STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: September 26, 2014)

LOCAL 2334 OF THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO	:	
V.	:	**C.A. NO. PC 13-5202**
THE TOWN OF NORTH PROVIDENCE, through the Director of Public Safety, Charles Lombardi, and THE NORTH PROVIDENCE FIRE DEPARTMENT, through the Chief of the Department, Leonard Albanese	:	

DECISION

MATOS, J. Before this Court is Plaintiff, Local 2334 of the International Association of Firefighters, AFL-CIO's, (Plaintiff or Local 2334) request for declaratory and injunctive relief and Defendants, The Town of North Providence and The North Providence Fire Department's, (collectively, Defendants) counterclaim for declaratory relief. Underlying each action is the legality of an "Annual Medical Evaluations Program" promulgated by the North Providence Fire Department on November 1, 2012. Jurisdiction is pursuant to G.L. 1956 §§ 9-30-1, et seq.

I

Facts and Travel

Local 2334 is an unincorporated association organized to represent the collective bargaining interests of firefighters of the Town of North Providence. Agreed Statement of Facts ¶ 2. Defendant, The Town of North Providence (Town), is a municipal corporation and a "person" as established by the Uniform Declaratory Judgments Act, § 9-30-13. Id. at ¶ 1. The North Providence Fire Department (Fire Department) is one of three divisions of the department

of public safety pursuant to § 8-1-1 of the Charter of the Town of North Providence. Id. at ¶ 3.

Pursuant to G.L. 1956 § 28-9.1-4, the Town and Local 2334 have engaged in collective bargaining. The Town and Local 2334 are currently governed by a collective bargaining agreement entitled, "Town of North Providence and Local 2334 – International Association of Firefighters, AFL-CIO, Collective Bargaining Agreement, July 1 2012 – June 30, 2015." (the Collective Bargaining Agreement). Id. at ¶ 15.

In 1988, the General Assembly enacted title 23, chapter 28.4 of the Rhode Island General Laws, entitled "Safety and Health Programs for Fire Departments" ("Safety and Health Act"). Pl.'s Compl. ¶ 5; Defs.' Answer ¶ 5. The Act adopts, in significant part, the National Fire Protection Association's (NFPA) Standard in Fire Department Occupational Safety Health Program which is referred to as the "NFPA 1500."

Section 23-28.4-2 states the "Scope and purpose" of the chapter: "This chapter establishes minimum requirements for a safety and health program for a fire department or any type of organization providing similar services." Section 23-28.4-4 continues that "[i]t is the intent of this chapter to ensure that NFPA 1500: Standard on Fire Department Occupational Safety and Health Program is adopted and adhered to by all applicable fire departments in the state."

Discussing the implementation of safety and health standards, § 23-28.4-5 requires that

> "Each applicable fire department in the state shall formulate a written plan to implement the requirements of NFPA 1500 not more than one hundred twenty days (120) after July 10, 1990 which shall be updated annually and a copy shall be given to the director of labor and training to be kept on file, and a copy shall be given to the bargaining agent representing employees within the fire department."

However, § 23-28.4-6 states that ". . . (b) The following NFPA 1500 chapters and sections shall

not apply to this chapter: (1) Chapter 3, training and educational standards; (2) Chapter 8-4, fire department physicians; (3) Chapter 8-5, physical fitness programs."

Prior to being hired, Town firefighters are required to pass a physical performance test and medical evaluation. Agreed Statement of Facts ¶ 8. Specifically, Section 8-1.1 of the NFPA 1500 states: "Prior to becoming a member, individuals shall be examined and certified by a physician as being medically and physically fit." Agreed Statement of Facts, Ex. 3. In addition, Section 8-1.2 of the NFPA 1500 requires that:

> "All members engaged in emergency operations shall be re-examined by the physician on at least an annual basis and before being reassigned to emergency duties after debilitating illnesses or injuries. Members who have not satisfied these requirements of the examination shall not be permitted to engage in emergency operations. When these examinations are conducted by a physician other than the NPFD's physician, the examination report shall be subject to the review and approval of the NPFD's physician." Agreed Statement of Facts, Ex. 3.

The Fire Department did not, however, have a standard operating procedure for post-hire annual medical evaluations, medical examinations, or physical examinations prior to November 2013. Agreed Statement of Facts ¶ 9. The Fire Department also never implemented a requirement that Town firefighters undergo post-hire annual medical evaluations, medical examinations, or physical examinations. Id. at 10. Town firefighters thus never submitted post-hire reports as required by the NFPA 1500 on annual medical evaluations, medical examinations, or physical examinations. Id. at 12.

As a result, the Fire Department discussed a plan to promulgate an annual medical evaluation program with Local 2334 on multiple occasions. Agreed Statement of Facts ¶ 17. The parties, however, failed to reach an agreement and, on November 1, 2013, the Fire Department promulgated an annual medical evaluations program (Annual Medical Evaluations Program or Program). Id. at 6, 18.

The Annual Medical Evaluations Program implemented a requirement that annual medical examinations are to be performed at the Fatima Hospital Corporate Care Unit. Agreed Statement of Facts, Ex. 1, SAF 3.5, Section 3.4.2(1). Section 3.4.4 of the Medical Evaluations Program also outlines, in general terms, a procedure by which firefighters will be placed on administrative leave if the physical results in a "Medical Hold" or "Not Medically Qualified" determination, pending resolution of the matter. SAF 3.5, Section 3.4.4. Specifically, Section 3.4.4 provides that the firefighter shall be placed on administrative leave for seven days pending a determination of whether the condition is job related. Id.

Plaintiff now requests a declaratory judgment in two respects: (1) that the Annual Medical Evaluations Program violates § 23-28.4-6(b)(2) because it effectively creates a fire department physician within the Town Fire Department; and, (2) that the Annual Medical Evaluations Program violates § 28-9.1-4 because it affects the terms and conditions of the employment of Town firefighters without having been collectively bargained. Plaintiff specifically objects to the mandate that Fatima Hospital conduct annual physicals of Local 2334 members. Plaintiff does not, however, *per se*, object to the requirement that Local 2334 members undergo annual physical examinations. Rather, Plaintiff argues that the process by which the physicals are to be conducted should be bargained. Plaintiff further requests an injunction against the enforcement of the Annual Medical Evaluations Program pending an interest arbitration proceeding.

Defendants have filed a counterclaim for declaratory judgment asking for a declaration that the Town's charter and/or the Safety and Health Act permits the unilateral promulgation of the Annual Medical Evaluations Program without first collectively bargaining with Local 2334. However, Defendants do not take issue with the argument that the consequences resulting from

the evaluations should be subject to collective bargaining. Defs.' R. at 22.

II

Analysis

In the instant matter, Plaintiff argues that the Annual Medical Evaluations Program violates § 23-28.4-6 of the Safety and Health Act by establishing a "fire department physician." Plaintiff further argues that the Program violates § 28-9.1-4, the Firefighters' Arbitration Act, because it affects the "terms and conditions of [the] employment" of Local 2334 members apart from the collective bargaining process. This Court must therefore interpret §§ 28-9.1-4 and 23-28.4-6(b)(2) so as to determine the legal rights of the parties.

A

Standing

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." Sec. 9-30-1. Because the UDJA exists to "'facilitate the termination of controversies,'" it is liberally construed by courts so as to realize that goal. Bradford Assocs. v. R.I. Div. of Purchases, 772 A.2d 485, 489 (R.I. 2001) (quoting Capital Props., Inc. v. State of R.I., 749 A.2d 1069, 1080 (R.I. 1999)). However, a declaratory judgment petition is justiciable only where a party "present[s] the court with an actual controversy." Millett v. Hoisting Eng'rs Licensing Div. of Dep't of Labor, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977). A plaintiff must therefore suffer both some "injury in fact, economic or otherwise" and maintain a "legal hypothesis [by] which [he, she, or it is] entitle[d] [ ] to real and articulable relief." Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008) (citations omitted).

As a threshold matter, this Court finds the instant controversy justiciable as Local 2334

members have been plausibly aggrieved by the Annual Medical Evaluations Program. An examination of the parties' papers reveals a potentially viable legal hypotheses, with real and articulable relief potentially available, with respect to the requirement that Local 2334 firefighters undergo an annual physical at Fatima Hospital. See Bowen, 945 A.2d at 317; see also Millett, 119 R.I. at 291, 377 A.2d at 233.

B

Statutory Interpretation

"'It is well settled that when the language of a statute is clear and unambiguous, [a court] must interpret the statute literally and [ ] give the words [ ] their plain and ordinary meanings.'" Providence & Worcester R.R. Co. v. Pine, 729 A.2d 202, 208 (R.I. 1999) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)). However, "[w]hen confronted with statutory provisions that are unclear and ambiguous, [a court] examine[s] statutes in their entirety in order to 'glean the intent and purpose of the Legislature.'" Providence and Worcester R.R. Co., 729 A.2d at 208 (quoting State v. Flores, 714 A.2d 581, 583 (R.I. 1998)). A court must therefore not myopically focus on one particular area, aspect, or sentence of a statute, but instead "consider [a] 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." Providence and Worcester R.R. Co., 729 A.2d at 208 (quoting Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994)); In re Brown, 903 A.2d 147, 149 (R.I. 2006); Park v. Ford Motor Co., 844 A.2d 687, 692 (R.I. 2004) (stating "statutory construction is a holistic enterprise"). Moreover, a court must "remain[ ] mindful of the longstanding principle that 'statutes should not be construed to achieve meaningless or absurd results.'" Piccoli & Sons, Inc. v. E & C Const. Co., 64 A.3d 308, 312 (R.I. 2013) (quoting McCain v. Town of N. Providence

ex rel. Lombardi, 41 A.3d 239, 243 (R.I. 2012)).

1

Section 23-28.4-6(b)(2)

The General Assembly enacted "Safety and Health Programs for Fire Departments" to "establish minimum requirements for a safety and health program for a fire department." Sec. 23-28.4-2. By its own decree, the Safety and Health Act was enacted to "ensure that [NFPA 1500 Standards . . .] are adopted and adhered to by all applicable fire departments in the state." Sec. 23-28.4-4. It is easily gleaned that the Legislature intended to provide a comprehensive statutory scheme for the safety and health of fire department employees. See Providence & Worcester R.R. Co., 729 A.2d at 208.

The crux of the issue before this Court is whether the requirement that firefighters undergo physicals at Fatima Hospital conflicts with § 23-28.4-6's exclusion of "fire department physicians" from the NFPA 1500. Except for the exclusions in § 23-21.4-6, the NFPA 1500 has been adopted by the Safety and Health Act. See Getty Petroleum Marketing, Inc. v. Capital Terminal Co., 391 F.3d 312, 330 (1st Cir. 2004) (discussing statutory "adoption by reference" and finding such occurred with respect to NFPA standards and the General Laws of Rhode Island). NFPA 1500, chapter eight, entitled "Medical," provides

> "All members engaged in emergency operations shall be re-examined by the physician on at least an annual basis . . . When these examinations are conducted by a physician other than the NPFD's physician, the examination report shall be subject to the review and approval of the NPFD's physician." Agreed Statement of Facts, Ex. 3, § 8-1.2.

Therefore, the requirement that firefighters undergo annual physicals is statutorily mandated by virtue of the Legislature's adoption of NFPA 1500. The mechanism by which the physicals are to occur is not as clearly defined.

The NFPA 1500 appears to allow for either a department physician or a physician other than the NPFD's physician. NFPA 1500, Section 8-1.2. However, the allowance is at odds with the Legislature's prohibition against a "fire department physician." Sec. 23-28.4-6(2).

The language of § 8-1.2 reflects a clear distinction between a physician working in conjunction with, or for, a fire department, as opposed to a physician *not* working in conjunction with, or for, a fire department. See Providence & Worcester R.R. Co., 729 A.2d at 208 (stating that "when the language of a statute is clear and unambiguous, [a court] must interpret the statute literally and [ ] give the words [ ] their plain and ordinary meanings"). Here, the Fatima Hospital Corporate Care Unit has been commissioned by the Fire Department to conduct the annual physicals of the firefighters. See Agreed Statement of Facts, Ex. 1, Annual Medical Evaluations Program, § 3.4.2, p. 2-3 (establishing the "Fatima Hospital corporate Care Unit shall provide Annual Medical Examinations to all members under the guidelines set forth by the department"). The Fatima Hospital Corporate Care Unit is thus working in conjunction with the Fire Department and qualifies as a "fire department physician."

This Court, therefore, finds that the Annual Medical Evaluations Program creates a "fire department physician" in contravention of § 23-28.4-6 of the Safety and Health Act. Here, although the Medical Evaluations Program properly requires annual physicals as mandated by the NFPA 1500, it oversteps by requiring that the physicals be conducted at Fatima Hospital. Hence, although the Fire Department may require the physicals, including that they be conducted by a "certified physician," it may not require the use of the Fatima facility. NFPA 1500, Section 8-1.1, 8-1.2.

2

Section 28-9.1-4

Further at issue is whether the Annual Medical Evaluations Program affects the "terms and conditions of the employment" of the firefighters without it having been made subject to the collective bargaining process because it provides for consequences as a result of "Medical Hold" and "Not Medically Qualified" determinations. SAF 3.5, Section 3.4.4.

Section 28-9.1-4 of the Firefighters' Arbitration Act, entitled Right to organize and bargain collectively, provides

> "The fire fighters in any city or town have the right to bargain collectively with their respective cities or towns and be represented by a labor organization in the collective bargaining as to wages, rates of pay, hours, working conditions, and *all other terms and conditions of employment.*" (emphasis added).

A city or town therefore violates § 28-9.1-4 of the Firefighters' Arbitration Act if it alters a term or condition of employment without having bargained with the union. See § 28-9.1-4; see also N.L.R.B. v. Solutia, Inc., 699 F.3d 50, 60 (1st Cir. 2012) (providing that an employer is in violation of a governing collective bargaining statute "when it makes a unilateral change to a term or condition of employment without first bargaining to impasse with the union") (citing Litton Fin. Printing Div. v. NLRB, 501 U.S. 190, 198 (1991)).

Here, the phrase "all other terms and condition of employment" reads broadly. See Providence & Worcester R.R. Co., 729 A.2d at 208 (providing that clear and unambiguous language should be given its plain and ordinary meaning). The language "*all other"* just prior to "terms and conditions of employment" indicates that a policy of inclusion is favored by the legislature. See id. Moreover, the phrase's use immediately *after* the Legislature's listing of specific employment aspects that must be collectively bargained is telling. Its placement

strongly suggests an intended role as a catch-all for non-named subject matter that affects employment rights. See id. (individual sections should be considered in the context of the whole statute).

In this regard, federal courts have also construed the phrase "terms and conditions of employment" broadly, finding employment aspects such as cafeteria vending machines and work transfers or reallocation decisions to qualify. See Town of Narragansett v. IAFF, Local 1589, 119 R.I. 506, 508, 380 A.2d 521, 522 (1977) (acknowledge the "persuasive force of federal decisions construing the phrase 'terms and conditions of employment'"). In Ford Motor Company v. N.L.R.B., the United States Supreme Court, while providing considerable deference to the National Labor Relations Board because of its "special expertise," recognized that food prices for vending machines can be construed as a "term[ ] and condition[ ] of employment." 441 U.S. 488, 502 (1979); see also Solutia, Inc., 699 F.3d at 60 (giving deference to the National Labor Relations Board and finding that the "allocation" of job site is a "term or condition of employment"). The Ford Motor Company Court notably commented that if disputes "are likely to be frequent and intense, it follows that more, not less, collective bargaining is the remedy."[1]

[1] In an instructive footnote, the Court elaborated on its position that "more, not less, collective bargaining is the remedy." Ford Motor Co., 441 U.S. at 502. The Ford Motor Company Court cited a Harvard Law Review Article, providing that:

> "Participation in debate often produces changes in a seemingly fixed position either because new facts are brought to light or because the strengths and weaknesses of the several arguments become apparent. Sometimes the parties hit upon some novel compromise of an issue which has been thrashed over and over. Much is gained even by giving each side a better picture of the strength of the other's convictions. The cost is so slight that the potential gains easily justify legal compulsion to engage in the discussion." Ford Motor Co., 441 U.S. at 502 n.14 (quoting Archibald Cox, The Duty to Bargain in Good Faith, 71 Harv. L. Rev. 1401, 1412 (1958)).

Ford Motor Company, 441 U.S. at 502.

Per the Annual Medical Evaluations Program, all firefighters employed by the Town are mandated to undergo an annual physical which may result in certain consequences to their employment status. SAF 3.5, Section 3.4.4. See generally §§ 23-28.4-1, et seq.; NFPA 1500. Section 8-1.2 of the NFPA 1500 also mandates that "[m]embers who have not satisfied the[] requirements of the examination shall not be permitted to engage in emergency operations." Hence, failure to take the physical may result in exclusion from emergency operations. However, the circumstances and procedure that must be followed if a firefighter has been re-examined and an issue arises which requires administrative action and a potential determination regarding the firefighter's job status is not specifically addressed. Thus, while the annual physicals are statutorily required, the consequences resulting from a physical that is undertaken constitute "conditions" of each firefighter's employment. See § 28-9.1-4; Providence & Worcester R.R. Co., 729 A.2d at 208; Ford Motor Company, 441 U.S. at 502. Accordingly, SAF 3.5, Section 3.4.4 is in violation of § 28-9.1-4 because it addresses a "term and condition of employment" for the Fire Department that is subject to collective bargaining.

III

Conclusion

After consideration of the law and facts, the Court finds that the Annual Medical Evaluations Program violates § 23-28.4-6, in part, because it creates a Fire Department physician. The Fire Department may require annual physicals for each firefighter by a certified physician but may not require that the physicals be provided by Fatima Hospital or a fire department physician. The Court also finds that SAF 3.5, Section 3.4.4 of the Annual Medical

Evaluations Program violates § 28-9.4-4 because the provisions of that section are properly the subject of collective bargaining.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

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JUSTICE/MAGISTRATE:	**Matos, J.**
ATTORNEYS:	
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