

SUPREME COURT OF LOUISIANA

DOCKET NO. 2020-C-01231

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

VERSUS

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

**MEMORANDUM OF AMICUS CURIAE,
PROFESSIONAL FIRE FIGHTERS ASSOCIATION OF LOUISIANA,
IN SUPPORT OF PLAINTIFFS-APPLICANTS'
APPLICATION FOR SUPERVISORY WRIT,
WRITS OF CERTIORARI AND/OR REVIEW**

**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

**ROBEIN, URANN,
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The Professional Fire Fighters Association of Louisiana respectfully urge this Court to reverse the dispositive rulings in this longstanding firefighter back pay litigation and authorize the Plaintiffs to proceed with enforcement proceedings for recovery of pay and employment benefits justly due. A writ should be granted. The Plaintiffs here should be afforded the opportunity to prove “a set of facts in support” of the adjudicated back pay entitlements.

The Town of Bastrop here argues that there is no “conflict between the circuits” as correctly contended by the Plaintiffs. 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 suggests to this Court 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 that proceeding, 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 Plaintiffs here are at that juncture and should be afforded a viable basis for seeking relief.

ARGUMENT

Firefighters have long struggled with enforcement of mandated statutory 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. 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 R.S. 33:1992(B) and 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. 6, §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 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. Ap. 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.

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, this Court 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 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.

Reversal and remand are more than warranted. This Court, in *Fishbein v. State ex rel. Louisiana State University Health Sciences Center*, 20014-2482 (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.

Respectfully submitted:

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CERTIFICATE OF SERVICE

In compliance with Louisiana Supreme Court Rule VII, Section 12, I hereby certify that on November 12, 2020, the foregoing Memorandum of Amicus Curiae, Professional Fire Fighters Association of Louisiana, in Support of the Plaintiffs-Applicants’ Application for Supervisory Writ, Writs of Certiorari and/or Review was served on the following via U.S. Mail, properly addressed and postage prepaid:

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