

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

**THE RETIREMENT BOARD OF THE MUNICIPAL EMPLOYEES’  
RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND’S  
MOTION TO COMPEL TAX LEVY AND  
PETITION FOR ISSUANCE OF A WRIT OF MANDAMUS**

Petitioner, the Retirement Board of the Municipal Employees’ Retirement System of the State of Rhode Island (“MERS”, or “Retirement System”), respectfully moves that this Honorable Court compel the Central Coventry Fire District, by and through the Special Master, to levy an appropriate tax to satisfy its statutorily mandated and actuarially-calculated indebtedness to MERS, and that the Court issue a Writ of Mandamus to the assessors of the Central Coventry Fire District (the “Fire District”), and/or the Special Master, to take necessary steps to assess and levy taxes within the Fire District in order to generate sufficient revenue to pay the amounts due MERS pursuant to R.I.G.L. §§45-21-41, 45-21-42, 45-21.2-14, and consistent with R.I.G.L. §§ 45-21-5 through 45-21-7 relating to the Fire District’s cessation of participation in the Retirement System.

## **Background**

Central Coventry Fire District was organized by an act of the General Assembly in 1959 to provide firefighting and other emergency services to residents of certain described portions of the Town of Coventry. On October 16, 2012, this Court appointed a Special Master to oversee the operations of the Fire District and to develop a plan to return the Fire District to solvency. *See*, Special Master Notice dated October 16, 2012 and Order dated October 23, 2012. Since that time the voters of the Fire District have twice rejected proposed budgets to permit the Fire District to continue in operation, first on February 11, 2013 and again on March 26, 2013.

On Friday, March 29, 2013, this Court ordered the Fire District closed as of 11:59 p.m. on April 11, 2013, and expressed the opinion that the Court does not have the power to compel the assessors to assess a tax to continue the operations of the Fire District. As indicated by the Retirement Board's Proof of Claim dated October 26, 2012 and Amended Proof of Claim dated December 10, 2012, the Fire District has failed to make statutorily mandated employer and employee contributions to employee pensions. Moreover, and as the Special Master was so notified in a letter dated March 28, 2013, the amount of the Fire District's indebtedness to MERS, should the district cease membership in the System, is provided for by statute and is predicated upon an actuarial valuation that takes into account the payment of retirement and disability allowances currently being paid to former employees of the district, deferred annuities to members who have not retired but who have a vested right to a retirement allowance, and reimbursement of the accumulated contributions of members who have not yet acquired a vested right to benefits. *See* March 28, 2013 Letter to Special Master Land, appended

hereto as Exhibit A, and R.I.G.L. §§45-21-5 through 45-21-7. The System's administrative staff is presently communicating with its actuary, and MERS will provide an amended proof of claim to the Special Master and the Court, with a comprehensive estimate of the District's indebtedness under the statute, upon completion.

### **Applicable Legal Standard**

A writ of mandamus may be issued when: "(1) the petitioner has a clear legal right to the relief sought, (2) the respondent has a ministerial duty to perform the requested act without discretion to refuse, and (3) the petitioner has no adequate remedy at law." *Sch. Comm. of Cranston v. Bergin-Andrews*, 984 A.2d 629, 648 (R.I. 2009); quoting *New England Development, LLC v. Berg*, 913 A.2d 363, 368 (R.I. 2007). As set forth below, each of the above criteria are met and the Retirement Board is entitled to a writ of mandamus.

### **Argument**

For over a century it has been the law in Rhode Island that mandamus will lie to compel the assessors of a quasi-municipal fire company to levy a tax to satisfy its debts. *Cole v. Fire-Engine Co.*, 12 R.I. 202, 205 (1878); see also *Flynn v. King*, 433 A.2d 172, 175 (R.I. 1981) (citing *Cole* with approval regarding the status of a fire district as a quasi-municipal entity). In *Cole*, the Supreme Court of Rhode Island rejected the Fire Engine Company in East Greenwich's argument that its power to levy taxes was merely permissive. *Cole*, 12 R.I. at 205. Noting that *Cole* had obtained a judgment against the fire company, the Supreme Court stated: "It was the duty of the corporation, after judgment recovered, to provide means for its payment." and "we think the power to tax,

though permissive in form, creates, under the circumstances, a duty which can be enforced.” *Id.*

The situation in *Cole* is not materially different from the situation at bar, wherein the Fire District, upon cessation of membership in MERS, has accrued a statutorily-mandated and defined obligation to fund the pension plan it provided for its members by virtue of joining the MERS System. The Fire District cannot avoid that obligation simply by virtue of this Special Mastership, and it cannot cease operations without rendering the plan immediately unsustainable in the absence of the statutorily required payment amounts. While the period of time that MERS can continue to pay benefits is dependent upon various scenarios (i.e., number of vested members retiring, number of members seeking a refund of contributions, number of members rolling contributions into another MERS unit, etc.), it is absolutely clear that MERS will be unable to make payments to all members and beneficiaries as provided by law, for anything other than a finite period of time. Accordingly, as established in *Cole*, the Court has the authority to require that the Fire District satisfy its obligation to MERS by exercising the taxing authority granted to it by the General Assembly.

More recently, the Supreme Court of Rhode Island affirmed that the Superior Court had properly granted a judgment for mandamus to enforce an order of the Commissioner of Education requiring the tax assessor of the Town of West Warwick to assess taxable property within the town in order to generate sufficient revenue to comply with the order of the Commissioner. *West Warwick Sch. Comm. v. Souliere*, 627 A.2d 328 (R.I. 1993): *cited by* 52 Am Jur 2d Mandamus § 265 (“Mandamus lies in a proper case to compel the levy and collection of taxes to meet governmental obligations,....”).

MERS contends that the Fire District has incurred a statutorily fixed obligation by virtue of its participation in MERS, and cannot avoid that obligation. MERS therefore urges this Court to order the Fire District, by and through the Special Master, to immediately levy the necessary taxes required to satisfy its obligations. Because the payments are required by statute, the District's obligation to make them is a ministerial act which can be compelled by mandamus. *Providence & Worcester Co. v. Blue Ribbon Beef Co.*, 463 A.2d 1313, 1316 (R.I. 1983)(Relief will be granted under a complaint for mandamus where the plaintiffs have a clear legal right to have the act done which is sought and where the defendants have a ministerial, legal duty to perform such act without discretion to refuse); *see also Warwick School Committee v. Gibbons*, 122 R.I. 670, 410 A.2d 1354, 1357 (1980); *Gormally v. Cannon*, 119 R.I. 771, 776 (1978).

Rhode Island General Laws sections 45-21-41, 45-21-42 and 45-21.2-14 specifically require that member and municipality contributions "shall" be made. There is no element of discretion for the Fire District with regard to member and municipality payments. Furthermore, the liability of a district that does not make the necessary contributions is fixed, and established by statute. *See* R.I.G.L. §45-21-7.

As the liquidation of the Fire District has been ordered, the manner of calculating the Fire District's obligations is also established by statute. R.I.G.L. §§ 45-21-5 through 45-21-7 provide as follows:

**§ 45-21-5. Procedure for withdrawal of municipality**

A municipality may withdraw from the retirement system established by this chapter or may withdraw any of its departments or agencies by the same procedure provided in § 45-21-4 for acceptance of the chapter; provided, that the withdrawal does not relieve the municipality from the liabilities arising from retirement allowances, annuities, or other benefits already granted or determined,

or rights and expectatives relative thereto that have become vested in employees of that municipality or in the survivors of those employees, which are discharged by the payment by the retirement system to the employees or beneficiaries concerned, computed according to the actuarial tables in use by the system; and provided, further, that the withdrawal is conditioned upon the written approval of a majority of the employees in the department or agency.

**§ 45-21-6. Settlement on withdrawal from system**

(a) Upon withdrawal from the system, the retirement board retains in the system from contributions made by the members from the municipality and by the municipality the following amounts:

(1) An amount equal to the actuarial value, determined in accordance with the actuarial tables in use by the system, of the retirement and disability allowances in force, being paid to former employees of the municipality who were granted allowances as members of the system or to the beneficiaries of those members;

(2) An amount equal to the actuarial value of deferred annuities to members who have not retired but who have acquired a vested right to a retirement allowance who may desire to maintain that vested right; and

(3) An amount equal to the accumulated contributions of the members who have not acquired a vested right which shall be refunded to those members.

(b) Any remainder in the system after providing for the foregoing amounts shall be paid over to the municipality in such amount as the retirement board shall in its sole discretion determine to be prudent and legally permissible; provided, that if no remainder exists and a deficiency to pay those amounts has accumulated, the municipality is liable to the system for the amount of the deficiency as provided in this section.

**§ 45-21-7. Liability of municipalities -- Enforcement**

(a) Each participating municipality is liable to the retirement system for the cost of funding a retirement system for its employees who are members of the system, including all contributions collected from employees, including any contributions pursuant to chapter 36-10.3.

(b) The liability of a municipality, including the liability under any formalized, commissioner approved, cooperative service arrangement under this chapter is enforceable by the retirement board against the municipality through appropriate action in the superior court.

(c) The state is further empowered to withhold from any municipality that amount

of the municipality's portion of any shared taxes which is sufficient to satisfy the liability, including any liability pursuant to chapter 36-10.3.

Pursuant to these statutes, upon the Fire District's cessation of participation in the Retirement System, an amount far in excess of the unpaid contributions prior to the appointment of the Special Master will become due in order to support the actuarial value of future liabilities of the Retirement System to the former employees of the Fire District. The statutory mandate for these payments puts their status as the just debts of the Fire District beyond question.

As the Fire District has a statutory obligation to make the necessary payments to MERS, and as the Fire District has a ministerial duty to levy a tax to satisfy its obligations without discretion to refuse in order to satisfy its just debts, MERS hereby requests that the Court issue a writ of mandamus to the assessors of the Fire District, by and through the Special Master, to compel the payment of all of its statutorily required and actuarially-calculated obligations to the Retirement System.

The Retirement System has no remedy at law, as any direct action against the Fire District has been stayed by Order of this Court. It appears that the current assets of the Fire District will be inadequate to meet its obligations to the Retirement System, and in turn, to the firefighters who have served the Fire District and its taxpayers. Accordingly, the Retirement System has no legal remedy. *Berg*, 913 A.2d at 368.

### **Conclusion**

For all of the reasons stated above, MERS respectfully requests that this Honorable Court compel the Central Coventry Fire District, by and through the Special

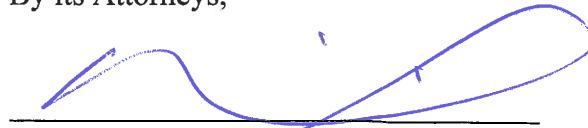
Master, to levy an appropriate tax to satisfy its indebtedness to MERS, and issue a Writ of Mandamus to the assessors of the Central Coventry Fire District or, alternatively, the Special Master to assess taxes within the Fire District in order to generate sufficient revenue to pay the amounts due pursuant to R.I.G.L. §§ 45-21-41, 45-21-42, and 45-21.2-14, and in an actuarially calculated amount consistent with R.I.G.L. §§ 45-21-5 through 45-21-7.

Dated: April 5, 2013.

Respectfully submitted,

The Retirement Board of the Municipal  
Employees' Retirement System of  
the State of Rhode Island,

By its Attorneys,



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## CERTIFICATION

I hereby certify that on this 5th day of April 2013, I emailed a true and accurate copy of this Petition to Special Master Richard J. Land, Esq., Chace Ruttenberg & Freedman, LLP, One Park Row, Suite 300, Providence, RI 02903 and to the following:

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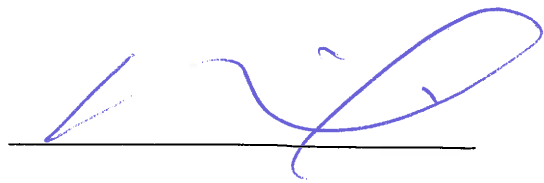
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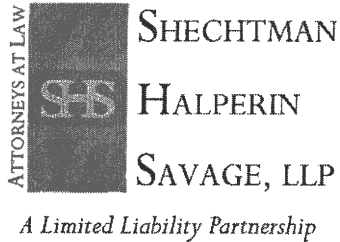
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Christine Moniz, Clerk to the Board  
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A handwritten signature in blue ink is written over a solid horizontal black line. The signature is stylized and appears to be the name 'Christine Moniz'.





***Michael P. Robinson, Esq.***  
***mrobinson@shslawfirm.com***

March 28, 2013

Richard J. Land, Esq.  
Special Master, Central Coventry Fire District  
Chace Ruttenberg & Freedman, LLP  
One Park Row, Suite 300  
Providence, RI 02903

***RE: Bouchard v. Central Coventry Fire District; KB No. 12-1150***

Dear Attorney Land:

As you know, this office represents the Retirement Board of the Municipal Employees' Retirement System of the State of Rhode Island ("MERS"). On December 10, 2012, MERS filed a Proof of Claim, outlining pre-petition and post-petition obligations of the Central Coventry Fire District ("CCFD") to MERS for both employer and employee contributions as of December 6, 2012. MERS contends that the unpaid obligations are secured pursuant to the Rhode Island General Laws. A copy of MERS' Proof of Claim is enclosed herein for your convenience.

As you may know, the Retirement Board's Executive Director delivered a letter to Judge Stern this morning, indicating that as of June 30, 2012, the CCFD's pension plan was only 68% funded. A copy of Executive Director Karpinski's letter is enclosed herein. To the extent that it now appears that liquidation of the district is imminent, I wanted to take this opportunity to advise you that the actuarial value of the district's obligation to MERS is significantly greater than the amount of the unpaid contributions, and as pointed out in Executive Director Karpinski's letter, will likely be in the range of \$5-\$6 million dollars.

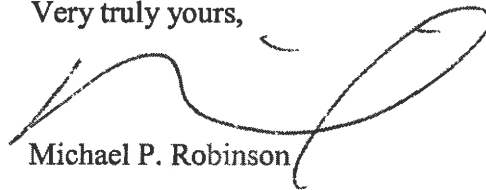
The amount of the district's indebtedness to MERS, should the district cease membership in the system, is provided for by statute and is predicated upon an actuarial valuation that takes into account the payment of retirement and disability allowances currently being paid to former employees of the district, deferred annuities to members who have not retired but who have a vested right to a retirement allowance, and the reimbursement of the accumulated contributions of members who have not yet acquired a vested right to benefits. See R.I.G.L. §§45-21-5; 45-21-6 and 45-21-7.

1080 Main Street  
Pawtucket, Rhode Island 02860  
p 401.272.1400 f 401.272.1403

w w w . s h s l a w f i r m . c o m

The purpose of this communication is to place you on notice of the system's amended and increased claim in light of the anticipated imminent liquidation of the CCFD. I will provide a comprehensive estimate of the amount of the increased claim based upon the necessary actuarial calculations once the administration of the system has obtained the necessary information. Please be advised that I intend to address this issue with the Court tomorrow, and I also anticipate requesting that the Court issue a supplemental tax in connection with any plan of liquidation, to satisfy the district's obligations to MERS. *See Cole v. The Fire Engine Co. in East Greenwich*, 12 R.I. 202 (1878). Please let me know if you have any questions about this communication, or with regard to my client's position.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael P. Robinson". The signature is fluid and cursive, with a large loop at the end.

Michael P. Robinson

CC: Gina M. Raimondo, General Treasurer and Chairperson of the Retirement Board  
Frank J. Karpinski, Executive Director  
Mark Dingley, Esq.

**CENTRAL COVENTRY FIRE DISTRICT  
PROOF OF CLAIM**

1. I, Frank J. Karpinski, being duly sworn, depose and say:

Pursuant to the provisions of R.I.G.L. § 45-21-35, I am the Executive Director of the Municipal Employees' Retirement System of the State of Rhode Island ("MERS") which is the claimant herein.

2. The full address of the claimant is 50 Service Avenue  
(Print Full Address) Warwick, RI 02086

3. That on the 16<sup>th</sup> day of October, 2012, the Central Coventry Fire District (CCFD), recently doing business at 240 Arnold Road, Coventry, Rhode Island, did owe and still does owe the claimant a balance of \$656,688.11 Dollars, as set forth in the attached statement or invoices.

4. The CCFD continues to have an obligations to make statutory employee member and employer contributions to MERS during the pendency of the this Special Master proceeding.

5. That such account is just, true and correct, and said balance is now due claimant from debtor.

6. Except as set forth in the attached Statement of Claim, no part of said sum has been paid or satisfied, and that there are no set-offs, or counter-claims against said sum, to the knowledge or belief of deponent, and no security exists for said debt.



Frank J. Karpinski  
Executive Director  
Municipal Employees' Retirement System of  
the State of Rhode Island

STATE OF RHODE ISLAND

COUNTY OF Providence

Subscribed and sworn to before me this 10<sup>th</sup> day of December, 2012



Notary Public

**Mail claim to:**

Chace Ruttenberg & Freedman, LLP  
One Park Row, Ste. 300  
Providence, RI 020903  
Attn: Joyce Gauthier

## STATEMENT OF CLAIM

The Municipal Employees' Retirement System of the State of Rhode Island ("MERS") is an actuarially financed retirement system for municipal employees established pursuant to R.I.G.L. § 45-21-1 *et seq.* (the "Act"). The Central Coventry Fire District ("CCFD") and its employees are members of MERS through the Optional Retirement for Members of Police Force and Fire Fighters plan established by R.I.G.L. § 45-21.2-1, *et seq.* ("OPF"). Pursuant the Act and OPF, employee members and their respective municipalities contribute funds to MERS pursuant to R.I.G.L. § 45-21.2-14 and in accordance with R.I.G.L. §§ 45-21-14 and 45-21-42 – 45-21-44. The employee member and municipalities' contributions are then paid to the General Treasurer, deposited by the Treasurer to the credit of the retirement system, and invested by the State. R.I.G.L. § 45-21-38. If CCFD fails to pay to the General Treasurer the amounts due from it under the Act within the time prescribed in the Act, the General Treasurer "is authorized to deduct that amount from any moneys due the city or town from the state for any purpose other than for education." R.I.G.L. § 45-21-42. Further, the liability of a municipality is enforceable by the retirement board against the municipality through appropriate action in the superior court. R.I.G.L. § 45-21-7.

### **I. Employee Member Contributions**

As of October 16, 2012, the date of the appointment of the Special Master, the Central Coventry Fire Department ("CCFD") owed MERS \$197,559.58 for employee member contributions deducted from each employee member's payroll and held in trust by the CCFD for deposit with MERS.

In addition, the CCFD owes MERS \$9,185.68 for employee member contributions deducted from each employee member's payroll and held in trust by the CCFD for deposit with MERS on and after October 16, 2012 through December 6, 2012, which amounts continue to accrue.

### **II. CCFD Contributions**

As of the date of the appointment of the Special Master, the CCFD owed MERS \$431,180.96 for the employer contributions due to MERS from on or about December 17, 2011 through October 16, 2012.

In addition, the CCFD owes MERS \$18,761.89 for employer contributions due to MERS on and after October 16, 2012 through December 6, 2012, which amounts continue to accrue.

### **III. Security and Priority of Claim**

The unpaid amounts due from CCFD to MERS are secured to the extent that the General Treasurer is authorized to deduct and amounts due from any moneys due to CCFD from the State. R.I.G.L. § 45-21-42.

To the extent applicable this claim is filed as a priority claim for employee benefits. *See Reynolds v. E & C Assocs.*, 693 A.2d 278, 281 (R.I. 1997).

**Neither the filing of this Proof of Claim, nor anything set forth herein, is intended to constitute a waiver by MERS of any of its rights as to the CCFD or any other person or entity. MERS reserves the right to amend and/or supplement this proof of claim at any time.**



# Employees' Retirement System of Rhode Island

March 27, 2013

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Jean Rondeau

Frank J. Karpinski  
Executive Director

Via Hand Delivery and First Class U.S. Mail

Honorable Brian P. Stern  
Superior Court  
Noel Judicial Complex  
222 Quaker Lane  
Warwick, Rhode Island 02886

Re: *Bouchard v. Central Coventry Fire District, KB No. 12-1150*

Dear Judge Stern:

Last evening the residents of the Central Coventry Fire District voted to reject the fiscal year 2012-2013 budget. I am writing to you as the Executive Director of the Employees' Retirement System of Rhode Island (ERSRI) to underscore the urgent nature of addressing Central Coventry Fire District's liability owed to ERSRI.

As of the last valuation (June 30, 2012), there were 13 individuals retired from the Central Coventry Fire District receiving monthly pensions, and an additional 48 members with accrued benefits. As of June 30, 2012, the Central Coventry Fire District's pension plan was only 68% funded. The current estimated actuarial accrued liability is \$12-13 million. If the Central Coventry pension plan ceases today, the plan's actuary estimates ERSRI would need approximately \$5-6 million to continue making payments to retirees and to pay remaining members their accrued benefits as provided for by Rhode Island General Law (RIGL). Should members who are ineligible to retire seek a return of their contributions, and members eligible to retire simultaneously seek to retire and begin to receive benefits as prescribed by RIGL, the pension fund will *immediately* become unsustainable. This leaves ERSRI in an untenable position, and while we are hopeful that this situation does not occur, it is a real possibility that gives me reason for grave concern.

Thank you in advance for your assistance in resolving this matter.

Sincerely,

Frank J. Karpinski  
Executive Director

cc: Richard Land, Esq.  
Michael Robinson, Esq.  
Mark Dingley, Esq.