

FAX 331-9267

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

ROBERT CARLOW }
LONNIE ST. JEAN }
Plaintiffs }

v. }

C.A. NO. 02-538ML

STANLEY J. MRUK }
Individually and in his official }
capacity as Chief of the Anthony Fire }
District; and, THE ANTHONY FIRE }
DISTRICT }
Defendants

PLAINTIFFS' MOTION
TO ADJUDGE DEFENDANT
MRUK IN CONTEMPT

Plaintiffs move to enforce the consent judgment originally approved by this Court on March 17, 2004 and then entered as a final judgment of the Court on April 28, 2005, and to adjudge defendant Mruk in contempt, as set forth below:

Plaintiffs allege that:

1. Subsequent to the settlement of the merits in this case and the consent judgment, approved by the parties prior to its entry by the Court on March 17, 2004, Defendant Mruk has failed to follow the specific injunction that no further reliance be made by defendant on the portions of the Fire District Constitution and By-Laws mentioned in paragraph 1 of the consent judgment. Paragraph 1 of the Consent Judgment states:

Declaratory judgment enters for plaintiffs and Article VI of the Constitution and By-Laws of the Anthony Fire Department (“Rules and Regulations”) is declared void and of no further effect as violative of plaintiffs’ First Amendment rights. Defendants are enjoined from further reliance on or enforcement of Article VI. This same declaratory and injunctive relief also applies to a portion of Article IV, Section 1, from which shall be deleted the terms “respectfully” and “avoid all personalities.” Article IV, Section 1, is otherwise not affected by this Consent Judgment.

No terms have been deleted. No new provisions have been promulgated, and no memo or new instructions have been issued to the Fire District’s employees regarding the changes required by paragraph 1 of the Consent Judgment.

2. Even if defendants took the position that lack of “final judgment” somehow postponed all obligations under the Consent Judgment, that rationale evaporated on April 28, 2005, when final judgment entered, pursuant to the Consent Judgment.
3. On October 7, 2004, counsel for plaintiffs wrote to counsel for defendants, stating a concern that no revised by-laws or constitutional language had been implemented. Documentation of any such revisions was requested.
4. When no response was received to the October 7, 2004 letter, another letter was sent on October 31, 2004. To this day, no documentation has ever been received, and no changes have been implemented, to the best of the knowledge of plaintiffs and their counsel.
5. In the summer of 2005 defendant Mruk through his negotiating representatives, introduced the pre-judgment constitution and by-laws as exhibits in a labor arbitration proceeding before Arbitrator Mark Grossman. They were accepted

as Joint Exhibits 4 and 5. Andrew J. Baynes, Staff Representative for Local 3240 and Vice President at Large of the R.I. State Association of Fire Fighters, was not a party to this case and had no reason to know that the proffered exhibits conflicted with the judgment of this Court. He accepted the documents to be the constitution and by-laws of the Anthony Fire District, as offered, and agreed that they be marked Joint Exhibits 4 and 5. All of the challenged provisions, including those enjoined in the Consent Judgment, remained word for word.

6. In the autumn of 2004, defendant Mruk informed the Providence Journal that the Fire District's rules had not been amended yet but that the Defendant no longer viewed the older provisions as in effect. Defendant Mruk stated on October 2, 2004, that he intended "to form a committee to review and formally revise the bylaws but hasn't had time to do so thus far." [Providence Journal, October 3, 2004, no quotation marks in original]. "I haven't had a chance to set this up," he said. "This can't be done overnight." [quotation marks in original].
7. More than another year has passed since Chief Mruk stated that compliance with the Consent Judgment could not be accomplished overnight. It is now twenty-one months since the Consent Judgment was entered by this Court.
8. On December 11, 2005, in the context of ongoing collective bargaining negotiations, Defendant Mruk's labor counsel [not counsel who signed the consent judgment in this case] told plaintiff Carlow (union president) that if he wanted to achieve a collective bargaining agreement with Chief Mruk, he (Carlow) would have to agree to "dismiss" all pending claims against the Fire

District or Chief Mruk. This “dismissal” would have to include all claims by Carlow, or the Union, or other officers and members of the Union. [Note: there have been a number of claims in recent years that would come under this description, including claims based on the First Amendment and claims based on state and federal labor law provisions, including Carlow and Perry v. Mruk, CA 04-325S, another case pending in this Court.]

9. “Dismissal” of the present case was specifically mentioned to plaintiff Carlow on December 11, 2005. On December 12, Carlow was e-mailed the attached proposed “memorandum of agreement.” Carlow was informed that he would have to agree to this release and obtain the approval of others in the union, including co-plaintiff St. Jean in the present case.
10. In short, defendant (an employer acting under color of state law) has demanded that, as a condition for collective bargaining, plaintiffs must surrender not only pending “claims” in this Court but the right to seek enforcement of a *judgment* of this Court. Such actions go beyond contempt of court in relation to a particular order or judgment. Defendant Mruk, in his role as a public employer, is seeking to undermine the authority and jurisdiction of the Court in a general sense.
11. Plaintiffs, despite their desire for a collective bargaining agreement, have not agreed to participate in such corruption of the Court process. Plaintiffs, however, do find themselves in need of relief from the Court.

WHEREFORE, Plaintiffs request that this Court:

1. Schedule a hearing, with notice to defendants, to determine whether defendant Mruk or the Fire District is in civil contempt of this Court's Consent Judgment and/or Final Judgment;
2. Schedule a hearing, with notice to defendants, to determine whether defendant Mruk has committed indirect criminal contempt of this Court's Consent Judgment and/or Final Judgment;
3. Order immediate notice to issue from defendants to all Fire District employees, and to the public, that the constitution and by-law provisions set forth in the March 17, 2004, Consent Judgment are repealed, deleted, and rescinded and of no further force and effect; and order defendants to immediately issue a revised copy of the constitution and by-laws, consistent with the Consent Judgment, to all employees (without any "committee" to review said constitution and bylaws);
4. Find defendant Mruk and/or the Fire District in continuing civil contempt of this Court's prior judgments, including defendant Mruk in his individual capacity;
5. Find defendant Mruk to have committed indirect criminal contempt of this Court's authority, in his individual capacity, punishable by the Court, separate and apart from any remedial relief on behalf of the litigants;
6. Award damages, costs, and reasonable attorney's fees to plaintiffs for their loss of the protections of this Court's Judgments for twenty-one months and their

costs in continuing these enforcement efforts. Plaintiffs request that said award be against defendant Mruk in his individual capacity for the reasons that (1) his actions are indeed his own and not the carrying out of Fire District “policy” and (2) his continuing practice of passing along to the taxpayers of the Fire District all of the costs and legal fees associated with his frequent attacks on civil liberties has allowed him to continue defying the law, and the courts, at no cost to himself. Plaintiffs for that reason are not seeking monetary sanctions against the Fire District itself.

7. Enter appropriate sanctions to punish the indirect criminal contempt of this Court, including fines, costs, and such other sanctions as this Court deems appropriate and necessary to uphold the authority and dignity of the United States District Court in the face of a public official who, for twenty-one months, “hasn’t had time” to comply with this Court’s Judgment.
8. Order defendant Mruk and the Fire District to refrain from linking collective bargaining negotiations with the subject of ongoing, completed, or future claims by the union or union members in this or any other court or agency; and order defendant Mruk to issue written notice forthwith to all union members, stating that no waiver, dismissal, or release of such claims is a condition of any collective bargaining rights;
9. Enter such other order, or relief, as the Court deems necessary.

Respectfully submitted,
Plaintiffs,
By their Attorney:

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CERTIFICATION

I hereby certify that on the _____ day of December, 2005, I mailed and faxed a true copy of this Motion to: Michael W. Carroll, Esq., 72 Pine Street, Providence, RI 02903.

John W. Dineen