STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 31, 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. Before the Court is the Defendants' Motion to Dismiss Plaintiff's Amended Complaint. The Plaintiffs (the Union) filed its original Complaint on June 15, 2015. The Defendants (hereinafter, collectively, the City), moved to dismiss the Union's Amended Complaint of August 26, 2015.

This contentious case was filed after the City announced that it would reduce the number of battalions for the City's firefighters and increase the number of hours that most of the firefighters would serve on duty. The relationship of the parties was already controlled by an active Collective Bargaining Agreement. After extensive argument, this Court issued a Decision on September 10, 2015. This motion to dismiss was filed shortly thereafter.

I

Facts and Travel

In its previous Decision of September 10, 2015, this Court stated:

> "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." Doughty v. Elorza, 2015 WL 5432649, at *1 (R.I. Super. Sept. 10, 2015).

The negotiating sessions proved ineffective. On June 15, 2015, the Union filed its original Complaint with the Court seeking injunctive relief to prevent the City from making this battalion shift change and a declaratory judgment declaring that the City cannot make such a change. See original Compl. "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 [now work] on three shifts. The elimination of the fourth battalion has resulted in an increased number of regularly scheduled work hours for most firefighters."[2] Doughty, 2015 WL 5432649, at *1.

[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 M. Pare of Aug. 5, 2015, Ex. A, Letter of Mayor Elorza, May 20, 2015.

On August 26, 2015, the Union filed an Amended Complaint with this Court seeking declaratory judgment that the Union is entitled to arbitrate under the grievance provisions of the Collective Bargaining Agreement and damages for the City's failure to pay wages and benefits upon separation of employment. See Am. Compl. The City promptly stipulated that it accepted this Amended Complaint.

On September 10, 2015, the Court issued the Decision pertaining to the Union's request for declaratory judgment and injunctive relief as contained in the Union's original Complaint. In its Decision, the Court granted declaratory judgment ordering 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; [and]
> "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." Doughty, 2015 WL 5432649, at *5.

On September 11, 2015, hours after the Court's Decision, the City moved to dismiss the Union's Amended Complaint under Super. R. Civ. P. 12(b)(6). Even though the Decision had been issued, the City now claimed (1) the Court lacked jurisdiction because the Union failed to allege a justiciable controversy (as the City is entitled, as a matter of law, to make the battalion change); and (2) the Union failed to assert a claim for which relief can be granted under Count Two of its Amended Complaint because there was no separation of employment alleged by the Union, as required by G.L. 1956 § 28-14-4.[3]

[3] An interlocutory appeal to the Rhode Island Supreme Court is pending.

II

Standard of Review

A

Rule 12(b)(6) Motion to Dismiss

"'[T]he sole function of a [12(b)(6)] motion to dismiss is to test the sufficiency of [a plaintiff's] complaint.'" Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008) (quoting R.I. Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989)). Granting such a motion is appropriate '"when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim."' Id. at 149-50 (quoting Ellis v. R.I. Pub. Transit Auth., 586 A.2d 1055, 1057 (R.I. 1991)).

Our notice pleading standard requires a "complaint [to] give the opposing party fair and adequate notice of the type of claim being asserted." Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992). Therefore, according to Super. R. Civ. P. 8(a), a pleading must include a "short and plain statement of the claim showing that the pleader is entitled to relief." Super. R. Civ. P. 8(a)(1). The pleading, however, need not contain all of "the ultimate facts that must be proven in order to succeed . . ." Haley, 611 A.2d at 848. Rather, a pleading need only provide its opponent with "fair and adequate notice of the type of claim being asserted." See id.; see also Bresnick v. Baskin, 650 A.2d 915, 916 (R.I. 1994) (stating a pleading's purpose is providing the opposing party with "fair and adequate notice of the type of claim being asserted").

This liberal construction of the pleading rules favors simplicity over redundancy as long as the opposing party will not be prejudiced by any unfair surprise. Our Supreme Court has stated that "[t]he 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." Hendrick v. Hendrick, 755 A.2d 784, 791 (R.I. 2000) (citing Haley, 611 A.2d at 848). Accordingly, a "Rule 12(b)(6) [motion to dismiss] will only be granted 'when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.'" Hendrick, 755 A.2d at 793 (quoting Bruno v. Criterion Holdings, Inc., 736 A.2d 99, 99 (R.I. 1999)); see also Folan v. State, 723 A.2d 287, 289 (R.I. 1999). Moreover, in making its Rule 12(b)(6) determination, a court '"assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs."' Giuliano v. Pastina, 793 A.2d 1035, 1036 (R.I. 2002) (quoting Martin v. Howard, 784 A.2d 291, 297-98 (R.I. 2001)).

III

Analysis

A

Timeliness

The sequence of events here is significant.

The Union filed its initial Complaint requesting injunctive relief in June 2015. The Union filed a motion to compel arbitration in June 2015. After extensive conferences and an attempt at mediation, the City indicated that it would go forward with the battalion change, so the Union moved for a temporary restraining order on July 25, 2015. Memoranda and affidavits were filed and argument was held. (See, for example, Defendants' Memorandum of Law in Support of its Objection to Plaintiffs' Motion for Injunctive Relief of August 3, 2015.)

The Union filed a proposed Amended Complaint on August 26, 2015. There was no motion, objection or order amending the Complaint. The City promptly accepted service, but did not answer.

The Court's Decision on the pending request for injunctive relief was issued on September 10, 2015. On September 11, the City submitted a motion to dismiss. On August 25, a Stipulation continuing the time for the City to respond to the Amended Complaint had been filed, but it was not approved by the Court.

Pursuant to Super. R. Civ. P. 15(a)

> "[a] party shall plead in response to an amended pleading within the time remaining for response to the original pleading, or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders." Super. R. Civ. P. 15(a) (emphasis added).

The City failed to timely respond to the Amended Complaint in ten days, as the rule requires. The Court never granted the City additional time to respond to the Union's Amended Complaint, as the rule requires. Therefore, the motion to dismiss is untimely. Apparently, the parties had informally agreed to allow the City to delay its responses.

To infer that these delays limited the Court's ability to decide a fully-briefed, fully-argued injunction request is simply incorrect. The City knew the motion was pending, and they briefed and argued it. Frankly, no one had asked the Court to delay its consideration of the submitted issue. The inference at oral argument that the Court acted too fast and preempted the City's opportunity to be heard is untrue. The Court continually endeavors to hear all arguments by all parties. See Tr. at 10, Oct. 15, 2015 (the Court stated that it was not even aware that the parties had agreed to delay the time allotted to respond to the Union's Amended Complaint).

B

Count One

Count One of the Union's Amended Complaint seeks declaratory judgment that the Union is entitled to arbitrate, under the grievance provisions of the Collective Bargaining Agreement, all the effects of the City's unilateral decision of altering the shift structure of the

Providence Fire Department, including the effect on wages, rate of pay, hours, working conditions, and all other terms and conditions of employment. See Am. Compl., ¶¶ 31-33; 1-5. The City asserts that Count One should be dismissed "because the Union fails to allege facts sufficient to establish a justifiable controversy, absent which this Court lacks jurisdiction." Mem. in Supp. of Mot. to Dismiss, 2. The City further alleges that "[t]here is no justiciable controversy because settled and binding Rhode Island Supreme Court precedents uniformly hold that, as a matter of law, a municipal employer's managerial decision to reorganize the platoon structure of its fire department [] is not subject to bargaining or arbitration." Id. The City supports its proposition by relying on N. Kingstown v. Int'l Ass'n of Firefighters, Local 1651, which held that a public employer's management right to reorganize is non-delegable and cannot be limited by contract or subject to arbitration. See id. at 6; see also N. Kingstown, 107 A.3d 304, 313 (R.I. 2015). In addition, the City states that any effects that such a managerial decision has upon the terms and conditions of employment—normally deemed subject to bargaining—are still not subject to arbitration. See Mem. in Supp. of Mot. to Dismiss, ¶ III (A). In response, the Union claims that the City is "not permitted to file a motion to dismiss under Super. Ct. R. Civ. P. 12(b)(6)" subsequent to the Court's September 10, 2015 Decision on the merits of this case. Mem. in Supp. of Obj. Mot. to Dismiss, 1.

Once a decision has been rendered on the merits of a claim, a litigant cannot move to dismiss under Super. R. Civ. P. 12(b)(6). See La Petite Auberge, Inc. v. R.I. Comm'n for Human Rights, 419 A.2d 274, 279-80 (R.I. 1980). The purpose of the rule, modeled after the Federal Rules of Civil Procedure, is that a defendant's failure to state that a plaintiff has not asserted a claim for which relief may be granted cannot subsequently be raised by the defendant after a court's disposition on the merits. See id. The court disposes of a case on the merits when

there is a final determination in the Superior Court so that nothing remains but the carrying into effect, by operation of law, of the court's determination of the case. See Frigon v. Warner, 80 R.I. 363, 97 A.2d 276 (1953). This rule applies even when a defendant attempts to assert that a court lacks jurisdiction under the theory that the plaintiff failed to present a justiciable case or controversy.[4]

Here, the City asserts that the Union has failed to allege a justifiable controversy because the law holds that a municipal employer's managerial decision to reorganize the platoon structure of its fire department is not subject to arbitration and, as a result, that the Court lacks jurisdiction over this matter. See Mem. in Supp. of Mot. to Dismiss. Similar to Brule, while the City's argument is presented under jurisdictional grounds, it relies on the contention that the Union has failed to state a claim on which relief can be granted. See Brule, 611 F.2d at 409.

[4] For instance, in a defendant's attempt to assert that the court lacked jurisdiction because the plaintiff's claim was allegedly not justiciable, the First Circuit stated:

> "Defendants' [] argument purportedly goes to the jurisdiction of the district court, and has a double aspect. They assert on appeal, for the first time, that the district court did not have subject matter jurisdiction to hear the case because the dispute between the parties had not ripened sufficiently to constitute a case or controversy . . . While the above argument is presented as jurisdictional, it is plain that its underpinnings rest on the contention that plaintiffs failed to state a claim on which relief could be granted, . . . and we think it fatal that defendants never asserted any such ground in the district court, either before or during trial. Having neglected to assert the defense of failure to state a claim below, defendants have waived their right to assert it now. Defendants now wish to breathe new life into their waived defense of failure to state a claim by presenting it as a challenge to the court's subject matter jurisdiction the latter being an issue which, of course, neither the parties nor the court could waive. We see no merit in this approach." Brule v. Southworth, 611 F.2d 406, 409 (1st Cir. 1979) (emphasis added) (internal citations omitted).

The procedural posture of Brule, similar to that of the case within, is as follows: the district court issued its opinion on March 2, 1979, following a stipulation by the parties, final judgment by the Court, and an appeal. Id. at 408-09.

The City's failure to assert the defense that the Union failed to state a claim for which relief can be granted prior to the Court's Decision on the merits of Count One of the Union's Amended Complaint waived the City's right to assert it now. See id.; see also La Petite Auberge, Inc., 419 A.2d at 279-80.

Furthermore, the Court previously decided Count One of the Union's Amended Complaint on the merits. As previously discussed by this Court, the City's managerial decision to reorganize the platoon structure of its fire department is not subject to arbitration. See Doughty, 2015 WL 5432649. As this Court already held, any resulting effects of such managerial decision are not automatically free from arbitration, but instead, are governed by the procedures set out in the Fire Fighters' Arbitration Act. The Fire Fighters Arbitration Act provides the right for firefighters to organize and bargain collectively and further delineates (1) the necessary requirements to form a bargaining agent; (2) the parties' obligations in bargaining; and (3) the parties' guidelines in forming a contract. See §§ 28-9.1-4; 28-9.1-5; 28-9.1-6; 28-9.1-7. In the event that the parties "are unable . . . to reach an agreement on a contract," the parties are required to proceed to interest arbitration. Doughty, 2015 WL 5432649, at *2; see also §§ 28-9.1-8 through 28-9.1-11. As the Court previously highlighted, the Fire Fighters Arbitration Act further provides that "[a]ny agreements actually negotiated between the bargaining agent and the corporate authorities . . . shall constitute the collective bargaining contract" and shall "govern[] [the] fire fighters and the city or town." Doughty, 2015 WL 5432649, at *2; see also § 28-9.1-12. The statute recognizes the "contract controls where a written agreement has been negotiated." Doughty, 2015 WL 5432649, at *2; see also § 28-9.1-17. As the Court previously found, "a written, negotiated, executed and ratified contract 'exists and is in full force and effect between the parties.'" Doughty, 2015 WL 5432649, at *2. This

contract mandates that all disputes between the parties be resolved by grievance arbitration. Id. Therefore, as the Court already held, although "[t]here is little question that [the City's elimination of a fire department battalion] is within its prerogative to do," the City still has an "obligation to negotiate in good faith concerning the ancillary aspects" of that decision. Id., at *4. In doing so, "the parties must proceed to the method of dispute resolution which they agreed to [] in their current contract," that being grievance hearings. Id.[5]

Therefore, as the Court has already rendered a Decision pertaining to Count One of the Union's Amended Complaint, the City[6] cannot now move to dismiss under Super. R. Civ. P. 12(b)(6). See La Petite Auberge, Inc., 419 A.2d at 279-80. As a result, the Court denies the City's motion to dismiss Count One of the Union's Amended Complaint.

C

Count Two

Count Two of the Union's Amended Complaint seeks damages for the City's failure to pay wages and benefits in accordance with the parties' Collective Bargaining Agreement. See Am. Compl., ¶¶ 34-39. In addition, the Union asserts that the City violated § 28-14-4 of the Collective Bargaining Agreement by failing to pay unused leave of absence time upon separation of employment, as accrued at the rate set by Article IX, Section 1 of the Collective Bargaining Agreement. See id. at ¶¶ 40-44.

[5] While this Decision discusses the prior Decision at length, it does so only to illustrate the travel and what has already been resolved. This Decision is not intended to amend or limit the scope of the prior Decision in any manner.

[6] The City admitted, during oral arguments, that Count One in the Amended Complaint was effectively the same as Count One in the original Complaint. Tr. at 11, Oct. 15, 2015. The City additionally admits that it was fully heard on the issues pertaining to Count One of the Amended Complaint. See id.

The City claims that Count Two of the Union's Amended Complaint fails to assert a claim for which relief can be granted because § 28-14-4 applies only when an employee is separated from the payroll of an employer after completing at least one year of service, and the Union failed to allege any such separation. See Mem. in Supp. of Mot. to Dismiss, 2. In response, the Union admits that the basis of its entitlement for payment of unused leave of absence time, including vacation time, under § 28-14-4, was erroneous. See Mem. in Supp. of Obj. to Mot. to Dismiss, ¶ 3. However, the Union fails to request the ability to re-amend what it admits is an incorrect pleading. Instead, the Union asserts that it intended to rely on §§ 28-14-2 and 28-14-19.2 for such recovery. See id.

A complaint is not required to state all possible facts or legal theories that will be proven at trial. See Haley, 611 A.2d at 848. Later, our High Court held:

> "Moreover, in most instances, one drafting a compliant [sic] in a civil action is not required to draft the pleading with a high degree of factual specificity. Id. That is not to say, however, that the drafter of a complaint has no responsibilities with respect to providing some degree of clarity as to what is alleged; due process considerations are implicated, and we require that 'the complaint give the opposing party fair and adequate notice of the type of claim being asserted.'" Hyatt v. Vill. House Convalescent Home, 880 A.2d 821, 824 (R.I. 2005) (quoting Butera v. Boucher, 798 A.2d 340, 353 (R.I. 2002)) (emphasis added, footnote deleted).

Under Super. R. Civ. P. 12(e),"[i]f a pleading [] is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement . . ." Super. R. Civ. P. 12(e). In instances when a court determines that a pleading is too vague or ambiguous, the court may, in its discretion, grant a motion for more definite statement under Rule 12(e). Id.; see also Star-Shadow Prods., Inc. v. Super 8 Sync Sound Sys., 730 A.2d 1081, 1083 (R.I. 1999); Rusinowski v. Vill. of Hillside, 835 F. Supp. 2d 641, 651 (N.D. Ill. 2011) (the court sua sponte treated the motion as a motion for a more definite

statement). See also 5C Wright & Miller, Federal Practice & Procedure, Civil § 1376 (3d ed.).[7] Therefore, when a complaint is defective due to vagueness or ambiguity, it can be "cured by motions for more definite statements . . ." Blackwell v. Power Test Corp., 540 F. Supp. 802, 814 (D.C.N.J. 1981) aff'd, 688 F.2d 818 (3d Cir. 1982); see also DeWitt v. Pail, 366 F.2d 682, 685 (9th Cir. 1966) (noting that pleadings cannot be dismissed under Rule 12(b)(6) for vagueness, but instead, if the person to whom the pleading is addressed has any remedy at all, he must seek it under Rule 12(e)).

When determining a motion for more definite statement, a court must review the pleading to ensure it is drafted in a manner that allows a defendant to "understand the nature and extent of the charges against him and to enable him to prepare generally for trial . . ." Buck v. Keenan, 1 F.R.D. 558, 559 (D.R.I. 1941); see also Schaedler v. Reading Eagle Publ'n, Inc., 370 F.2d 795, 797 (3d Cir. 1967) (stating that the allegations in the complaint "must be so stated as to enable the defendant to determine [what] the cause of action is based on"). A court should grant a motion for more definite statement when the complaint, as framed, denies the defendant the ability to properly respond. Oresman v. G.D. Searle & Co., 321 F. Supp. 449, 458 (D.R.I. 1971) (citing Schaedler, 370 F.2d 795); see also Weddle v. Bayer AG Corp., 2012 WL 1019824, at *1 (S.D. Cal. 2012) (noting that "[a] motion for more definite statement should be granted [] where the [pleading] is [] indefinite that the defendants cannot ascertain the nature of claims being asserted" or "frame a responsive pleading") (internal quotations omitted).

Here, the Union admitted that it erroneously claimed entitlement to payment of unused leave of absence time under § 28-14-4. In its arguments, the Union relies on a different statute,

[7] Rhode Island's Rule 12(e) is substantially similar to Rule 12(e) of the Federal Rules of Civil Procedure; therefore, Rhode Island courts may look to the interpretation of the federal rule for guidance as to how to interpret the state rule. See Smith v. Johns-Manville Corp., 489 A.2d 336, 339 (R.I. 1985).

yet it has not attempted to correct the Amended Complaint. This Court finds that the Amended Complaint does not provide the City with a fair and adequate notice of the type of claim being asserted. This inadequacy results in confusion of the legal theory on which the Union bases its claim against the City. See Rusinowski, 835 F. Supp. 2d at 651 (the court noted that a motion for a more definite statement pursuant to Rule 12(e) is appropriate when the claim was pled inadequately); see also Stanton v. Mfrs. Hanover Trust Co., 388 F. Supp. 1171, 1174 (S.D.N.Y. 1975) (stating that "[t]he rule [pertaining to a motion for a more definite statement] is designed to strike at unintelligibility in a pleading"). Although the Court recognizes that the Union need not plead with detail every evidentiary matter, the Complaint must still provide the City with fair notice in order to enable it to prepare an appropriate pleading. See Wheelock v. State of R.I., 2006 WL 3391507 (D.R.I. Nov. 22, 2006). The Union has not done so. As a result, the City is entitled to a more particular statement as to the statute that it allegedly violated and the facts surrounding such violation.

This Court treats the City's motion to dismiss Count Two of the Union's Amended Complaint as a Motion for a More Definite Statement. The Court requires that the Union provide a more definite statement specifying and clarifying Count Two of the Complaint.

IV

Conclusion

After carefully considering the arguments that the parties advanced in their papers, and after a review of the applicable case law and authority on the issues presented herein, the Court denies the City's motion to dismiss Count One of the Union's Amended Complaint.

The Court converts the City's motion to dismiss Count Two of the Union's Amended Complaint to a Motion for a More Definite Statement. The Motion for a More Definite

Statement is granted and the Union shall submit a Second Amended Complaint within ten days. The City's motion to dismiss is denied, without prejudice.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Doughty v. Elorza, et al.**
CASE NO:	**PC 2015-2534**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 31, 2015**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
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For Defendant:	**Christopher N. Dawson, Esq.** **Timothy C. Cavazza, Esq.** **Jeffrey Dana, Esq.**