RULING DENYING TEMPORARY INJUNCTION

Firefighters in Tylerton claim their lives and fortunes are in peril. They say the peril was created in July when the fire district reduced the minimum number of firefighters on duty from 5 to 3, allegedly violating a contractual 5-firefighter minimum. They have claims about this in front of the State Board of Mediation and Arbitration and the State Board of Labor Relations. They admit they normally would have no right to be in court at this stage. They are here because they claim the danger is so great that they cannot wait the 30 to 60 days the parties agree it would take to get an interim decision from the State Board of Labor Relations. The firefighters seek a temporary injunction ordering the fire district to return to staffing the firehouse with a minimum of five firefighters at all times and requiring them to rehire the nine firefighters the district laid off.

In 2010 the Supreme Court made clear in *Aqleh v. Cadlerock Joint Venture II, LP* that to win a temporary injunction a party must prove they are likely to win their claim, they have no adequate remedy at law, and they face a substantial probability of irreparable harm without immediate relief.[1] Because it is not substantially probable that the firefighters will face irreparable harm in the next 60 days, the firefighter's

[1] 299 Conn. 84, 97-98 (2010).

request for a temporary injunction is denied. A day-long hearing held on August 13, 2014 revealed the following salient facts showing no such emergency exists:

- Rescues at structure fires are the most dangerous things firefighters face.
- There have been just 3 or 4 rescues at structure fires within the district within the last 28 years.
- Even without rescues, structure fires are dangerous.
- The department faced 16 structure fires last year. They represent less than 1% of the department's work which consists mostly of far safer work collaborating with the police, ambulance companies and paramedics on emergency medical calls.
- The written recommended standard in firefighting is 4 men to respond to a structure fire.
- Tylerton Fire District currently requires a minimum of 3 firefighters at all times but has 4 firefighters on almost every shift.
- If needed for safety, the department can keep 4 firefighters on duty at all times because the contract allows the department leadership to call in additional firefighters as needed to ensure 4 men are on duty.
- Even a 5-man minimum could be achieved without rehiring the laid off firefighters or violating the contract because the gaps can be filled by other firefighters working overtime.
- If needed for a structure fire, the fire official in charge at the scene can call in any or all of the total 16 firefighters the district employs. They work one 24-hour day and then get 72 hours off.
- Mutual aid from adjoining departments can arrive to help within as little as 4 minutes from the 17 or 18 firefighters on duty at the military base

fire department and up to 10 minutes or so from the rest of the 9 total fire companies within Beach Pond where the fire district is located.

- The department operated with a 3-firefighter minimum in the 1980s and a 4-firefighter minimum after that.

- The nearby City of Shoreton Department recently used a 3-firefighter minimum and now uses a 4-firefighter minimum.

- While the fire chief believes the 3-firefighter minimum presents his department with a manpower emergency, he does not believe it is an imminent danger so grave that it could not wait 30-60 days to resolve—although he said 60 days was "stretching it." He agreed that safety was not dependent exclusively on the 5-firefighter minimum but several factors, including training and good judgment. He said there was no "imminent and irreparable threat" caused by the reductions.

Regardless of numbers, nothing can change the fact that fighting a fire is risky and fires spread quickly. The serious event that occurs once in a decade may happen anytime. What matters now is to use common sense and probabilities to assess the danger faced over the next 30-60 days. At least one witness for the firefighters—the former Westwood deputy fire chief—insisted there was not a moment to lose. He refused to acknowledge that a lower risk of fires means lower risks to firefighters. To him firefighters who respond to 1 major fire a year have just as much a chance of being hurt as those who respond to a 100 major fires a year. This is like saying a man who is playing Russian Roulette faces no greater risk by pulling the trigger 5 times than he does by pulling it once. Besides violating high school math lessons about

permutations, this approach defies common sense. It is not a sound basis for judicial decision making.

While anything can happen, it is not substantially probable that during the next 30-60 days: (1) someone will have to be rescued from a structure fire in Tylerton, (2) it will fall on a day where the department has just three firefighters on duty, (3) the rescue will have to be completed before extra help can arrive, and; (4) a firefighter will be injured or killed rescuing the victim. This is in part because there have been just 3 or 4 of these rescues in 28 years. It is also because, without any help from the court, the department has mostly and can totally prevent falling below the recommended minimum by keeping 4 firefighters on duty during every shift. Risks not involving rescues can similarly be reduced without the court's help by keeping 4 firefighters on duty during every shift—if the department leadership judges that using the recommended minimum is needed for safety.

The firefighters have asked a lot. As our Supreme Court made clear in *Kolenberg v. Board of Education* the courts normally have no subject matter jurisdiction in a case like this because it is presumed to belong in front of the administrative agencies that have first crack at labor disputes.[2] It is true—emergencies can justify immediate court intervention. As the Court held in 1995 in *O & G*

[2] 206 Conn. 113, 123 (1988).

Industries, Inc. v. Planning & Zoning Commission, where waiting would be futile, it is not required.[3] Because death—unlike money loss—can never be undone, waiting for action while people are injured or die is the classic example of futility. If that were judged substantially probable here, it would merit immediate intervention. Because it is not substantially probable, an extraordinary usurpation of the agencies' functions would be wrong. Doing it to make up laid off employees' financial losses is even less permitted. First, the laid off firefighters are in no physical danger from fires. Second, as the Supreme Court held in *Cahill v. Board of Ed. of City of Stamford* in 1982, in every way recognized by law, financial losses can be made up by payment of money damages at a later date. [4]

There is no reason to decide the parties' hotly contested rights under the contract. Because it is not substantially likely that the firefighters will be irreparably harmed in the next 60 days, they can get no temporary injunction even if they are right about the contract.

The temporary injunction is denied. Because potentially granting it was the sole basis for the court having subject matter jurisdiction, denying it means the court has no subject matter jurisdiction. Therefore, the case is dismissed.

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[3] 232 Conn. 419, 429 (1995).
[4] 187 Conn. 94, 98 (1982).

BY THE COURT

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Moukawsher, J.