

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**No. 13-1261**

**MYRON BOGGESS, et al.  
Plaintiffs Below, Petitioners**

**v.**

**CITY OF CHARLESTON, A WEST VIRGINIA MUNICIPAL  
CORPORATION; 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  
Defendants Below, Respondents**

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**PETITIONERS' RESPONSE TO BRIEF  
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**

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## SUMMARY OF ARGUMENT

Petitioners, who are firefighters for the City of Charleston, filed a petition with the Firemen's Civil Service Commission (hereinafter "Commission"), alleging that the City had violated 8-15-11(b) of the Code of West Virginia, and Rule 7.01 of the Rules and Regulations of the Commission by reducing the hourly rate of overtime pay of the firefighters.

On January 26, 2012, a special meeting of the City of Charleston Firemen's Civil Service Commission was held in order to hear that petition. The hearing was limited by the Commission 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.

The Commission asserts that its jurisdiction is limited by the provisions of W. Va. Code §§ 8-15-11 and 8-15-25, and ruled it could only hear and rule if the allegations involved the removal, discharge, suspension, or reduction in rank or pay of any particular firefighter. The Commission, in its Brief, asserts that the evidence presented to the Commission on January 26, 2012, was "uncontradicted that none of the Petitioners had been removed, discharged, suspended, had been reduced in rank, or that any other disciplinary action had been taken or was pending against them." (Commission's Brief, p. 3.) [Emphasis added.] The Firefighters were prepared to offer evidence that they had suffered a reduction in pay and they were entitled to a hearing and ruling under § 8-15-11(b). [Emphasis added.]

## ARGUMENT

West Virginia Code § 8-15-11(b), Civil Service for Paid Fire Departments, and Rule 7.01 of the Rules and Regulations of the Firemen's Civil Service Commission for the City of Charleston, provide, in part, as follows:

"...(b) No individual may be appointed, promoted, reinstated, removed, discharged, suspended, or reduced in rank or pay as a

paid member of any paid fire department regardless of rank or position, in any manner or by any means other than those prescribed in this article." [Emphasis added.]

The personnel actions stated in 8-15-11(b) and Rule 7.01 are in the disjunctive, not conjunctive. The unilateral action by the City in changing the method of calculation of the hourly rate of pay result in a reduction of between \$1.68 to \$2.70 per hour depending on the Firefighter's rank and years of service, ranging from 6.45% to 10.8% loss of their hourly overtime rate is a reduction in pay. Firefighters being on a 24 hour on, off 48 hour schedule with a two week pay cycle requires the Firefighters to work 22 hours overtime after every second shift. Rules 7.02.2 and 7.02.3 of The Rules and Regulations of the Civil Service Commission further provide that in every case of a reduction in pay, the member shall be entitled to a hearing with the burden on the City to show just cause resulting from wrongful misconduct by the member. [Emphasis added.]

The Commission in its Brief to this Court states that it relied on Darlington v. Magnum, 192 W.Va. 112 (1994), finding it had no jurisdiction.

The Commission's reliance on Darlington that it has no jurisdiction is unfounded, for here the members of the Fire Suppression Unit are being reduced in pay, while in Darlington, the deputy sheriffs' salaries were not being reduced, but those who wanted healthcare were to pay a portion of their premium costs.

The Commission also cites Pugh v. Policemen's Civil Service, 214 W.Va. 498 (2003), in support of its no jurisdiction, which again is an erroneous reliance.

In Pugh, speaking on the issue of jurisdiction of municipal civil service commission, this Court stated that under West Virginia Code § 8-14-6 through 24 for police officers, which is similar to § 8-15-11 through 25 for firefighters, that the Commission has a broad mandate to

investigate and develop a factual record on the issues involved. See Pugh at 504. Here, the Commission should have investigated to determine whether the City's action was or was not discriminatory, was made in good faith, and not motivated by any political or other improper objectives, and to require the City to show affirmatively that it was suffering from financial hardships, and then if so, could proceed with layoffs done in accordance with West Virginia Code § 8-15-25, and requiring the City to make equitable adjustments with all City employees, exempt and non-exempt, so that there is no discriminatory action as to any employee in the reduction of their hourly rates of pay.

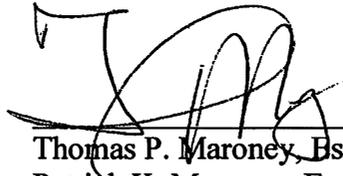
Additionally, the Commission in its Brief did not address the liberty and property issues raised in the Firefighters' Appeal and Brief. The Firefighters rely on their Brief previously filed with the Court on these issues.

### **CONCLUSION**

As stated in the Conclusion of the Petitioners'/Firefighters' Appeal Brief, the judgment of the Circuit Court affirming the final order of a Civil Service Commission was based on a mistake of law and should be reversed. Firefighters respectfully request this Court order a Writ of Mandamus compelling the City of Charleston Firemen's Civil Service Commission to assume jurisdiction under West Virginia Code § 8-15-25 to find that the Firefighters have contractual property rights under the Fifth and Fourteenth Amendments of the United States Constitution, and Article III, Section 10, of the Constitution of West Virginia, and further order that the Commission make an investigation and findings of fact and conclusion that the City has unilaterally violated its employment contract under the FLSA with the Firefighters, and order that the City cannot unilaterally alter the employment contract by changing the method of calculation of the regular rate of hourly pay which reduces the hourly rate, and direct the Circuit

Court to require the City to account for all overtime hours worked since the effective dates of Resolution 037-11, pay Firefighters any overtime due at the prior regular rate of hourly pay, and award costs and attorney's fees.

Respectfully submitted,



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Defendants Below, Respondents**

**CERTIFICATE OF SERVICE**

I, Thomas P. Maroney, counsel for Petitioners herein, do hereby certify that I served a true and accurate copy of **PETITIONER'S RESPONSE TO BRIEF OF MATTHEW P.**

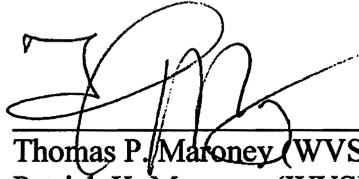
**JACKSON, ERIC E. KINDER, AND VICTOR E. SIGMON IN THEIR CAPACITY AS  
COMMISSIONERS OF THE FIREMEN'S CIVIL SERVICE COMMISSION OF THE  
CITY OF CHARLESTON** upon counsel for the respondents via the U.S. Postal Service, First

Class postage pre-paid, on this the 26<sup>th</sup> day of March 2014, addressed as follows:

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