

**SUPREME COURT OF LOUISIANA**

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**DOCKET NO. 2020-C-01231**

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**ARNOLD LOWTHER, ET AL.  
Plaintiffs-Applicants**

**VERSUS**

**TOWN OF BASTROP, ET AL.  
Defendants-Respondents**

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**ON WRIT OF CERTIORARI AND/OR REVIEW**

**ORIGINAL BRIEF OF AMICUS CURIAE, ON BEHALF OF  
PROFESSIONAL FIRE FIGHTERS ASSOCIATION OF LOUISIANA,  
IN SUPPORT OF PLAINTIFFS-APPLICANTS**

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**Review the Ruling of  
SECOND CIRCUIT COURT OF APPEAL  
CIVIL DOCKET NO. CA 20-53586  
WILLIAMS, MOORE, AND STONE, JJ - JUDGES**

**On Appeal from the  
4TH JUDICIAL DISTRICT COURT FOR THE PARISH OF MOREHOUSE  
CIVIL DOCKET NO. 2008-333  
THE HONORABLE JUDGE ROBERT C. JOHNSON, PRESIDING**

**CIVIL MATTER**

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## **I. STATEMENT OF INTEREST OF AMICUS CURIAE**

The Professional Fire Fighters Association of Louisiana (“PFFALA”) respectfully submits that it has an urgent interest in the outcome of this case:

1. PFFALA, which represents, advocates for, and supports professional firefighter organizations and their members throughout the State of Louisiana, has an interest in other cases involving a similar question, the disposition of which are in favor of the Applicants’ position. Louisiana Firefighter organizations have litigated, re-litigated, and continue to litigate statutorily mandated pay and benefit entitlements since 1940! Exhibit A: *Court Ponders Firemen’s Claim for Back Wages*. The Times Picayune, 2/2/1940; Exhibit B: Robertson, Campbell, *New Orleans Mayor May Face House Arrest in Pay Dispute*. The New York Times, 9/4/2015. Most recently, this Court weighed in on the question of pension contributions mandated for Firefighters in *Dunn v. City of Kenner*, No. 2015-C-1175 (3/27/2016), 187 So. 3d 404 (Firefighter class action seeking retroactive adjustments and corrections to city’s pension contributions, as well as retroactive and prospective pay adjustments). This pay litigation continues in the Twenty-Fourth Judicial District Court for the Parish of Jefferson as to post-declaratory judgment entitlements and obligations.
2. PFFALA and its affiliated organizations have substantial, legitimate interests that will likely be affected by the outcome of the case.

## **II. SUMMARY OF ARGUMENT**

The Courts below, it is respectfully submitted, erred in not properly considering the mandatory nature of the underlying judgment. An appropriation by a local governing authority is a ministerial, not discretionary, function when adjudicated in actions for wages, compensation, and pension contributions for fire and police employees employed by municipalities and fire protection districts. Those benefits, albeit “unfunded,” are mandatorily imposed on all such political subdivisions by operation of LSA-Const. Art. VI § 14(A)(2)(e).

## **III. ASSIGNMENT OF ERROR**

The District Court erred in applying the procedural restraints applicable to appropriations established by LSA-Const. Art. XII § 10 and La. R.S. 13:5109, while ignoring the fire and police benefit mandates established by LSA-Const. Art. VI § 14(A)(2)(e).

#### IV. STATEMENT OF THE CASE

PFFALA respectfully urges this Court to reverse the dispositive rulings in this longstanding firefighter back pay litigation and authorize the Plaintiffs, Bastrop Firefighters, to proceed with enforcement proceedings for recovery of pay and employment benefits justly due. The Firefighters here should be afforded the opportunity to prove “a set of facts in support” of the adjudicated back pay entitlements.

The Court of Appeal here did not address the critical distinction between general obligation under a judgment versus judgment obligations arising under constitutionally mandated wages and benefits for fire and police service employees protected by LSA-Const. Art. VI § 14(A)(2)(e). The Town of Bastrop has argued that there is no “conflict between the circuits” as correctly contended by the Plaintiffs before the trial court. It does recognize the significance of *New Orleans Fire Fighters Pension Fund v. City of New Orleans* (La. App. 4 Cir. 12/18/13), 131 So. 3d 412, *writ denied*, 135 So. 3d 623 (La. 3/21/14), but has suggested to this Court, in its opposition to writ application, that “(t)his case is legally distinguishable because there was no judgment sought to be executed” in that proceeding.

There was certainly no judgment poised for execution at that juncture in those Firefighter proceedings, but there was then and is today a rich “legal” history supporting the Fourth Circuit’s ultimate conclusion that the statutory obligation of municipalities to pay mandated Firefighter statutory benefits and entitlements was litigable and should proceed. The Firefighters here are at that juncture and should be afforded a viable basis for seeking relief.

#### V. ARGUMENT

Louisiana Firefighters have long struggled with enforcement of mandated statutory and constitutional entitlements. In 1986, the Fourth Circuit in *New Orleans Firefighters Local 632 v. Civil Service Commission*, 485 So. 2d 1017, 1019 (La. App. 4 Cir. 1986), counselled the City of New Orleans in a Firefighter statutory pay case:

We have reviewed and decided the issues in the present appeal with a sense that the City is using the appellate judicial process to postpone the day of fiscal reckoning with its firefighters. We, therefore, affirm yet another judgment of the District Court and urge the parties to recognize that continued litigation will not yield the answer to the City’s financial problems.

Long before then, in *New Orleans Firefighters Local 632 v. City of New Orleans*, 260 So. 2d 779 (La. App. 4 Cir. 1972), the Fourth Circuit, in the first Longevity (La. R.S. 33:1992) class action successfully pursued by the New Orleans Firefighters, reversed a contempt judgment

against the City of New Orleans for non-payment of past due benefits, but “remanded to the trial court to fix a reasonable period for defendants to comply with the judgments ... after which, should they fail to comply, further contempt proceedings may be invoked as authorized by LSA-C.C.P. Arts. 225, 226, 227 and LSA-R.S. 13:4611.”

Also, the Fourth Circuit, in response to the City of New Orleans’ argument that it lacked “sufficient revenues to comply with the proposed pay increases,” referred the City to La. R.S. 33:2922 “relative to the ranking of expenditures from revenues of municipal corporations and parishes.” There, as here, “(t)here was no showing of impossibility of compliance in this record.” *Id* at 785. La. R.S. 33:2922(A) clearly provided then and now:

A. The annual revenues of any political subdivision ... shall be dedicated as follows: first, all statutory charges shall be paid from respective funds upon which they are imposed...

There was no dispute that the pay entitlements – Longevity, Annual Leave – were statutory charges mandated by La. R.S. 33:1992(B) and La. R.S. 33:1996, respectively. Indeed, they were then (and now) constitutionally created “unfunded mandates” imposed on all municipalities by operation of LSA-Const. Art. VI § 14(A)(2)(e). *See, New Orleans Firefighters Ass’n v. Civil Service Commission*, 422 So. 2d 402 (La. 1982). This legal reality Bastrop reluctantly acknowledges. Such claims are mandatory!

The “separation of powers” argument advanced here by Bastrop and essentially adopted by the Court of Appeal below was fully considered in *New Orleans Firefighters Pension & Relief Fund v. City of New Orleans*, 2013-0873 (La. App. 4 Cir. 12/18/13), 131 So. 3d 412. It addressed the mandatory nature of the trial court’s mandamus as it related to this City’s legislative authority to budget and appropriate by reiterating *Penny v. Bowden*, 199 So. 2d 345, 350-51 (La. App. 3 Cir. 1967), a police pension contribution case:

...[T]he duty to appropriate and pay any yearly deficit which occurs in the operation of the policemen’s retirement fund is a statutory duty imposed by the will of the Legislature on the municipality. Our system of local government contemplates that statutory charges imposed on a municipality by the Legislature take precedence over a more permissive use of municipal funds, and it is settled that the State has the power to require a municipality to set up and appropriate money to a pension system... We are of the opinion, therefore, that though in the City Council’s view the Council might better serve the inhabitants of the city by allocating the proceeds from the ad valorem tax to other functions, the will of the Legislature in this regard is supre[sic] and must be obeyed.

The Fourth Circuit has correctly distinguished the applicability of *Hoag v. State*, 2004-0857 (La. 12/01/04), 889 So. 2d 1019, which applied the Separation of Powers Doctrine to the Judiciary’s authority to mandate appropriations for payment of a money judgment against the

State. There, this Court held that the only process available to a litigant for collection of a judgment against the State was provided in La. R.S. 13:5109(B). It disallowed a mandamus action as an alternative means for judgment execution. The Fourth Circuit correctly distinguished the underlying basis of the backpay claims and reasoned, “[W]e have already determined that the City’s obligation to contribute to the Fund is a ministerial duty.” *Id.*, 131 So. 2d at 422. “As such, the trial court’s mandamus is not an improper usurpation of a legislative function and does not violate the separation of powers doctrine.” *Id.*

The subsequent discussion of this critical distinction in *Jazz Casino Co., L.L.C. v. Bridges*, 16-1663 (La. 5/13/17), 223 So. 2d 488 is instructive. This Court correctly characterized the mandamus there as not an “attempt to enforce judgment against a public body that arose in contract or tort.” *Id.* at 497. The wages and benefits adjudicated here must be funded by the local public body that employs the plaintiff Firefighters. The ministerial function of appropriations is the only available method of satisfying the constitutionally-established wage and benefit mandate. *See also, Parish of St. Charles v. R. H. Creager, Inc.*, 10-180 (La. App. 5 Cir. 12/14/10), 55 So. 3d 884, *writ denied*, 60 So. 3d 1250 (La. 4/1/11) (final judgment in expropriation case enforceable by mandamus: “(T)he same law that affords the right of the Parish to exercise its police power compels that parish to pay just and fair compensation . . .”).

Critically, it should be noted that this Court, in *Chauvet v. City of Westwego*, No. 92-C-0712 (5/22/92), 599 So. 2d 294 (Memo), clarified the mandatory nature of the relief to which public safety officers were entitled. While this Court noted that a “demand for payment of past due benefits” in that back pay case was there “referred to as a mandamus action,” *Id.* at 914, it reasoned that it was “essentially a request for mandatory injunction ordering a public official to pay past due sick leave pay and vacation pay.” *Id.* (emphasis original). The significant consideration there, as now, is past due pay entitlements, not pay going forward.

The District Court in this case erred in granting the exception. There is a valid and justly due procedure for enforcing back pay entitlements to Firefighters, be it styled as a mandamus or a mandatory injunction, or both. There is and must be a cause of action. Possible affirmative defenses to any such mandatory procedures are always available to the defending municipality, but those must be asserted and tried.

Reversal and remand are more than warranted. This Court, in *Fishbein v. State ex rel. Louisiana State University Health Sciences Center*, 2004-2482 (La. 4/12/05), 898 So. 2d 1260 (a

teacher pension contribution and benefits dispute), remanded to the district to “hold an evidentiary hearing to determine the amounts payable by both LSU (the employer) and plaintiff and to consider the request for injunctive relief.” (Emphasis added). The Court relied on its earlier ruling in *Chauvet* to activate that remand.

Finally, the PFFALA respectfully urges this Court to consider relevant legislative history of the controlling law here: La. C.C.P. art. 3862 *et seq.*, the underlying basis for any mandamus. The legislative history of a statute and related legislature provides a particularly helpful guide in ascertaining the intent of a statute. *Theriot v. Midland Risk Ins. Co.*, 95-2895, pp. 3-4 (La. 5/20/97), 694 So. 2d 184, 186.

In the 2016 Regular Session, the Senate considered, but failed to enact, Senate Bill No. 130 (By Senator Appel), which would have, *inter alia*, amended La. CCP Art. 3863(B) to expressly and unambiguously prohibit a writ of mandamus directed to any public office “to compel the appropriation of funds where such appropriation authority is within the discretion of the legislative branch of the state or political subdivision.” The “legislative voyage” was prompted by then-ongoing New Orleans Firefighters litigation to execute on a judgment for approximately \$75,000,000 in Longevity backpay entitlements. *See*, McClendon, Robert, *After House Arrest Order, Landrieu Seeks Contempt Protections*. The Times Picayune, March 22, 2016, [www.nola.com/news/politics/article\\_83367c7b-ba4b-58de-86f7-975ca8ccd047.html](http://www.nola.com/news/politics/article_83367c7b-ba4b-58de-86f7-975ca8ccd047.html). A copy of Bill No. 130 and its Digest is attached hereto.

There was then, and today, a triable issue as to whether an appropriation to compensate Firefighters for mandated benefits and back pay is “ministerial” as “required by law.” There was then, and there is today, a cause of action against the governing authority, be it by mandamus or mandatory injunction.

Respectfully submitted:

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**VERIFICATION**

**STATE OF LOUISIANA**

**PARISH OF JEFFERSON**

BEFORE ME, the undersigned notary, personally came and appeared:

**LOUIS L. ROBEIN**

who, after being duly sworn, did depose and say that he is an attorney for the Amicus Curiae and that the allegations contained in the foregoing Original Brief of Amicus Curiae, on behalf of Professional Fire Fighters Association of Louisiana, in Support of Plaintiffs-Applicants are true and correct to the best of his knowledge, information, and belief.

Affiant further states that copies of this pleading were served on the following via email or U.S. Mail, properly addressed and postage prepaid, this 22<sup>nd</sup> day of February 2021:

Hon. Robert C. Johnson  
4<sup>th</sup> Judicial District Court  
Morehouse Parish Courthouse  
100 East Madison  
Bastrop, LA 71220

J. Rodney Pierre  
Pierre & Pierre, LLC  
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Lowther et al.*



\_\_\_\_\_  
LOUIS L. ROBEIN (LA Bar No. 11307)

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 22<sup>ND</sup> DAY OF FEBRUARY 2021.

  
\_\_\_\_\_  
NOTARY PUBLIC

