

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

THE BOARD OF TRUSTEES of the,
CITY OF HOLLYWOOD FIRE
FIGHTERS' RETIREMENT SYSTEM,
and WILLIAM HUDDLESTON, et. al.
Plaintiffs,

CASE NO: 12-001000 (05)

vs.

HON. RICHARD D. EADE

CITY OF HOLLYWOOD, FLORIDA,
A municipal corporation,
Defendant.

**ORDER GRANTING DEFENDANT CITY'S MOTION FOR PARTIAL SUMMARY
JUDGMENT AND RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

THIS CAUSE came before the court on Defendant City's Motion for Partial Summary Judgment and Response to Plaintiffs' Motion for Partial Summary Judgment. The court having considered the motion, having heard arguments of counsel, and being otherwise duly advised in the premises finds and decides as follows:

Factual Background

On January 12, 2012, The Board of Trustees of the City of Hollywood Fire Fighters Retirement System ("the Fire Trustees") and William Huddleston ("Huddleston") filed a four Amended Complaint ("the Fire Amended Complaint") (case number 12-001000) against the Defendant, City of Hollywood ("the City").¹ Also on January 12, 2012, The Board of Trustees of the City of Hollywood Police Officer Retirement System ("the Police Trustees") and Van Szeto ("Szeto"), filed a three count Amended Complaint ("the Police Amended Complaint")

¹ For purposes of this motion, the court will only address count IV.

(case number 12-001005) against the City.² On April 19, 2012, this Court entered an order consolidating case number 12-001005 with the instant case, 12-001000. Accordingly, the Fire Trustees, the Police Trustees, Huddleston, and Szeto will be collectively referred to as “the Plaintiffs”.

According to the allegations of both the Fire Amended Complaint and the Police Amended Complaint, the City of Hollywood City Commission (“the City Commission”), by way of resolution, declared the existence of a financial urgency for fiscal years 2011 and 2012. On September 7, 2011, the City Commission adopted several ordinances designed to modify pension benefits for city employees, including police officers and fire fighters. On September 13, 2011, a referendum election was held where the voters of the City considered and approved the ordinances. According to the allegations of the Fire Amended Complaint and the Police Amended Complaint, along with the attached exhibits, these ordinances modified the pension benefits and collective bargaining agreements of police officers and fire fighters employed by the City. Relevant to this Order, the Plaintiffs seek declaratory and injunctive relief to determine the length of time that the City’s financial urgency determination, which preceded the passage by the electorate of the subject ordinances that modified the pension system and collective bargaining agreements, is to remain in effect.

On September 24, 2012, the City filed its motion for partial summary judgment as to count IV of the Fire Amended Complaint and count III of the Police Amended Complaint. In support thereof, the City argues 1) this Court lacks subject matter jurisdiction over the claims asserted in each respective count; 2) the allegations misstate the requirements of sections 447.4095 (financial urgency) and 447.403 (resolution of impasse), Florida Statutes; and 3) the individual plaintiffs have failed to exhaust their administrative remedies. The City’s first

² For purposes of this Order, the court will only address count III.

argument, that this Court lacks subject matter jurisdiction, is not appropriate on a motion for summary judgment, but rather, is appropriate on a motion to dismiss. *See Seminole Tribe of Florida v. McCor*, 903 So. 2d 353, 357 (Fla. 2d DCA 2005) (“The question of whether a court lacks subject matter jurisdiction over a claim . . . is properly presented by way of a motion to dismiss, rather than by a motion for summary judgment.”). As such, the court will construe the City’s motion for summary judgment on the basis of subject matter jurisdiction as one for dismissal.

Motion to Dismiss Standard

The law is well settled that “the function of a motion to dismiss a complaint is to raise a question of law as to the sufficiency of the facts alleged to state a cause of action.” *Hitt v. North Broward Hosp. Dist.*, 387 So. 2d 482, 483 (Fla. 4th DCA 1980). “The motion admits as true all well pleaded facts as well as all reasonable inferences arising from those facts.” *Id.* “The allegations must be construed in the light most favorable to plaintiffs and the trial court must not speculate what the true facts may be or what will be proved ultimately in trial of the cause.” *Id.*

A motion to dismiss is not a substitute for a motion for summary judgment. *Baycon Indus., Inc. v. Shea*, 714 So. 2d 1094 (Fla. 2d DCA 1998). In ruling on a motion to dismiss a complaint, the trial court is confined to consideration of the allegations found in the four corners of the complaint. *Id.* at 1095.

The purpose of a complaint is to advise the defendant of the nature of the cause of action asserted by the plaintiff. *See Kest v. Nathanson*, 216 So. 2d 233 (Fla. 4th DCA 1969). The test for a motion to dismiss for failure to state a cause of action is whether the pleader could prove any set of facts whatsoever in support of the claim. *Wausau Ins. Co. v. Haynes*, 683 So. 2d 1123 (Fla. 4th DCA 1996). If a complaint states a cause of action upon any ground, a motion to

dismiss the complaint for failure to state a cause of action should be denied. *Bond v. Koscot Interplanetary, Inc.*, 246 So. 2d 631 (Fla. 4th DCA 1971).

Subject Matter Jurisdiction

The City argues that this Court lacks subject matter jurisdiction over the claims asserted in count IV of the Fire Amended Complaint and count III of the Police Amended Complaint. The City posits that the claims asserted by the Plaintiffs in these counts are within the exclusive jurisdiction of Florida's Public Employee Relations Commission ("PERC").

PERC was established "to provide an exclusive method for resolving labor disputes between public employers and public employees, with [PERC] having preemptive jurisdiction over such matters if such activities are 'arguably' covered under Chapter 447, Florida Statutes." *See Maxwell v. School Board of Broward County*, 330 So. 2d 177, 179 (Fla. 4 DCA 1976). Although not every dispute gives rise to the preemptive jurisdiction of PERC, a review of the allegations of both the Fire Amended Complaint and the Police Amended Complaint indicates that the Plaintiffs contentions are arguably, if not squarely, covered under Chapter 447, Florida Statutes. Specifically, the Plaintiffs seek a declaration as to the length of time the financial urgency determination, which led to the modification of the existing collective bargaining agreement between the City and the fire fighters union, Broward County PBA, and Local AFSCME, is to remain in effect. Such declaration would require the court to interpret and construe provisions of Chapter 447 relating to financial urgency and provisions of the above mentioned collective bargaining agreements. The court finds that such matters are within PERC's jurisdiction. *See Manatee Educ. Ass'n, FEA, AFT (Local 3821), AFL-CIO v. School Board of Manatee Cty.*, 62 So. 3d 1176 (1st DCA 2011) (declining to interpret "financial urgency" and deferring initially to PERC on this question). As such, the court finds that it lacks

subject matter jurisdiction over count IV of the Fire Amended Complaint and count III of the Police Amended Complaint.

Accordingly, it is hereby

ORDERED that Defendant City's Motion for Partial Summary Judgment and Response to Plaintiffs' Motion for Partial Summary Judgment is GRANTED.

IT IS FURTHER ORDERED that count IV of The Board of Trustees of the City of Hollywood Fire Fighters Retirement System Amended Complaint is DISMISSED.

IT IS FURTHER ORDERED that count III of The Board of Trustees of the City of Hollywood Police Officer Retirement System Amended Complaint is DISMISSED.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this _____ day of December, 2012.

RICHARD D. EADE

DEC 04 2012

TRUE COPY

RICHARD D. EADE
CIRCUIT COURT JUDGE

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