STATE OF RHODE ISLAND **KENT, SC.**		**SUPERIOR COURT**
Girard Bouchard, in his capacity as President of the Board of Directors of The Central Coventry Fire District, **Plaintiff,** **v.** **Central Coventry Fire District,** **Defendant.**	: : : : : : : : : : :	**K.B. No. 12-1150**

CENTRAL COVENTRY FIREFIGHTERS' VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER, PRE-JUDGMENT ATTACHMENT AND ORDER DIRECTING ISSUANCE OF FOURTH QUARTER TAX BILLS

Petitioner Central Coventry Professional Firefighters, Local 3372 ["Firefighters"], respectfully requests that this Honorable Court temporarily and preliminarily enjoin Central Coventry Fire District ["CCFD"] from transferring any work presently performed by bargaining unit employees or assets of the District to any other Fire District, District employer, employee or independent contractor and issue an Order directing CCFD to issue tax bills sufficient to fund the current collective bargaining agreement. As reason therefore, Firefighters aver:

1. Firefighters and CCFD are parties to a collective bargaining agreement ["CBA"] for the period April 1, 2012 through March 31, 2015.

2. Since the commencement of the Special Mastership, firefighters have performed their duties without reservation, notwithstanding the threat of termination of their family health insurance, non-payment of wages for approximately four (4) weeks, and continued non-payment of various employment-related benefits.

3. Over the course of the proceedings, Firefighters negotiated in good faith to allow various concessions to the CBA. There were two rounds of concessions deemed significant by the Special Master. The second round of concessions was achieved at the encouragement of the Court and achieved over $250,000 additional savings this year alone.

4. Under the CBA, the District has agreed "not to contract out any work normally performed by employees at the present time without approval of the Union" and that "[w]ork presently performed by employees in the bargaining unit shall not be performed or given to any fire district, District employer, employee of independent contractor." The CBA is binding on successors and assigns. CBA Article 6, 6A, 6B at 23-24 (attached). All disputes are subject to arbitration.

5. Under applicable law, the CCFD is required to fund a duly executed CBA. *Exeter-West Greenwich Regional School District v. Exeter West Greenwich Teachers*, 489 A.2d 1010 (1985). In *West Warwick School Committee v. Souliere*, 626 A.2d 1280 (RI 19930, the Supreme Court held that this obligation was enforceable by Writ of Mandamus. The Court may enforce this obligation by Writ of Mandamus to levy a tax. In *Cole v. East Greenwich Fire Engine Co*., 12 R.I. 202 (1878), the Rhode Island Supreme Court held that the Court may issue a Writ of Mandamus directing a fire district to levy a tax. In *Cole*, the General Assembly granted a charter to certain residents of East Greenwich "to buy and support a fire engine," and further authorizing them to levy a tax on themselves and other residents. A creditor sued on a judgment, but execution was returned unsatisfied. The Court held that the charter created a quasi public corporation, which had the "power to tax, though permissive in form, create[ing] a duty which can be enforced." *Cole* was cited with approval as recently as 1981. *Flynn v. King*, 433 A.2d 172 (R.I.).

6. As this Court has recognized in the context of its Order directing issuance of tax bills for the first, second and third quarters, the Court also has broad equitable authority to issue tax bills. *See Cambio v. G-7 Corp*., 1998 WL 1472896 (1998) (Silverstein, J).

7. Transferring work presently performed by Firefighters would violate the express terms of the CBA and could expose the District to back pay liability in excess of $10,000,000. In addition, firefighters who become unemployed would be eligible for unemployment benefits, for which the District is self-insured, and all accrued sick leave, vacation time, comp time and other accrued benefits would immediately become due. CBA Article V(8)(D). The District would therefore be assuming huge additional and liabilities, while at the same time paying some other provider for fire and rescue services.

8. Upon information and belief, Anthony and Hopkins Hill districts intend to propose a plan ["Anthony/Hopkins Hill plan"] which has not been disclosed or vetted. Similarly, Representative Morgan has suggested a plan. This Court has previously advised the parties that there would be Notice and a Hearing on such a plan, to be developed by the Special Master with the assistance of a Public Safety Committee. Upon information and belief, no closure plan, which the Court previously advised would take not less than 120 days to complete, has been presented. See Order dated February 19, 2013.

9. CCFD Chief Baynes has proposed an interim plan by which the District would continue to operate, with additional financial concessions from Firefighters. Upon information and belief, this plan could be funded with proceeds from fourth quarter taxes.

10. Upon information and belief, the Anthony/Hopkins Hill plan requires the District to transfer or diminish the value of assets, which ought to be subject to creditors, including Firefighters.

11. Upon information and belief, the Anthony/Hopkins Hill plan would significantly affect public safety by increasing response times, and modifying and restructuring fire and rescue services.

12. Currently pending in the House is H5176, which would authorize a new tax structure and provide for level funding of the District. The Bill is scheduled for hearing before House Finance on April 3, and has widespread support. Other legislation which would affect the outcome of this litigation is also pending.

13. Under the Rhode Island Supreme Court's "traditional" criteria for injunctive relief, plaintiffs are entitled to an injunction if they show (1) a likelihood of success on the merits, (2) the **possibility** of irreparable harm to plaintiffs if preliminary relief is not granted, and (3) that the balance of the equities, including the public interest, as between the parties, favors plaintiffs. *See The Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997). *See also In re State Employees' Union*, 587 A.2d 919 (R.I. 1991); *Paramount Office Supply Co. v. D.A. MacIsaac, Inc.*, 524 A.2d 1099 (R.I. 1987), *Frenchtown Five, LLC v. Vanikiotis*, 863 A.2d 1279, 1282 (R.I. 2004). "[T]he office of a preliminary injunction is not ordinarily to achieve a final and formal determination of the rights of the parties or of the merits of the controversy, but is merely to hold matters approximately in status quo, and in the meantime to prevent the doing of any acts whereby the rights in question may be irreparably injured or endangered." *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997) (quoting *Coolbeth*, 112 R.I. at 564, 313 A.2d at 659).

14. Injunctions sought by unions against employers pending arbitration (commonly termed "reverse *Boys Market*" situations in the private-sector) are also subject to the traditional

criteria for injunctive relief. Thus, in the labor relations realm, to demonstrate a likelihood of success on the merits, the Union must show that the matter is arbitrable. *Boys Markets Inc. v. Retail Clerks Union, Local 770,* 398 U.S. 235, (1976). Second, in order to demonstrate irreparable harm, the Union must demonstrate either the necessity of an injunction to preserve the integrity of the arbitral process or other irreparable harm. *Independent Oil & Chemical Workers of Quincy, Inc. v. Procter & Gamble*, 864 F.2d 927, 932 (1st Cir. 1988). Third, the Union must show that imbalanced hardships would result without the injunction. *International Brotherhood of Teamsters v. Almac's, Inc.*, 894 F.2d 464, 466 (1st Cir. 1990). A traditional inquiry into the likelihood of success on the merits would encroach upon the role of the arbitrator and thus, in labor disputes, courts prefer to focus on the other requirements for preliminary relief, namely irreparable harm and the balance of hardships. *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 410-11 (U.S. 1976); *International Brotherhood of Teamsters v. Almac's, Inc.*, 894 F.2d 464, 465 (1st Cir. 1990); *International Ass'n of Machinists & Aerospace Workers v. Panoramic Corp.*, 668 F.2d 276, 285 (7th Cir. Wis. 1981). Indeed, the Rhode Island Supreme Court has ruled that interpretation of the collective bargaining agreement is exclusively within the jurisdiction of the arbitrator. *C.f. N. Providence Sch. Comm. v. N. Providence Fed'n of Teachers, Local 920*, 945 A.2d 339, 345 (R.I. 2008). Thus, as long as the matter is arbitrable, the Union has satisfied the first criterion.

15. The Court should issue a temporary restraining order, whether traditional or *Boy's Market*, enjoining the District from transferring any work presently performed by bargaining unit employees, or assets of the District, because Firefighters are likely to prevail on their claim that they have a valid CBA which precludes such conduct. Firefighters will suffer irreparable harm by virtue of their loss of employment and employment related benefits. If bargaining work is

restructured and transferred, it will be virtually impossible to calculate the value of these benefits, and rearrange seniority rights. For example, in *Ardito v. City of Providence*, 263 F. Supp. 2d 358, 371-72 (D.R.I. 2003), the Court found irreparable harm because "it would be impossible to restore [plaintiffs'] lost seniority rights or to attach a dollar value to that loss." Moreover, transferred assets will diminish in value and become unavailable to creditors. Finally, the availability of funds to satisfy the huge potential liability of Firefighters and other creditors is, to say the least, in question.

16. Further, the Firefighters are entitled to a temporary restraining order pursuant to Rule 4(m)(3) of the Rhode Island Superior Court Rules of Civil Procedure, which permits a prejudgment attachment when the plaintiff can demonstrate a "probability of a judgment being rendered in favor of the plaintiff and… a need for furnishing the plaintiff security in the amount sought for satisfaction of such judgment, together with interest and costs." A need for security is demonstrated when the plaintiff establishes likelihood that **it will have difficulty enforcing a judgment**. *Katz Agency, Inc. v. Evening News Ass'n*, 514 F.Supp. 423, 429 (R.I. 1981). Further, R.I.G.L. § 10-5-5 provides that, in any civil action of an equitable character, the complainant may move the court, ex parte, to issue a writ of attachment, to run against the property of the defendants. With respect to non-equitable actions, R.I.G.L. § 10-5-2 provides that a court may authorize a plaintiff to attach the defendant's assets, or any part thereof, after hearing on a motion to attach, notice of which has been given to defendant.

17. The balance of equities favors issuance of an injunction. Clearly Firefighters have acted in good faith by performing the duties, notwithstanding non-payment of wages and benefits. On the other hand, it is without question that the District will pay some amount not less than the prior approved rate for the coming quarter, so the District will not be harmed.

Moreover, replacing the current workforce will expose the District to huge additional liabilities. Finally, the public interest will be best served by continuing current levels of fire and rescue services, or alternatively fully vetting an alternate plan.

Conclusion

For the foregoing reasons, the Motion should be granted. The Court should direct the Special Master to send fourth quarter tax bills, and enjoin the District from transferring any work or assets pending hearing on a preliminary injunction.

VERIFICATION

I have read the allegations of the foregoing motion and they are true and correct to the best of my knowledge, information and belief.

_____
David Gorman, President, Local 3372

Respectfully submitted

Central Coventry Professional Firefighters, Local 3372,

By its Attorneys,

/s/ Marc Gursky
Marc Gursky, Esq. (#2818)
Elizabeth Wiens, Esq. (#6827)
Gursky Law Associates
420 Scrabbletown Road
North Kingstown, RI 02852
mgursky@rilaborlaw.com

CERTIFICATION

A true copy of the foregoing was served on the following via email on March 29, 2013.

nickgorham@gorhamlaw.com
kmiley@courts.ri.gov
bstern@courts.ri.gov
rland@crfllp.com
ktaylor@itwlaw.com
jboulanger11@verizon.net

/s/ Elizabeth Wiens