

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 1981-11108

DIVISION "L"

NEW ORLEANS FIREFIGHTERS LOCAL 632

VERSUS

CITY OF NEW ORLEANS, ET AL

PROCEEDINGS held in the above-captioned matter before
the HONORABLE KERN A. REESE, JUDGE presiding on
Thursday, June 11, 2015.

APPEARANCES:

LOUIS L. ROBEIN, JR.

CHRISTINA CARROLL

Attorneys for Plaintiffs

SHARONDA R. WILLIAMS

Attorney for City of New Orleans

VICTOR L. PAPAI

Attorney for the Civil Service

Commission

REPORTED BY:

DENISE K. ETHERIDGE, CCR, OCR

1 one way.

2 We have asked for the alternative
3 relief under Code Section 2504, that since
4 the Court has performed -- has directed the
5 parties, the City of New Orleans in the
6 public officer's name to perform a specific
7 act. In this case the specific act is to
8 pay wages, or pay about benefits, earned
9 benefits and earned wages. And if the
10 defendant fails to comply within the time
11 specified, the Court will direct the act be
12 done by the Sheriff or some other person
13 appointed by the Court, at the cost of the
14 disobedient party, and with the same effect
15 is if done by the party.

16 Your Honor, as you know from -- as we
17 all know from the media and from the
18 disclosure to the Court, the parties are now
19 scheduled to enter into mediation on June
20 25th. All parties have agreed. The details
21 are to be worked out, because the City has
22 proposed that the mediation be global in the
23 sense that it covers not only the claims in
24 the action before you, but claims, some
25 related, some unrelated in the ongoing
26 pension dispute before Judge Giarrusso. And
27 some counter-claims and side-bar claims,
28 so-to-speak, filed in other divisions and in
29 other districts with respect to cross-claims
30 against future entitlements by the pension
31 fund or by future notice. Those would be
32 submitted.

1 It's our understanding we're certainly
2 entering into those mediations, which are
3 essentially negotiations, in good faith.
4 But it is essential that if not today, that
5 at some point very close in the future, that
6 we be allowed to cross-examine, we can
7 subpoena him of course, cross-examine, as we
8 did in the parallel proceeding, the Chief
9 Administrative Officer.

10 There is no dispute, I don't think
11 counsel would dispute the fact, that there
12 are funds available, and that this judgment
13 can be satisfied on a planned systemic
14 basis.

15 Going back to longstanding cases out
16 of the Fourth Circuit, the bottom line is
17 that it is contemptuous, not necessarily to
18 refuse to pay, but it's contemptuous to
19 refuse to even consider a plan to resolve
20 the issue.

21 As the Court is aware, the final
22 judgment, while this litigation started in
23 the 90's with respect to the longevity
24 aspect, we have been kicking this bucket, or
25 several buckets since 2002.

26 And as the Court is aware that much
27 progress was made beginning 2006,
28 post-Katrina, much progress was made. That
29 progress has stalled. And it's time to
30 resume that.

31 And having said that, Your Honor, you
32 had ordered the original trial court

1 judgment, and you had supplemented those
2 judgments to address the issue of the annual
3 millage, the millage derived from that
4 provision of the 1921 Constitution, not the
5 general funding millage, which may be voted
6 upon by the people, but the one and a half
7 mill that is devoted to fire. And I believe
8 it's been in the Constitution since the
9 thirties.

10 The millage for this year is
11 outstanding. The millage had been paid to
12 the police department, members of the police
13 department. It has not been paid to the
14 fire department. That millage is subject to
15 your Judgments, which indicates that the
16 millage has to be supplemented. In other
17 words, a millage for firefighters with "X"
18 number of years is not just simply the base,
19 which we understand the base is
20 approximately \$4,000, but it should also
21 include on top of that those longevity
22 factors.

23 THE COURT:

24 No, I understand that.

25 MR. ROBEIN:

26 We have that issue. We have discussed
27 with the principals the years that the
28 millage under the Nagin administration, and
29 the beginning of the Landrieu
30 Administration, where the millage was paid,
31 but the supplements were not awarded.

32 My understanding is that the fire

1 department, the fire department were to get
2 those calculations, and hopefully in
3 connection with the payment of this
4 millage, resolve that. I mean that's a
5 small can, but it's critical. And it will
6 help, certainly help us going into
7 mediation, that we can get these relativity
8 minor portions of the judgment resolved, so
9 we can go into mediation and resolve what
10 we call the retro-pay, which is subject to
11 the consent order, and the parallel
12 retro-pension, which is -- we were to
13 determine that, and that's going to be
14 determined, I discussed it with the City
15 Attorney, and resolved these issues that
16 now or over time, on a reasonable basis.
17 And unless the City can do that, or if the
18 City refuses to do that, obviously we are
19 back here on contempt again, Your Honor.

20 THE COURT:

21 Okay. All right. Ms. Williams.

22 MS. WILLIAMS:

23 Your Honor, I know that the Court has
24 received the City's briefing on the motion
25 that is pending before the Court.

26 THE COURT:

27 I have.

28 MS. WILLIAMS:

29 I'm sure that the Court is well aware
30 of the City's position regarding the
31 distinction between the mandatory
32 injunction that is pending in this court

1 and a mandamus proceeding, just from a
2 procedural standpoint, that was rendered by
3 Judge Giarrusso in which the firefighters
4 have relied on extensively in their
5 briefing to the Court.

6 The City maintains that a mandatory
7 injunction is procedurally different, just
8 by mere reference to the Code of -- the
9 Civil Code, 3862 specifically references a
10 mandamus and says that you should not be
11 confused between mandatory injunction and a
12 mandamus. They issue under two different
13 sets of procedural rules.

14 We cited to the Court the Boutte case,
15 which is a Fourth Circuit case, quoting a
16 Louisiana Supreme Court case that says, "An
17 injunction cannot be employed to redress
18 alleged consummated wrong or undo you what
19 has already been done."

20 The City maintains its position that
21 this judgment, although it is a consent
22 judgment, the parties entered into good
23 faith discussions to come to a calculation
24 about the back pay, that it is still
25 subject to the procedural vehicle that it
26 was filed under in this Court.

27 And we have also briefed to the Court
28 various statutes and various longstanding
29 law in the State of Louisiana regarding
30 appropriation and whether something is
31 subject to appropriation in this case. To
32 the extent that the firefighters are

1 likening this to a mandamus proceeding,
2 appropriation certainly is a discretionary
3 function within the authority of the City
4 Council. And if there is no appropriation,
5 there is much case law that we cited to the
6 Court that a Court has no authority to
7 order something be paid in preference to
8 other indebtedness that is due by the City
9 of New Orleans.

10 So I think that we briefed the Court
11 extensively on the cases we are relying on.
12 But just to talk to the Court a little bit
13 about good faith efforts and contempt, the
14 sanctions that are being sought here is
15 contempt. And we also briefed the Court on
16 what remedies are available in a contempt
17 proceeding.

18 THE COURT:

19 I'm very aware.

20 MS. WILLIAMS:

21 As the Court is aware, the contempt
22 proceeding is about, just about basically
23 showing deference to the Court, and no
24 disrespect to the Court, the City has a
25 always been in this court and acted in good
26 faith. And in connection with our
27 discussions with the Court we engaged in a
28 very lengthy mediation proceeding expending
29 numerous hours with City employees, and in
30 addition, financial resources to do this
31 lengthy mediation proceeding. And now at
32 the City's suggestion, we are hoping that

1 John Perry, and I know that the Court is
2 aware of Mr. Perry, and --

3 THE COURT:

4 He's very capable, absolutely.

5 MS. WILLIAMS:

6 -- and his capable mediation skills.

7 And we are hopeful that that will result in
8 the path forward. The City remains
9 interested in having these good faith
10 discussions. We are just as interested as
11 the Court in seeing this being resolved and
12 interested in doing that process in good
13 faith.

14 THE COURT:

15 Ms. Williams, as always, your office
16 is to be commended for always being well
17 prepared and researching the law very
18 capably. But the one thing that I have
19 learned about the law, and the one thing
20 that fascinates me about the law is that it
21 can always change, but to make change it
22 has to be put to the test. And the
23 question is how much risk do you want to
24 buy, because the laws on mandatory
25 injunction, haven't seen anything on it at
26 least since 2004, the last thing I think I
27 read. And it might be time to test the
28 waters again. And if I write something
29 that the Fourth Circuit and/or the Supreme
30 Court likes, the law could change. And I am
31 of a mind now, this case goes back to March
32 2nd of 1990, and we are now in June of

1 2015, that it might be time to put it to
2 the test.

3 Now, a couple of things, on the issue
4 of the millage, what's your stand on that?

5 MS. WILLIAMS:

6 Your Honor, as we indicated to counsel
7 for the plaintiffs, we had some
8 disagreement, we thought, on the
9 calculation for the millage for the current
10 year, which is why it was not paid
11 concurrently with the police millage, as
12 Mr. Robein indicated to the Court. The
13 parties met about a week ago to talk about
14 that millage payment. At that time we
15 inquired with the plaintiffs whether they
16 would like us to hold the millage payment
17 to try to work out this dispute about the
18 calculation. I think we came to a
19 resolution. At that time we decided that
20 we, consistent with their agreement, that
21 we would go forward with the payment of the
22 millage. It's my understanding that --

23 THE COURT:

24 Let me put my two cents in on that,
25 pay the millage.

26 MS. WILLIAMS:

27 That was our intention, Your Honor,
28 consistent with our agreement with counsel.
29 Apparently there was a glitch with ADP, and
30 we will be working to get that resolved.

31 THE COURT:

32 Well, tell everybody at ADP and

1 whoever else has a calculator, computer or
2 abacus, I don't care, count it up and pay
3 it. Candidly, I kind of thought June 30th,
4 but I think it needs to be paid by the
5 mediation as a sign of good faith. That
6 would be a good thing. So that's the 25th,
7 that's two weeks. I just looked at a
8 calendar. Let's try to get it done by
9 then. That would make me very happy and
10 encouraged.

11 MS. WILLIAMS:

12 That is our intention, to get it done
13 as quickly as possible, Your Honor.

14 THE COURT:

15 Good. I appreciate that.

16 MS. WILLIAMS:

17 And the other issues that have been
18 brought up by counsel are things -- it just
19 goes to sort of the complexity of the issues
20 that are before us here in terms of
21 resolving this. There are a number of
22 issues that we discussed with plaintiff's
23 counsel in terms of good faith efforts and
24 small payments that might be made. We are
25 continuing those discussions with Mr. Robein
26 as we lead up to this June 25th mediation
27 date and are hopeful that we're able to
28 resolve a number of those issue within the
29 next couple of weeks.

30 THE COURT:

31 Okay. Let me make a few things clear.
32 I appreciate your comments. I would like

1 to here from Mr. Koppelin, Andy, Andrew
2 Koppelin? I want to get his name right.

3 MS. WILLIAMS:

4 Yes, Your Honor, Andrew Koppelin.

5 THE COURT:

6 Affectionately known as "Andy".

7 And not by deposition, live in court,
8 because I want to see his face. I want to
9 check his demeanor. I want to hear his
10 intonation and inflection. And I want to
11 hear his explanation personally, so that
12 there is no misinterpretation, there's no
13 misconstruing comments on paper. I want to
14 hear from him. I think that would be a
15 worthwhile pursuit. And hopefully if this
16 mediation is successful on the 25th I won't
17 have to hear from Mr. Koppelin.

18 Now I went and looked at some dates,
19 and if you're going into mediation, I know
20 there is always, if you're successful there
21 is things that have to be confected, and
22 the "I's" to be dotted and "T's" to be
23 crossed, that I'm going to leave this
24 hearing open. I'm only going to recess it
25 so that we don't have to re-file it. I
26 have open dates on July the 23rd, July
27 30th, and August 6th.

28 And if you happen to confect a
29 settlement of all these issues, which would
30 make we absolutely ecstatic, then we won't
31 have to come back. I'll sign a document to
32 execute a settlement. But if we do then I

1 want to hear from everybody who needs to be
2 heard from. So everybody needs to send out
3 subpoenas to who needs to be sent subpoenas
4 to.

5 MR. ROBEIN:

6 Okay.

7 THE COURT:

8 And make sure that they know that my
9 expectations are they would be here on
10 whatever date we choose and be prepared to
11 go forward.

12 MS. WILLIAMS:

13 Your Honor, just -- Mr. Robein is
14 aware that Mr. Koppelin testified in the
15 other matter that is pending before Judge
16 Giarrusso. There is no need for him to
17 subpoena --

18 THE COURT:

19 That's Division "G", this is Division
20 "L".

21 MS. WILLIAMS:

22 At long as we work out a date, we will
23 get Mr. Koppelin here. There's no need to
24 issue a subpoena.

25 THE COURT:

26 Okay.

27 MS. WILLIAMS:

28 But I do want to ask the Court one
29 thing since we were talking about the
30 mediation and the City was suggesting this
31 to the Court, we also talked about the idea
32 of involving Your Honor in the mediation

1 process.

2 THE COURT:

3 I'm available.

4 MS. WILLIAMS:

5 Okay.

6 THE COURT:

7 I will make myself available.

8 MS. WILLIAMS:

9 Thank you.

10 THE COURT:

11 So y'all want me to come on the 25th
12 or you want me to just hang back?

13 MS. WILLIAMS:

14 It's scheduled the afternoon of the
15 25th. We will check with Mr. Perry to see
16 how he might want to structure that
17 discussion and let the Court know.

18 THE COURT:

19 Because you know. I'll be more than
20 happy to tell him what my feelings are on
21 the subject. It's time to stop kicking
22 this can down the road. And 25 years is
23 long enough. And actually it goes back to
24 '79, as I recall, that's when it first
25 started.

26 MR. ROBEIN:

27 Yes.

28 THE COURT:

29 It's time for this to end. This is
30 too important an issue. And candidly, this
31 administration has the capability and the
32 wherewithal to get this accomplished. I

1 have a great deal of confidence in them in
2 that regard, but we just need to manifest
3 the -- So if we all put our heads together
4 this can be resolved. That's my
5 expectation. And if it's not then this
6 Court will do what it has to do, and that
7 includes everything in the quiver. Okay.

8 MR. ROBEIN:

9 Your Honor, if I could?

10 THE COURT:

11 Yes.

12 MR. ROBEIN:

13 Mediator Perry has asked obviously
14 that each party submit position statements
15 and an outline. Would it be appropriate
16 that the mediator just --

17 THE COURT:

18 Well, no, not now, not to me, and not
19 to involve me that minutely in the process,
20 because technically mediations are not
21 evidence in court. And I don't want to be
22 charged with having any undue prejudice in
23 the matter. But I just wanted to make sure
24 that Mr. Perry understands what my
25 expectations are and that he make every
26 good faith effort to get this resolved.

27 MR. ROBEIN:

28 I think the transcript will relay that
29 message.

30 THE COURT:

31 That's fine. But if I have to do that
32 personally I didn't have a problem with

1 that either.
2 Anything else?
3 MR. ROBEIN:
4 Thank you, Your Honor.
5 THE COURT:
6 You need to see Ms. Sylvas and pick
7 the date. And I'll you see back. This
8 matter recessed until the date that is
9 chosen among counsel.

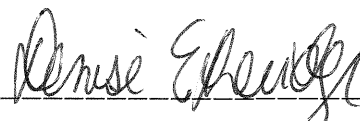
10 (End of proceedings.)

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C E R T I F I C A T E

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Denise K. Etheridge, CCR, OCR