

Plaintiff requested a Law Enforcement Officers' Bill of Rights (LEOBOR) hearing, which went unanswered, and then filed the instant Verified Complaint on December 1, 2020.¹

In her Verified Complaint, Plaintiff requested declaratory and injunctive relief from the Court. On December 14, 2020, the Defendants filed their motion for summary judgment, and they subsequently filed their Answer to the Verified Complaint on December 30, 2020. On February 8, 2021, this Court denied Defendants' motion for summary judgment. Plaintiff then filed a request for declaratory and injunctive relief on March 15, 2021. Plaintiff sought a declaration that she is entitled to the LEOBOR's rights, which she claimed would result in the payment of her salary and benefits retroactive to the date of her termination. This Court heard oral arguments on March 26, 2021. Subsequently, Defendants filed a supplemental memorandum with an affidavit containing numerous exhibits.

On May 6, 2021, this Court issued a Decision granting the declaratory relief sought by Plaintiff and ordering that Plaintiff be reinstated to her position with all back pay and benefits. As a result, Defendants filed a Notice of Appeal to the Rhode Island Supreme Court of the Order, as well as a motion to stay this Order. Plaintiff has objected, and this Court heard oral arguments on June 8, 2021 and July 14, 2021. This Court now issues its Decision on the motion to stay.

II

Standard of Review

A stay pending interlocutory appeal should be granted when the movant makes a strong showing that: (1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is denied; (3) no substantial harm will come to the interested parties; and (4) a stay will

¹ For a more detailed recitation of the facts of this case, please refer to this Court's February 8, 2021 Decision. *See Ricci v. Rhode Island Commerce Corporation*, No. WC-2020-0502, 2021 WL 507730 (R.I. Super. Feb. 08, 2021).

not harm the public interest. See *Town of North Kingstown v. International Association of Firefighters, Local 1651*, 65 A.3d 480, 481 (R.I. 2013) (citing *Narragansett Electric Co. v. Harsch*, 367 A.2d 195, 197 (R.I. 1976)). “Although all four of the above-referenced factors should be considered, [they] are not prerequisites that must be met, but are interrelated considerations that must be balanced together.” *Id.* at 481 (citations and internal quotation marks omitted). Because “the sine qua non is whether the town is likely to succeed on the merits, the issuance of the stay depends on whether the harm caused to the [movant] without the stay, in light of the [movant]’s likelihood of eventual success on the merits, outweighs the harm the stay will cause the [non-movant].” *Id.* at 482 (internal quotations and original alterations omitted).

III

Arguments

Defendants argue that they meet all four elements for a motion to stay. First, they contend that they have made a strong showing that they are likely to succeed on the merits of their appeal, both on procedural and substantive grounds. (Defs.’ Mem. Supp. Mot. to Stay (Defs.’ Mem.) 4.) Procedurally, Defendants argue that this Court failed to make findings on the elements required for an injunction or to provide notice that it intended to conduct a trial on the merits by making findings of fact. *Id.* Substantively, Defendants maintain that they are likely to prevail in showing that Plaintiff is not entitled to the LEOBOR protections. *Id.* Next, they claim that, in light of their strong showing of likelihood to succeed on appeal, the harm caused to Defendants would be irreparable because they would be unlikely to recoup payments made to Plaintiff. *Id.* Accordingly, they also contend that Plaintiff would not suffer substantial harm if the stay were granted because Plaintiff would be able to recover for loss of wages and benefits as monetary damages. *Id.* Lastly, Defendants argue that the stay of this Court’s Order is in the public interest because it would help

avoid an unnecessary waste of scarce resources of this Court, and because forcing Defendants to reinstate Plaintiff would be disruptive to RIAPD due to Defendants' significant concerns about Plaintiff's work performance. *Id.* at 4-5.

Plaintiff argues that this Court did not err in granting declaratory and injunctive relief because there were no material issues of fact that had any bearing on the Court's Order, and the Court decided the case as a matter of law. (Pl.'s Mem. Opp'n Mot. to Stay (Pl.'s Mem.) 2.) Plaintiff contends that this is a case of statutory construction and that all the findings made by this Court came about as the result of its declaration that Plaintiff was a law enforcement officer entitled to the protections under the LEOBOR. *Id.* at 4. Next, Plaintiff argues that Defendants would not suffer irreparable harm should their motion to stay be denied because their contention is not supported by any evidence, and the instant case is much different than the case cited by Defendants as supporting authority. *Id.* at 5-6. On the other hand, Plaintiff argues, she would suffer irreparable harm² because an appeal could take at least one year, if not longer, and she would suffer damages that may not be quantified to a dollar amount. *Id.* at 6-7. Lastly, regarding the public interest element, Plaintiff notes that this is the first time Defendants claim that they are aware of information about her extremely troubling past conduct at other police departments, and that Defendants have the option to suspend Plaintiff with pay and benefits and not have her return to work until the matter is resolved. *Id.* at 8.

² Please note that the correct term and standard for the non-movant's harm if the motion to stay is granted would be "substantial harm," rather than "irreparable harm." *See supra* Part II, Standard of Review. However, Plaintiff does clarify that she is not analyzing the irreparable harm to her in the context of a preliminary injunction but, instead, of a motion to stay. (Pl.'s Mem. at 6, n.5.)

IV

Analysis

Town of North Kingstown v. International Association of Firefighters is instructive here. In that case, the town had unilaterally implemented an ordinance that significantly changed the firefighters' wages, hours, and terms and conditions of employment. The Supreme Court granted the town's motion to stay the trial justice's mandatory injunction, which directed the town to "reinstate wages, hours and other terms and conditions of employment that exi[s]ted pre-unilateral implementation . . ." *International Association of Firefighters*, 65 A.3d at 481 (alteration in original). In granting the motion, the Court reasoned that the town was likely to succeed on the merits because neither party had requested the injunction, that the Superior Court did not have original jurisdiction to determine the issue before it, that the lower court failed to make the requisite findings, and that no notice of the injunction was given to the town. *Id.* at 482.

Next, the Court held that because the town had demonstrated a strong showing of success on appeal, it did not need to make as strong a showing of irreparable harm. *Id.* The Court concluded that, although the town was not precluded from recovering any overpaid funds to the firefighters, the town's actual ability to recover any of those funds was "doubtful at best." *Id.* at 483. Furthermore, the Court found that the union would not suffer substantial harm if the stay was granted because the stay would essentially maintain the status quo between the parties since the implementation of the ordinance. *Id.* Lastly, the Court opined that granting the stay would not harm the public interest because, "[a]lthough the hearing justice previously determined that the ordinance itself was enacted in violation of the town's charter, that question as well as whether the town had an inherent managerial right to enact such changes [were] looming issues for th[e] Court on appeal." *Id.*

A

Likelihood of Success on the Merits

Defendants first argue that this Court's Order directs both mandatory and permanent injunctive relief and that they are likely to succeed on the merits of the appeal on procedural grounds because the Order did not make the requisite findings for an injunction or recognize the difference between a mandatory injunction and a declaratory judgment. (Defs.' Mem. 5.) Defendants contend that a declaratory judgment is a "much milder form of relief than an injunction." *Id.* at 7 (citing *Steffel v. Thompson*, 415 U.S. 452, 471 (1974)). They also argue that the declaratory relief and injunctive relief requests must be considered separately. *Id.* at 7-8; *see also Zwickler v. Koota*, 389 U.S. 241, 254 (1967).

Plaintiff argues that this Court's requirements in its Order came about as a result of the Court's declaration that Plaintiff was a law enforcement officer and thus entitled to the protections under LEOBOR. (Pl.'s Mem. 4.) In that context, Plaintiff contends, it was not necessary for the Court to conduct an analysis for injunctive relief. *Id.* During the July 14, 2021 hearing, Plaintiff also noted that this Court's ruling on declaratory relief essentially made the injunctive relief issue moot because the declaratory judgment automatically placed Plaintiff under the protections of the LEOBOR. (Hr'g Tr. 6:4-7:24, July 14, 2021.)

At the outset, our Supreme Court has stated that "where the Federal rule and our state rule are substantially similar, [it] will look to the Federal courts for guidance or interpretation of our own rule." *Heal v. Heal*, 762 A.2d 463, 466-67 (R.I. 2000) (citing *Smith v. Johns-Manville Corp.*, 489 A.2d 336 (R.I. 1985)). Fortunately, Rules 57 and 65 of Rhode Island Rules of Civil Procedure for declaratory judgments and injunctions are substantially similar to Rules 57 and 65 of the Federal Rules of Civil Procedure. *See Super. R. Civ. P. 57, 65; Fed. R. Civ. P. 57, 65.*

In *Steffel v. Thompson*, the United States Supreme Court found that requiring a party to prove all of the prerequisites to the issuance of an injunction before the Court could issue a declaratory judgment would defy Congress' intent to make declaratory relief available in cases where an injunction might be inappropriate. *Steffel*, 415 U.S. at 471. Furthermore, "[i]n an action for a declaratory judgment, the court may grant appropriate provisional relief, so long as the relief is allowed by statute." 26 C.J.S. Declaratory Judgments § 122. "Ordinarily, the practical effect of injunctive and declaratory relief will be virtually identical, so that if the court can protect the interests of a federal plaintiff by entertaining a declaratory judgment, the stronger injunctive remedy will be unnecessary." Janet Elaine Curry & Theodore Z. Wyman, *10 Federal Procedure*, § 23:74 Injunctions in declaratory judgment action.

The Order at issue was given effect through this Court's May 6, 2021 Decision. *See Ricci v. Rhode Island Commerce Corp.*, No. WC-2020-0502, 2021 WL 1902787, at *6 (R.I. Super. May 06, 2021). This Court stated in its Decision that "if this Court chooses to grant [Plaintiff] declaratory relief, then the injunctive relief, by definition, would inevitably be granted because Plaintiff would be entitled to the protections set forth under the LEOBOR. As such, this Court will proceed with its analysis without consideration of the elements for injunctive relief." *Id.* at *3. The Decision further stated that "this Court grants Plaintiff's request for declaratory relief and, consequently, for injunctive relief. Plaintiff shall be reinstated to her position as deputy chief of RIAPD with all her back pay and benefits." *Id.* at *6. This Court recognizes the differences between declaratory and injunctive reliefs, and it acknowledges that the phrasing in its Decision was inartful when it granted injunctive relief without an analysis of the necessary elements and ordered Defendants to reinstate Plaintiff to her position with back pay and benefits. However, this

wording does not change the substance of that Decision regarding its interpretation of the LEOBOR, which led to granting Plaintiff's declaratory relief.

In this sense, this case is distinguishable from *Town of North Kingstown v. International Association of Firefighters*, where the Court intended to characterize an injunction as supplementary relief based on a declaratory judgment. *See International Association of Firefighters*, 65 A.3d at 482. This Court omitted an analysis of the elements of an injunction because the Court was convinced that the issuance of a declaratory judgment was sufficient to afford Plaintiff the protections set forth under the LEOBOR. By the Court's grant of a declaratory judgment, Plaintiff was automatically placed under the protections of the LEOBOR, which mandated that she be paid all ordinary pay and benefits during the investigation of her case. *See* G.L. 1956 § 42-28.6-4 ("The law enforcement officer . . . shall receive all ordinary pay and benefits as he or she would have if he or she were not charged."). Because such relief is allowed by statute, an injunction in this case would be unnecessary, given that the practical effect of injunctive and declaratory relief would be virtually identical. *See* 26 C.J.S. Declaratory Judgments § 122; *10 Federal Procedure*, § 23:74 Injunctions in declaratory judgment action. Therefore, the alternative request for injunctive relief became moot upon the Court's grant of declaratory relief.

Nevertheless, this Court recognizes that it may not have made this result clear. It then ordered that Plaintiff be reinstated to her employment at RIAPD while the LEOBOR provides Defendants with the option either to reinstate her or to suspend her with all ordinary pay and benefits. *See* § 42-28.6-4 ("The law enforcement officer may be relieved of duty subject to § 42-28.6-13 of this chapter. . . ."). This Court also ordered pay and benefits retroactive to the date of Plaintiff's termination. As such, this Court is mindful of the procedural concerns these orders may have raised and therefore finds that due to this Court's admittedly inartful and incomplete

discussion of the relationship between injunctive relief and the LEOBOR in its May 6, 2021 Decision, Defendants are likely to succeed on the merits in their appeal, meeting the first prong of the motion. *See International Association of Firefighters*, 65 A.3d at 482.

Defendants further contend that this Court's Order did not take into account their undisputed evidence or explain how the Court made contested factual rulings without an evidentiary hearing or notice to Defendants. (Defs.' Mem. 8.) On substantive grounds, Defendants claim that they have strong arguments showing that Plaintiff was the highest ranking sworn officer in the RIAPD. *Id.* at 10.³ By contrast, Plaintiff argues that the issues of fact to which Defendants point—whether Plaintiff was the highest ranking sworn officer or whether Mr. Ahmad was a sworn officer or held a rank—were not necessary to the issue before the Court because the decision was made as a matter of law. *Id.* at 2.⁴

Regarding Defendants' intention to hold an evidentiary hearing and further discovery, this Court believes this argument to be a meritless avenue to show a likelihood of success on the merits. The Court's May 6, 2021 Decision was based on statutory interpretation rather than findings of fact; therefore, Defendants cannot offer any factual evidence that could change this Court's opinion. Furthermore, Defendants provided this Court with numerous exhibits regarding this factual concern, which the Court accepted and considered before it decided that it could issue a decision founded on statutory interpretation. Therefore, this Court does not consider Defendants' substantive grounds for appeal to be likely to succeed.

³ Defendants incorporate by reference their arguments from their past memoranda in this case.

⁴ Plaintiff explains that Mr. Ahmad's classification as the highest ranking sworn officer was determined by the reading and interpretation of the statutes at issue. (Pl.'s Mem. 2-3.)

B

Irreparable Harm

Defendants argue that they will suffer irreparable harm if forced to comply with the Order because it requires them to make payments to Plaintiff that Defendants are unlikely to recoup if they prevail on appeal. (Defs.' Mem. 11.) On the other hand, Plaintiff argues that Defendants' contention is not supported by any evidence and that, even if Defendants were to prevail, Plaintiff would be capable of responding to a claim for the recoupment of the wages paid to her if Defendants made such a claim. (Pl.'s Mem. 5.)

As a preliminary matter, because it is likely that Defendants would succeed on the merits of their appeal, they do not need to make a strong showing that they would suffer irreparable harm. *See International Association of Firefighters*, 65 A.3d at 482 (“Thus, because the town has demonstrated a strong showing of success on appeal, it need not make as strong a showing of irreparable harm.”). Here, Defendants would need to recoup payments made to Plaintiff if the stay were denied and Defendants were to prevail in this case. Similar to *Town of North Kingstown v. International Association of Firefighters*, although Defendants have the right to recover any overpaid funds, there is no guarantee that they will in fact be able to recoup these funds, even if Plaintiff has stated that she would respond to such a claim. *See International Association of Firefighters*, 65 A.3d at 483. Therefore, it is likely that Defendants would suffer irreparable harm.

C

Substantial Harm

Defendants further argue that courts have held that loss of income and health benefits can be remedied by money damages and do not cause irreparable harm. (Defs.' Mem. 11-12.) Defendants also contend that by issuing a motion to stay the Order, the Court would maintain the

status quo. *Id.* at 12. Additionally, Defendants pose that Plaintiff has other sources of income and health benefits.⁵ *Id.* Plaintiff argues that Defendants' contention fails to consider the fact that this appeal will take at least one year to decide and that, in the interim, Plaintiff will suffer damages that she will not be able to quantify in dollars and cents, such as her mortgage payment, which is currently on moratorium until September when she will then owe a lump-sum amount. (Pl.'s Mem. 6.) Furthermore, Plaintiff explains that she has had to liquidate her entire retirement account to keep up with her expenses. *Id.* at 7. Plaintiff also claims that while she was able to secure a job recently, this is only temporary, and she is earning less income than she did with RIAPD. (Pl.'s Mem. 7; *see also* Hr'g Tr. 6:11-15, 10:23-25, July 14, 2021.)

Here, as in *Town of North Kingstown v. International Association of Firefighters*, granting a stay would maintain the status quo, and Plaintiff would retain the right to recover money damages if she were later to prevail. *See International Association of Firefighters*, 65 A.3d at 483. This Court is aware that an appeal will prolong Plaintiff's difficult circumstances, but this is outweighed by Defendants' likelihood of success on the merits of their appeal and by the irreparable harm they could suffer prior to the Supreme Court's ruling on the appeal.

D

Public Interest⁶

Defendants argue that their request for a stay is in the public interest because it will avoid an unnecessary waste of the scarce resources of this Court and of the parties if Defendants prevail

⁵ Defendants have offered to post a bond pending appeal for the difference between the value of Plaintiff's back pay and benefits and the value of her current income and benefits, to the extent this Court deems it necessary to enter a stay of enforcement of the Order. *See* Defs.' Mem. 13.

⁶ The correct standard for a motion to stay regarding the public interest is whether granting the motion to stay would harm the public interest, rather than whether granting the stay would be in the public interest, which is how the parties argue this element here. *See Harsch*, 367 A.2d at 197.

on appeal. (Defs.' Mem. 13.) They also claim that granting the stay would eliminate any potential that a final judgment from this Court might conflict with a decision by the Supreme Court on appeal. *Id.* Furthermore, Defendants maintain that they have significant concerns about Plaintiff's performance in the workplace, which raise public safety concerns. *Id.* Lastly, they contend that the scope of LEOBOR's jurisdictional reach is also a matter of substantial public interest, which should be litigated first as part of the Supreme Court appeal. *Id.* at 13-14. On the other hand, Plaintiff argues that § 42-28.6-13(f)⁷ provides Defendants with the option either to order Plaintiff to return to work in her position as deputy chief or to continue her suspension with all pay and benefits until the matter has been resolved. (Pl.'s Mem. 7.) Therefore, she suggests, any behavioral concerns Defendants may have about Plaintiff should not be considered. *See id.*

Here, there is no indication that granting the stay would harm the public interest. There is only one plaintiff involved, and it could be beneficial to await the Supreme Court's interpretation of the relevant portion of the LEOBOR under current litigation.

V

Conclusion

This Court granted Plaintiff's declaratory relief pursuant to a question of law involving statutory construction, but it acknowledges that its wording granting injunctive relief pursuant to

⁷ Section 42-28.6-13(f) states,

“(f) Suspension may be imposed by the chief or highest ranking sworn officer of the law enforcement agency upon receipt of notice or disciplinary action in accordance with § 42-28.6-4(b) of this chapter in which termination or demotion is the recommended punishment. Any such suspension shall consist of the law enforcement officer being relieved of duty, and he or she shall receive all ordinary pay and benefits as he or she would receive if he or she were not so suspended.”

a finding that Plaintiff was entitled to the protections of the LEOBOR was inartful and incomplete. Furthermore, Defendants have met the remaining elements for a motion to stay. For the foregoing reasons, Defendants' motion to stay is granted. Counsel shall present the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Ricci v. Rhode Island Commerce Corporation, et al.

CASE NO: WC-2020-0502

COURT: Washington County Superior Court

DATE DECISION FILED: August 2, 2021

JUSTICE/MAGISTRATE: Gibney, P.J.

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