

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: September 10, 2015)

PAUL A. DOUGHTY, individually and as:
President of LOCAL 799 OF THE
INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, A.F.L.-C.I.O., and
LOCAL 799 OF THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS,
A.F.L.-C.I.O.

VS.

C.A. No. PC 2015-2534

JORGE ELORZA, in his official capacity as
Mayor of the City of Providence, THE CITY
OF PROVIDENCE, by and through its
treasurer, James J. Lombardi, III, and the
PROVIDENCE FIRE DEPARTMENT, through
the Providence Commissioner of Public Safety,
Steven Pare

DECISION

LANPHEAR, J. This is a declaratory judgment action. The parties agree that the remaining issue is whether or not the parties are obligated to proceed toward interest arbitration pursuant to the Fire Fighters’ Arbitration Act or whether grievance arbitration, pursuant to the contract, is the appropriate method of resolving this dispute pursuant to state law.

I

Findings of Fact

Local 799 of the International Association of Firefighters, A.F.L.-C.I.O. (the Union) is the bargaining unit for the firefighters of the City of Providence. In October 2010, it entered into a Collective Bargaining Agreement with the City of Providence which set their wages, rates of pay, grievance procedures, promotions, provided union security, outlined management rights and

the like. That Collective Bargaining Agreement was ratified and renewed. The Collective Bargaining Agreement is due to expire on June 30, 2017. In the spring of 2015, the Mayor of the City of Providence and the Public Safety Commissioner, in an attempt to save financial resources, indicated to the Union that a three-battalion structure would be created to replace the current four-battalion structure.¹ Eventually, negotiations on the pay, hours and other effects of this change took place. The first negotiating session was held on May 29, 2015 and sessions continued during this litigation. The Union filed for grievance arbitration on June 30, 2015. Affidavit of Steven Pare, ¶ 32; Ex. 3 to Pls.’ Br. of July 14, 2015. Although the Union pressed for injunctive relief to prevent the elimination of the fourth battalion, the request was unsuccessful. On August 2, 2015, the City of Providence eliminated the fourth battalion, and the firefighters in the City of Providence are now working on three shifts. The elimination of the fourth battalion has resulted in an increased number of regularly scheduled work hours for most firefighters.² The Union claims this change violates contract language concerning the hours to be worked and rates of pay. Pursuant to the contract, “the regular work week for members of the Fire Fighting Force shall be an average of forty-two (42) hours.” Contract VI, § 1, page 32.

II

Analysis

A

The Statutory Framework

In order to complete an appropriate legal analysis, it is necessary to review the Fire Fighters’ Arbitration Act. The statute itself declares that firefighters, while serving a paramount

¹ A battalion is similar to a shift, ensuring around-the-clock operations.

² Most firefighters will be working a total of forty-eight hours every six days. Aff. of Steven Pare of Aug. 5, 2015, Ex. A, Letter of Mayor Elorza, May 20, 2015.

public safety need and unable to exercise the right to strike, are entitled to unionize. The statute embraces the right to bargain collectively concerning wages, rates of pay and other terms and conditions of employment. G.L. 1956 § 28-9.1-2(a). The statute also specifies “[t]he establishment of this method of [interest] arbitration shall not, in any way be deemed to be a recognition by the state of compulsory arbitration as a superior method of settling labor disputes.” Sec. 28-9.1-2(c).

The Fire Fighters’ Arbitration Act provides the right to firefighters to organize and bargain collectively (§ 28-9.1-4) and elect a bargaining agent (§ 28-9.1-5). The city or town is obligated to bargain and negotiate in good faith with the union (§ 28-9.1-6). A defined method of arbitration is established to resolve disputes (§ 28-9.1-7) if the city and union “are unable, within thirty (30) days . . . to reach an agreement on a contract.”

The provisions of the Fire Fighters’ Arbitration Act should be read as a whole. (“Therefore we must consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.” Peloquin v. Haven Health Ctr. of Greenville, LLC, 61 A.3d 419, 425 (R.I. 2013)). The Fire Fighters’ Arbitration Act dictates when a union is a recognized bargaining agent and is unable to negotiate under a contract. It is premised on the inability of public employees to strike and counterbalances that prohibition with an avenue to resolve disputes, even if no contract is in effect. The statute first establishes the determination of a bargaining agent (§ 28-9.1-5), next sets the obligations of the parties to bargain (§ 28-9.1-6), and then to form a contract (§ 28-9.1-7). In the event that the parties “are unable . . . to reach an agreement on a contract,” they proceed to [interest] arbitration. The method of choosing arbitrators and the

procedure for the arbitration are specifically set forth in the subsequent sections (§§ 28-9.1-8 through 28-9.1-11).

Section 28-9.1-12 follows:

“Any agreements actually negotiated between the bargaining agent and the corporate authorities . . . shall constitute the collective bargaining contract governing fire fighters and the city or town . . .”

Hence, the Fire Fighters’ Arbitration Act itself recognizes that the contract controls where a written agreement has been negotiated. See also § 28-9.1-17.

B

Application of Law to the Present Dispute

In the case at bar, the parties stipulated that a written, negotiated, executed and ratified contract “exists and is in full force and effect between the parties.” Stipulation in open court, Aug. 12, 2015. The language in that contract provides a procedure by which the parties may resolve disputes.³ That mechanism is grievance arbitration.

The existing contract expressly sets the method by which disputes between the parties will be resolved.

“Section 1 – Grievance Procedure

Alleged grievances from members of the bargaining unit in respect to wages, rates of pay or other terms and conditions of employment

³ It is clear that a contract exists because it is in writing, executed by both of the parties, renewed periodically, and confirmed by the Providence City Council in resolutions. (Defs.’ Mem. of Aug. 3, 2015, Exs. P, Q and R). Moreover, the parties have each performed pursuant to the contract, so the contract has been treated as if it were in full force and effect. Perhaps most telling are the City of Providence’s proposals entitled “addenda” to the contract, presumably in an attempt to effectuate the elimination of one battalion. Appendices I & II of the City of Providence’s final offer dictate the precise amendments to be made to the contract (Aff. of Steven Pare of Aug. 5, 2015, Ex. G). As the City of Providence stated in its letter of July 31, 2015, “Attached as Appendix II, please find the terms the City intends to implement absent such [a negotiated] agreement.” Aff. of Steven Pare of Aug. 5, 2013, Ex. H, Letter of July 31, 2015.

arising under this contract or in connection with the interpretation thereof shall be handled in accordance with the following grievance procedures:

“When a member feels he/she has a grievance he/she shall take up the matter with the Executive Committee of Local 799 within thirty days of the date of occurrence or knowledge thereof. If, in the judgment of the Executive Committee, the nature of the grievance justifies further action, it shall, through the President or Vice President of Local 799, bring the grievance to the attention of the Chief of the Fire Department not later than thirty (30) days from the date of the receipt of the grievance.

“The Chief of the Fire Department shall meet with the President of (sic) Vice President of Local 799 within ten (10) days of receipt of a request from the Executive Committee of Local 799. If either party feels it necessary, the individual or individuals involved in the grievance shall be ordered to appear before the Chief of the Fire Department and the President or Vice President of Local 799 for the purpose of discussing the grievance.

“In addition to the foregoing procedure, Local 799 shall have the right to bring a grievance on behalf of any employee or on its own behalf. In such case a grievance shall be presented directly to the Chief of the Fire Department within thirty (30) days of the date of occurrence of the alleged grievance. The Chief of the Fire Department shall render a written decision within ten (10) days of said meeting.

“In case a decision is not rendered within the time limit, the grievance may be processed to arbitration under Section 2 hereof.

* * *

“Section 2 – Arbitration

If agreement cannot be reached via the method set forth in Section 1, Local 799 shall file a demand for arbitration with the American Arbitration Association. The proceeding shall be governed by the Voluntary Labor Arbitration Rules of the American Arbitration Association.

“The decision of the arbitrator shall be final and binding upon the parties hereto except that the arbitrator shall not have the power to add or subtract from the terms and conditions of the agreement.

“Costs and expenses of the arbitrator shall be shared equally by the parties. Nothing contained herein shall prohibit or prevent the arbitrator from fashioning any remedy which the arbitrator deems appropriate unless otherwise delineated above.

“Cognizant of the statutory strike prohibition the Union additionally agrees that neither it nor its members will engage in any strike, shut down or concerted refusal to perform its duties during the term of this Agreement, over any matter which is subject to final and binding arbitration under this Article.” Collective Bargaining Agreement, Art. XVI.

The City of Providence claims that the case law establishes that the pay and hours must be altered and such alteration is necessary for it to exercise its management rights. The case law already established by our high court is quite revealing. Just this year, the Rhode Island Supreme Court pronounced that the elimination of a battalion is clearly within the management control of the city.

“After review of the record and in light of our consideration of the particular circumstances that have given rise to the long and bitter conflict between these parties, we hold that the decision to implement the three-platoon structure is a management right of the town . . . [n]onetheless, while the decision to implement the three-platoon structure is a management right, it remains that the effects of that decision are subject to the FFAA’s bargaining requirements.” Town of N. Kingstown v. Int’l Ass’n of Firefighters, Local 1651, 107 A.3d 304, 314-15 (R.I. 2015) (citations omitted).

The decision concludes by recognizing that the firefighters’ union failed to timely file for statutorily mandated interest arbitration. Therefore,

“the town could not be compelled to negotiate with the union regarding any matter requiring the appropriation of money . . . Accordingly, we hold that the union’s failure to comply with § 28-9.1-13 vitiated any obligation of the town to bargain regarding any matter requiring the appropriation of money.” Id. at 316 (citations omitted).

The City of Providence contends that the North Kingstown case and Lime Rock Fire Dist. v. R.I. State Labor Relations Bd., 673 A.2d 51 (R.I. 1996) case, “expressly hold that unresolved issues arising out of negotiations over the effects of a managerial decision are subject to interest arbitration only.” Defs.’ Supp. Mem. of Law 3, Aug. 5, 2015. The City of Providence makes a detailed analysis of the cases, but fails to focus on the key difference between the North Kingstown and Lime Rock cases, and the case at bar. In both North Kingstown⁴ and Lime Rock⁵, 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 provides that disputes involving “wages, rates of pay and other terms and conditions of employment” (Art. XVI §1, at 55) shall be resolved through the grievance and arbitration procedures specifically delineated in the contract. Moreover, the contract in effect with the City of Providence and its firefighters contains specific provisions addressing salaries (Art. XIII, at 32), rates of pay (e.g. temporary service out of rank, Art. IV § 3, at 9; overtime, Art. VI § 5, at 16), regular work week (i.e., maximum hours to be worked, Art. VI § 1, at 13), and other conditions of employment. The regular workweek was expressly set at “an average of forty-two (42) hours.” Art. VI § 1, at 13. Under the new battalion proposal, employees would be working forty-eight hours every six days. The Public Safety Commissioner computed that firefighters would work “an average of 56 hours per week.” Steven Pare Aff., ¶ 18, Aug. 5, 2015.

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

⁴ “Prior to the expiration of that [2010] agreement, the parties had attempted to negotiate a successor contract, but to no avail.” Town of No. Kingstown, 107 A.3d at 307.

⁵ “The previous contract had expired on February 29, 1992, and the parties had held three negotiation sessions.” Lime Rock Fire Dist., 673 A.2d at 52.

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.

Although the contract itself controls, the City of Providence has raised other contentions worthy of mention. First, the City of Providence claims that interest arbitration, by the strict language of the statute, would bring a faster resolution. It is true that § 28-9.1-9 sets strict deadlines for hearing and decision; however, the parties could agree to accelerate the grievance arbitration process here for a prompt resolution. Further, the firefighters are already abiding by the terms of the City of Providence's unilateral battalion change—they are abiding by the new battalion configuration and are left with increased work hours and standing salaries at present. It is the firefighters, not the City of Providence, which are impaired by any delay.

Second, the City of Providence claims that the Union failed to meet the strict time limits set for interest arbitration under the statute. As stated, the statute does not apply as the parties are in contract and have agreed to an alternate dispute resolution method. The Union members have timely disputed the increased hours while not questioning the authority of the City of Providence to eliminate a battalion. See Defs.' Mem. of Law, Aug. 3, 2015, Exs. B, F.

III

Conclusion

A declaratory judgment shall issue Ordering, Adjudging and Decreeing that:

1. The implementation of the three-platoon structure was a management right of the City of Providence;
2. The effects of the implementation of the three-platoon structure including wages, rates of pay, hours and other terms and conditions of employment shall be resolved pursuant to the grievance procedures set forth in Article XVI, Section 1 of the Collective Bargaining Agreement.
3. If the grievance procedures do not resolve the disputes, grievance arbitration pursuant to Article XVI, Section 2 of the Collective Bargaining Agreement shall apply, and the decision of the Arbitrator shall be final and binding as the Collective Bargaining Agreement provides.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Paul A. Doughty, et al., v. Jorge Elorza, et al.

CASE NO: PC 2015-2534

COURT: Providence County Superior Court

DATE DECISION FILED: September 10, 2015

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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