

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

[Filed: February 22, 2017]

CITY OF WARWICK,  
by and through its Solicitor, and  
its Finance Director, ERNEST ZMYSLINSKI

v.

INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, WARWICK LOCAL 2748

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C.A. No. KC-2016-0908

**DECISION**

**LANPHEAR, J.** This case is before the Court on the City of Warwick’s request for injunctive relief and declaratory judgment. Specifically, the City of Warwick (the City) asks this Court to bar International Association of Fire Fighters, Warwick Local 2748 (the Local) from proceeding with a grievance concerning certain pension plan programs for firefighters hired after July 1, 2012, because the grievance was filed out of time, and asks this Court to declare that the City had the authority to amend its pension program, as enacted by the Tier II pension plan program reforms. For the reasons set forth below, the Court denies the City’s request for injunctive relief and for declaratory judgment.

**I**

**FACTS AND TRAVEL**

Both the City and the Local entered into collective bargaining agreements (CBAs) pursuant to G.L. 1956 § 28-9.1. These agreements contain the governing language of all terms and conditions of employment, including the mandatory subject of bargaining under the FAA

pension benefits. The pension benefits are set forth in Article XIV of the previous CBAs between the parties and are the subject of the underlying grievance against the City.

In 2011, the Warwick City Council adopted amendments to several pension fund programs, including the firefighters' pensions. The amendments were incorporated into the City's Code of Ordinances (Pension Ordinance) in April 2011, and affected all persons hired by the Local after June 30, 2012. The Pension Ordinance effectively created two tiers of the Local employees: Tier I employees were employees hired prior to July 1, 2012, and Tier II employees were hired after July 1, 2012. A few of the differences in the pension benefits between Tier I and Tier II employees are: Tier I employees' "final average salary" is calculated based upon the last year of creditable service; while Tier II employees' "final average salary" is based upon the last three years of creditable service. Tier I employees are eligible to retire after twenty years of creditable service with no minimum age requirement, while Tier II employees become eligible to retire after twenty-five years of creditable service and cannot retire before the age of fifty.

After the Pension Ordinance's enactment, the Local and the City agreed to a new CBA for the period of 2012-2015. Article XIV of the previous CBA remained unchanged; however, the 2012-2015 CBA contained pension benefits which conflicted with those found in the Pension Ordinance. Since July 1, 2012, forty-five new members of the Local were hired under the Tier II pension benefits. According to the Local, in July 2014, the City began deducting a different amount for pension contributions from the Tier II employees pursuant to the Pension Ordinance.

On July 31, 2014, as a result of the new deductions in pension contributions of Tier II employees (grievance Ex. C), the Local filed a grievance with the City in accordance with the grievance procedure set forth in the CBA. The grievance was held in abeyance "until such time as either party feels impasse and notifies the opposite in writing." (the City's Mem. Law Ex. B,

Oct. 5, 2016). The City seeks injunctive relief and declaratory judgment which would bar the Local from continuing with its July 2014, grievance.

## II

### ANALYSIS

Pursuant to G.L. 1956 § 9-30-1, Rhode Island's enactment of the Uniform Declaratory Judgments Act, the Superior Court has the "power to declare rights, status, and other legal relations" upon petition. Sec. 9-30-1. The Court has considerable discretion as to whether to grant or deny a request for declaratory judgment. Town of Barrington v. Williams, 972 A.2d 603, 608 (R.I. 2009). The Court has no duty to exercise its authority to issue declaratory judgments. Cruz v. Wausau Ins., 866 A.2d 1237, 1240 (R.I. 2005). The Court declines to issue a declaratory judgment in this case.

The Court is discouraged from ruling on issues that are arbitrable; therefore declaratory judgment is inappropriate in the instant case. See G.L. 1956 § 28-9-4 (directing courts to stay proceedings on issues that are "referable to arbitration"); Purvis Sys., Inc. v. American Sys. Corp., 788 A.2d 1112, 1114 (R.I. 2002) (recognizing "that the role of the judiciary in the arbitration process is extremely limited") (internal quotations omitted); Sch. Comm. of City of Pawtucket v. Pawtucket Teachers Alliance AFT Local 930, 120 R.I. 810, 815, 390 A.2d 386, 389 (1978) (stating that issues of procedural arbitrability should be left to the arbitrator). In all relevant CBAs between the parties, Article XII, Section 1, provides the procedure and purpose of filing a grievance. Whether the grievance was filed in a timely manner consistent with the CBA, is an issue of procedural arbitrability. Therefore, this Court finds that issuing a declaratory judgment is inappropriate.

The parties, via the CBAs, have agreed to an alternative method of dispute resolution which should be adhered to. The language in Article XII of all relevant CBAs dictates that the parties should proceed to alternative dispute resolution, not litigation. As previously noted, courts are discouraged from getting involved where arbitration may be required. Pawtucket Teachers Alliance, 120 R.I. at 815, 390 A.2d at 389. On July 31, 2014, the Local filed a grievance with respect to pension benefits described in Article XIV, SECTION 5, of the CBA. (Hr'g Ex. C, at 1). The 2014 grievance was held in abeyance in writing by the parties "until such time as either party feels impasse and notifies the opposite party in writing." (Hr'g Ex. C, at 2).

While there is no writing indicating that the controversy has reached impasse, Attorney Penza's letter to Chief McLaughlin dated May 10, 2016 (the City's Mem. Law Ex. B, Oct. 5, 2016), Attorney Penza's letter to City Solicitor Ruggiero dated August 2, 2016 (Hr'g Ex. D), and the Complaint filed herein clearly establish an impasse.

Exhibit B is a letter by the union's counsel to Fire Chief McLaughlin. In seeking relief under the CBA it states:

"... I am suggesting that the parties proceed directly to arbitration in light of the fact that going through the grievance process as spelled out in Article XII will be a waste of everyone's time and effort."

Ironically, in demanding relief provided under the CBA after a delay of three years, the Local also seeks to avoid the first two steps of the alternative dispute resolution process enumerated in Article XII. This article of the CBAs requires two steps prior to formal arbitration. The proper remedy is to initiate Step One as proscribed by the CBAs.

The City argues that the subsequent CBA and the hiring of additional members of the Local demonstrate that the Local sat on its rights and, therefore, the grievance is now out of time.

With the addition of forty-five new firefighters who may be governed by Tier II, the delay appears to be detrimental to the parties. The estoppel claim raised in Count II of the Complaint bears consideration. However, whether or not the grievance is timely or ripe for adjudication is a procedural issue, and our courts have ruled that such issues are for an arbitrator. Pawtucket Teachers Alliance, 120 R.I. at 817, 390 A.2d at 389-90. In Pawtucket Teachers Alliance, our Supreme Court held that questions such as whether proper procedures for requesting arbitration were followed must be adjudicated by an arbitrator. 120 R.I. at 817, 390 A.2d at 390; see also Burns v. Segerson, 122 R.I. 130, 404 A.2d 500, 503-04 (1979). The issues of timeliness and delay are preserved for the arbitrators, should this dispute continue to arbitration.

### **III**

#### **CONCLUSION**

The Court denies the City's request for declaratory judgment and injunctive relief. The dispute shall be resolved in accordance with the provisions set forth in Article XII of the respective Collective Bargaining Agreements, commencing with Step One.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** City of Warwick, by and through its Solicitor, and its Finance Director, Ernest Zmyslinski

**CASE NO:** KC-2016-0908

**COURT:** Kent County Superior Court

**DATE DECISION FILED:** February 22, 2017

**JUSTICE/MAGISTRATE:** Lanphear, J.

**ATTORNEYS:**

For Plaintiff: Diana E. Pearson, Esq.

For Defendant: Joseph F. Penza, Jr., Esq.