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LAFAYETTE PARISH
15TH JUDICIAL DISTRICT COURT
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LAFAYETTE PROFESSIONAL
FIREFIGHTERS ASSOCIATION, ET AL

VERSUS NO: 2005-0585

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PARISH OF LAFAYETTE

LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT

*

STATE OF LOUISIANA

REASONS FOR RULING

Presented to the Court is a suit for declaratory judgment and for an injunction filed by various firemen employed by the City of Lafayette against Lafayette City-Parish Consolidated Government. The central issue is whether, as a result of certain events, the City-Parish can reduce the base pay of all Firemen on its force. The parties have stipulated to facts and submitted the matter for decision on those facts and numerous exhibits relevant to the issues. The Court commends the parties on both the competency and co-operation exhibited by their respective counsel.

FACTS

The pay of firefighters employed by Lafayette Consolidated Government (LCG) is established pursuant to pay plans adopted by ordinances of the Lafayette City-Parish Council. These pay plans are subject to La. R.S. 33:1992 which provides for minimum base pay and longevity increases.

In the late 1990's, ways to increase the pay of firefighters were explored by Lafayette Consolidated Government. In November of 2002, a tax millage was approved enabling LCG to increase the base pay of firefighters to \$1833 per month. In 2003, individual firefighters and officials of the Lafayette Firefighters Association (which is not recognized by LCG) committed to take voluntary step up promotions in exchange for an increase in pay above the \$1833 base. Jay Castille, an officer of the Association, advised the LCG Council that the firefighters had agreed to a "trigger clause" that would revert the starting salary back to \$1833 at a point where firefighters refused to accept the step-ups. (All firefighters are not members of the association)

Ordinance 231-2003 was adopted on September 16, 2003. This ordinance provided for a \$1950 starting salary for firemen, conditioned on acceptance of voluntary step-ups, as well as the trigger clause which would revert the salary of all employees to a reduced pay plan, with a

starting salary of \$1833, if the city was obligated to pay overtime as a result of a firemen's refusal to accept a step-up promotion.

Firefighters accepted step-up promotions during fiscal year 03/04 and LCG did not exercise the "trigger clause" during that period.

Ordinance 249-2004 established the pay plan for the next fiscal year. This plan incorporated the 2% pay increase mandated by state law and did not include a provision for step up promotions or a trigger clause. Subsequently, on December 21, 2004, the council adopted Ordinance 290-2004 which substantially reduced the number of exchange days a firefighter could use each year, an unrelated issue. Some firefighters refused step-up promotions after this date, directly resulting in increased overtime liability for LCG. On January 26, 2005 LCG implemented the 231-2003 "trigger clause," and began paying firefighters pursuant to the reduced pay plan with a \$1833 base starting salary.

Ordinance 039-2005 adopted on February 22, 2005, ratified the implementation of the revised pay plan implemented pursuant to the trigger clause.

This lawsuit was filed, challenging the implementation of the "trigger clause" and the subsequent reduction in pay. The petitioners seek a declaratory judgment declaring Ordinance 039-2005, as well as the government's unilateral pay reduction to be in violation of 33:1992B, a breach of contract, and unconstitutional. The plaintiffs further request a mandatory injunction restoring their vested pay rates as legislated by Ordinance 249-2004 and guaranteed by La. R.S. 33:1992 B.

DISCUSSION

The La. Constitution adopted on January 1, 1975 provides in Art. VI broad powers to local governments to control political subdivisions. However, it limited local governments with respect to firemen and policemen, reserving to the legislature that power. In fact it expressly reserved to the legislature the power, if it so chooses, to enact laws increasing the financial burden of political subdivisions. *New Orleans Firefighters Association, et al versus Civil Service Commission of the City of New Orleans*, 422 So.2d 402 (La 1982:) *Ruby, et al versus City of Shreveport*, 427 So.2d 1267 (2nd Cir. App, La 1983). No limitations are placed upon the legislature's power regarding firemen's minimum wage and labor standards statutes. In fact, the cited cases hold that power is exclusive, and reserved by the Constitution.

The Court must now determine if the ordinances passed by the Lafayette City Parish Counsel are inconsistent with the cited law:

Ordinances 231-2003 & 039-2005

Ordinance 231-2003 was adopted after discussion and negotiations with the Lafayette Firefighters Association. Strangely, the city argues it does not recognize this entity to have any authority while alleging a contractual relationship with the firemen through that association. In any event, clearly the Lafayette Consolidated Government had nothing but good intentions when enacting the ordinance. It sought to provide a higher base salary for its firemen and at the same time act within budgetary restraints present at the time.

Nevertheless, pure motives are not a defense if the statute is an illegal infringement on the Legislatures powers reserved to it by the Constitution. Quoting *Bailey, et al versus City of Lafayette*, 904 So. 2d 922, 2005 (La. App. 3rd Cir. 2005), “[t]his Court is aware of the history of the ordinance and the equitable considerations of the parties, but the law is the law, and a conflicting ordinance must yield to state statute.”

The Court has some serious concerns that this ordinance as written, and without the “implementation” of the trigger clause may be contrary to State law, since it seeks to limit a firemens’ right to overtime. However, that issue is not before the court nor considered since the “trigger” was implemented.

The Firemen argue that once the 2% increase in salary guaranteed by the State Law occurred, no reduction in the base pay in effect at the time could be reduced. To do so would circumvent the application of R.S. 33:1992.

The city counters with the position that as long as its base salary is at least that established by state law that it has the power to adjust salaries as necessary to manage the City-Parish coffers.

The council cannot justify disregarding La. R.S. 33:1992 on the basis that the city pays higher than minimum base salaries. See *New Orleans Firefighter versus City of New Orleans* La. 00-1921, 788 So. 2d 1166; (La. 2001) *New Orleans Firefighters versus City of New Orleans* 876 So.2d 211, *Supra*, *Turner versus City of Shreveport*, 437 So 2d 961 (La. App. 2 Cir.), writ denied 442 So. 2d 468 (La. 1983)

It is this Courts opinion that the reduction of the base pay of firemen pursuant to the trigger clause in 0-231-2003 was in conflict with state law with respect to the affected firemen.

To hold otherwise would allow a local government to avoid the guaranteed 2% longevity pay raise established by state law by simply adjusting the base pay downward on an annual basis.

As a result of so holding, the subsequent ordinance adopted in 2005, 0-039-2005, must also fail, since it attempts to do the same thing. (The Court takes no position on its legality when applied to new firemen subsequently hired and who did not yet receive a longevity raise.)

The Court has considered other arguments made by the City-Parish but does not find them meritorious.

Finally, under 0-231-2003 if one firemen, one time, refuses to "step up" the entire fire department would have its pay reduced. This seems nonsensical.

As a result of the foregoing, the Lafayette City-Parish Government is indebted to the plaintiff firefighters employed prior to the enactment of ordinance 0-23-2003 and who were granted the 2% longevity pay raise subsequent thereto. The amount owed is the amount of pay each would have received absent the implementation of the "trigger clause" by ordinance 231-2003 and the enactment of ordinance 039-2005, less the actual pay received.

The Plaintiff's request for a mandatory injunction is also granted. The Lafayette City-Parish Consolidated Government is to restore pay to the affected firefighters consistent with the above holding.

Lafayette, Louisiana this 21st day of November, 2006.



GLENNON P. EVERETT, DISTRICT JUDGE

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