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Attorneys for Plaintiffs and Proposed Class

JOSEPH FARRELL
3107 Brighton Street
Philadelphia, PA 19149

and

PATRICK VIOLA
9608 Frankford Avenue
Philadelphia, PA 19114

Plaintiffs,

v.

PHILADELPHIA FIREFIGHTERS' AND
PARAMEDICS' UNION, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, LOCAL 22
415 North 5th Street
Philadelphia, PA 19123-4095

and

CITY OF PHILADELPHIA
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

Defendants.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
TRIAL DIVISION

CIVIL ACTION

CLASS ACTION

October Term, 2023

No. _____

Jury Trial Demanded

NOTICE TO DEFEND

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

**Philadelphia Bar Association
Lawyer Referral
and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197**

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

**Asociacion De Licenciados
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**COMPLAINT—CIVIL ACTION—CLASS ACTION
TORT—2E—BREACH OF DUTY OF FAIR REPRESENTATION**

AND NOW come Plaintiffs Joseph Farrell (“Mr. Farrell”) and Patrick Viola (“Mr. Viola”) (collectively, “Plaintiffs”), by and through their undersigned counsel, and state the following claims for relief against Defendants Philadelphia Firefighters’ and Paramedics’ Union, International Association of Firefighters, Local 22 (“Local 22” or the “Union”) and the City of Philadelphia (the “City”) (collectively, “Defendants”), and aver as follows:

SUMMARY OF THE CASE

1. Plaintiffs bring this civil action to address the Union’s concealment of increased pension benefits available to firefighters and paramedics employed by the City of Philadelphia, while Union officials and high-ranking City employees took those same benefits for themselves.

2. For decades, the Union has consistently advised rank-and-file union and bargaining unit members not to sell back unused vacation time, claiming that doing so could end that benefit for firefighters and paramedics.

3. The Union and its officials also concealed how selling back vacation time during an employee’s last two full years of service prior to retirement or enrollment in the City’s Deferred Retirement Option Plan (hereinafter, the “Pension Years”) could maximize employees’ pensions.

4. However, at the same time, certain Union officials and high-ranking City Fire Department employees were doing the very thing they were telling rank-and-file union members not to do, and were selling back their unused vacation time to the City, thereby increasing their own pensions upon retirement.

5. On information and belief, those Union officials and high-ranking City employees misled rank-and-file firefighters and paramedics to preserve the increased benefits of vacation sellbacks for themselves.

6. Because the “[u]nion has assumed the role of trustee for the rights of its members

and other employees in the bargaining unit” and employees are “beneficiaries of fiduciary obligations owed by the [u]nion[,] . . . the [u]nion bears a heavy duty of fair representation to all those within the shelter of its protection.” *Falsetti v. Local Union No. 2026, United Mine Workers of Am.*, 161 A.2d 882, 895 (Pa. 1960). Accordingly, unions must “act in good faith, in a reasonable manner and without fraud.” *Id.*

7. Local 22 breached its duty to Plaintiffs and proposed class members by failing to “act in good faith, in a reasonable manner and without fraud.” *Id.*

JURISDICTION AND VENUE

8. “[B]reach of the duty of fair representation . . . is within the exclusive jurisdiction of the courts of common pleas.” *Dailey v. PLRB*, 148 A.3d 920, 924 (Pa. Cmwlth. 2016).

9. Venue is proper in Philadelphia County because the City is in Philadelphia County, the Union’s principal places of business is in Philadelphia County, the Union regularly conducts business in Philadelphia County, the cause of action arose in Philadelphia County, and transactions or occurrences out of which the cause of action arose took place in Philadelphia County. *See* Pa.R.Civ.P. 2103(b), 2179(a)(1)–(4).

PARTIES

10. Plaintiff Joseph Farrell is an adult individual residing in Philadelphia, Pennsylvania.

11. Mr. Farrell is currently employed as a Captain with the City’s Fire Department, and at all relevant times hereto was a dues-paying member of Local 22 within a bargaining unit exclusively represented by the Union.

12. Plaintiff Patrick Viola is an adult individual residing in Philadelphia, Pennsylvania.

13. Mr. Viola is currently employed as a Firefighter with the City’s Fire Department and at all relevant times hereto was a dues-paying member of Local 22 within a bargaining unit exclusively represented by the Union.

14. Defendant Local 22 is a labor organization with a principal place of business at 415 North 5th Street, Philadelphia, Pennsylvania 19123-4095.

15. On information and belief, the Union is the sole and exclusive bargaining representative of all uniformed employees of the City's Fire Department below the rank of Commissioner.

16. Defendant City is a public employer and political subdivision of the Commonwealth of Pennsylvania with Law Department offices located at 1515 Arch Street, 14th Floor, Philadelphia, Pennsylvania 19102.

17. At all relevant times, action was taken on behalf of Defendants by their officials, and Defendants acted in concert with each other.

CLASS ACTION ALLEGATIONS

18. Plaintiffs Joseph Farrell and Patrick Viola ("proposed Class Representatives") bring this case as a class action pursuant to Pennsylvania Rules of Civil Procedure 1701–1717, for themselves and for all others similarly situated.

19. Proposed Class Representatives seek to represent a class consisting of: all former or current City Fire Department employees exclusively represented by Local 22 who retired or enrolled in the City's Deferred Retirement Option Plan (DROP) from November 2019 through the present, who did not sell back the maximum amount of vacation time that they could during their Pension Years.

20. Proposed Class Representatives estimate the class size to be at least 100 individuals. The number of individuals in the class is thus so numerous that joinder is impracticable.

21. There are questions of law and/or fact common to all proposed class members, including proposed Class Representatives, which include whether the Union breached its duty of fair representation by concealing knowledge of pension benefits from proposed Class Representatives

and proposed class members and whether the Union and/or its officials discouraged rank-and-file members from selling back vacation time in order to preserve that benefit, including its effect of increasing pension benefits, for Union officials and/or high-ranking City Fire Department employees.

22. Proposed Class Representatives' claims are typical of the claims of the proposed class members because all have been subjected to the same breach of the Union's duty of fair representation, namely the Union's concealment of the knowledge of pension benefits from all proposed class members and the Union's bad faith guidance to all proposed class members to not sell back unused vacation time.

23. Proposed Class Representatives can fairly and adequately represent the interests of the proposed class members. They have no conflict with proposed class members, who also have been injured in the same way by the Union's breach of its duty of fair representation.

24. Proposed Class Representatives have also retained class counsel adequate to represent both themselves and the proposed class members.

25. Furthermore, proposed Class Representatives' counsel are provided to them, Plaintiffs, and proposed class members pro bono by a public interest non-profit law firm that provides free legal aid to individuals such as proposed Class Representatives, Plaintiffs, and proposed class members.

26. A class action provides for fair and efficient adjudication of the controversies, in that proposed Class Representatives and proposed class members have been subjected to the same conduct which constitutes a breach of the Union's duty of fair representation and common questions of law and fact related to the Union's concealment of knowledge of pension benefits and its reasons for doing so predominate over any questions unique to individual class members.

27. The substantive claims of proposed Class Representatives and the proposed class

members will require evidentiary proof of the same kind and application of the same law since Defendants have treated all proposed class members in a similar and/or identical manner.

28. Proposed Class Representatives do not anticipate or foresee any difficulties in managing this action as a class action. Proposed Class Representatives have retained counsel experienced in the particular issues and areas of law raised in this action and experienced in litigating and managing class actions of this nature and size.

29. The prosecution of separate actions by individual proposed class members would create a risk of inconsistent and varying adjudications, which would establish incompatible standards of conduct for Defendants.

30. Proposed Class Representatives are currently unaware of any similar litigation concerning the controversy set forth in this Complaint filed either by Plaintiffs, proposed Class Representatives, and/or proposed class members or filed against Plaintiffs, proposed Class Representatives, and/or proposed class members.

31. The chosen forum is the most desirable and only appropriate forum for this action because the City is a named Defendant and all Defendants are located in Philadelphia County. Furthermore, all of the actions giving rise to the controversy set forth herein took place in Philadelphia County.

32. The amount of money at stake for each individual proposed class member and the complexities of a breach of the duty of fair representation action make it burdensome and undesirable for proposed Class Representatives and proposed class members to maintain individual, separate actions at their own expense.

33. Defendants have acted or refused to act on grounds generally applicable to all proposed class members by, among other things, concealing knowledge of pension benefits.

FACTUAL ALLEGATIONS

The City's DROP Plan

34. Mr. Farrell has been employed by the City for the past 38 years, working in various positions with the Fire Department.

35. Mr. Viola has been employed by the City for over 25 years, working as a firefighter.

36. During that entire period, Plaintiffs were and remain dues-paying members of the Union.

37. Decades ago, the City instituted a Deferred Retirement Option Plan (DROP), available to City employees like Plaintiffs.

38. According to the City, DROP allows “City employees to accumulate their monthly service retirement benefit in an interest-bearing account at the Board of Pensions for up to four (4) years and continue to be employed by the City of Philadelphia.” *What is a Deferred Retirement Option Plan (DROP)?*, City of Philadelphia (July 30, 2019), <https://311.phila.gov/s/article/What-is-a-Deferred-Retirement-Option-Plan-DROP-1416909105263> (last modified Dec. 18, 2021, 5:15 AM).

39. When a City employee elects to participate in DROP, their retirement contributions cease and their monthly pension benefit is calculated as of the day before their DROP enrollment date. *Id.*

40. The election to participate is irrevocable by the employee. *Id.*

41. Mr. Viola elected to participate in DROP and enrolled in DROP on or around November of 2020.

42. Mr. Farrell elected to participate in DROP in July of 2021 and enrolled in DROP on or around October of 2021.

The Union Deters Employees From Selling Back Unused Vacation Time

43. Fire Department employees receive certain amounts of vacation time as a benefit from the City.

44. Those employees may bank or retain up to 592 hours of vacation time.

45. They may also sell a maximum of 192 hours of unused vacation time back to the City each calendar year.

46. Alternatively, outstanding vacation time may also be sold back at the time of an employee's retirement or DROP enrollment date, but at a reduced pay rate.

47. Unused vacation time sold back at the time of retirement or DROP enrollment does not count towards or increase pension benefits.

48. For decades, the Union and its officials have urged rank-and-file members to not sell back unused vacation time.

49. The Union's officials claimed that selling back vacation time could cause the City to seek the elimination or curtailment of that benefit.

50. Additionally, City Fire Department supervisors that need to approve vacation sellbacks would frequently discourage or otherwise try to prevent employees from doing so.

51. Consequently, firefighters like Plaintiffs refrained from selling back vacation time each year and thus had accumulated significant amounts of unused vacation time at the time of their retirement or DROP enrollment.

52. For example, Mr. Farrell had approximately 225 hours of unused vacation time when he elected to participate in DROP.

53. Defendants' actions concealed the increased pension benefits of vacation sellbacks and caused Plaintiffs and proposed class members not to maximize their unused vacation sellbacks until their retirement or DROP enrollment.

Discovery of the Union's Concealment of Pension Benefits

54. After enrolling in DROP, Mr. Farrell began to hear rumors that Union officials and other high-ranking Fire Department employees had consistently sold back unused vacation time for decades.

55. In November of 2021, Mr. Farrell contacted Brian Coughlin, Financial Secretary of the Union and member of the City's Board of Pensions and Retirement, to inquire about this disparity and how it could impact pension benefits.

56. Coughlin informed Mr. Farrell that he and the Union knew that selling back unused vacation time prior to retirement or DROP enrollment could increase an employee's pension benefits.

57. Coughlin also related that if too many Fire Department employees sold back their vacation time, the City would eliminate the benefit.

58. Specifically, Coughlin revealed to Mr. Farrell that the Union commissioned a lawyer to look into the issue of increased pension benefits from pre-retirement vacation sellbacks approximately a year and a half earlier.

59. Moreover, Coughlin either knew or should have known, as a member of the City's Board of Pensions and Retirement, how vacation sellbacks affected pension benefits.

60. Coughlin further elucidated that the lawyer commissioned by Local 22 opined or otherwise advised the Union that Fire Department employees would receive increased pension benefits if they sold back vacation time prior to retirement or DROP enrollment.

61. Mr. Farrell concluded that had he known of the benefits of selling back his unused vacation time prior to his DROP enrollment, he could have increased his pension by a significant percentage.

62. Specifically, pensions for City Fire Department employees are determined by their Pension Years (the last two full years of employment prior to retirement or DROP enrollment).

63. In those Pension Years, an employee could have sold back four 48-hour increments of unused vacation time (192 hours total) per calendar year.

64. Each of those 48-hour increments would equate to some percentage of an employee's pension.

65. Accordingly, an employee with knowledge of these benefits could maximize their pension by selling back twelve 48-hour increments of vacation days (four per calendar year, spread out to be taken within their Pension Years), resulting in a significant percentage increase in their pension benefits.

66. Therefore, employees like Plaintiffs, who would have known of these increased benefits had the Union not concealed them, could have potentially increased their pension payments by as much as hundreds of dollars per month.

67. Plaintiffs and proposed class members were unable to discover these increased pension benefits and the Union's concealment of them until at least November of 2021.

68. Defendants actively concealed knowledge of these increased pension benefits from Plaintiffs and proposed class members until at least November of 2021.

69. Plaintiffs and proposed class members had no reason not to sell back unused vacation time prior to retirement or enrolling in DROP and detrimentally relied on their Union's insistence to not sell back that time.

70. Plaintiffs and proposed class members would have sold back their unused vacation time to maximize their pension payments prior to enrolling in DROP if the Union had not discouraged them from doing so and/or prevented their access to information about accessing this benefit.

71. Those increased benefits would not only impact the employees themselves, but also their families and heirs who would have rights of survivorship in their pensions.

72. Notably, the City's Fire Department employees do not receive social security benefits and rely on their pensions to take care of themselves and their families upon retirement.

73. The Union has not generally informed its membership body or the entirety of the bargaining unit it exclusively represents of these benefits.

74. Rather, it has actively concealed this information from employees like Plaintiffs.

75. In June of 2022, Coughlin told Mr. Farrell that the Union will never inform the membership body how vacation sellbacks could increase pension benefits.

76. As a result of the concealment, City Fire Department employees lack the knowledge required to maximize their pension benefits and instead retire or enroll in DROP without selling back vacation time to increase their pensions.

77. For example, Mr. Viola did not discover that he missed the opportunity to maximize his pension benefits until the summer of 2022, about one and a half years after he enrolled in DROP.

The City and Union Conspire to Preserve Benefits for Select Individuals

78. Rather than informing all impacted bargaining unit members of these benefits, the Union and the City have continued to discourage pre-retirement or DROP enrollment vacation sellbacks.

79. For example, the Union has ostracized Mr. Farrell, refusing to answer or return his phone calls, since he informed several other Fire Department employees of the Union's concealment.

80. Moreover, on information and belief, Chiefs that must approve vacation sellbacks discourage and/or make it difficult for subordinates to complete sellbacks.

81. Chiefs serve in managerial positions for the City.

82. Chiefs are also members or officials of the Union.

83. On information and belief, Union officials and high-ranking City officials in the Fire Department, including several Chiefs, continue to perform vacation sellbacks for themselves and authorize them for other Union officials and insiders.

84. On information and belief, this double standard has been a long-standing practice.

85. Union executive board members that retired in previous decades took advantage of selling back unused vacation time and increasing benefits, while simultaneously telling rank-and-file members to refrain from selling back their unused vacation time.

86. On information and belief, the Union and/or its officials told or otherwise discouraged rank-and-file members from selling back vacation time in order to preserve that benefit, including its effect of increasing pension benefits, for Union officials and/or high-ranking City Fire Department employees.

87. On information and belief, the Union and the City have conspired to conceal knowledge of pension benefits from vacation sellbacks from Fire Department employees in order to preserve those benefits for Union officials and/or high-ranking City Fire Department employees.

88. On information and belief, Union officials and high-ranking City Fire Department employees attempted to preserve vacation sellbacks and increased pension benefits for themselves and concealed information from bargaining unit members so that their ability to receive those benefits would not be jeopardized or eliminated.

CAUSE OF ACTION
Breach of Duty of Fair Representation

89. The foregoing paragraphs are incorporated by reference as if set forth fully herein.

90. Because the “[u]nion has assumed the role of trustee for the rights of its members and other employees in the bargaining unit” and employees are “beneficiaries of fiduciary

obligations owed by the [u]nion[,] . . . the [u]nion bears a heavy duty of fair representation to all those within the shelter of its protection.” *Falsetti*, 161 A.2d at 895. Accordingly, unions must “act in good faith, in a reasonable manner and without fraud.” *Id.*

91. Local 22, as Plaintiffs’ and proposed class members’ exclusive representative, owes the duty of fair representation to Plaintiffs, proposed class members, and all members of the bargaining unit it represents.

92. Local 22, with the participation, assistance, and ratification of the City, breached its duty of fair representation by concealing knowledge of available pension benefits from the entire bargaining unit in order to preserve those benefits for Union officials and select City employees.

93. Local 22, acting in concert with the City, breached its duty of fair representation by failing to adequately pursue or protect Plaintiffs’ and proposed class members’ interests as members of the bargaining unit exclusively represented by Local 22.

94. Local 22 breached its duty of fair representation, with the participation, assistance, and ratification of the City, by arbitrarily, discriminatorily, and in bad faith concealing knowledge of available pension benefits from Plaintiffs and proposed class members.

95. Local 22 breached its duty of fair representation, with the participation, assistance, and ratification of the City, by arbitrarily, discriminatorily, and in bad faith permitting Union officials, including but not limited to Brian Coughlin, to conceal knowledge of available pension benefits in order to preserve them for Union officials and select City employees.

96. Local 22 breached its duty of fair representation by failing to disclose to its Union members and bargaining unit members the legal advice regarding available pension benefits from vacation sellbacks.

97. Local 22, with the participation, assistance, and ratification of the City, breached its duty of fair representation by pressuring Plaintiffs and proposed class members into not selling back

unused vacation time despite the fact that Union officials and select high-ranking City Fire Department employees did so.

98. Local 22 breached its duty of fair representation by misrepresenting available pension benefits and providing misleading information to Plaintiffs and proposed class members.

99. Local 22 breached its duty of fair representation when it discriminated against Plaintiffs and proposed class members by elevating the interests of select Union officials above that of Plaintiffs and proposed class members.

100. Plaintiffs and proposed class members retired or enrolled in DROP without maximizing their pension benefits because of Local 22's conduct.

101. As a result of the foregoing, Plaintiffs and proposed class members, as well as their families and heirs, have suffered or will suffer pecuniary injury in the form of a loss of or decreased pension benefits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and proposed class members respectfully request this Honorable Court to:

- a) As soon as practicable, certify this case as a class action, certifying the class as defined in this Complaint, certifying proposed Class Representatives (Plaintiffs Joseph Farrell and Patrick Viola) as class representatives, and appointing Plaintiffs' counsel as class counsel;
- b) Enter judgment against Local 22;
- c) As to all Defendants, award Plaintiffs and proposed class members nominal and compensatory damages;
- d) Order Defendants to provide all proposed class members with an accounting of unsold vacation days during their Pension Years, and the resulting difference to their pension benefits had those days been sold back;

- e) Order Defendants to immediately inform the entire bargaining unit of all available pension benefits and the effects of vacation sellbacks on pension benefits;
 - f) Award costs and fees, including reasonable attorneys' fees;
 - g) Award Plaintiffs Joseph Farrell and Patrick Viola class representative incentive awards;
- and,
- h) Award such other relief as the Court deems appropriate.

JURY DEMAND

Petitioner demands a trial by jury pursuant to Pennsylvania Rule of Civil Procedure 1007.1.

Respectfully submitted,

Dated: October 27, 2023

/s/ Logan M. Hetherington

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Attorneys for Plaintiffs

VERIFICATION

I, Joseph Farrell, hereby verify that I am the plaintiff in this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.


Date: October 26, 2023

By:  _____

VERIFICATION

I, Patrick Viola, hereby verify that I am the plaintiff in this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

Date: October 26, 2023

By: 

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that requires filing confidential information and documents differently than non-confidential information and documents.

Dated: October 27, 2023

/s/ Logan M. Hetherington

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