



September 13, 2015

Dear Fellow East Siders:

I hope you are enjoying one of our last summer weekends. This week's letter will discuss ways for the City to manage the financial risks presented by Thursday's ruling by the Superior Court in the fire fighters case.

As I described last week, the administration recently changed the fire fighter's shifts, increasing the average work week from 42 to 56 hours while increasing weekly pay by 8%. The administration predicted \$5 million in cost savings, as an 8% increase in pay for 33% more hours would produce an approximately 25% reduction in pay per hour of work and fewer hours of "call back" overtime. Not surprisingly, the fire fighters' union (Local 799) filed a lawsuit, saying the pay changes violated the current contract, which stipulates a 42-hour average work week and the payment of time-and-half for overtime.

In response, the administration argued to the Court that because it had the legal authority (or "management right") to change the fire fighters' shifts without the union's approval, it also had the management right to change the hours fire fighters were paid for "straight time" versus "overtime." The administration based its position on a shift change and salary saving that North Kingstown implemented in 2010-15, which was validated by the Supreme Court earlier this year. Local 799 objected to the new pay arrangements, noting that the Town of North Kingstown waited until its collective bargaining agreement expired before taking unilateral action, while Providence's current labor contract with Local 799 specifies an average work week of 42 hours, with additional "overtime" hours to be paid at time and a half. The Superior Court agreed with the union, and directed the parties to proceed to arbitration to hear the fire fighters' grievance that they are not being paid overtime for hours in excess of the 42-hour standard work week. The administration has not yet announced whether it will appeal the court's ruling, proceed to arbitration or pursue both tracks simultaneously. The union estimates their members could win as much as \$12 million or more per year in arbitration, which exceeds the \$5 million annual savings the administration predicted if the Court ruled in its favor.

The budgetary impact of the shift change is difficult to project, as the number of fire fighters available to work any 56-hour shift is affected by the number who retire, who are injured on duty, who are limited to light duty or who are out on temporary leave. Despite these complexities, I believe it is necessary to make the best possible (conservative) budgetary estimate of different possible outcomes to ensure the City has sufficient reserves available to satisfy a potential adverse award from the arbitrator. At this point in time, the City has no reserves; instead, it has an accumulated \$8.7 million deficit that State law requires it to retire over the next two years. Also, the current budget is challenged, having started this fiscal year \$1.5 million out of balance, due to the administration's over-optimistic projection of State municipal aid. As a result, I believe the City Council's second necessary step is to ensure the funding of adequate reserves once a realistic estimate has been developed.

I also believe the City Council should engage an outside legal specialist to advise it concerning the pending lawsuit and arbitration proceedings. I do not envision the City Council participating in the lawsuit as a separate party; instead, the legal specialist would advise the City Council about the possible issues, contingencies and timelines to inform plans to protect the City's interests through the uncertainties of the litigation. I believe a "second opinion" from legal counsel could help because the administration's legal strategy to date has not produced smooth sailing. Initially, the administration's lawyers tried to pre-empt the impact of the current contract's 42-hour defined work week by arguing that the entire contract was invalid. In response, Local 799 pointed out that this position would undermine the same contract's pension reform provisions, which currently produce annual savings for the City exceeding \$20 million. After hearing this, the administration's lawyers retracted this argument; however, the strategy of taking and then quickly abandoning a significant legal position appears reactive and confused. Also, the now-abandoned legal argument sent the wrong message to the City's other unions, suggesting that the City is willing to repudiate existing labor agreements when it is advantageous to do so. Finally, last week's court ruling against the City raises a cautionary flag with regard to the substantial risks the current legal course entails. With that in mind, I have introduced a resolution for Thursday's City Council meeting to authorize the limited engagement of a labor attorney to advise the City Council with a "second opinion" in this difficult, controversial and potentially damaging matter.

Sincerely,