

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

Myron Boggess, and
William Gill, individually and
in their capacity as representatives of
Charleston Firefighters named in Exhibit 1,

MWWP PLLC

JUL 12 2013

RECEIVED

2013 JUL 10 PM 1:45

CATHY S. EASTON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Plaintiffs and Petitioners,

v.

Civil Action No.: 12-MISC-119
Honorable James C. Stucky

City of Charleston,
a West Virginia Municipal Corporation,

Defendant,

and

Matthew P. Jackson, Eric E. Kinder,
and Victor E. Sigmon, in their capacity
as Commissioners of the Firemen's Civil
Service Commission of the City of Charleston,

Respondents.

ORDER

On the 22nd day of April 2013 came the parties by and through their counsel all pursuant to the Motion to Dismiss filed on behalf of Matthew P. Jackson, Eric E. Kinder, and Victor E. Sigmon, in their capacity as Commissioners of the Firemen's Civil Service Commission of the City of Charleston. The Court, after the reviewing the memoranda of law submitted the parties, and in oral argument, does hereby make the following findings of fact and conclusions of law.

1. On the 4th day of February, 2012, Plaintiff's filed this action with the Circuit Court of Kanawha County, West Virginia.
2. On the 23rd day of November, 2011, Myron Boggess, William Gill, and all other Firefighters at Local 317 of the International Association of Firefighters of the City of Charleston

filed a Petition to reinstate the correct hourly wage for Firefighters with Firemen's Civil Service Commission of the City of Charleston.

3. In that Petition, Plaintiffs alleged that on November 7, 2011, the City of Charleston unilaterally changed the method of calculation of the regular hourly rate by which they were paid and that change resulted in a reduction of pay in the amount of \$1.83 per hour which is used to calculate overtime pay.

4. On the 26th day of January, 2012, a special meeting of the Firemen's Civil Service Commission of the City of Charleston was held in order to hear the Petition that had been filed.

5. The initial portion of the hearing before the Commission was limited solely to the issue of whether the Commission had jurisdiction pursuant to W.Va. Code §§8-15-11 and 8-15-25 to hear and rule upon the claims that were being presented.

6. Pursuant to the provisions W.Va. Code §§8-15-11 and 8-15-25, the jurisdiction of the Commission is limited to certain defined areas. As it relates to the grievance claims that were set forth in the Petition brought before it, the Commission could only hear and rule upon the petition if the allegations involve the removal, discharge, suspension, or reduction in rank or pay of any particular firefighter.

7. The evidence presented for the Commission on the 26th day of January, 2012, was uncontradicted that none of the Plaintiffs had been removed, discharged, suspended, had been reduced in rank, or that any other disciplinary action had been taken or was pending against them.

8. The Commission only has jurisdiction and powers conferred upon it by statute and has no inherent jurisdiction or powers. Pugh Pugh GH v. Policemen's Civil Service Commission, 214 W.Va. 498 (WV 2003) and Legg v. Smith, 181 W.Va. 796 (WV 1989).

9. After the presentation of evidence, exhibits, and argument, the Commission on the 26th day of January, 2012, by a vote of 2 to 1, held that the Commission did not have jurisdiction to hear the grievance claims pursuant to W.Va. Code §8-15-11 and W.Va. Code § 8-15-25.

10. In this civil action, Plaintiffs set forth a complaint for damages and a petition for a Writ of Mandamus. As it relates to the Firemen's Civil Service Commission of the City of Charleston, Plaintiffs assert that the Commission should assume jurisdiction in this matter, hold a full evidentiary hearing, and hold a hearing pursuant to part VII, 7.02, and part VIII of the Rules and Regulations of the Firemen's Civil Service Commission of the City of Charleston. Plaintiffs assert that the Commission was in error, when it ruled on the 26th day of January, 2012, that it did not have jurisdiction to hear the claims of the Plaintiffs.

11. W.Va. Code §8-15-1 *et seq.* controls matters under which the Commission can act. Pursuant to the provisions of the W.Va. Code §§8-15-11 and 8-15-25, the jurisdiction of the Commission is limited to certain defined areas. As it relates to the Plaintiffs' claims in this matter, the Commission was only permitted to hear matters that involved the removal, discharge, suspension, or reduction in rank or pay of any particular individual.

12. The evidence presented before the Commission, on January 26, 2012, was uncontradicted that none of the Plaintiffs had been removed, discharged, suspended, or had been reduced in rank, or that any other disciplinary action had been taken or was pending against them.

13. This Court finds that the West Virginia Supreme Court decision of Darlington v. Magnum, 192 W.Va. 112 (WV 1994) is controlling on the issue of whether the Commission had jurisdiction to hear this matter. In Darlington, the County Commission of Raleigh County had begun to take out of deputy sheriffs' salaries a premium for healthcare. The deputy sheriffs

argued that such charges effectively resulted in the reduction of their pay and under the provisions of W.Va. Code §7-14-17, which is virtually identical to the civil service provision the Commission was required to operate under which is found under W.Va. Code §8-15-25. The West Virginia Supreme Court found that the language of W.Va. Code §7-14-17 related to disciplinary proceedings instituted against deputy sheriffs and the term "reduction in wages" found in that Code section was used as a part of a group of disciplinary actions that cannot be taken without affording a deputy sheriff the procedural rights contained in the statute.

14. In this matter, none of the Plaintiffs were removed, discharged, suspended, or reduced in rank, no disciplinary action had been taken against them or was pending against them by the City of Charleston Fire Department, and none of the Plaintiffs had disciplinary actions threatened against them by the City of Charleston Fire Department.

15. For the above reasons, the Court finds that the Commission properly found that it did not have jurisdiction to hear the claims of the Plaintiffs in this matter pursuant to the provisions of W. Va. Code §§8-15-11 and 8-15-25.

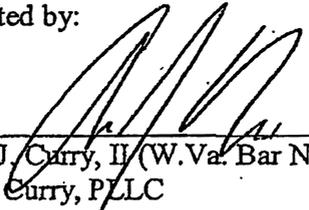
16. It is hereby ORDERED and ADJUDGED that the Motion to Dismiss filed by Matthew P. Jackson, Eric E. Kinder, and Victor E. Sigmon, in their capacity as Commissioners of the Firemen's Civil Service Commission of the City of Charleston is hereby GRANTED. The exceptions and objections of the Plaintiffs are preserved.

ENTERED this 9 day of July, 2013.

James C. Stucky
James C. Stucky, Judge

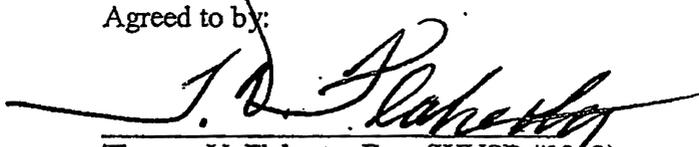
STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND BY SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 11th
DAY OF JULY 2013
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA ll

Presented by:

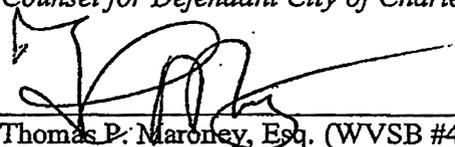


Arden J. Curry, II (W.Va. Bar No. 907)
Pauley Curry, PLLC
P.O. Box 286
Charleston, WV 25330-2786
(304) 342-6000 Phone
(304) 342-6007 Fax
*Counsel for Matthew P. Jackson, Eric E. Kinder
and Victor E. Sigmon*

Agreed to by:



Thomas V. Flaherty, Esq. (WVSB #1213)
Kurt E. Entsminger, Esq. (WVSB #1130)
Caleb P. Knight, Esq. (WVSB #11334)
Flaherty Sensabaugh Bonasso PLLC
200 Capitol Street
P.O. Box 3843
Charleston, WV 25338-3843
Counsel for Defendant City of Charleston



Thomas P. Maroney, Esq. (WVSB #42326)
Patrick K. Maroney, Esq. (WVSB # 8956)
Maroney, Williams, Weaver & Pancake, PLLC
608 Virginia Street, East
Charleston, WV 25301
Counsel for Myron Boggess and William Gill

RICHARD L. SYMNS, an individual;
 RYAN A. VAUGHN, an individual;
 DAVID L. WAGONER, an individual;
 SHAWN L. WANNER, an individual;
 ANDREW WHITE, an individual;
 RICHARD JASON WHITING, an individual;
 JAMES D. WILCOX, an individual;
 JOHN N. WILCOX, an individual;
 KEITH D. WITTERS, an individual;
 EDWARD A. WOODS, an individual;
 JOEL L. WOOTEN, an individual; and
 PAUL E. YOUNG, JR., an individual;

Plaintiffs,

v.

CITY OF CHARLESTON, a West Virginia
 Municipal Corporation,

Defendant.

Civil Action No. 12-Misc-119
 Judge James C. Stucky

ORDER

This Court has reviewed the Plaintiffs' Motion to Revise, Alter or Amend Judgment under Rule 54(b) and 59(e) wherein Plaintiffs' seek relief from two of this Court's orders: (i) Order granting summary judgment to the Defendant City of Charleston dated October 7, 2013; and (ii) Order dismissing Mathew Jackson, Eric Kinder, and Victor E. Sigmon in their capacity as Commissioners of the Firemen's Civil Service Commission of the City of Charleston dated July 9, 2013.

Upon consideration of the Plaintiffs' motion, this Court does hereby ORDER that the Plaintiffs' Motion to Revise, Alter or Amend Judgment under Rule 54(b) and 59(e) be DENIED. The Clerk shall provide a certified copy of this Order to all counsel of record.

Enter this Order the 30th day of October, 2013.

James C. Stucky
 Honorable James C. Stucky, Judge
 Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
 COUNTY OF KANAWHA, SS
 I, GATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
 AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
 IS A TRUE COPY FROM THE RECORDS OF SAID COURT
 GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
 DAY OF *October* 2013
Gathey S. Gatson
 CLERK
 OF THE COURT OF KANAWHA COUNTY, WEST VIRGINIA