4-Platoon CBA—including Sections concerning wages, schedule, and overtime—expressly apply only to "employees assigned to the four platoon system," and not to employees assigned to a three platoon system or any other organizational structure. *Id.* ¶ 33. The CBA also includes provisions that are mandatory bargaining subjects that would be affected by the reorganization. It has been argued by the Union

that to implement a three platoon structure would directly conflict with numerous provisions in the CBA, thereby largely violating a valid and enforceable contract.

The Town argues that despite the fact that a valid CBA exists, under our Supreme Court case law they nonetheless have a management right to reorganize. The Town argues that this management right to reorganize is non-delegable and cannot be bargained away. As such, the Town contends that the CBA, insofar as it assigns its firefighters to a four platoon system, is "void *ab initio* and unenforceable as a matter of law" because it attempts to "impede a public-sector employer's statutory powers and obligations." (Pl.'s Second Supp. Mem. 2.) In support of its argument, the Town relies heavily on two Rhode Island Supreme Court cases and the line of cases that followed: *Town of N. Kingstown v. Int'l Ass'n of Firefighters, Local 1651*, 107 A.3d 304 (R.I. 2015) and *Vose v. R.I. Bhd. of Corr. Officers*, 587 A.2d 913 (R.I. 1991).

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Town of N. Kingstown v. International Association of Firefighters

The case that the Town argues is most instructive—and the Court agrees—as to whether it has a management right to implement a three platoon structure during the life of a valid CBA is *Town of N. Kingstown v. Int'l Ass'n of Firefighters, Local 1651 AFL-CIO*, 107 A.3d 304 (R.I. 2015) (hereinafter *North Kingstown*). In that case, the Town of North Kingstown unilaterally implemented a three platoon structure against the objections of the Union. It is important to note, however, that this implementation took place after the expiration of the CBA between North Kingstown and the Union. As a result of the unilateral reorganization, the union filed suit in the Washington County Superior Court seeking: (1) a declaratory judgment that the ordinance was invalid because it was passed in violation of the town charter; (2) a declaratory judgment that the town violated the Firefighters Arbitration Act (FFAA or the Act) and the State Labor

Relations Act (SLRA); and (3) injunctive relief. The Superior Court issued a written decision declaring that, because it was passed in violation of the town charter, the ordinance imposing the restructuring was invalid.[4] North Kingstown appealed to the Rhode Island Supreme Court.

The FFAA establishes "the obligation of the [city or town] and the [union] . . . to bargain with each other in good faith with respect to [wages, rates of pay, hours, working conditions, and all other terms and conditions of employment]." *Id.* at 313 (quoting *Fibreboard Paper Prods. Corp. v. Nat'l Labor Relations Bd.*, 379 U.S. 203, 210 (1964)). However, there are also certain matters that may not be bargained away by a public employer. *North Kingstown*, 107 A.3d at 313 (citing *Vose*, 587 A.2d at 915). The Court found that, for example, a public employer may not bargain away its statutory duties nor are they "at liberty to bargain away their powers and responsibilities with respect to the essence of the[ir] . . . mission." *Id.* (citing *N. Providence Sch. Comm. v. N. Providence Fed'n of Teachers, Local 920, Am. Fed'n of Teachers*, 945 A.2d 339, 347 (R.I. 2008)). "This prohibition can even hold true notwithstanding the fact that action taken related to the employer's mission or pursuant to a statutory obligation may impact something that is otherwise a mandatory subject of collective bargaining." *Id.*; *see also Vose*, 587 A.2d at 916 (holding that a collective bargaining agreement "shall not be interpreted as restricting the [public employer's] statutory power to order mandatory involuntary overtime").

[4] Importantly, the Superior Court in that case also noted that:

> "[T]he platoon structure of the Fire Department is a management right that may be properly asserted at the expiration of the CBA [and that] [g]oing forward the parties may agree to a new CBA that addresses the effects of this management change on mandatory bargaining subjects or proceed to interest arbitration, solely to determine the effects on mandatory bargaining subjects and not the management decision itself." *North Kingstown*, 107 A.3d at 308 (emphasis added).

The Court also noted that there are certain '"managerial decisions, which lie at the core of entrepreneurial control"' over an organization. *Ford Motor Co. v. Nat'l Labor Relations Bd.,* 441 U.S. 488, 498 (1979) (quoting *Fibreboard Paper Prods. Corp.*, 379 U.S. at 223). With respect to these decisions, a "union should [not] be able to dictate to the [employer]" because such "matters [are] strictly within the province of management." *Barrington School Comm. v. R.I. State Labor Relations Bd.*, 120 R.I. 470, 388 A.2d 1369 (1978). It is clear from this decision that the "choice itself of whether or not to implement a particular management decision is not subject to mandatory bargaining and need not be submitted to arbitration." *North Kingstown*, 107 A.3d at 314. This holds true notwithstanding the fact that such a decision "may have effects—sometimes profound effects—upon th[e] [terms and] conditions" of employment. *Id.* Working within this framework, the Court in *North Kingstown* has held that the decision to implement the three-platoon structure is a management right of the Town that cannot be delegated or bargained away. The Court found support for this notion among a number of different jurisdictions: *State ex rel. Quiring v. Bd. of Educ. of Indep. School Dist. No. 173, Mountain Lake, Minnesota,* 623 N.W.2d 634, 640 (Minn. Ct. App. 2001) (holding that reorganization of organizational structure is a matter of inherent managerial policy that does not require negotiations with bargaining units); *Appeal of Int'l Ass'n of Firefighters, AFL–CIO Local 1088 v. City of Berlin*, 123 N.H. 404, 462 A.2d 98, 100 (1983) (upholding determination that alteration of fire department's "platoon size was a subject falling solely within management discretion"); *Borough of Atlantic Highlands v. Atlantic Highlands PBA Local 242,* 192 N.J. Super. 71, 469 A.2d 80, 85 (Ct. App. Div. 1983), *cert. denied,* 96 N.J. 293, 475 A.2d 588 (1984) (holding that, based on particular facts, "issue of shift changes is nonnegotiable").

Based on the *North Kingstown* case, the Town argues that they have a management right to reorganize the EGFD from a four platoon structure to a three platoon structure. The Town further contends that this management right cannot be bargained away and is therefore not subject to the CBA in any respect. It is clear from the decision in *North Kingstown* that the Town is correct when it asserts it has a management right to reorganize. However, it should be noted that there is a major factual difference between the *North Kingstown* and this case: the fact that the collective bargaining agreement in *North Kingstown* had expired whereas the CBA in this case has not. In *North Kingstown*, the court was unbridled by any other valid agreement and was left to simply examine whether a management right existed unhindered by any other factors.

The Court also noted that,

> "Although the terms of the 2007–2010 CBA had expired and its terms do not 'fill a gap between CBAs,' *Arena v. City of Providence*, 919 A.2d 379, 392 (R.I. 2007), we nonetheless find support for our determination [that the Town has a management right to reorganize] in the fact that the 2007–2010 CBA contained a management rights clause in which the town 'retain[ed] all other rights and responsibilities inherent in the Town Council, Town Manager, Director of Public Safety and the Fire Chief."' *North Kingstown*, 107 A.3d n.7 (emphasis added).

The Court added that "[t]his provision went unchanged in the 2010–2011 arbitration award" suggesting that such a management rights provision may likely be included in any newly drafted collective bargaining agreement. *Id*. Simply put, in this case a valid contract exists. Moreover, the current CBA would unquestionably be violated if the Town were permitted to reorganize the EGFD at this time. The Town has already effectively exercised its management right to organize the EGFD into a four platoon structure and a forty-two hour work week when it executed the CBA and now simply seeks to change its mind.

It is also important to this Court to note that the decision in *North Kingstown* appears to be limited by certain factors, none of which are present in this case. In making its decision, our Supreme Court seemed to carefully limit its holding to the particular facts of the case remarking that:

> "Here, it is our opinion that the town's actions in implementing its decision to change to a three-platoon structure were lawful under the circumstances before us in this case. We reach this determination based on the union's failure to timely comply with § 28–9.1–13, its failure to timely submit unresolved issues to arbitration pursuant to § 28–9.1–7, and our reliance on both our own precedent and that of other courts. Critical to this holding is that the union had knowledge that the town had proposed to implement the three-platoon structure as early as the negotiations and hearings before the arbitration panel for the July 1, 2010 to June 30, 2011 contract year. Additionally, the union was put on formal notice at least as early as the first negotiation session on October 28, 2011, regarding matters pertaining to the 2011–2012 contract year, of the town's proposal to implement the three-platoon structure." *North Kingstown*, 107 A.3d at 317.

The remainder of the decision is peppered with language that would suggest the Court's decision was at least partially based upon the fact that the Union failed to comply with certain requirements of the FFAA. The Court added:

> "Here, we note that the union had knowledge of the town's proposal to implement the three-platoon structure during the proceedings leading up to the July 1, 2010 to June 30, 2011 arbitration award and also that the union failed to timely comply with § 28-9.1-13. It is certainly arguable that these facts alone may have justified the town in implementing its decision to reorganize in a three-platoon structure. *See Town of Burrillville*, 921 A.2d at 120; *Town of Tiverton*, 118 R.I. at 166-67, 372 A.2d at 1276. Without doubt, however, because: (1) the union had knowledge of the town's desire to implement the three-platoon structure from the previous year's negotiations; (2) the union failed to timely comply with § 28-9.1-13; (3) the town formally proposed the implementation of the three-platoon structure at the October 28, 2011, negotiating session; and (4) the union failed to timely submit unresolved issues to interest arbitration pursuant to § 28-9.1-7, the town's implementation of its decision to reorganize in a three-

> platoon structure was lawful. *See Town of Burrillville*, 921 A.2d at 120; *Lime Rock Fire District*, 673 A.2d at 54. . . .
>
> Had the same series and confluence of events not occurred, the town may not have been justified in implementing the three-platoon structure." *Id.* (emphasis added).

Here, we have no such noncompliance by the Union. In addition, our case presents an additional obstacle in the form of a valid CBA that would hinder the Town's ability to reorganize at this time.

Although this Court acknowledges that *North Kingstown* vests a town with the management right to reorganize a department, we cannot ignore the stark differences between that case and ours. First and foremost, the Court in *North Kingstown* was not presented with a valid contract which would be violated by the exercise of this management right. Thus, its analysis was unhindered by any form of contract constraint. Furthermore, even if a collective bargaining agreement existed in that case, the Court established that, given the previously included management rights clause, the contract would have permitted the reorganization and no contract violation would have taken place. Finally, the effect that the Union's noncompliance with certain requirements of the FFAA had on the Court's decision cannot be ignored. Those particular failures on the part of the Union in *North Kingstown* were specifically addressed in the decision and clearly guided the Court's holding. As such, this Court finds *North Kingstown* is distinguishable from the case at hand, and thus instructive but not controlling.

2

Doughty v. Elorza

The Court has looked for guidance from another Justice of this Court who considered this matter subsequent to *North Kingstown*. Although not binding, this Court (Lanphear, J.) recently addressed the effect of a current collective bargaining agreement on a town's management right and appeared to have heavily relied on the *North Kingstown* case. In that case the court held:

> "The City of Providence makes a detailed analysis of the cases, but fails to focus on the key difference between the *North Kingstown* . . . case[] and the case at bar. In . . . *North Kingstown* . . . the parties had no collective bargaining agreement in effect. In the case at bar, the Providence Firefighters and the City of Providence have a collectively bargained agreement in effect, which . . . contains specific provisions addressing salaries, . . . rates of pay (*e.g.*, temporary service out of rank; . . . overtime, . . . regular work week (*i.e.*, maximum hours to be worked), and other conditions of employment. . . .
>
> "Here, the Defendant City of Providence eliminated a fire department battalion. There is little question that that is within its prerogative to do so. It is a management right pursuant to the *North Kingstown* decision. In doing so, the City of Providence recognized its obligation to negotiate in good faith concerning the ancillary aspects of employment, such as salary and the hours to be worked. If the negotiations prove unsuccessful, and the Union grieves the results, the parties must proceed to the method of dispute resolution which they agreed to in writing in their current contract. Article XVI of the contract provides for grievance hearings. There is no reason, nor any logic, to deviate from the express provisions of the contract now." *Doughty v. Elorza*, No. PC 2015-2534, 2015 WL 5432649, at *4 (R.I. Super. Sept. 10, 2015) (hereinafter *Providence*).

Distinguishable from our case, however, is the substance of the collective bargaining agreement that was in effect in the *Providence* case. In that case, it would appear that the collective bargaining agreement did not specifically reference the platoon structure for which the fire department was to abide by. Instead, it seems from counsel's arguments that the collective

bargaining agreement in *Providence* was entirely distinct from the CBA we have in this case. The collective bargaining agreement in *Providence* was drafted in very broad terms and failed to specifically mention a certain platoon structure at all. (Tr. 25, June 19, 2018.) Instead, it is surmised that there was no provision providing for a four platoon structure. *Id.* Essentially, there was no issue of contract violation in *Providence* because the contract in that case made no mention of a required structuring of the department. In this case, the CBA specifically delineates a very clear four platoon structure throughout, referencing a four platoon structure dozens of times. It is clear that the East Greenwich CBA was not drafted broadly, but very narrowly in order to purposefully dictate exactly what platoon structure would organize the EGFD through the life of the CBA. There is no possible avenue the Town can take to reorganize the EGFD from a four platoon structure to a three platoon structure without directly violating the CBA. That, of course, was not the case in *Providence,* where the reorganization took place without having any direct conflict with the city's collective bargaining agreement.

In addition, it is the Court's "understanding from looking at the original papers [that] there was . . . a significant dispute whether *Providence* even had a valid contract [given] the way it was approved." *Id.* at 14. However, it appears that at some point in the litigation in *Providence*, the "parties decided not to pursue that area of argument" and accepted that a valid contract existed. *Id.* Furthermore, at the beginning of the hearing, "the firefighters [were] already abiding by the terms of the City of Providence's unilateral battalion change—they [were] abiding by the new battalion configuration and [were] left with increased work hours and standing salaries" by the time litigation began. *Providence*, 2015 WL 5432649, at *5. It was also determined that the *Providence* collective bargaining agreement did, in fact, include a management rights clause that allowed the city to "[retain] all rights and responsibilities granted

by law to manage, control and direct its Fire Department." Tr. 25. This may explain why the Union's motion for injunctive relief at the beginning of *Providence* was denied by the court, allowing the implementation to take place, notwithstanding the fact that a current and valid CBA was in effect. While it may be argued that this decision to permit the reorganization prior to litigation goes to reinforce the notion that restructuring a department is a non-delegable management right, even with a valid CBA, the court's allowance of the reorganization in that case may have simply been a result of the fact that the contract did not conflict with the city's management right, given the management rights clause. The court in *Providence* was presented with an entirely distinct legal issue from what we have here.

Also distinguishable is the fact that negotiations on the pay, hours and other effects of the department reorganization took place prior to litigation. *Id*. at *1. The Union had been given notice and an opportunity to bargain the effects of the reorganization. Here, no opportunity for the parties to negotiate has taken place. Rather, the Town has first looked to the Court for guidance. It is also indicated in *Providence* that the reason for the reorganization was an attempt to save financial resources. *Id.* Here, the Town has given no reason—apart from the assertion that they have a non-delegable right to reorganize—as to why this reorganization must take place.[5] In fact, at the hearing on June 19, 2018, the Town expressly stated that it was not

[5] In this case, no facts have been presented by either side in the pleadings to suggest any motive the Town has to reorganize the EGFD. The Union, in its objection to the present motion, refers to a press release dated December 19, 2017 which read:

> "The Town recently entered into negotiations with the Union. 'Currently, the Fire Department is incurring approximately 500 hours per week on overtime, which raises serious safety concerns. Clearly, something is wrong, and we are working to address that,' said East Greenwich Town Council President Suzanne Cienki. 'The Town is asking the Court for guidance and direction to ensure

providing any reason as to why the reorganization needed to take place. (Tr. 52-58, June 19, 2018.)

While *Providence* is factually similar to our case—given the fact that there was a valid collective bargaining agreement in effect at the time of the reorganization—there are nonetheless major differences which make it distinct. Much like the collective bargaining agreement in *North Kingstown*, which included a management rights clause, the collective bargaining agreement in *Providence* is substantively different from the CBA in effect in East Greenwich. In that case, the contract was questionably valid, broadly written and specifically permitted the Town to execute certain management rights. This is simply not the case with respect to the East Greenwich CBA. Further, unlike in *Providence*—where the Town and Union partook in extensive negotiations as to the reorganization prior to seeking judicial intervention—no negotiations or reasoning as to the need for this EGFD reorganization have been presented to the Court. Finally, unlike this case, in which the reorganization has yet to be implemented in any way, the fire department in *Providence* was already abiding by the terms of the reorganization by the time the issue was presented to the Court. This Court, for all these reasons, finds the *Providence* case factually distinguishable from the present matter.

3

Vose v. R.I. Brotherhood of Correctional Officers

The second Supreme Court case that the Town relies heavily on in making their argument—albeit a case more factually similar, but still distinct—is *Vose*. In *Vose*, "the department [of corrections] adopted a new policy in regard to requiring officers to work involuntary overtime. Up to that time the department followed the [collective bargaining]

> East Greenwich resolves this situation in manner that is fair and equitable to both the Union and taxpayers.'"

agreement, which allowed the director to mandate involuntary overtime only if an 'emergency situation' exists." 587 A.2d at 913. Apparently, the reasoning for the change in department policy was due to "a spiraling increase in inmates at the Adult Correctional Institutions since 1979." The director attempted to deal with the increased population by authorizing extensive voluntary overtime because, despite the existence of many overtime workers, staffing remained insufficient during this spike in population. *Id.* at 914.

The Director of the Department of Corrections brought a declaratory judgment action to determine the Director's authority to unilaterally adopt a "policy requiring correctional officers to work mandatory involuntary overtime" notwithstanding the existence of a collective bargaining agreement that (1) restricted the Director's authority to order involuntary overtime "only" in an "emergency situation" and (2) required alleged violations of the collective bargaining agreement to be resolved through binding grievance arbitration. *Id.* at 913-14. The Director asked the Court "to declare that the department's new [overtime] policy [was] valid and that the [collective bargaining] agreement [was] invalid because it conflict[ed] with" the Director's statutory powers and obligations derived from G.L. 1956 (1988 Reenactment) § 42-56-10. *Id.* at 914.

In that case, the court found that the department of corrections did not have the authority to bargain away the director's § 42–56–10 statutory powers. The court relied on an analogous case, *Power v. City of Providence*, 582 A.2d 895 (R.I. 1990), in making its decision. The court noted that, "statutory powers and obligations cannot be contractually abdicated" and that an agreement in *direct* conflict with a statute would be considered "a nullity because '[c]ontracts entered into in contravention to a state statute . . . are illegal, and no contract rights are created thereby.'" *Vose*, 587 A.2d at 915 (citing *Birkett v. Chatterton*, 13 R.I. 299, 302 (1881)).

Ultimately, the Court in *Vose* found that "the single provision in the collective bargaining] agreement strips the director of his ability to '[m]ake and promulgate necessary rules and regulations incidental to the exercise of his or her powers [to provide for] . . . safety, discipline, . . . care, and custody for all persons committed to correctional facilities.'" *Id.* (citing section 42-56-10(v)). The court further noted that "due to the exigencies incident to running a correctional institution, we could not fathom a result that would leave the director unable to provide for adequate security, regardless of whether an emergency is deemed to be present." *Id.* at 915-16. Finally, the court held that "the agreement with respect to involuntary mandatory overtime is invalid because it is an improper attempt to contractually restrict the director's statutory powers." *Id.* at 916.

The Town contends that provisions in the CBA contracting for a four platoon structure constitute interference with its statutory duty to reorganize the EGFD as proscribed by law. The Town cites *Vose* for the proposition that its statutory powers and obligations for the organization of the fire department cannot be contractually abdicated. 587 A.2d at 915. The Union argues the Town's position far exceeds the scope in *Vose*. In order to invalidate a contractual provision in a collective bargaining agreement, the Union suggests that the contested terms must either directly violate a statute or in some measurable way prevent or hinder the employer from carrying out its lawful duties or responsibilities.

In the instant case, the Town invokes its duties and responsibilities in Section C-85(p) of the Home Rule Charter (the Charter) which vests the Town with the statutory power and obligation to reorganize its fire department. The Charter states, in pertinent part, that the Town Manager "has [the] power and shall be required to: [r]eorganize departments subject to the approval of the Town Council"—as the source of its statutory authority. Charter § C-85(p).

The Town argues that, like the statutory powers and obligations at issue in *Vose*, the Town's statutory power and obligation to reorganize its fire department cannot be contractually abdicated. The Town goes on to argue that if there is conflict between the Town's statutory power and obligation to reorganize its fire department and its CBA, *Vose* dictates that the agreement "is invalid because it is an improper attempt to contractually restrict the [Town's] statutory powers." 587 A.2d at 916 (citing *Power*, 582 A.2d at 900). Finally, the Town contends that because the CBA directly conflicts with the Charter and is thus void, the parties assumed the risk that the contract could be invalidated at any time. The Town opted to exercise its management right to reorganize. At the hearing conducted on June 19, 2018, the Town suggested that:

> "[I]f the parties are agreeing with knowledge . . . that . . . the law [prohibits] us [to bargain away the Town's statutory right to reorganize a department] but [we] . . . enter into a contract anyway[.] [T]here is an assumption of risk on both sides . . . and the assumption of risk [is that the parties] . . . know the contract [to be] technically unlawful." (Tr. 45, June 19, 2018.)

However, the provisions in the CBA which expressly refer to a four platoon structure do not directly conflict with the Charter. The Court in *State v. R.I. All. of Soc. Servs. Employees, Local 580, SEIU* held that "the parties to a CBA have no legal authority to contravene state law by word or deed. Thus, statutory obligations cannot be bargained away via contrary provisions in a CBA . . . . Indeed, '[the Rhode Island Supreme] Court has previously held that powers and responsibilities assigned to governmental employers by state law may not be negotiated away.'" 747 A.2d 465, 469 (R.I. 2000) (quoting *Town of W. Warwick v. Local 2045, Council 94*, 714 A.2d 611, 612 (R.I. 1998) (emphasis omitted)). Such a conflict between a CBA and statute does not exist in this instance. Here, the Charter requires:

> "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: Reorganize departments subject to the approval of the Town Council, notwithstanding any section to the contrary." Charter § C-85(p).

The Charter does not require a three platoon system or particular shift schedule. Instead, the Charter merely designates what body may exercise certain management duties, granting the Town Council—as opposed to the Town Manager or Fire Chief—the ultimate authority to "reorganize departments." Although provisions in the CBA call for a certain organizational structure—in the form of a four platoon system—those provisions do not directly conflict with the requirement of the Charter. On the contrary, the provisions in the CBA simply comply with the Charter in that the Town Manager, with the consent of the Town Council, exercised her authority to organize the EGFD within a four platoon structure through the construction of the CBA. Keeping this in mind, we will not go out of our way to discover illegal elements in a contract. As it has been established, the CBA does not directly contravene the Charter and therefore, this Court is disinclined to make a ruling that would ultimately hold the CBA invalid.

The Town also neglects to identify other ways in which *Vose* is distinguishable from the case at bar. While it is evident that *Vose*, like the present case, involves a collective bargaining agreement in conflict with some statutory authority, the court in *Vose* only required a single provision in the collective bargaining agreement to be invalidated. Here, twenty-one provisions—a substantial portion of the CBA—would be invalidated if we were to find for the Plaintiff. Practically speaking, the entire CBA would be invalidated.

Additionally, the need to invalidate the collective bargaining agreement in *Vose* was due to exigent circumstances related to health and safety. In that case, the collective bargaining agreement usurped the statutory authority given to the municipality and prevented it from fulfilling duties, "directly related to the essence of [its] mission" in that it prevented the town from providing adequate security. There was evidence of a crisis necessitating action that conflicted with the collective bargaining agreement. It appears that the Court intended to limit their holding to the specific facts of the case when it noted that it "could not fathom a result that would leave the director unable to provide for adequate security" regardless of what was delineated in the collective bargaining agreement. *Vose*, 587 A.2d at 916.

The idea that *Vose* was intended to be a narrow finding is supported by a number of cases following the decision. Three years after *Vose*, the Supreme Court confirmed the narrowness of its holding. In *R.I. Bhd. of Corr. Officers v. State,* the Director of the Department of Corrections invoked the State of Rhode Island Personnel Rules & Regulations, enacted pursuant to his statutory authority under G.L. 1956 (1990 Reenactment) § 36-4-8, to treat an officer as having resigned. 643 A.2d 817, 819 (R.I. 1994). This action was taken pursuant to Rule 6.04 of the State of Rhode Island Personnel Rules & Regulations which states in pertinent part: "[a]ny employee, who is absent from duty without authorized leave for five consecutive working days or who fails to resume his/her duties at the expiration of a leave of absence, shall be deemed to have resigned without notice." *Id.* at n.1. There was no dispute that the officer had been absent from duty without authorized leave for five consecutive working days. Nonetheless, the Union grieved the separation of employment under its collective bargaining agreement just-cause provision. *Id.* at 819. The matter proceeded to arbitration and the arbitrator found that there was no just cause for the officer's termination. *Id.* On appeal, the Superior Court vacated the

decision, finding that, under *Vose*, the Director has certain "non-delegable" powers that cannot be "bargained away," including the power to find that an employee has violated the Personnel Rules. *Id.* at 820. The Rhode Island Supreme Court reversed the Superior Court and confirmed the arbitration award. Referring to *Vose*, the Supreme Court found:

> "Although it is true that there are *certain narrow circumstances* in which a supervisor, empowered by clearly delineated state law, must be allowed to act in a manner free of the constraints of the CBA . . . the situation in the case at bar does not involve such a critical area of state power." *Id.* at 822 (emphasis added).

Thus, our Supreme Court confirmed that such narrow circumstances that would allow a director to circumvent the requirements of a collective bargaining agreement exist only where the constraints of that agreement would "interfere with the power of the director of the department to perform any *essential aspect of his position*." *Id.* (emphasis added).

Additionally, in *State, Dep't of Mental Health, Retardation, & Hosps. v. R.I. Council 94, A.F.S.C.M.E., AFL-CIO*, the Department, concerned about the length of time its health-care employees could volunteer to work in one stretch without creating adverse health risks for the patients in its care, sought to limit employees to working two consecutive eight-hour shifts. 692 A.2d 318, 320 (R.I. 1997). The Director was vested with the statutory authority to "provide for the proper care . . . of all such [patients]" and to "adopt such rules and regulations governing the management of facilities . . . to insure the comfort and promote the welfare of the patients." *Id.* at 324 (citing *R.I. Bhd. of Corr. Officers*, 643 A.2d at 821 (recognizing that "there may be some limitations on a CBA to supersede state statutes in *certain critical areas* such as the obligation of the director of corrections to *require overtime services under emergent conditions* (emphasis added))).

In objection, the "union claimed that the department had a long-standing practice of allowing employees to work more than two consecutive shifts on a voluntary basis and that the CBA's past-practices clause insulated this custom from the state's attempt to bypass the collective-bargaining process and thereby unilaterally change the status quo." *Id.* at 320.

After a hearing, an arbitrator bestowed on the "hospital's employees the unilateral right to decide for themselves whether they are competent to care for the state's mental patients for extended periods far in excess of the normal workday." *Id.* at 324. Our Supreme Court, however, reversed the arbitrator's award holding that:

> "Given [the Department's] statutory responsibilities to 'take all necessary steps to promote the health of the . . . patients' and to 'adopt such rules and regulations . . . to insure the comfort and promote the welfare of the patients,' . . . the department [should not] have to put patients at risk by being forced to allow its disabled patients to be cared for by employees who insist on voluntarily working three consecutive shifts in nonemergency situations." *Id.* at 324-25.

Of course, it should be noted that, like in *Vose*, the Department was vested with a statutory authority affecting the health and safety of patients. The Supreme Court emphasized the importance of this factor and reasoned that to favor the collective bargaining agreement and permit workers to voluntarily work more than two consecutive shifts potentially put patients at risk—a result the Court could not tolerate. *See id.* at 325. No such circumstances exist in this case. In fact, no reasoning whatsoever has been given as to why this reorganization must take place, nor why it must take place during the life of a valid CBA which the Town Council itself—the body authorized to approve the implementation of the reorganization—ratified.

In sum, the circumstances of each case—*Vose* and East Greenwich—are simply too dissimilar to make the holding in *Vose* binding in this instance. First, and most importantly, is the fact that the contract in *Vose* directly conflicted with the Director's statutory authority to

provide for the safety of all persons committed to the correctional facility. Here, no such conflict exists as the CBA in no way contravenes the statutory authority vested with the Town Manager and Town Council through the Charter. Additionally, the court in *Vose* required only a single provision of the collective bargaining agreement to be invalidated, unlike this case in which the entire contract would be invalidated. The court in *Vose* found certain exigent circumstances having to do with health and safety permitting the collective bargaining agreement to be invalidated. In this case, the Town has presented the Court with no circumstances that would justify it to invalidate the CBA at present. As such, this Court also finds *Vose* to be distinguishable from the facts presented in the instant case.

Decision

After careful review of the *North Kingstown* case, the *Providence* case, *Vose*, and all other cases which have already discussed this issue, this Court finds that the Town cannot reorganize the EGFD, changing from a four platoon structure to a three platoon structure wherein the middle of a contract. It is clear that the Town has the right to do so—the right is non-delegable and does not need the consent of the Union. But the Town and Union, knowing their rights after the *North Kingstown* decision, agreed to and are bound under the three-year CBA. The Town executed its management rights and agreed with the Union as to the organizational structure of the EGFD for three years. The fire fighters of East Greenwich relied on that contract to plan their professional and personal lives. The Town and Union have expectations as to the execution and performance of the contract for the next three years.

For the Town to now say, "well, we changed our minds," in the face of this three-year agreement without giving notice and without any negotiation is simply unfair. For the Town to now suggest that when a union enters into a contract with the Town, there is an "assumption of

risk" (*See* Tr. 45, June 19, 2018) of the Town changing their mind is contrary to every notion of contracts, labor relations, and good government. Even more, the Town itself knew of the *North Kingstown* decision at the time they entered into the CBA. It was fully apprised of its rights and could have included a management rights provision in the CBA—as many other towns before it had—but chose not to.

It is public policy in Rhode Island to enforce contracts freely entered into which do not clearly contravene some positive law or rule of public policy. The right to contract is one of every individual's civil rights, and thus, the usual and most important function of courts in this regard is to enforce and maintain contracts, as opposed to invalidating them. As my esteemed colleague Associate Justice Silverstein understood in his evaluation of *Vose*¸ our Supreme Court:

> "[D]id not intend its ruling to apply every time the statutory authority of a municipality is implicated in some wonted way. Instead the *Vose* Court made void only provisions encompassing powers inherent and vital to the safe operation of a correctional facility. . . . This Court sees no reason why the City's economic interest in balancing its budget should trump the economic interest of enforcing contracts and the sanctity of contract law. Countenancing such a position would not only hurt the ability of the City to enter into future contracts but it would make many of the City's contracts illusory and thus void. In effect this would allow the City to legally breach its contracts whenever the terms become unfavorable to them." *City of Central Falls v. Am. Fed'n of State, Cty. and Mun. Emps., AFL-CIO, Council 94, No. Civ.A. PM/2000-5993*, 2003 WL 22048737, at *4 (R.I. Super. Aug. 4, 2003) (emphasis added).

At the expiration of the contract—June 30, 2019—the Town can reorganize the EGFD in any manner that they believe best serves the people of East Greenwich. The people of the Town can voice their approval or disapproval at town meetings and ultimately at the ballot box.

C

Count II

Because this Court has decided that the Town cannot reorganize during the current CBA, it is unnecessary to address the merits of the arguments regarding Count II. Because the Town has no right to reorganize at present, there is no need to discuss the Town's obligation to negotiate the effects of that reorganization.

D

Count IV

In its final argument, the Town requests this Court declare the contract provisions included in the CBA, requiring the Town to compensate EGFD employees performing services on behalf of the Union, unlawful and void. Section 21-2 of the CBA requires that:

> "Members of the Fire Department coveted by this Agreement who are members of the Union's Executive Board . . . shall be allowed reasonable time off to attend meetings with the Rhode Island State Fire Fighters Association and State and National Conventions of the International Association of Fire Fighters without loss of pay and without the requirements to make up such time."

Similarly, Section 21-3 of the CBA provides:

> "[E]mployees who are members of the Union's Executive Board . . . shall be allowed reasonable time off without loss of pay and without the requirements to make up time for bargaining unit business in connection with conferences with its' attorney or Union representative regarding contract negotiation matters and/or arbitration matters concerning the Collective Bargaining Agreement and similar time off for conferences relative to bargaining unit grievances and grievance arbitration and attendance to such grievance arbitration hearings."

The Town argues that these particular provisions are in direct contravention of § 28-7-13(3)(iii), which states in pertinent part that:

> "It shall be an unfair labor practice for an employer to:

> "(3) Dominate or interfere with the formation, existence, or administration of any employee organization or association, agency, or plan which exists in whole or in part for the purpose of dealing with employers concerning terms or conditions of employment, labor disputes, or grievances, or to contribute financial or other support to any such organization, by any means, including, but not limited to, the following:
>
> "(iii) By compensating any employee or individual for services performed in behalf of any employee organization or association, agency or plan, or by donating free services, equipment, materials, office or meeting space, or anything else of value for the use of any employee organization or association, agency, or plan; provided that an employer shall not be prohibited from permitting employees to confer with him or her during working hours without loss of time or pay."

The Town contends that the statutory commands of § 28-7-13(3)(iii) are unambiguous and as such, it is clear that the Town cannot compensate any employee for performing union business. The Town argues that this is a simple matter of contract interpretation where it is simply asking the Court to determine whether a contract contravenes a statute. The Town notes that § 28-7-13(3)(iii) is clear and unambiguous and therefore, the language of the statute must be given its plain meaning, essentially eliminating any need for interpretation by this court. *Shine v. Moreau*, 119 A.3d 1 (R.I. 2015). As such, the Town asks this Court to enter judgment in its favor declaring that it is not bound by Section 21 of the CBA and that the Town is not required to compensate employees of the EGFD for services performed in behalf of the Union.

In response, the Union argues that this issue is better heard by the SLRB and the Superior Court does not have jurisdiction. The Union argues that allowing the administrative agency with expertise in labor matters—in this case, the SLRB—to flush out both factual and legal issues will serve the basic purpose of the Administrative Procedures Act (APA), §§ 42-35-1 *et seq.*, judicial economy, and our Supreme Court's hands-off approach to labor disputes. *See also*

MacQuattie v. Malafronte, 779 A.2d 633, 636 n.2 (R.I. 2001) ("Exclusive original jurisdiction in unfair labor cases is generally in the State Labor Relations Board under the State Labor Relations Act, § 28-7-21, and the Superior Court does not have jurisdiction until administrative remedies have been exhausted.") (citing *Paton v. Poirier*, 109 R.I. 401, 286 A.2d 243, 245 (1972)).

The Union further argues in support of its posit that it filed an unfair labor practice charge against the Town with the SLRB due to the Town's rejection of Section 21 of the CBA.[6] The charge alleges that the Town's rejection of the CBA and refusal to bargain with the Union violates the SLRA, and, by preventing Union representatives from taking bargaining leave, the Town is interfering with its employees' collective bargaining rights. The SLRB subsequently issued a Complaint against the Town on May 22, 2018, alleging in pertinent part that the Town: "violated R.I. Gen Laws § 28-7-13 (6) and (10) when, beginning on or about February 1, 2018, it made unilateral changes to Section 21 the Collective Bargaining Agreement ("Bargaining Leave") without first negotiating with the exclusive bargaining representative." (Defs.' Ex. 3.) As such, the Union argues the review of this issue by this Court is premature because the SLRB has yet to hold a hearing and issue a decision. Because the decision would be subject to administrative review by this Court, the Union believes this issue should not be resolved at present but rather, should be first decided by the SLRB.

While it is clear that this Court does in fact have jurisdiction over this particular issue, it agrees with the Union that this issue should first be heard by the SLRB. *See New England Expedition-Providence, LLC v. City of Providence,* 773 A.2d 259, 263 (R.I. 2001) (questions of law are "reserved for the Court"). Because the SLRB has already issued a formal Complaint as to this matter, its next step will be to hear evidence and argument on both the Union's charges

[6] It appears that this particular charge was filed with the SLRB on May 21, 2018. This charge was filed by Defendants as Exhibit 2.

that Section 21 is invalid, as well as the Union's defense that Section 21 is enforceable. The SLRB will then issue a decision which will be subject to administrative review by this Court at the request of either party. It is well settled that a "trial justice is not mandated to entertain a request for declaratory relief; it is rather, purely discretionary. *Sauro v. Lombardi*, 178 A.3d 297 n.5 (R.I. 2018) (citing *Sullivan*, 703 A.2d at 751 ("The decision to grant or to deny declaratory relief under the Uniform Declaratory Judgments Act is purely discretionary.")). Given the narrow question presented in this Count of Plaintiff's Complaint, this Court would have to have extensive hearings regarding the specific types of leave taken under the CBA, the purposes of the leave, and the effects of denying such leave on the firefighters' and the parties' bargaining relationship. In my opinion, those hearings are better left to the SLRB. *See Sauro*, 178 A.3d at 303 n.5. Unlike our analysis of Count II of Plaintiff's Complaint above—where we are left only to address questions of law and no questions of fact—Count IV of Plaintiff's Complaint would require this Court to establish findings of fact, a task inappropriate for a Judgment on the Pleadings motion and better left to the Board. As such, this Court leaves this matter to be heard before the SLRB so that a factual record can first be established.

IV

Conclusion

For the reasons stated herein, the Court denies Plaintiff's motion for judgment on the pleadings on Counts I, II and IV. Counsel shall prepare the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Town of East Greenwich, Rhode Island v. East Greenwich Fire Fighters Association Local 3328, I.A.F.F., AFL-CIO, et al.
CASE NO:	KC-2017-1276
COURT:	Kent County Superior Court
DATE DECISION FILED:	August 23, 2018
JUSTICE/MAGISTRATE:	McGuirl, J.

ATTORNEYS:

For Plaintiff:	Timothy C. Cavazza, Esq.; David M. D'Agostino, Esq.
For Defendant:	Elizabeth A. Wiens, Esq. Jeffrey W. Kasle, Esq. (counsel for Intervenor)