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**THE ATLANTIC CITY POLICEMEN'S  
 BENEVOLENT ASSOCIATION LOCAL  
 24,**

*Plaintiff,*

v.

**CITY OF ATLANTIC CITY, STATE OF  
 NEW JERSEY, NEW JERSEY DIVISION  
 OF LOCAL GOVERNMENT SERVICES IN  
 THE DEPARTMENT OF COMMUNITY  
 AFFAIRS, ROBERT LONG,** Director  
 of the Division of Local  
 Government Services in the  
 Department of Community Affairs  
 in his official capacity,  
*Defendants.*

SUPERIOR COURT OF NEW JERSEY  
 ATLANTIC COUNTY - LAW DIVISION

Docket No.

CIVIL ACTION

**VERIFIED COMPLAINT**

Atlantic City Policemen's Benevolent Association Local 24 ("PBA 24" 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, Robert Long, 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 representatives of the rank and file members of the police

department of the City of Atlantic City ("ACPD"). The operations of Defendant City were effectively taken over by the State Defendants pursuant to the New Jersey Municipal Stabilization and Recovery Act ("MSRA"), N.J.S.A. 52:27 BBBB-1, *et seq.*, P.L. 2016, c. 4. The City was previously under State monitorship from 2011 pursuant to N.J.S.A. 52:27BB.

Pursuant to the purported authority of the MSRA, Defendants have made, and intend to hire into, and make promotions within the ACPD and discipline employees without complying with the procedures and requirements promulgated by the New Jersey Civil Service Commission and the Civil Service Act, N.J.S.A. 11A:1-1, *et seq.* and the parties' Collective Negotiations Agreement ("CNA"). Civil Service regulations provide public safety employees in Civil Service municipalities a transparent promotion and hiring process with safeguards and mechanisms to appeal improper promotion and hiring decisions, as well as disciplines. Defendants must still comply with the requirements of the New Jersey Constitution and the MSRA despite the MSRA removing the protections of the Civil Service Commission and the Civil Service Act.

Defendants are instead engaged in clandestine promotional and hiring processes and improper discipline procedures. Plaintiff made numerous written and verbal requests to Defendants seeking routine information regarding proposed ACPD promotions and hiring, as well as discipline. These information requests include

promotion processes, criteria, promotional lists, and appeal rights for employees of the ACPD. Defendants have failed to act in good faith by refusing to produce any responsive information and by continuing to engage in a clandestine promotion process in violation of New Jersey constitutional and statutory requirements.

Plaintiff seeks declaratory relief from this Court declaring that Defendants are in violation of the MSRA, the Civil Service Appointment Clause, Art. VII, Section I, Paragraph 2 of the New Jersey Constitution, and the Collective Negotiations Clause, Art. I, Paragraph 19 of the New Jersey Constitution. Plaintiff also seeks an Order requiring Defendants to provide requested information, negotiate in good faith, to enjoin Defendants from making future promotions, hiring, and discipline which violate the New Jersey Constitution and the MSRA. 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 and its officials representing public safety employees employed by the Atlantic City Police Department ("ACPD"). 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 PBA 24's offices are situated at 250 North New York Ave, in the City of Atlantic City, County of

Atlantic and State of New Jersey.

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

3. At all times relevant hereto, Defendant the State of New Jersey ("State") was a public entity.

4. Defendant Division of Local Government Services ("DLGS") in the New Jersey Department of Community Affairs ("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 Robert Long ("Long") 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 Takeover Bill.

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**

10. The City submitted to state monitorship pursuant to N.J.S.A. 52:27BB in February 2011 in response to tax appeals filed by various casinos which, among other economic conditions, triggered an unprecedented financial crisis.

11. Upon information and belief, the City complied or attempted to comply with Civil Service requirements with respect to promotions while under state monitorship.

12. On or about May 27, 2016, then-Governor Christopher Christie signed S-1711/A-2569 into law, the Atlantic City "Municipal Stabilization and Recovery Act," (the "MSRA" or "Takeover Act") N.J.S.A. 52:27 BBBB-1, *et seq.*, P.L. 2016, c. 4.

13. The MSRA provides a mechanism for the State and its designees to takeover complete control of the City, including staffing, labor contracts, promotions, and pay.

14. On or about November 9, 2016, the New Jersey Department of Community Affairs Local Finance Board voted to vest powers under

the MSRA to the Defendant Director Cunningham.

15. On or about November 14, 2016, Jeffrey Chiesa was selected as Designee of the Director of the Division of Local Government Services in the Department of Community Affairs. In that capacity, he has full control of the City pursuant to the terms of the MSRA.

16. Plaintiff submitted written requests on August 2, 2017 and February 2, 2018 to Defendants seeking the following information related to promotions:

- a. Any and all promotional lists which were used or will be used in selecting candidates for promotion in the ACPD;
- b. The process which was used or will be used to identify, evaluate, or select candidates for promotion in the ACPD;
- c. Any and all competitive examinations of applicants which were used or will be used to identify, evaluate, or select candidates for promotion in the ACPD;
- d. Any and all communications to members of the ACPD which were sent or will be sent regarding promotions in the ACPD;
- e. Any other criteria which was used or will be used to identify, evaluate, or select

candidates for promotion in the ACPD, including, but not limited to, questions asked during candidate interviews; and

f. The process through which members of the ACPD can appeal a decision not to promote.

Certification of David F. Watkins Jr. Esq., dated September 4, 2018 ("Exhibit") Exhibits C, D.

17. Plaintiff also verbally requested promotion information, as well as hiring and discipline information during numerous in-person meetings with Defendants during 2017 and 2018. Plaintiff further noted during those meetings that the MSRA was designed to stabilize the City's finances, but that removing the City from the Civil Service Act is revenue neutral and does not save the City any money.

18. Defendants have refused to produce any information in response to Plaintiff's requests.

19. Upon information and belief, Defendants are conducting and will continue to conduct promotions, hiring, and discipline impacting the ACPD without regard to the merit and fitness of the applicants and without a competitive examination in violation of minimum constitutional and statutory requirements.

20. Upon information and belief, Defendants promoted ACPD officers on or about July 5, 2017 and May 8, 2018.

21. Upon information and belief, Defendants intend further

ACPD promotions in 2018 but have not disclosed to Plaintiff a specific timeframe for these promotions.

22. Upon information and belief, there is no appeal process for officers who believe that they were improperly not promoted.

23. Defendants have stated that Civil Service norms do not apply and that aggrieved officers who are denied promotions have no appeal rights.

24. The Union has made repeated information requests to Defendants regarding the hiring of officers.

25. All of these requests have been ignored.

26. Defendants have agreed via settlement agreement and Court Order, see infra., to maintain a police force of at least 252 officers.

27. Currently, the police force is at 250 officers, requiring the Defendants to hire 2 police officers.

28. The City announced that 2 police officers are being sworn into duty on September 4, 2018.

29. Those 2 officers are currently Special Law Enforcement Officers ("SLEO") and work pursuant to the New Jersey Special Law Enforcement Officers' Act, N.J.S.A. § 40A:14-146.8, et seq.

30. SLEO are not full-time officers and have hours and duties restricted by statute.

31. Defendants did not announce the openings for the 2 police officer positions.



32. Defendants did not interview applicants for the 2 police officer positions.

33. There is no appeal process for applicants who believe that they were improperly not hired.

34. Defendants have stated that Civil Service norms do not apply and that aggrieved applicants who are denied hire have no appeal rights.

35. Defendants have stated that Civil Service norms do not apply and that aggrieved members who are disciplined, up to and including discharge, have no appeal rights.

36. In response to Defendants' assertions, members facing discipline have agreed to take suspensions rather than pursue action in Superior Court.

37. Officers facing discipline have no appeal or review process and fear retaliation if they protest discipline.

38. The MSRA amended the Employer-Employee Relations Act ("EERA"), N.J.S.A. 34:13A-5.4, to eliminate all of Plaintiff's and Plaintiff's members' EERA rights, as well as binding arbitration.

39. The EERA permits Plaintiff and Plaintiff's members to file unfair labor practice charges with the New Jersey Public Employment Relations Commission ("PERC") and facilitates grievance arbitration.

40. A New Jersey public employer's failure to negotiate in good faith and failure to provide information are among unfair labor practices investigated and adjudicated by PERC.

41. PERC has stated that the MSRA divests its authority to order Defendants to comply with unfair labor practice decisions.

42. Pursuing this action with PERC is, therefore, futile.

43. On or about March 13, 2017, Defendants unilaterally implemented changes to Plaintiff's CNAs, including slashing wages and other salary items and eviscerating other terms and conditions of employment.

44. In response to Defendants' actions, Plaintiff filed a lawsuit PBA Local 24 and SOA v. Christopher J. Christie et al., ATL-L-554-17 challenging the constitutionality of the MSRA and the legality of Defendants' actions.

45. While that matter was pending, the Court ordered that the parties participate in mediation.

46. Plaintiff requested promotion information from Defendants during mediation sessions.

47. Defendants refused to produce information responsive to Plaintiff's requests.

48. During a November 17, 2017 mediation session, the parties reached a settlement agreement which included the terms of successor CNAs for the PBA and Atlantic City Superior Officers' Association ("SOA") ("Settlement Agreement") which was ratified by

both the PBA and SOA membership.

49. The Settlement Agreement, however, did not address or include terms impacting promotion procedures or related information requests, or the criteria for hiring and disciplining police officers.

50. Plaintiff, with the SOA, also filed an action currently pending in this Court, PBA Local 24 and SOA v. City of Atlantic City et al., ATL-L-554-17, regarding the failure of Defendants to properly pay current and retired ACPD officers promoted after May 2016 pursuant to, *inter. alia*, the terms of two 2016 Memoranda of Agreement ("MOAs") between the parties.

51. In a related matter filed by the union representing Atlantic City firefighters, IAFF Local 198, et al. v. City of Atlantic City, et al., Docket No. ATL-L-222-17 ("IAFF Action"), Judge Julio L. Mendez, issued a decision on July 6, 2017 finding that Defendants violated the New Jersey Constitution and the MSRA with respect to the promotion of Deputy Chiefs. Exhibit B.

### COUNT I

#### **VIOLATION OF THE NEW JERSEY STATE CONSTITUTION CIVIL SERVICE APPOINTMENT CLAUSE ARTICLE VII, § I, PARAGRAPH 2**

52. Plaintiff hereby incorporates paragraphs 1 through 52 of this Complaint as if set forth in full.

53. The New Jersey Constitution, Art. VII, Section I, Paragraph 2, provides: "Appointments and promotions in the civil

service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law."

54. Defendants have engaged and continue to engage in a promotional process within the ACPD without regard to the Civil Service Appointment Clause, Art. VII, Section I, Paragraph 2 of the New Jersey Constitution, which must be enjoined.

#### **COUNT II**

##### **VIOLATION OF THE NEW JERSEY STATE CONSTITUTION COLLECTIVE NEGOTIATIONS CLAUSE ARTICLE I, PARAGRAPH 19**

55. Plaintiff hereby incorporates paragraphs 1 through 55 of this Complaint as if set forth in full.

56. The New Jersey Constitution, Art. I, Paragraph 19 states in pertinent part "Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing."

57. By failing to negotiate in good faith with Plaintiff, including the failure to provide information related to promotions, the Defendants violated New Jersey Constitution, Art.



I, Paragraph 19.

58. The actions of Defendants violated Plaintiff's rights under the New Jersey Constitution.

### COUNT III

#### **VIOLATION OF THE MUNICIPAL STABILIZATION AND RECOVERY ACT**

59. Plaintiff hereby incorporates paragraphs 1 through 59 of this Complaint as if set forth in full.

60. The New Jersey Municipal Stabilization and Recovery Act ("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."

61. Defendants' actions regarding promotions, including the failure to provide information and the lack of adequate promotional procedures, are neither reasonable nor directly related to stabilizing the finances of the City or assisting with the financial rehabilitation and recovery of the City.

62. Additionally, Defendant's violations of the Civil Service Appointment Clause, Art. VII, Section I, Paragraph 2 of the New Jersey Constitution, and the Collective Negotiations Clause, Art. I, Paragraph 19 of the New Jersey Constitution are

not reasonably and directly related to stabilizing the finances of Atlantic City.

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

**PRAYER FOR RELIEF**

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

- A. Declare that Defendants have impaired the constitutional rights of the Plaintiffs and their covered members in violation of: (1) the Collective Negotiations (2) the Civil Service Appointment Clause of the New Jersey Constitution, Art. VII, § I, ¶ 2; and (3) the MSRA, N.J.S.A. 52:27 BBBB-1, *et seq.*
- 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 promoting Plaintiff's members currently employed by the City of Atlantic City until such time as Defendants have published the

procedures, standards, requirements and selection process to be used for such promotions;

- ii. Requiring that the Defendants publish the procedures, standards, requirements and selection process to be used in the future for determining merit and fitness for promotion;
- iii. Requiring that officers denied promotion are provided procedures to appeal the denial of promotion;
- iv. Requiring that officers that have been denied promotion by being passed over for another candidate since the MSRA has taken effect are provided with the promotional process utilized, the reason for being passed over and a meaningful/impartial procedure for appeal.
- v. Restraining Defendants from hiring employees into the bargaining unit until such time as Defendants have published the procedures, standards, requirements and selection process to be used for such hiring;
- vi. Requiring that the Defendants publish the procedures, standards, requirements and selection process to be used in the future for determining merit and fitness for hiring; and,
- vii. Requiring that persons denied employment are provided procedures to appeal the denial of employment;

viii. Requiring that officers who are disciplined or are to receive discipline are provided procedures to have the decision reviewed by a neutral party with authority to modify any discipline, including by not limited to, reinstatement with or without backpay.

ix. Requiring that officers who have disciplinary and/or promotional appeal processes either with the Civil Service Commission and/or the Office of Administrative Law which were suspended due to the MSRA be afforded with a meaningful/impartial procedure for appeal and/or disposition.

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 demand 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 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 except as 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**  
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