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STATE OF RHODE ISLAND
KENT, SC.

SUPERIOR COURT

TOWN OF EAST GREENWICH, RHODE ISLAND, Plaintiff,	:	
v.	:	C.A. No. KC-2017-1276
EAST GREENWICH FIRE FIGHTERS ASSOCIATION LOCAL 3328, I.A.F.F., AFL-CIO, by and through, WILLIAM PERRY, in his official capacity as President of the EAST GREENWICH FIRE FIGHTERS ASSOCIATION LOCAL 3328, I.A.F.F., AFL-CIO, and MATT HOWARD, in his official capacity as Secretary of the EAST GREENWICH FIRE FIGHTERS ASSOCIATION LOCAL 3328, I.A.F.F., AFL-CIO, Defendants.	:	

PLAINTIFF TOWN OF EAST GREENWICH'S MOTION FOR JUDGMENT ON THE PLEADINGS ON COUNTS I, II AND IV OF THE COMPLAINT

Pursuant to Super. Ct. R. Civ. P. 12(c), Plaintiff, Town of East Greenwich (the "Town") moves for judgment on the pleadings on Counts I, II and IV of its Complaint against the East Greenwich Fire Fighters Association Local 3328, IAFF, AFL-CIO (the "Union").

In Count I, the Town requests several specifically tailored declaratory judgments confirming the Town's right to exercise its non-delegable, management right to reorganize the East Greenwich Fire Department ("Fire Department") from a four platoon, 42-hour workweek structure to a three-platoon, 56-hour workweek structure. Pursuant to the Rhode Island Supreme Court's decision in Town of North Kingstown v. International Association, Local 1651, 107 A.3d 304 (R.I. 2015) (hereafter, "North Kingstown"), a case that is materially indistinguishable from the one at bar, the Town has an absolute management right to implement this organizational

change without bargaining over the decision with the Union. Id. at 313-315 ("we hold that the decision to implement the three-platoon structure is a management right of the town."). The Town's right is non-delegable and cannot be "bargained away" or delegated to an arbitrator. Id. Moreover, because the Town's right and obligation to reorganize the Fire Department are also specifically provided by a legislatively ratified Home Rule Charter, they "trump" any general (labor or contract) law to the contrary. As a result, and notwithstanding any terms that may exist in a labor contract or the general laws, the Court should grant the Town's requested declarations confirming its non-delegable, management right.

In Count II, the Town seeks declarations concerning its obligation to negotiate the "effects" of its decision to reorganize the Fire Department to a three platoon, 56-hour workweek structure. Specifically, the Town requests declarations concerning the Supreme Court's command that "the effects of that decision are subject to the FFAA's bargaining requirements." North Kingstown, 107 A.3d at 315. Because the Town and the Union have negotiated a wage scale and other provisions in their labor contract that expressly apply only to "employees assigned to a four platoon system," one effect of the decision to reorganize into a three platoon system is to render these provisions inapplicable and thus the subject matter of each may be negotiated under the terms of the Fire Fighters Arbitration Act ("FFAA"), R.I. Gen. Laws §§ 28-9.1-1 et seq., and if impasse is reached, the Union may submit the matter to interest arbitration in accordance with the requirements of the FFAA. See North Kingstown, 107 A.3d at 315, 319.

In Count IV, the Town seeks declarations that the contract provisions requiring it to compensate Fire Department employees performing services on behalf of the Union are unlawful and void. R.I. Gen. Laws § 28-7-13(3)(iii) specifies that it is unlawful for a public employer to "compensat[e] any employee . . . for services performed in behalf of any employee

organization." Because a collective bargaining agreement cannot authorize what state law forbids, see State v. R.I. All. of Soc. Servs. Emples., Local 580, 747 A.2d 465, 469 (R.I. 2000), this Court should declare these provisions unenforceable.

As a matter of law, this Court should enter judgment on the pleadings in favor of the Town on Counts I, II and IV of the Complaint and issue the requested declaratory judgments set forth therein.

I. FACTS AND TRAVEL

Although North Kingstown makes clear the Town's right to unilaterally implement the organizational change at issue, the Town has filed this action in deference to judicial sensibilities, expressed in other contexts. Because time is of the essence for the Town, however, it now moves for summary, expedited disposition of three counts by judgment on the pleadings.

The pleadings are now closed; the Union filed its Answer to the Town's Complaint on January 23, 2018. To date, neither party has served discovery.

As alleged in the Town's Complaint and admitted in the Union's Answer, the Town is a municipality with a Town Council/Town Manager form of government. Compl. ¶ 10; Answer ¶ 10. The Town's Fire Department is responsible for, among other things, providing fire suppression and emergency rescue services to Town residents, and it currently operates on a continuous 24-hour per day, 7-day per week, 52-week per year basis. Compl. ¶ 21; Answer ¶ 21. The Town currently organizes the line personnel responsible for fire suppression and emergency rescue services of its Fire Department into a four-platoon, 42-hour workweek organizational structure, which is also referred to as a "four-platoon system." Compl. ¶ 22; Answer ¶ 22. By operating with a four-platoon system, the Town separates its line fire suppression and emergency rescue personnel into four groups, or platoons. Compl. ¶ 23; Answer ¶ 23. To provide

continuous, 24-7 coverage within the four-platoon system, the Town assigns each of the four platoons to a non-overlapping schedule that, on average, covers one-quarter of the hours each week. Thus, because there are 168 hours in a week, the Town assigns each of the four platoons to a schedule that covers 25% of the hours each week, or 42 hours per week. Compl. ¶ 24; Answer ¶ 24.

The Union is a labor organization, and it is the exclusive bargaining agent for all permanent employees of the Fire Department except for the Chief and the Deputy Chief. Compl. ¶¶ 2, 3; Answer ¶¶ 2, 3. The Town and the Union executed a collective bargaining agreement that is attached to the Complaint (and this Motion) as Exhibit A. Compl. ¶ 31; Answer ¶ 31. The agreement will be referred to throughout this Motion as the "4-Platoon CBA."

The 4-Platoon CBA contains at least twenty-three separate provisions that are expressly applicable only to employees assigned to a "four platoon system." See generally Exhibit A. For example, Section 3 of the 4-Platoon CBA contains a wage scale applicable to "[e]mployees assigned to the four platoon system," id. at p. 21, and it defines a "WORK DAY" as "[a] ten (10) hour day shift or a fourteen (14) hour night shift for those employees assigned to the four platoon system." Id. at p. 8. Similarly, Section 36-1 of the 4-Platoon CBA states:

> The regular work schedule for employees assigned to the four platoon system shall be: ten (10) hours on duty followed by fourteen (14) hours off duty, followed by ten (10) hours on duty, followed by twenty-four (24) hours off duty, followed by fourteen (14) hours on duty, followed by ten (10) hours off duty, followed by fourteen (14) hours on duty, followed by ninety-six hours off duty.

Id. at p. 26 (emphasis added).

The 4-Platoon CBA's management rights clause provides, inter alia:

"The Department retains all the powers and rights to:

a. Direct said employees in the performance of their duties.

b. Determine the mission of the Fire Department and the personnel, methods, means and procedures necessary to most efficiently fulfill that mission.

c. Determine the size and composition of the work force.

. . . .

g. Hire, schedule, promote, demote, transfer and assign employees in accordance with the applicable sections of this agreement."

Id. at p. 8. The parties' pleadings also establish that the Town has decided to change the organizational structure of its Fire Department to a three platoon, 56-hour workweek structure. The parties agree that the Town has a duty to negotiate in good faith over the effects of its decision to reorganize the Fire Department, but they dispute the scope of that bargaining obligation. Compl. ¶ 56; Answer ¶ 56.

II. STANDARD OF REVIEW

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." R.I. Super. Ct. R. Civ. P. 12(c). "Rule 12(c) provides a trial court with the means of disposing of a case early in the litigation process when the material facts are not in dispute after the pleadings have been closed and only questions of law remain to be decided." Chase v. Nationwide Mut. Fire Ins. Co., 160 A.3d 970, 973 (R.I. 2017). The same test applies to a Rule 12(c) motion as a Rule 12(b)(6) motion. Heritage Healthcare Servs. v. Beacon Mut. Ins. Co., 109 A.3d 373, 374 (R.I. 2015). "The court must accept that the factual allegations contained in the nonmovant's pleadings are admitted as true for purposes of the motion, and all proper inferences are to be drawn in favor of the nonmovant." Id. at 377; Casperson v. AAA S. New Eng., No. PC-2014-6139, 2016 R.I. Super. LEXIS 118, at *1 (R.I. Super. Ct. Oct. 13, 2016). "Thus, to prevail on a Rule 12(c) judgment on the pleadings, the [movant] must demonstrate to a certainty that the [nonmovant] will not be entitled to relief

under any set of facts that might be proved at trial." Heritage Healthcare Servs., 109 A.3d at 377.

Ordinarily, when ruling on a motion to dismiss brought under Rule 12(c), "a court may not consider any documents that are outside of the complaint, or not expressly incorporated therein, unless the motion is converted into one for summary judgment." Chase, 160 A.3d at 973. "There is, however, a narrow exception for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint." Id.

III. THE COURT SHOULD DECLARE THE TOWN'S NONDELEGABLE MANAGEMENT RIGHT TO REORGANIZE THE FIRE DEPARTMENT INTO A THREE-PLATOON, FIFTY-SIX HOUR WORKWEEK STRUCTURE

The Rhode Island Supreme Court has recently decided the narrow issue presented in Count I, i.e., that a municipality has a non-delegable management right to reorganize its fire department from a four platoon, 42-hour workweek structure to a three platoon, 56-hour workweek structure. North Kingstown, 107 A.3d at 313-315. This Court should reach the same result here and issue the requested declaratory judgments confirming the Town's non-delegable right to implement the same reorganization within its Fire Department.

In North Kingstown, the dispute arose over the municipality's right "to reorganize from a four-platoon structure to a three-platoon structure," which "increase[d] the average workweek from forty-two hours to fifty-six hours and . . . change[d] the schedule to include a twenty-four hour on-shift followed by a forty-eight hour off-shift." 107 A.3d at 307 n.2. When the town was unable to obtain agreement with the Union concerning the reorganization, the town unilaterally implemented the reorganization and began operating with a three-platoon, 56-hour workweek structure. Id. at 308.

In response, the union brought several rounds of litigation to stop the town from implementing the reorganization and force the town to remain in a four platoon, 42-hour workweek structure. Id. at 307. These legal challenges included a lawsuit to reverse the implementation of the three-platoon system on the union's theory that it violated the municipality's charter and the FFAA. The union also made demands for interest arbitration for two separate years – 2011-2012 and 2012-2013 – and filed unfair labor practice charges with the State Labor Relations Board ("SLRB"). The Town also filed a complaint seeking, among other things, declaratory judgments that its implementation of the three-platoon, 56-hour workweek structure was lawful, and that the SLRB and interest arbitration panels did not have authority to restrict the town's non-delegable management right to do so. Id. at 307-310.

On appeal,[1] the Supreme Court granted the town's requests. It held that the town had a non-delegable management right to reorganize its fire department to a three platoon, 56-hour workweek structure without the necessity of bargaining with the union or submitting the question to arbitration. Id. at 313-315. Although the Court acknowledged that, as a general matter, the FFAA imposes a general duty to bargain over mandatory subjects of bargaining, it held "there are certain matters" – such as the right to decide to implement a three-platoon, 56-hour reorganization – "that may not be bargained away by a public employer." Id. at 313.

A. The Four Central Legal Pillars On Which North Kingstown Rests Equally Support The Town's Right To Reorganize From A Four-Platoon, 42-Hour Workweek Structure, To A Three-Platoon, 56-Hour Workweek Structure

The North Kingstown Court's core reasoning rested on four fundamental principles of

[1] The Superior Court held that the town's unilateral implementation of the three-platoon system was unlawful and ordered it to reinstate the terms of employment that existed prior to reorganization. North Kingstown, 107 A.3d at 310. In a separate legal proceeding, the SLRB ruled that the town committed unfair labor practices by unilaterally implementing the three-platoon structure without first obtaining agreement from the union and ordered it to return to the status quo that existed pre-implementation. Id. at 311. The Superior Court affirmed the SLRB's decision but stayed its decision pending review by the Supreme Court. Id. at 311.

Rhode Island labor law: (1) a public employer may not bargain away its statutory duties; (2) public employers are not at liberty to bargain away their powers and responsibilities with respect to the essence of their mission; (3) a public employer is not empowered to delegate to arbitrators its statutory obligations, or decisions directly related to the essence of its mission; and (4) certain managerial decisions, which lie at the core of entrepreneurial control over an organization, are strictly within the province of management, and the choice itself of whether or not to implement a particular management decision is not subject to bargaining and need not be submitted to arbitration, even if the decision has profound effects upon the terms and conditions of employment. North Kingstown, 107 A.3d at 313-314. Each of these four principles applies with equal force in the present case and independently supports the Town's right to reorganize its Fire Department to the same three-platoon, 56-hour workweek structure without bargaining that decision with the Union. Each of these principles similarly defeats any claim by the Union that the Town "bargained away" its authority in the 4-Platoon CBA.

1) The Town Has A Non-Delegable, Statutory Duty To Reorganize Its Fire Department Into A Three-Platoon, 56-Hour Workweek Structure.

The Supreme Court held in North Kingstown that "[a] public employer may not bargain away its statutory duties." North Kingstown, 107 A.3d at 313 (citing Vose v. R.I. Bhd. of Corr. Officers, 587 A.2d 913, 915 (R.I. 1991)). Because the North Kingstown Charter gave the town the power to reorganize its fire department, the town had no duty to bargain with the union before implementing the reorganization, and no interest arbitration panel could have jurisdiction over the reorganization. North Kingstown, 107 A.3d at 318.

By Charter, the specific right and responsibility to reorganize the Town of East Greenwich's Fire Department are vested exclusively in the Town, through its Manager and Council. Section C-85 of the Town's Home Rule Charter unambiguously states that the Town

Manager "has power and shall be required to: * * * [r]eorganize departments subject to the approval of the Town Council, notwithstanding any section to the contrary."[2] The legislature has repeatedly ratified, confirmed, validated, and enacted the Town's Charter, see 2015 R.I. Pub. Laws chs. 29, 33,[3] meaning it is a "special law" of the State and, thus, "trumps" any conflicting general law. See, e.g., Town of Burrillville Police Dep't v. Int'l Bhd. of Police Officers, C.A. No. PC02-5649, 2003 R.I. Super. LEXIS 17, *14 (R.I. Super. Ct. March 7, 2003) (McGuirl, J.) ("ratification" of a home rule charter "results in what is called special legislation, which works to trump explicitly any conflicting provision created by and through general legislation that is applicable to all cities and towns.").

As a result, the Town's statutory duty to reorganize its Fire Department is "non-delegable," and the Town cannot be divested (or divest itself) of that authority through the collective bargaining process, or otherwise. North Kingstown, 107 A.3d at 313.[4] The Union's

[2] The Charter also states that Fire Chief "has the authority to establish and maintain divisions within the Fire Department," and that "[t]he further organization of the Department shall be made by the Fire Chief with the approval of the Town Manager and the Town Council." See Town Charter at C-109(A). However, the Town Manager's power and obligation to "[r]eorganize departments subject to approval of the Town Council" are paramount and exist "notwithstanding any section to the contrary." See Defs. of Animals v. Dep't of Envt'l Mgmt., 553 A.2d 541, 543 (R.I. 1989) (defining the term "notwithstanding" when used in a statute to mean "regardless of hindrance by") (citing American Heritage Dictionary at 898 (1981)); see, e.g., E. Providence Sch. Comm. v. E. Providence Educ. Ass'n, No. PB/09-1421, 2010 R.I. Super. LEXIS, at * 16 (R.I. Super. Ct. March 15, 2010) (Silverstein, J.) (construing the phrase "[n]otwithstanding any provisions of the general laws to the contrary," in R.I. Gen. Laws § 16-2-9(d) to mean contrary general laws are "disregard[ed]" in interpreting the qualified phrase).

[3] See also 2005 R.I. Pub. Laws chs. 185, 269; 2001 R.I. Pub. Laws ch. 8; 1996 R.I. Pub. Laws ch. 73; 1989 R.I. Pub. Laws chs. 318, 319; 1977 R.I. Pub. Laws ch. 40; 1973 R.I. Pub. Laws ch. 157.

[4] This principle is firmly embedded in Rhode Island labor law. See Vose v. R.I. Bhd. of Corr. Officers, 587 A.2d 913, 915 (R.I. 1991) ("statutory powers and obligations cannot be contractually abdicated."); see, e.g., Town of West Warwick v. Local 1104, Int'l Ass'n of Firefighters, ("Local 1104"), 745 A.2d 786, 788 (R.I. 2000) (town could not bargain away its authority under its Charter to not employ convicted felons); Town of W. Warwick v. Local 2045, 714 A.2d 613, 614 (R.I. 1998) (same); R.I. Council 94, AFSCME v. State,714 A.2d 584, 591-92 (R.I. 1998) (labor contract cannot be interpreted so as to strip the director of the statutory power to regulate prison labor); State Dep't of Mental Health, Retardation, & Hosps. v. R.I. Council 94, ("MHRH"), 692 A.2d 318, 324-25 (R.I. 1997) (department director's policy regarding the number of consecutive hours department employees could voluntarily work, unilaterally adopted pursuant to director's statutory power and authority, could not be bargained away in a labor contract, subjected to arbitration or eroded by past practice); Pawtucket Sch. Comm. v. Pawtucket Teachers' All., Local No. 930, 652 A.2d 970, 972 (R.I. 1995) (school committee cannot bargain away its responsibility of evaluating bilingual language programs for state law compliance); Sch. Comm. v. Johnston Fed'n,

assertion that the Town, by negotiating the 4-Platoon CBA, has divested itself of its statutory power and responsibility to reorganize the department is plainly wrong. Id. To the extent that the 4-Platoon CBA does so, it is null and void. See Charter at Section C-29 ("Any contract, verbal or written, made in violation of this Charter shall be null and void. * * *"); see also Vose, 587 A.2d at 915 ("contracts entered into in contravention to a state statute * * * are illegal, and no contract rights are created thereby.") (quoting Power v. City of Providence, 582 A.2d 895, 900 (R.I. 1990)). North Kingstown is on all fours with this case, and the Town should be granted a declaration upholding its right to reorganize its Fire Department regardless of any contract provision or general law.

2) The Town's Decision To Reorganize Its Fire Department Into A Three Platoon, 56-Hour Workweek Structure Goes To The Essence Of The Mission.

The Supreme Court established in North Kingstown that the decision to reorganize from a four platoon, 42-hour workweek structure to a three platoon, 56-hour workweek structure goes to the essence of the Town's mission. North Kingstown, 107 A.3d at 313. In North Kingstown, the power and responsibility to reorganize its fire department could not be restricted by contract because it went to the essence of the town's mission. Id. The same is true of East Greenwich. The Town's Charter, its organic law, illustrates the point. Section C-85 holds that the Town Manager "has power and shall be required to: * * * [r]eorganize departments subject to the approval of the Town Council, notwithstanding any section to the contrary." The Town has also retained all powers and responsibilities that go to the essence of its mission; Section C-3 of the Charter provides, in relevant part:

> The Town has all the powers granted to a town and all the powers possible for a town to have under the Home Rule Charter Amendment and under the

652 A.2d 976, 977 (R.I. 1995) (school committee could not "contract away" its statutory authority to dismiss non-tenured teachers).

> Constitution and laws of this state together with all the implied or incidental powers necessary to carry into execution the powers granted.

Moreover, the Town and the Union have expressly recognized and memorialized this essential, core power in the 4-Platoon CBA, which states, in relevant part: "The Department retains all the powers and rights to . . . [d]etermine the mission of the Fire Department and the personnel, methods, means and procedures necessary to most efficiently fulfill that mission." Exhibit A at p. 8.

Just as in North Kingstown, the Town is seeking to reorganize from a four platoon, 42-hour workweek structure to a three platoon, 56-hour workweek structure. Just as in North Kingstown, the decision to reorganize the East Greenwich Fire Department goes to the essence of the Town's and the Fire Department's mission. Therefore, the Town is "not at liberty to bargain away [its] powers and responsibilities" to implement the reorganization. North Kingstown, 107 A.3d at 313; N. Providence Sch. Comm. v. N. Providence Fed'n of Teachers, Local 920, 945 A.2d 339, 347 (R.I. 2008).

3) The Town May Not Delegate To An Arbitrator Its Statutory Obligation And Authority To Reorganize Into A Three Platoon, 56-Hour Workweek Structure.

Under North Kingstown's holding, the Town cannot delegate to an arbitrator the exercise of its statutory power and obligations, or decisions related to the essence of its mission, including a decision to reorganize the Fire Department from four platoons to three platoons. North Kingstown, 107 A.3d at 313. Public employers in Rhode Island cannot divest themselves of their core duties, including statutory duties and those duties that go to the essence of their mission, by way of labor negotiations, past practices or arbitration. See City of Cranston v. Int'l Bhd. of Police Officers, Local 301, 115 A.3d 971, 978 (R.I. 2015) (hereafter "Local 301") ("This Court has also noted that 'statutory obligations cannot be bargained away via contrary provisions

in a CBA, nor can they be compromised by the past or present practices of the parties. And they certainly cannot be negated by an arbitrator who purports to do so through the medium of 'contract interpretation.'") (citation omitted; emphasis by court)). Thus, the Town's decision to reorganize its Fire Department is non-delegable and cannot be divested to an arbitrator or limited through any arbitration procedure. See also R.I. All. of Soc. Servs. Emples., Local 580, 747 A.2d at 469 (non-delegable rights cannot be bargained away).

4) The Town's Decision To Reorganize Its Fire Department Into A Three Platoon, 56-Hour Workweek Structure Lies At The Core Of Its Entrepreneurial Control And Therefore Is Not Subject To Bargaining.

Fourth, the Court cited to the "well-established" rule that "certain managerial decisions, which lie at the core of entrepreneurial control over an organization . . . are strictly within the province of management." North Kingstown, 107 A.3d at 313-14 (internal quotations and citations omitted). For these core management rights, "the choice itself of whether or not to implement a particular management decision is not subject to mandatory bargaining and need not be submitted to arbitration." Id. at 314. "This holds true notwithstanding the fact that such a decision 'may have effects—sometimes profound effects—upon th[e] [terms and] conditions' of employment." Id. (brackets by Court) (quoting Providence Hosp. v. NLRB, 93 F.3d 1012, 1018 (1st Cir. 1996)). North Kingstown held that the decision to reorganize from four platoons to three platoons is a managerial decision that lies at the core of a town's entrepreneurial control. North Kingstown, 107 A.3d at 313-14 (citations omitted). The Court found support for its holding in the management rights clause in the parties' (expired) labor contract, which stated, among other things, that the town "retained all other rights and responsibilities inherent in the Town Council, Town Manager, Director of Public Safety and the Fire Chief." Id. at 314 n.7.[5]

[5] North Kingstown also relied, in part, upon decisions from other jurisdictions in holding that a municipality has no duty to bargain or arbitrate its decision to exercise its management right to reorganize its fire department into a three

Similarly, here, the 4-Platoon CBA reserves to the Town "all the powers and rights to . . . [d]etermine the mission of the Fire Department and the personnel, methods, means and procedures necessary to most efficiently fulfill that mission * * * [and] Determine the size and composition of the work force." Exhibit A at p. 8. Thus, this Court should similarly declare that the Town's right to reorganize from a four platoon, 42-hour workweek structure to three platoon, 56-hour workweek structure is a core management right over which it has no duty to bargain or arbitrate. North Kingstown, 107 A.3d at 313-314.

In sum, as the Court held in North Kingstown under materially identical circumstances, the Town can "assert the decision to implement the three-platoon structure as a management right. The [Town] is not required to bargain with the union regarding this decision . . . Additionally, the [Town] may not be compelled to submit the decision itself to interest arbitration." Id. at 318.

B. Any Claim That The Town Has Bargained Away Its Statutory Right And Responsibility To Reorganize The Fire Department Into A Three Platoon, 56-Hour Workweek Structure Is Contrary To Settled Rhode Island Law.

The Union has and will likely continue to claim that the 4-Platoon CBA is an impediment to the Town's ability to reorganize from a four platoon, 42-hour workweek structure into a three platoon, 56-hour workweek structure. According to the Union, the Town has "bargained away" its ability to reorganize the Fire Department because the 4-Platoon CBA is specifically and expressly tailored to a "four platoon system." See generally Exhibit A.

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platoon, 56-hour workweek structure. North Kingstown, 107 A.3d at 314-315, citing State ex rel. Quiring v. Board of Education of Independent School District No. 173, Mountain Lake, Minnesota, 623 N.W.2d 634, 640 (Minn. Ct. App. 2001) (holding that reorganization of organizational structure is a matter of inherent managerial policy that does not require negotiations with bargaining units); Appeal of International Association of Firefighters, AFL-CIO Local 1088, 123 N.H. 404, 462 A.2d 98, 100 (N.H. 1983) (upholding determination that alteration of fire department's "platoon size was a subject falling solely within management discretion"); Borough of Atlantic Highlands v. Atlantic Highlands PBA Local 242, 469 A.2d 80, 85 (N.J. Super. Ct. App. Div. 1983), cert. den., 96 N.J. 293, 475 A.2d 588 (N.J. 1984) (holding that, based on particular facts, "issue of shift changes is nonnegotiable").

But this claim is irreconcilable with North Kingstown, Vose, State, Dep't of Mental Health, Retardation, & Hosp. v. R.I. Council 94, A.F.S.C.M.E., 692 A.2d 318, 324 (R.I. 1997) (hereafter, "MHRH"), and the many other Supreme Court decisions which hold that public employers may not "bargain away" their non-delegable statutory duties and responsibilities. Indeed, in holding that a neighboring town's decision to implement the same reorganization is an inalienable right of management, the Supreme Court held that public employers "may not bargain away [their] statutory duties," nor may they "bargain away their powers and responsibilities with respect to the essence of the[ir] * * * mission." North Kingstown, 107 A.3d at 313; see also id. at 313-314.

Thus, the fact that the 4-Platoon CBA expressly calls for a four platoon organizational structure cannot limit the Town's right to reorganize into a three platoon, 56-hour workweek structure. To the extent the Union claims that any provision of the 4-Platoon CBA restricts or prevents the Town from reorganizing into a three platoon, 56-hour workweek structure, the provision must yield to the Town's non-delegable management right. See, e.g., MHRH, 692 A.2d at 324 (vacating arbitration award that construed a CBA as restricting the public employer's ability to set the number of hours worked by its employees and finding "there are limits to the extent that a statutory power and responsibility may be bargained away in a labor contract") (citation omitted); Vose, 587 A.2d at 916 (holding that CBA "shall not be interpreted as restricting the [public employer's] statutory power to order mandatory involuntary overtime.").

By ratifying and enacting the Town's Charter, the legislature has made a "special law" providing that the Town Manager "has power and shall be required to: * * * [r]eorganize departments subject to the approval of the Town Council, notwithstanding any section to the

contrary," and that "[a]ny contract, verbal or written, made in violation of this Charter shall be null and void. * * *". Town Charter at Section C-85 (emphasis added); 2015 R.I. Pub. Laws chs. 29, 33. As a result, any provision of the 4-Platoon CBA requiring the Town to maintain a four platoon, 42-hour workweek structure is contrary to law, unenforceable and "shall be null and void." Town Charter at Section C-85; see, e.g., Town of W. Warwick v. Local 2045, 714 A.2d 613, 614 (R.I. 1998) (town could not bargain away its authority under its legislatively ratified Charter prohibiting the employment of convicted felons); Town of Burrillville Police Dep't, 2003 R.I. Super. LEXIS 17, at *14 (ratified home rule charter provision results in "special legislation, which works to trump explicitly any conflicting provision" of the general laws, including statewide labor laws such as the Law Enforcement Officers' Bill of Rights); see also Town of Johnston v. Santilli, 892 A.2d 123, 129 (R.I. 2006) (special act that ratifies town charter takes precedence over any inconsistent provisions of the general laws); Local No. 799, Int'l Ass'n of Firefighters v. Napolitano, 516 A.2d 1347, 1349 (R.I. 1986) (validation of home rule charter by special legislation supersedes inconsistent general laws).

For these reasons, this Court should resolve the controversy between the Town and the Union and enter the declaratory judgments in favor of the Town as set forth in Count I of the Complaint.

IV. THE 4-PLATOON CBA'S PROVISIONS APPLICABLE TO A "FOUR PLATOON SYSTEM" EXPRESSLY DO NOT APPLY TO EMPLOYEES ASSIGNED TO A THREE PLATOON SYSTEM AND THEREFORE ARE SUBJECT TO EFFECTS BARGAINING UNDER THE FFAA'S PROCEDURES.

In Count II, the Town requests declarations concerning the Supreme Court's command that "the effects of th[e] decision [to reorganize into three platoons] are subject to the FFAA's bargaining requirements." North Kingstown, 107 A.3d at 315 (emphasis added). In North Kingstown, the "heart" of the litigation was "the town's unilateral implementation of a three-

platoon structure and the effects of that reorganization." Id. at 312 (emphasis added). North Kingstown held that the management right to reorganize to a three platoon, 56-hour workweek structure is not subject to bargaining or arbitration, but "there is an important distinction between the right to bargain about a core entrepreneurial business decision (a right which a union does not possess) and the right to bargain about the effects of that decision on employees within a bargaining unit." Id. at 314 (quoting Providence Hosp., 93 F.3d at 1018). North Kingstown further held that when the reorganization impacts a term or condition of employment, the employer has a duty to negotiate with the Union. The "duty, however, is limited to the obligation to negotiate over the effects." Id. at 314.

North Kingstown concluded "that while the decision to implement the three-platoon structure is a management right, it remains that the effects of that decision are subject to the FFAA's bargaining requirements." Id. at 315. Upon proper and timely notice from a union, a municipality is required to bargain over the effects of its management right to implement a three platoon, 56-hour workweek structure. "[P]rovided that the union complies with the FFAA's requirements and makes timely requests, the town must bargain regarding the effects of its decision to implement the three-platoon structure . . . [and] provided that the union complies with the FFAA's requirements and makes timely requests, the union may submit unresolved issues regarding the effects of the town's decision to interest arbitration." Id. at 319.

In this case, the 4-Platoon CBA contains twenty-three provisions that, on their face, are expressly applicable only to employees assigned to a four-platoon system, and not to employees assigned to a three platoon system or any other organizational structure.[6] Even the wage and

[6] The twenty-three provisions of the 4-Platoon CBA that are expressly applicable only to employees assigned to a four-platoon system are: [1] the "vacation day" definition in Section 3; [2] the "vacation week" definition in Section 3; [3] the "work day" definition in Section 3; [4] Section 6-1 (Duties & Responsibilities); [5] Section 6-2(a) (Duties & Responsibilities); [6] Section 13-3 (Seniority); [7] Section 13-4 (Seniority); [8] Section 13-6 (Seniority); [9]

overtime pay provisions are restricted to "[e]mployees assigned to the four platoon system." See Section 26-1, Section 39-1 and Section 40-1 of the 4-Platoon CBA, at Exhibit A. Section 61 contains a "Table of Organization" that expressly refers to an "East Greenwich Fire Department (4 Platoon System)." See Exhibit A.

The 4-Platoon CBA was negotiated and took effect after North Kingstown was decided. See Exhibit A. Clearly, the parties were on notice that the Town might adopt a three platoon, 56-hour workweek system, and they expressly protected their right to bargain over these issues in that event, for once the three platoon decision was made, its most significant effect was to render nugatory vast swathes of the 4-Platoon CBA.

North Kingstown holds that the resolution of all of these issues has to be achieved by recourse to the procedures and requirements of the FFAA, and the Court should so declare here as set forth in Count II of the Complaint. See generally FFAA, R.I. Gen. Laws §§ 28-9.1-6 to -11; North Kingstown, 107 A.3d at 314-315, 319.

V. THE COURT SHOULD ENTER JUDGMENT ON COUNT IV BECAUSE IT IS UNLAWFUL FOR THE TOWN TO COMPENSATE EMPLOYEES WHEN THEY ARE PERFORMING WORK FOR THE UNION

The 4-Platoon CBA contains provisions that require the Town to compensate employees of the Fire Department for performing services in behalf of the Union. These provisions are unlawful and void. See R.I. Gen. Laws § 28-7-13(3)(iii).

Section 21-3 of the 4-Platoon CBA unlawfully requires the Town to compensate up to three (3) elected Union officials "for bargaining unit business in connection with conferences

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Section 14-2 (Vacations); [10] Section 15-2 (Sick Leave); [11] Section 17-2 (Personal Leave); [12] Section 26-1 (Wages); [13] Section 27-1 (Holidays); [14] Section 33-1 (Clothing Allowance and Uniforms); [15] Section 33-2 (Clothing Allowance and Uniforms); [16] Section 33-5 (Clothing Allowance and Uniforms); [17] Section 34-1 (Turnout Gear); [18] Section 35-2 (Reimbursement for Medical Expenses); [19] Section 36-1 (Hours); [20] Section 37-1 (Vacancies); [21] Section 39-1 (Overtime Pay); [22] Section 40-1 (Call Back Pay); and [23] Section 61 (Table of Organization). See Exhibit A (4-Platoon CBA).

with its' [sic] attorney or Union representative regarding contract negotiation matters and/or arbitration matters concerning the Collective Bargaining Agreement and similar time off for conferences relative to bargaining unit grievances and grievance arbitration and attendance to such grievance arbitration hearings." Exhibit A at p. 19 (emphasis added).

Likewise, Sections 21-1 and 21-2 of the 4-Platoon CBA require the Town to compensate up to three (3) elected Union officials "to attend meetings with the Rhode Island State Fire Fighters Association and State and National Conventions of the International Association of Fire Fighters . . ." and to attend "conferences with the [Union] membership when said conferences are for the purpose of explaining or ratifying this agreement." Id.

Section 28-7-13(3) of the Rhode Island General Laws provides, in pertinent part:

> "It shall be an unfair labor practice for an employer to: . . .
>
> (3) Dominate or interfere with the formation, existence, or administration of any employee organization or association, agency, or plan which exists in whole or in part for the purpose of dealing with employers concerning terms or conditions of employment, labor disputes, or grievances, or to contribute financial or other support to any such organization, by any means, including, but not limited to, the following: . . .
>
> (iii) By compensating any employee or individual for services performed in behalf of any employee organization or association, agency or plan, or by donating free services, equipment, materials, office or meeting space, or any thing else of value for the use of any employee organization or association, agency, or plan; provided that an employer shall not be prohibited from permitting employees to confer with him or her during working hours without loss of time or pay."

These statutory commands are unambiguous. The Town cannot compensate any employee for performing union business. It cannot "donate free services" to the Union. Indeed, it cannot lawfully contribute any "support" to the Union "by any means." R.I. Gen. Laws § 28-7-13(3)(iii); cf. R.I. Bhd. of Corr. Officers v. State Dep't of Corr., 707 A.2d 1229, 1230 (R.I. 1998) (upholding on other grounds State's elimination of practice of paying "employees to work

full time on union matters"). When a statute is unambiguous, the language must be given its plain meaning and the Court's "interpretive task is done." Shine v. Moreau, 119 A.3d 1, 9 (R.I. 2015) (also explaining that "the plain statutory language is the best indicator of legislative intent."). It is a "fundamental principle" that "when the language of a statute is clear and unambiguous, [the] Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings" and "abstain from judicial construction." Prew v. Emple. Ret. Sys., 139 A.3d 556, 561 (R.I. 2016).

Section 28-7-13(3)(iii) contains only one exception to its broad prohibition on any form of taxpayer support for public sector unions: the "employer shall not be prohibited from permitting employees to confer with him or her during working hours without loss of time or pay."

When a legislature enumerates an exception to a general statutory rule, the legislature excludes all other exceptions to the general rule. Kenyon v. United E. Ry., 151 A. 5, 8 (R.I. 1930) ("the enumeration by the legislature of specific exceptions by implication excludes all others"); Batcheller-Durkee v. Batcheller, 97 A. 378, 383 (R.I. 1916) ("It is an ancient maxim of the law that the specification of one thing is the exclusion of a different thing--Enumeratio unius est exclusio alterius."); see also Ret. Bd. of the Emps. Ret. Sys., 721 A.2d 872, 877 (R.I. 1998) (applying the statutory-construction principle of expressio unius est exclusio alterius to exclude payment to parties not mentioned in statute). Exceptions to broad statutory prohibitions must be read narrowly to preserve the primary operation of the statute and the announced will of the people. Commissioner v. Clark, 489 U.S. 726, 739 (1989). Exceptions cannot be read into a statute that are not there. Prew v. Emple. Ret. Sys., 139 A.3d at 561. Clearly, then, on the well-established rules of statutory interpretation in Rhode Island, Sections 21-1, 21-2 and 21-3 of the

4-Platoon CBA are unlawful.

It is also settled in Rhode Island that a collective bargaining agreement cannot contravene state law. Vose, 587 A.2d at 915 ("contracts entered into in contravention to a state statute * * * are illegal, and no contract rights are created thereby.") (quoting Power, 582 A.2d at 900); see also R.I. All. of Soc. Servs. Emples., Local 580, 747 A.2d at 469.

Here, the cited provisions of the 4-Platoon CBA are irreconcilable with R.I. Gen. Laws § 28-7-13(3)(iii). They unmistakably require the Town to contribute financial support to the local, state, and international unions in ways defined and prohibited by R.I. Gen. Laws § 28-7-13(3)(iii). There is no applicable exception. Thus, because the 4-Platoon CBA's provisions are in direct contravention of state law, those provisions "are illegal, and no contract rights are created thereby." Vose, 587 A.2d at 915 (quoting Power, 582 A.2d at 900).

Accordingly, the Court should enter judgment on the pleadings that the Town is not bound by the illegal Sections 21-1, 21-2 and 21-3 of the 4-Platoon CBA, and that the Town is not required to compensate employees of the Fire Department for services performed in behalf of the Union, unless such compensation is solely for an employee to "confer with [the Town] during working hours[.]" See R.I. Gen. Laws § 28-7-13(3)(iii).

VI. CONCLUSION

For the forgoing reasons, the Court should grant the Town's Motion for Judgment on the Pleadings and enter judgment as a matter of law in favor of the Town on Counts I, II and IV of the Complaint.

On Count I of the Complaint, the Court should enter judgment and issue the following declarations:

a. The decision to implement a three-platoon structure in the Town's Fire

Department is a non-delegable management right of the Town. North Kingstown, 107 A.3d at 313-14.

b. The decision to implement a three-platoon structure in the Town's Fire Department goes to the essence of the mission of the Fire Department and the Town. North Kingstown, 107 A.3d at 313.

c. The power, responsibility and obligation to implement a three-platoon structure in the Town's Fire Department is vested exclusively in the Town through its Charter. North Kingstown, 107 A.3d at 313, 318; Town of Burrillville Police Dep't, 2003 R.I. Super. LEXIS 17, at *14 (McGuirl, J.).

d. The Town's non-delegable statutory power, responsibility and obligation to implement a three-platoon structure in its Fire Department may not be bargained away. North Kingstown, 107 A.3d at 313.

e. The Town's non-delegable statutory power, responsibility and obligation to implement a three-platoon structure in its Fire Department may not be delegated to an arbitrator. North Kingstown, 107 A.3d at 313.

f. The Town's non-delegable statutory power, responsibility and obligation to implement a three-platoon structure in its Fire Department may not be restricted by contract. North Kingstown, 107 A.3d at 313-314.

On Count II of the Complaint, the Court should enter judgment and issue the following declarations:

a. While the decision to implement the three-platoon structure is a management right of the Town, the effects of that decision are subject to the FFAA's bargaining requirements. North Kingstown, 107 A.3d at 315.

b. The "FFAA's bargaining requirements" require, inter alia, the Town and the Union to meet and confer in good faith within ten (10) days of the Town's receipt of a written request to bargain from the Union. R.I. Gen. Laws § 28-9.1-6.

c. The "FFAA's bargaining requirements" would then require, inter alia, the Town and the Union to negotiate in good faith over the effects of the Town's decision to implement the three-platoon structure for a period of at least thirty (30) days. R.I. Gen. Laws § 28-9.1-7.

d. If the Town and the Union are unable to reach agreement on the effects of the Town's decision to implement a three-platoon structure within thirty (30) days from and including the date of their first meeting, the FFAA provides the Union with the exclusive remedy of submitting unresolved issues regarding the effects of the Town's decision to interest arbitration, provided the Union has complied with the FFAA's requirements for such submission. R.I. Gen. Laws §§ 28-9.1-2, -9; North Kingstown, 107 A.3d at 319.

e. Among others, the following Sections of the 4-Platoon CBA, by their express terms, are neither applicable nor enforceable with respect to employees of the Fire Department assigned to a three-platoon system: Section 15-2; Section 26-1; Section 33-5; Section 36-1; Section 39-1; Section 40-1; and Section 60-1. See North Kingstown, 107 A.3d at 314-315, 319; Exhibit A

f. Among others, Sections 36-1 and 60-1 of the 4-Platoon CBA are unlawful, void and unenforceable as they purport to obligate the Town to maintain a four-platoon system in its Fire Department. See North Kingstown, 107 A.3d at 313-14; Exhibit A.

On Count IV of the Complaint, the Court should enter judgment and issue the following declarations:

a. Section 21-3 of the 4-Platoon CBA, which states that the Town shall compensate up to three (3) elected Union officials "for bargaining unit business in connection with conferences with its' [sic] attorney or Union representative regarding contract negotiation matters and/or arbitration matters concerning the Collective Bargaining Agreement," is unlawful, unenforceable, and void ab initio. R.I. Gen. Laws § 28-7-13(3)(iii).

b. Section 21-3 of the 4-Platoon CBA, which states that the Town shall compensate up to three (3) elected Union officials to attend "conferences with its' [sic] attorney or Union representative . . . relative to bargaining unit grievances and grievance arbitration and attendance to such grievance arbitration hearings," is unlawful, unenforceable, and void ab initio. R.I. Gen. Laws § 28-7-13(3)(iii).

c. Section 21-1 of the 4-Platoon CBA, which states that the Town shall compensate up to three (3) elected Union officials to attend "conferences with the [Union] membership when said conferences are for the purpose of explaining or ratifying this agreement," is unlawful, unenforceable, and void ab initio. R.I. Gen. Laws § 28-7-13(3)(iii).

d. Section 21-2 of the 4-Platoon CBA, which states that the Town shall compensate up to three (3) elected Union officials "to attend meetings with the Rhode Island State Fire Fighters Association and State and National Conventions of the International Association of Fire Fighters," is unlawful, unenforceable, and void ab initio. R.I. Gen. Laws § 28-7-13(3)(iii).

Respectfully submitted,

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Dated: March 9, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of March, 2018, I filed and served the foregoing document through the electronic filing system on the following parties:

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