

Coventry Fire District
Special Meeting, February 25, 2015, 7:00 PM, Club Jogues
Minutes

1. Emergency Evacuation Procedures were reviewed by Frank Palin
2. Roll call was taken. Present were John Cook, John D'Onofrio, Frank Palin, Sam Rachiele, and Brenda Raposo.
3. Pledge of Allegiance led by John Cook
4. Discussion on the legality, validity and lawfulness of the contract between the Coventry (Anthony) fire district and chief Paul Labbadia, dated January 28, 2009.

A. The board requested legal counsel Timothy Williamson to provide a synopsis of the findings of attorney William Harsch's report, regarding the investigation of Chief Paul Labbadia. The synopsis only pertains to the portion of the investigation that deals with the validity and legality of the contract. The synopsis does not include any findings as they pertain to the chief's actions, conduct or behavior while performing his duties as chief of the district.

- i. The first article of review is the 2007 By-Laws: Page 2, Article II
ELECTIONS, OFFICERS, & OFFICIALS - Section 3

A. Appointed Officials

1) The following district officials shall be appointed by the District Board of Directors and shall serve at their will:

FIRE CHIEF

They shall perform the duties as set forth by the Board of Directors and shall act in the best interest of the fire district.

- ii. The second article of review is 2008 Amendments to the District Charter. Per SENATE BILL S 2287 (Blais and Raptakis) and HOUSE BILL H 7778 (Moffitt, Serpa and Sullivan)
“ The chief of the fire district shall be appointed by the board of directors and will serve at the pleasure of the board of directors. The board of directors shall set the qualifications for the chief of the fire district.”
- iii. The third article of review is 2009 contract between the Coventry Fire District and fire Chief Paul Labbadia. The contract is deemed to be unlawful, illegal and invalid and as such it is null and void. The rationale behind this decision is based on the facts and the authority that is available to the Coventry Fire District and its Board of Directors.
 - a. Date of the Contract is January 28, 2009; which means the terms and conditions of the contract were contemplated subsequent to the 2007 change in the District's By-Laws and the 2008 Amendments to the District's Charter. Both

authorities indicate that the Chief of the Fire District shall

(a) “serve at the will of the District Board of Directors”

(b) The Chief of the fire district shall be appointed by the board of directors and will serve at the pleasure of the board of directors

- b. Due to the contradiction that exists in the legal authorities that were recognized by both the Coventry Fire District and its Board of Directors prior to the contemplation of said “contract” the document entered into by the parties cannot be deemed legal as the then Coventry Board of Directors had no legal authority to enter into an agreement that violates both State Law and the District’s By-Laws.
- c. As Chief Labbadia serves at the will of the Board of Directors and serves at the pleasure of the Board of Directors; the former Board of Directors (that was elected for the 2009 year) had absolutely no authority to attempt to enter into an agreement that usurped those particular authorities.
- d. Any agreement that allows for a 5 year contract within the same period of time that the Board of Directors is subject to the election cycle (that is also dictated by the District Charter) would allow for the abdication of that authority. Theoretically, and in this instance realistically; a former Board could tie the hands of a future Board by violating the By-Laws and the District Charter by such contractual language
- e. The following cases were researched as it relates to this specific area of the law:
 - 1. Montaquila v. St. Cyr, 433 A.2d 206 (1981)
 - 2. Power v. City of Providence, 582 A.2d 895 (1990)
 - 3. Town of East Greenwich v. O’Neil, 617 A.2d 104 (1992)
 - 4. Marran v. Baird, 635 A.2d 1174 (1994)
 - 5. Technology Investors v. Town of Westerly, 689 A2d 1060 (1997)
 - 6. Casa DiMario Inc. v. Richardson, 763 A.2d 607 (2000)
 - 7. Macera v. Cerra, 789 A.2 890 (2002)
 - 8. Kells v. Town of Lincoln, 874 A.2d 204 (2005)
 - 9. Town of West Warwick v. West Warwick School Comm R.I.D.E. 0017-09
 - 10. School Comm of Town of WW v. Giroux C.A. KC2010-1106

These cases basically outline the thought process of the RI Supreme Court when it comes to these types of situations regarding the authority of state law, municipal charters, municipal ordinances and the employment of non-collective bargaining employees; and the hiring and firing of same.

The Court has found, that in Rhode Island, contracts cannot run contrary to a state statute or law and no contractual rights are created by such an agreement. Moreover, contract terms that are contrary to public policy are not enforceable.

- f. The language of the document that purports to be an agreement between the then Board of Directors and Chief Labbadia was entered into willfully and knowingly. However, the agreement contains terms and conditions that run directly contrary to the State's law as outlined in the District's Charter (as amended in 2008), and the District's by-laws as adopted in 2007.
- g. The purported agreement allows for the contract to basically run forever unless the Chairman of the Board of Directors places the issue of the contract extension before the Board at a scheduled meeting (at least one year prior to the expiration of the Contract (page 1) In this instance the Chairman would have had to put the contract extension on the agenda “ at least one year prior to the expiration, that would have been Dec 28, 2012 as the original contract was set to expire on December 28, 2013. There exists no such agenda item as of December 28, 2012 through to the present, wherein the contract renewal was discussed.
- h. There also does not appear to be any rule, regulation nor charter amendment and law that specifically authorize the Chairman of the District to have complete control and authority over the placing of matters on the Board of Directors' meeting agendas. Again this would contradict the language of both the Charter and the By-Laws.
- i. The purported agreement was an unlawful exercise of the former Board's powers as outlined in the Charter and By-Laws. In addition, the RIGL clearly indicates that: “That no state agency, department of government, commission, board authority, public corporation, governmental or quasi-governmental body, autonomous or otherwise, which is created by the authority of the general assembly, executive order, or state law, shall enter into any contract or agreement with any individual, firm, or partnership which provides for any of the following upon termination of employment:
(4) which provides for a contract term in excess of three (3) years. (SEE RIGL 36-16-1)

Under RIGL 36-16-2 any contract or other agreement which is made contrary to or in violation of the provisions of 36-16-1 shall be null and void and have no force of effect.

As is quite apparent, this section of the law contains a clause that states “Upon termination of employment”. Obviously there appears to be a problem with the location of this clause; to wit, why would any employer provide a contract term in excess of three years to an employee that they are terminating???. As such, the Supreme Court ruled in *East Greenwich v. O’Neil* that: “Legislative enactments are not always models of style and drafting. It is, however “the function and duty of this court to construe statutes; to establish and effectuate the intent of the legislature. Legislative intent is determined through an examination of the language of the statute itself, and giving the words of the statute their plain and ordinary meaning. The language of both RIGL 36-16-1 and 36-16-2 is plain, clear and unambiguous. There cannot be any doubt that the Coventry Fire District, as an entity, meets the definition as stated in the statute, as a governmental body or a quasi-governmental body. As such, the former Board of Directors, even if the Charter and By-laws language did not include the “service at the pleasure of or the will of”, was legally prohibited from entering into a contract that exceeded three years duration.

However, since that language does exist in both of those authorities, the Board of Directors was not authorized to enter into such an agreement with Labbadia. In addition, the purported document is in direct conflict with the Charter and the By-Laws and RIGL 36-16-1. Labbadia may claim detrimental reliance on the agreement; but he too, cannot plead ignorance of the law.

Because the former Board of Directors had no actual or apparent authority to enter into a purported agreement with Paul Labbadia, and RIGL forbids a 5 year contract, the present Board of Directors is entitled and authorized to reject the contract as being illegal, unlawful and invalid. As such the document and its terms and conditions are null and void.

- iv. Pursuant to these findings, the present Board of Directors is well within its powers and authority to either retain the services of Paul Labbadia or terminate his employment relationship with the District. Either decision would be based and conditioned upon “serving at the pleasure of; or serving at the will of”, as he is an at-will employee. Furthermore, should the decision of the Board be to terminate the employment relationship with Paul Labbadia, said determination can be done without benefit of notice, cause or a hearing of any type. There is no legal mandate to remove an at-will employee who serves at the pleasure of and at the will of the Board for cause.

Therefore; any need to address the investigative report of William Harsch or the media reports that appeared on television, radio, newspaper or social media is not really required at this point. As his employment hiring was conducted in public, any administrative action by the Board of Directors (pro/con) as it relates to that employment may also be conducted in public

B. Thomas DeSimone was invited by the board of directors to speak as a legal representative for Chief Paul Labbadia. Mr. DeSimone spoke on behalf of his brother, John DeSimone, who is the appointed legal counsel for Chief Paul Labbadia

i. Mr. DeSimone stated that he believes that much of Mr. Williamson argument is based on Kells v. Town of Lincoln, 874 A.2d 204 (2005)

1. Mr. DeSimone stated that there is a big distinction between this case and the case of Chief Labbadia. In the Kells matter, the contract specifically states that it only applies to compensation and benefits. Chief Labbadia's contract however does not state that it "only" applies to compensation and benefits but it also states that it applies to a term of years and payment during the term. In the Kells case, the Town of Lincoln charter establishes that the chief of police shall be appointed for an indefinite term (meaning at will). However, by its very terms, the contract both anticipates and resolves any durational issue. The agreement establishes a three year term but critically, it states that the three year term is specifically for the application of compensation and benefit purposes only (emphasis added).

Therefore the court said that thus despite the 3 year term, the parties acknowledge that the chief's tenure is for an indefinite period. It is Mr. DeSimone's belief that in 2009, the Coventry Fire District board had the authority to enter into a contract and that they never said that the period of years stated in the contract is only for compensation and benefits. Even though it was in conflict with the by-laws, the board at the time entered into an agreed contract with Chief Labbadia. The contract is valid if there is consideration and voted upon.

2. In 2008 (see 4 A ii above), the General Assembly stated that the board of directors "should have the power and authority to contract on behalf of the district". The Chief Labbadia contract does not state that the chief is an "at will" employee. The contract applies to compensation as well as a term of years. It is Mr. DeSimone's opinion that the board should have been advised of the laws. They should have also known of contracts in other town committees and contracts of employment. It is contention that Chief Labbadia is not responsible if he has an ignorance of the law.

3. It is his argument that it is well within the power of the board, by charter and by the Supreme Court Law, to enter into contracts and that the contract with Chief Labbadia is not an at-will contract. Based upon this, the board should not terminate Chief Labbadia.

C. The board took Mr. DeSimone's statement under advisement.

D. A motion was made by Mr. D'Onofrio to accept the findings of the board's attorney Timothy Williamson. The motion was seconded by Mr. Cook. There was no further discussion by the board. A vote was taken resulting in 5 in favor and 0 opposed.

5. Discussion of action on the current disciplinary status of Chief Paul Labbadia and on the status of his continued employment with the Coventry Fire District. A motion was made by Mr. D'Onofrio to terminate Chief Paul Labbadia due to the fact that he no longer serves at the will or the pleasure of the Coventry Fire District's board.. The motion was seconded by Mr. Cook. There was no further discussion by the board. A vote was taken resulting in 5 in favor and 0 opposed
6. Discussion of action on releasing the summary of the investigator's report completed by attorney William Harsch. A motion was made by Mr. D'Onofrio to table this agenda item until the next regular monthly meeting. The motion was seconded by Mr. Rachiele. There was no further discussion by the board. A vote was taken resulting in 5 in favor and 0 opposed
7. A motion was made to adjourn by Mr. Cook and seconded by Mr. D'Onofrio. A vote was taken resulting in 5 in favor and 0 opposed.