

O'BRIEN, BELLAND & BUSHINSKY, LLC

Mark E. Belland, Esquire
Kevin D. Jarvis, Esquire
David F. Watkins Jr., Esquire
509 S. Lenola Rd., Building 6
Moorestown, New Jersey 08043
(856) 795-2181

Attorneys for Plaintiff

**THE INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, AFL-CIO, LOCAL
198,**

Plaintiff,

v.

**CITY OF ATLANTIC CITY, STATE OF
NEW JERSEY, NEW JERSEY DIVISION
OF LOCAL GOVERNMENT SERVICES IN
THE DEPARTMENT OF COMMUNITY
AFFAIRS, MELANIE WALKER,**
Director of the Division of
Local Government Services in
the Department of Community
Affairs in her official
capacity,

Defendants.

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY - LAW DIVISION

Docket No.

CIVIL ACTION

VERIFIED COMPLAINT

The International Association of Fire Fighters, AFL-CIO, Local 198 ("IAFF 198" or "Plaintiff" or "Union"), by way of Verified Complaint against the City of Atlantic City ("City"), State of New Jersey ("State") the New Jersey Department of Community Affairs, Melanie Walker, as the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs, (collectively, the "State" with the City, collectively "Defendants") states as follows:

INTRODUCTION

Plaintiff is the certified collective bargaining representative of members of the fire department of the City of Atlantic City ("ACFD"). Three days ago, the Union became aware of three Firefighters who tested positive for COVID-19 ("Positive Individuals"). In response, the City arranged for individuals who were in close contact with and/or directly exposed ("Exposed Individuals") to at least one of the Positive Individuals to take a rapid COVID-19 test, and upon a negative result, Exposed Individuals are directed to return to work. This approach is in direct conflict with the guidance issued by the New Jersey Department of Health ("NJDOH") Centers for Disease Control and Prevention ("CDC"), and other Federal and State agencies.

Unsurprisingly, this ineffective approach has resulted in further spread of COVID-19, as three additional Firefighters tested positive for COVID-19, and there are now approximately 65 Exposed Individuals, some of which have become symptomatic. In doing so, the City has jeopardized the health and safety of all Firefighters, their families, and the general public.

Plaintiff seeks declaratory relief from this Court declaring that Defendants are in violation of Art. I, Section 1 of the New Jersey Constitution and the MSRA, and have breached the Collective Negotiations Agreement ("CNA") negotiated between the parties. Plaintiff also seeks an Order requiring Defendants: (1) place

Exposed Individuals on paid leave and to direct such individuals to self-quarantine for 14 days; (2) professionally disinfect each station between shifts; (3) to comply with all guidance issued by the NJDOH, CDC, and all other Federal and State entities; (4) to provide the Union with a copy of the City's protocols for responding to COVID-19 cases and potential exposures; and (5) postpone the training of new hires scheduled to begin the week of September 28, 2020. Plaintiff also seeks an award of attorneys' fees and costs, and all other relief the Court finds just and proper.

PARTIES

1. Plaintiff is a public employee labor organization representing public safety employees employed by the ACFD. Plaintiff has associational standing on behalf of their members, as well as their own standing as parties to collective negotiations agreements ("CNAs") with the City. Plaintiff IAFF 198's offices are situated at 19 S. New York Ave Atlantic City NJ 08401.

2. At all times relevant hereto, Defendant City was a public entity located at 1301 Bacharach Boulevard, Atlantic City, New Jersey.

3. At all times relevant hereto, Defendant the State was a public entity.

4. Defendant Division of Local Government Services ("DLGS") in the DCA is a State agency created to provide administrative

guidance, financial support and technical assistance to local governments, community development organizations, businesses and individuals to improve the quality of life in New Jersey.

5. Defendant Melanie Walker ("Walker") is the Director ("Director") of the Division of Local Government Services in the New Jersey Department of Community Affairs, which is responsible for implementing the MSRA.

6. At all times relevant hereto, Defendants have conducted and/or conduct business in the State of New Jersey.

JURISDICTION AND VENUE

7. Plaintiff files this action pursuant to the laws, constitution, statutes, administrative codes, rules and regulations promulgated by the State of New Jersey and its agencies.

8. This court also has jurisdiction to grant declaratory relief pursuant to The Declaratory Judgements Act, N.J.S.A. § 2A:16-51 *et seq.*

9. Venue is proper in Atlantic County because (a) the cause(s) of action arose in Atlantic County, and (b) the Defendants have conducted and/or conduct business in Atlantic County. See N.J.S.A. 34:13A-19.

FACTUAL ALLEGATIONS

1. The City's Firefighters work in 24-hour shifts in groups known as Companies.

2. The City's Firefighters work out of 6 stations located throughout the City.

3. Between one and three companies are located in each station, and between approximately eight and thirteen individuals are in each station during each 24-hour shift.

4. During these shifts, Firefighters are in close quarters, and eat and sleep in close proximity to one another.

5. The ACFD will be commencing training for new hires next week, and such training will involve instruction and participation from Firefighters of various ranks working out of various stations.

6. On or about September 22, 2020, the Union was informed that three Firefighters tested positive for COVID-19 ("Positive Individuals").

7. On September 24, 2020, the Union was informed that three additional Firefighters tested positive for COVID-19.

8. The six Positive Individuals worked in Firehouse Station 1, Station 2, and Station 3, and were in close contact with and/or directly exposed ("Exposed Individuals") to at least one of the individuals who tested positive.

9. One of the Positive Individuals developed symptoms during their September 24, 2020 work shift, was sent to take a rapid COVID-19 test, and tested positive.

10. The Exposed Individuals working with the above-specified Positive Individual received rapid COVID-19 tests, and upon

receiving negative results were instructed to return to work to complete their shifts.

11. One of the six positive test results includes a Firefighter who was going to be an instructor for next week's new hire training, and has been in close contact with other individuals who will be instructing and/or attending such training.

12. Upon information and belief, within the past week approximately 65 Firefighters have been in close contact with and/or were otherwise exposed to at least one of Positive Individuals.

13. The City is arranging rapid COVID-19 tests for Exposed Individuals, and upon receiving a negative test result, Exposed Individuals are immediately returned to work.

14. At least two Exposed Individuals who produced a negative test result were exhibiting symptoms of COVID-19 as of this morning (September 25, 2020).

15. The City has not provided the Union with protocols and procedures that the City would be following to respond to the multiple COVID-19 cases and widespread exposure among Firefighters.

16. The Union is unaware of any further intent to test Exposed Individuals beyond the initial rapid test being performed before returning such individuals to work.

17. The City's decision to return Exposed Individuals to work upon receipt of a single negative test is contrary to Federal and State Guidance.

18. The New Jersey Department of Health ("NJDOH") and Centers for Disease Control and Prevention ("CDC") both advise individuals to self-quarantine for a period of 14 days upon exposure to a Positive Individual.

19. The NJDOH has instructed that a negative test result does not mean that an individual has not contracted COVID-19, and that symptoms may not develop for 2-14 days from exposure.

20. Where an individual lives with a Positive Individual (which is comparable to the unique nature of Firefighters' work environment where they "live" with other Firefighters in the station), NJDOH instructs the Positive Individual to self-isolate until certain conditions are met, and the individual living with the Positive Individual is advised to quarantine for 14 days after the Positive Individual's self-isolation ends. It is irrelevant whether the individual is asymptomatic and/or tests negative for COVID-19.

21. Scientific research has revealed that there is a noteworthy risk of false-negative test results, and that such false-negatives are significantly more likely where individuals were tested within four days after infection.

22. Scientific evidence suggests that there is a 100% probability of a false-negative result for tests issued on the first day of infection, and a 67% rate of false negative on day 4.

23. The City's approach to handling the COVID-19 outbreak among Firefighters is causing irreparable harm by jeopardizing the health and safety of firefighters, their families, and the general public.

24. As COVID-19 is highly contagious, COVID-19 will continue to spread throughout the ACFD.

25. The spread of COVID-19 among Firefighters also places their family members and housemates at risk.

26. The nature of Firefighters' work requires them to come into close contact with the general public, including the elderly (potentially in nursing homes), high-risk individuals, and those who will need medical attention and/or hospitalization after suffering serious injuries.

27. COVID-19 can have long-term health consequences and even lead to death among all age groups, even where such individuals do not have pre-existing conditions.

28. The spread of COVID-19 throughout the ACFD places the general public at risk.

COUNT I

**VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES
OF THE NEW JERSEY STATE CONSTITUTION, ARTICLE I, PARAGRAPH 1**

29. Plaintiff hereby incorporates paragraphs 1 through 21 of this Complaint as if set forth in full.

30. The New Jersey Constitution, Article I, Paragraph 1 provides: "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." This provision protects the values encompassed by the principles of due process and equal protection.

31. The City's blatant disregard for the health and safety of Firefighters in its response to a COVID-19 outbreak, including (but not limited to) the return of Exposed Individuals to work upon receipt of a negative test, contravenes the due process and equal protection provisions of the New Jersey Constitution, Article I, Paragraph 1.

COUNT II

VIOLATION OF THE MUNICIPAL STABILIZATION AND RECOVERY ACT

32. Plaintiff hereby incorporates paragraphs 1 through 31 of this Complaint as if set forth in full.

33. The MSRA, N.J.S.A. 52:27 BBBB-5(a)(3)(g) permits the Director, or Designee, to modify, amend or terminate collective

bargaining agreements if the modifications are "reasonable and directly related to stabilizing the finances or assisting with the fiscal rehabilitation and recovery of a municipality in need of stabilization and recovery."

34. Defendants' actions regarding its response to the COVID-19 outbreak, including (but not limited to) the return of Exposed Individuals to work upon receipt of a negative test, are neither reasonable nor directly related to stabilizing the finances of the City or assisting with the financial rehabilitation and recovery of the City.

35. Defendants, by implementing the actions described herein, are violating the MSRA and must be enjoined.

COUNT III

BREACH OF CONTRACT

36. Plaintiff hereby incorporate paragraphs 1 through 35 of this Complaint as if set forth in full.

37. Pursuant to the terms and conditions of Plaintiff's Collective Negotiations Agreement, the Defendants agreed to protect the safety of Firefighters.

38. Plaintiff demanded that Defendants comply the provisions of the parties' agreement.

39. Despite due demand, Defendants have steadfastly failed and refused to perform their obligations under the CNA and have, therefore, breached said agreement.

40. As a result of Defendants' breaches, Plaintiffs are entitled to a judgment requiring Defendants to specifically perform their obligations as set forth under the agreements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of itself and its members respectfully request that this Court:

- A. Declaring that Defendants have impaired the constitutional, statutory, and contractual rights of Plaintiff and its covered members in violation of: (1) the Due Process and Equal Protection Clauses of the New Jersey Constitution, Art. I, Section 1; (2) the MSRA, N.J.S.A. 52:27 BBBB-1, et seq.; and (3) the parties' Collective Negotiations Agreement;
- B. Issuing a Temporary and Permanent Injunction enjoining Defendants, Defendants' officers, agents, employees, attorneys, and all other persons acting in active concert or participation with them, from violating Plaintiff's constitutional, statutory and contractual rights including, but not limited to the following:
 - i. Restraining Defendants from compelling Exposed Individuals to return to work immediately upon receiving a negative COVID-19 test result, without a 14-day quarantine;

- ii. Requiring Defendants to place exposed individuals on paid leave and to direct such individuals to self-quarantine for 14 days;
 - iii. Requiring Defendants to have each station professionally disinfected between shift;
 - iv. Requiring Defendants to strictly comply with all guidance issued by the NJDOH, CDC, and all other Federal and State entities;
 - v. Requiring Defendants to provide the Union a copy of the City's protocols for responding to COVID-19 cases and potential exposures;
 - vi. Postponing the training of new hires scheduled to begin the week of September 28, 2020;
- C. Awarding Plaintiff the attorneys' fees, costs, and other expense they have incurred in bringing this action, pursuant to state law.
- D. Providing such other relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues subject to trial.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Mark E. Belland, Esquire is hereby designated as trial counsel for Plaintiff in the above matter.

CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that there is a related action involving the hiring and training of new hires, IAFF Local 198 v. State of New Jersey, et al., Docket No. ATL-L-2731-20, although such proceeding unrelated to the COVID-19 issues presented in this Complaint. To the best of my knowledge that the matter in controversy is not the subject of any other action pending in the court or the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated and as otherwise set forth herein. I further certify that I know of no party who should be joined in the action at this time.

Respectfully submitted,

O'BRIEN, BELLAND & BUSHINSKY, LLC
Attorneys for Plaintiff

By: /s/ Mark E. Belland
Mark E. Belland, Esquire
David F. Watkins Jr., Esquire
Matthew B. Madsen, Esquire
509 S. Lenola Rd., Building 6
Moorestown, NJ 08043
856-795-2181/Fax 856-581-4214
mbelland@obbblaw.com

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