

CAUSE NO. 048-270181-14 _____

**FORT WORTH
PROFESSIONAL FIREFIGHTERS
ASSOCIATION,**

Plaintiff,

v.

CITY OF FORT WORTH, TEXAS,

Defendant.

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IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

_____ **JUDICIAL DISTRICT**

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW the Plaintiff, the Fort Worth Professional Firefighters Association, and complains of Defendant City of Fort Worth as follows.

I. DISCOVERY LEVEL

Plaintiff intends to conduct discovery in this case under Rule 190.4 (Level 3) of the Texas Rules of Civil Procedure.

II. PARTIES

Plaintiff, the Fort Worth Professional Firefighters Association, also known as Local 440 of the International Association of Fire Fighters, AFL-CIO-CLC (“the Association”), is a labor organization that does not claim and specifically disavows the right to strike. It represents and seeks to represent fire fighters employed in the Fort Worth Fire Department.

Defendant City of Fort Worth is a municipal corporation operating under its home rule charter within its geographical boundaries in Tarrant, Denton, Johnson,

Parker, and Wise counties. Defendant City may be served with process by serving its City Secretary, Mary J. Kayser, at her office address located at City Hall, 1000 Throckmorton, Third Floor, Fort Worth, Tarrant County, Texas 76102.

III. JURISDICTION AND VENUE

The Court has jurisdiction of this case under TEX. LOC. GOV'T CODE §§ 174.109, 174.251–174.252. The City's immunity, if any, is waived by TEX. LOC. GOV'T CODE § 174.008. Venue is proper in this county under TEX. LOC. GOV'T CODE §§ 174.251–174.252 and TEX. CIV. PRAC. & REM. CODE § 15.002.

IV. FACTUAL ALLEGATIONS

At all times relevant herein, Defendant City has had a population in excess of 10,000 and has been governed by the Fire Fighter and Police Officer Civil Service Act, Texas Local Government Code Chapter 143, its voters having previously adopted the Civil Service Act in an election held for that purpose. Defendant City is also governed by the Fire and Police Employee Relations Act ("FPERA"), Texas Local Government Code Chapter 174, its voters having adopted the FPERA in an election held for that purpose.

Defendant previously has recognized Plaintiff as the exclusive bargaining agent for Fort Worth's fire fighters. The parties have entered into a collective bargaining agreement governing the wages, hours, and employment conditions for Fort Worth's fire fighters. The current collective bargaining agreement was set to expire on September 30, 2013, if a successor agreement was reached by that time. Because no successor agreement has been reached, the current collective bargaining agreement will remain in effect until September 30, 2014.

In May 2012, Plaintiff notified Defendant that it wished to engage in negotiation of a successor collective bargaining agreement. Defendant City planned to reach an

impasse with Plaintiff before even beginning the bargaining process. Defendant City strategized about how to reach impasse and actions to take after reaching impasse.

Defendant City refused to meet to engage in negotiations for a 5-month period, from April 2013 to August 2013. When Defendant City did agree to meet, it was often late and/or unprepared to present or discuss proposals at the designated start time for each bargaining session, in violation of the parties' agreed ground rules for negotiations. Plaintiff made proposals on all issues in October 2012. Defendant City did not present a counterproposal on wages until more than a year later. That proposal included a modest wage increase for most employees of the Fire Department, but a 35% increase for Assistant Chiefs, which are appointed by the Fire Chief rather than being selected through a competitive examination process.

Defendant City did not present a counterproposal on the pension issue until December 18, 2013. Defendant's proposal was, in effect, a refusal to bargain in good faith on pension contributions and benefits, which are mandatory subjects of bargaining. Defendants' only proposal on the pension issue provided that pension contributions and benefits would be determined by Defendant City's unilateral action, rather than by the terms of the collective bargaining agreement. That same day, December 18, 2013, Defendant City refused to negotiate further on any issue, presenting its "Last, Best and Final Offer." Plaintiff responded to each provision in that offer on December 30, 2013. The parties reached impasse under TEX. LOC. GOV'T CODE § 174.152 on December 31, 2013.

Despite the manner in which Defendant City approached negotiations, the parties were able to tentatively agree on several items. However, the parties were unable to reach agreement with respect to the following issues:

- Definitions
- Article 5 – Maintenance of Standards
- Article 9 – Wages
- Article 10 – Overtime
- Article 15 – Retiree Health Benefits
- Article 16 – Pension
- Article 21 – Disciplinary Procedures
- Article 24 – Miscellaneous
- Article 28 – Battalion Chief Promotional Process
- Article 29 – Sick and Family Illness Leave
- Article 30 – Perfect Attendance Benefit
- Article 34 – Duration and Termination

At the conclusion of the statutory bargaining period, the parties mutually agreed to extend the bargaining period for a number of additional 15-day periods as authorized by TEX. LOC. GOV'T CODE § 174.152. During that time period, Plaintiff offered to engage in mediation with Defendant through the auspices of the Federal Mediation and Conciliation Service. The Defendant declined mediation.

At the conclusion of the extended statutory bargaining period, having tried in good faith but failing to achieve agreement with Defendant, Plaintiff requested that Defendant agree to interest arbitration to resolve disputed issues as provided for by TEX. LOC. GOV'T CODE § 174.153. Defendant declined Plaintiff's request to engage in interest arbitration as allowed by the FPERA.

Under these circumstances, the FPERA authorizes Plaintiff to file suit in district court seeking judicial resolution of all issues in dispute. The court is authorized by TEX. LOC. GOV'T CODE § 174.252 to enforce the requirements of TEX. LOC. GOV'T CODE § 174.021 as to any unsettled issue relating to compensation or other conditions of employment of fire fighters. Plaintiff now seeks such resolution.

V. FIRST CAUSE OF ACTION—JUDICIAL RESOLUTION

Pursuant to TEX. LOC. GOV'T CODE § 174.252, Plaintiff respectfully requests that the Court resolve all collective bargaining issues in dispute between the parties and impose a collective bargaining agreement as authorized by TEX. LOC. GOV'T CODE § 174.252.

VI. SECOND CAUSE OF ACTION—BAD FAITH BARGAINING

Defendant's actions described above constitute a violation of Defendant City's obligations under TEX. LOC. GOV'T CODE § 174.105 to bargain collectively with Plaintiff in good faith. The Court has the power to enforce TEX. LOC. GOV'T CODE § 174.105 under TEX. LOC. GOV'T CODE § 174.251.

VII. PRAYER

Wherefore, premises considered, Plaintiff respectfully requests that Defendant be cited to appear and answer herein and, upon hearing, that the Court award Plaintiff the following relief:

1. Resolve the collective bargaining impasse between the parties by imposing wages and working conditions on Fort Worth fire fighters with regard to all disputed issues in accordance with the standard set forth in TEX. LOC. GOV'T CODE § 174.021.

2. Impose upon the parties a collective bargaining agreement not to exceed one year containing those tentative agreements reached between the parties during negotiations and those issues resolved by the Court in accordance with TEX. LOC. GOV'T CODE § 174.021.

3. Make the agreement imposed upon the parties retroactive to October 1, 2013, and order Defendant to make the affected fire fighters whole as to their past losses.

