

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

EAST PROVIDENCE SCHOOL COMMITTEE

v.

C.A. No.: PC 09-1421

EAST PROVIDENCE EDUCATION  
ASSOCIATION

**COMPLAINT**

1. This Complaint is being filed pursuant to § 9-30-1 *et seq.* of the Rhode Island General Laws to obtain declaratory relief construing the relevant provisions of Title 16 and Title 28 of the General Laws of Rhode Island as they affect the respective rights, status and other legal relations between the East Providence School Committee (hereinafter "Committee") and the East Providence Education Association (hereinafter "EPEA" or "Union") with respect to the Committee's decision to avoid debt by changing certain terms and conditions of employment of East Providence teachers, members of the Union, after reaching impasse in negotiations with EPEA for a successor agreement.

**Jurisdiction**

2. Jurisdiction of this Court is proper pursuant to § 9-30-1 & § 9-30-2 of the General Laws of Rhode Island.

**Parties**

3. The Plaintiff, the East Providence School Committee, is a governmental subdivision of the State of Rhode Island and is a proper party to file a claim for declaratory relief under § 9-30-1 *et seq.* of the General Laws of Rhode Island.

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4. The Defendant, East Providence Education Association, is a Rhode Island corporation and is a “person” as defined by § 9-30-13 of the General Laws of Rhode Island.

**Facts**

5. The fiscal year in the City of East Providence (“City”) runs from November 1 through October 31.
6. The Committee receives revenue from the City, as well as the state and federal governments to operate the East Providence School Department (“Department”) each fiscal year.
7. As of the close of fiscal year 2008, on October 31, 2008, the Committee had a cumulative deficit of approximately \$5.4 million.
8. The Committee incurred approximately \$4.2 million of this \$5.4 million deficit between November 1, 2007 and October 31, 2008. The balance of the deficit was the subject of a deficit reduction plan agreed upon by the City and the Committee pursuant to R.I. Gen. Laws § 16-2-9(f).
9. Teachers’ salaries and benefits alone comprise approximately 78% of the Department’s overall budget.
10. Because it anticipated ending the fiscal year 2008 with debt, the Committee filed a lawsuit under the state law known as the “Caruolo Act,” R.I. Gen. Laws § 16-2-21.4, seeking an appropriation from the City to defray the fiscal year 2008 deficit.
11. In August 2008, the Committee submitted a proposed budget to the East Providence City Council (“Council”) requesting \$51,748,762 in local revenue.

12. If the Council had appropriated this amount, it was then estimated to be just sufficient to eliminate the accumulated debt as of the close of fiscal year 2008, and to avoid further debt in fiscal year 2009, assuming no increase in labor costs.
13. In October 2008, however, the Council appropriated to the Committee a total of \$42,725,086 for fiscal year 2009.
14. As of October 2008, if state aid had remained constant, this appropriation, in conjunction with other revenue, would have provided the Committee with \$73,398,970 to operate the Department in fiscal year 2009.
15. The amount of \$73,398,970 was \$4.2 million less than the Committee needed to operate the East Providence School Department for fiscal year 2009 without incurring additional debt.
16. As of November 2008, the Committee owed approximately \$2.5 million in overdue tuition for special education services. New bills have been, and continue to be, incurred every day.
17. The School Department's physical plant is in need of approximately \$6 million for essential, short-term repairs, including but not limited to: peeling paint, leaking roofs, inadequate lighting, ceiling holes, crumbling stairwells, corroded heating systems and unsecured exterior doors at the high school. These repairs are not to be made due to lack of funding.
18. In October 2008, the Committee commissioned a study of the School Department's programs for fiscal year 2009 to identify any and all expenditures that might be cut for fiscal year 2009 without violating state or federal law.

19. As of October 2008, the only cost reductions available for fiscal year 2009, other than reducing employee compensation, that were open to the Committee and not barred by law or by contract were to eliminate the interscholastic athletics program entirely; to cut extracurricular offerings, including but not limited to music, for the remainder of the fiscal year; and to eliminate nine teaching positions in areas not mandated by state law or regulation. In total, these reductions were estimated to amount to \$297,687 for the fiscal year. The School Committee concluded that these cuts in the educational program would directly and negatively impact students and were bad educational policy.
20. These were the only cuts available to the Committee for fiscal year 2009 without violating state or federal law, except for cuts to employee compensation.
21. The City increased taxes for fiscal year 2009 by the maximum amount permitted by City Ordinance § 16-53, which provides that the “city may not levy a tax in an amount more than three and one-half percent in excess of the amount levied and certified by the city for the prior year.”
22. Under state law, see R.I. Gen. Laws § 44-5-2, the City could have increased taxes for fiscal year 2009 by an additional 1.5%, but this would have generated only an additional \$900,000 for the entire City, which is currently among the highest taxed and fiscally burdened communities in Rhode Island.

#### **2008-2009 Contract Negotiations**

23. The EPEA is the certified bargaining representative for the East Providence School Department’s (“Department”) part-time and full-time certified teachers.

24. The most recent collective bargaining agreement (“CBA”) between the Committee and the EPEA expired on October 31, 2008.
25. Prior to the contract’s expiration, the Committee attempted to establish a successor agreement with the Union that would be fiscally viable, and would therefore enable the Committee to operate the Department lawfully for fiscal year 2009 in accordance with Rhode Island General Laws § 16-2-9(d) & § 16-2-18, which prohibit any school committee from incurring debt.
26. The first meeting with the Union took place on August 14, 2008. The Union did not have any NEA staff representative or attorney present. The Committee explained that it was facing a financial crisis and that it looked forward to working through the issues to avoid the crisis. The Union declined to fix a date for the next bargaining session because, it explained, it did not know when its representative would be available.
27. The next session was scheduled for August 25, 2008, but on the eve of the meeting the Union cancelled it.
28. The Union declined to meet for another two weeks. The parties met on September 8. The Union insisted on agreement on its proposed ground rules, the key components of which were to keep the negotiations secret and to require that any agreement reached would be binding without approval by the City Council, despite a Charter provision requiring Council approval. The Committee agreed to the Union’s other proposed ground rules, but suggested that negotiations proceed without any ground rules on these two issues.

29. The Union declined the Committee's suggestions and declined the Committee's request to meet any other day that week, instead agreeing to resume on September 19, 2008 (a Friday).
30. On September 16, the Committee requested arbitration on all unresolved issues, and at the same time, provided to the Union its bargaining proposal.
31. It did so in compliance with R.I. Gen. Laws § 28-9.3-9, which states "[i]f mediation and conciliation fail or are not requested, at any time after the thirty (30) days, either party may request that any and all unresolved issues shall be submitted to arbitration ."
32. On September 19, the Committee offered compromises on ground rule proposals, and again urged the Union to negotiate with no ground rules on the two contentious issues. The Union refused, and refused to schedule further meetings. The Union also said it would not meet without a mediator present.
33. Thereafter followed five negotiating sessions with a mediator, on October 7, October 20, October 23, October 28, and October 29, 2008. The parties also agreed to reserve October 30 and 31, 2008, for further negotiating if needed.
34. At the session on October 20<sup>th</sup>, the Committee responded to the mediator's request that both parties reduce the number of their bargaining proposals by offering to withdraw all its financial and operational proposals, if in exchange the Union would provide at least \$3 million in real and lasting savings from prior year costs for the first year of the contract. The Committee said it would afford the membership modest pay raises in the second and third contract years.

35. The Union responded that it would work on coming up with \$3 million in cuts in the first year if the Committee would agree to seeing that teachers' salaries were at least the twelfth highest among Rhode Island's public school teachers by the end of a three-year contract. After due deliberation, the Committee agreed.
36. At the next session, on October 23<sup>rd</sup>, the Committee made various suggestions and proposals and provided costs, some in writing, to assist the Union in its work. Further mediation sessions took place on October 23, 28, and 29, 2008. Late on the 29<sup>th</sup>, the Union came forward with a proposal that it claimed would save the Committee \$1 million in the first year.
37. The savings were exaggerated, and the counterproposal was not reduced to writing. The verbal description made plain that it would also result in "cost rollups" in the second year of the contract, which the Committee could not accept in light of current economic conditions.
38. The Committee responded that although it could not accept the Union's proposal it was prepared to make a counterproposal that would save \$3 million for the first contract year. The Union said it had no more movement, so if the Committee could not accept the Union's counterproposal, there was no need for further proposals, or for further meetings.
39. Interest arbitration proceedings pursuant to R.I. Gen. Laws § 28-9.3-9(a) were conducted at hearings in November 2008, at which both sides presented extensive evidence and examined and cross-examined witnesses. The Committee presented one-hundred and forty-five (145) exhibits and four witnesses; the Union presented seventy-five (75) exhibits and seven witnesses. In addition, the Committee

presented a detailed comparison, comprised of one-hundred and twenty-three (123) exhibits, comparing each Union and Committee contract proposal with those in eight (8) comparable school districts in Rhode Island and neighboring Massachusetts communities.

40. The panel issued its Decision and Award on December 23, 2008. It recommended, inter alia, that teachers be afforded no increase in salaries for fiscal year 2009, and that they make a 5% contribution to the cost of health and dental insurance. The Committee-appointed arbitrator dissented from the Decision and Award because the Committee could not accept it without violating Rhode Island law.
41. All aspects of the panel's decision on matters involving the expenditure of money are nonbinding pursuant to Rhode Island General Laws § 28-9.3-12.
42. On December 30, 2008, the Union voted to accept the award.
43. On December 30, 2008, the Committee voted to reject the award because it required the Committee to incur additional debt of over \$4 million in fiscal year 2009.
44. On January 2, 2009, the Committee wrote to the Union advising it that it would reduce budgeted expenditures for teachers' compensation, effective Monday, January 5, 2009, with a shift to higher deductibles on health insurance to take effect on February 1, 2009. (Exhibit A, attached hereto.)
45. The reductions had three key components: (a) the teachers' last pay increase was rolled back and bonuses for higher levels of education beyond a bachelor's degree were reduced; and (b) instead of making no contribution, all teachers now make a

20% contribution to the cost of dental insurance and a redesigned health insurance package; and (c) teachers who are eligible for alternate health insurance no longer will be paid over \$5,000 to use it, but must use it without this extra sum of money.

46. Teachers remain covered by Health Mate Coast-to-Coast from Blue Cross Blue Shield with the same access to physicians, hospitals, and other providers they enjoyed under the expired contract.
47. With the reductions, the average pay for all full-time and part-time teachers remains above \$63,000. Teachers still qualify for incentive bonuses, based on education beyond a bachelor's degree, longevity pay, pay for coaching, for extracurricular activities, for taking training, for having an "extra student" in class and for covering an extra class, among many other pay add-ons.
48. Teachers still work only 181 days a year, less 15-20 sick days, less one personal day. They still work only a 6.5 hour day, less their lunch breaks, and in most instances, less free periods. They continue to have a defined benefit pension plan, with guaranteed annual increases, a wide assortment of paid and unpaid leaves of absence, retiree health insurance, full medical, dental, vision and life insurance coverage, and much more.
49. The reductions decreased the budgeted expenditures for teachers' compensation (salaries and benefits) in fiscal year 2009 from \$46,485,315 to \$43,193,557, for a difference of \$3,291,758.
50. After this nearly \$3.3 million in savings, the Committee still has to turn to other sources to eliminate the remaining estimated \$1 million of debt for 2009, which could be greater, in light of anticipated reductions in state aid to cities and towns.

It is currently in negotiations over obtaining concessions from other bargaining units.

51. The Committee had already obtained concessions from one bargaining unit and eliminated positions from another.
52. The Committee took the step of reducing teachers' compensation to enable it to comply with the Title 16 mandate that it conform its budget so that expenditures do not exceed revenue under Rhode Island General Laws §16-2-9(d) & §16-2-18.
53. Rhode Island General Law § 16-2-9(d) provides: "Notwithstanding any provisions of the general laws to the contrary, the requirement defined in subsections (d) through (f) of this section shall apply. The school committee of each school district shall be responsible for maintaining a school budget which does not result in a debt." (emphasis added).
54. Rhode Island General Laws § 16-2-18 provides in relevant part: "the entire care, control, and management of all the public school interests of the several cities and town, shall be vested in the school committee of the several cities or towns, and they shall also draw all orders for the payment of their expenses; provided, that these expenses shall not in any fiscal year exceed the total of all revenue appropriated by the state or city or town or otherwise for the public schools under the care, control, and management of the school committee. If, in any fiscal year, a school committee is notified that estimated expenses may exceed total available appropriations, the school committee shall adopt and implement a plan to maintain a balanced school budget, which plan shall provide for continuous regular public school operations consistent with the requirements of 16-2-2."

55. On January 5, 2009, the Union filed a charge at the Rhode Island State Labor Relations Board (“Labor Board”) alleging, *inter alia*, that the Committee committed an unfair labor practice (“ULP-5951”) in violation of R.I. Gen. Laws §28-7-13(6) & (10) by changing the terms and conditions of teachers’ employment on January 5, 2009.
56. The Union then filed a complaint in Rhode Island Superior Court seeking an injunction against the Committee’s implemented changes pending the Labor Board’s resolution of ULP-5951.
57. At all stages of the dispute and in every forum, the Committee denied committing an unfair labor practice and denied the Labor Board’s jurisdiction to decide the merits of the underlying dispute.
58. On January 22, 2009, the Superior Court denied the Union’s request for injunctive relief. In doing so, the court stated that the Labor Board in considering the Union’s unfair labor practice charge “should consider the tax cap provisions found in § 16-53 of the City Charter of East Providence and § 16-2-21(d), and the no deficit spending provision found in § 16-2-9(d).”
59. On February 11, 2009, the Labor Board nonetheless issued a complaint against the Committee in the Union’s ULP-5951 (Exhibit B), and hearings are scheduled for March 19 and April 2, 2009.

**Count 1**  
**(Request for Issuance of Declaratory Judgment)**

60. The Committee repeats and realleges the allegations of paragraphs 1-65 as if fully set forth herein.

61. The Committee requests this Court pursuant to § 9-30-1 *et seq.* to declare the respective rights, status, and other legal relations as between the Committee and the Union with respect to the Committee's decision to reduce teachers' pay and benefits, which requires this Court to construe the relevant provisions of Title 16 and Title 28 of the Rhode Island General Laws.
62. A controversy exists between the Committee and the Union regarding their respective rights, status, and other legal relations under Title 16 and Title 28 of the Rhode Island General Laws.
63. Under Title 16, the Committee is "vested" with the "entire care, control, and management of all the public school interests," and it must operate the school district with a balanced budget "[n]otwithstanding any provisions of the general laws to the contrary." Under Title 28, the Committee and the Union were under a general obligation to bargain with respect to the terms and conditions of employment of the certified teachers in East Providence.
64. In exercising its plenary authority under Title 16, the Committee determined it was necessary to reduce teachers' pay and benefits to comply with the statutory balanced budget mandate of R.I. Gen. Laws § 16-2-9(d). It took action to do so only after exhausting all statutory impasse resolution procedures set forth in Title 28 without successfully breaking the bargaining impasse between the parties and only after determining that these budgetary cuts were necessary to avoid debt in fiscal year 2009.
65. The Committee's decision to reduce teachers' pay and balance its budget was made pursuant to Title 16, and, as such, is reviewable, if at all, through Title 16's

