

O'BRIEN, BELLAND & BUSHINSKY, LLC

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<p>ERICH WOLF, IAN KEYSER, SHANE MCGRATH, DANIELLE SMITH, CRAIG WHITEHEAD, AND TYLER WOLF,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>BOROUGH OF AVALON,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>SUPERIOR COURT OF NEW JERSEY CAPE MAY COUNTY – LAW DIVISION</p> <p style="text-align: center;">Docket No.</p> <p style="text-align: center;">CIVIL ACTION</p> <p style="text-align: center;">VERIFIED COMPLAINT</p>
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Plaintiffs Erich Wolf, Ian Keyser, Shane McGrath, Danielle Smith, Craig Whitehead, and Tyler Wolf, by way of Verified Complaint against the Defendant, Borough of Avalon (“Borough”), states as follows:

INTRODUCTION

Plaintiffs are seasonally employed by the Borough as Beach Patrol Lieutenants to protect and guard the beaches enjoyed by Borough residents and vacationers each summer season. Beach patrol members of other beach municipalities, like Atlantic City and Cape May, enjoy the benefit of a pension. In fact, New Jersey’s pension statutes provide that these beach patrol members have a statutory right to such a pension. Yet, when Plaintiffs approached the Borough and requested this benefit, the Borough balked. Rather than recognize Plaintiffs’ right to a pension, the Borough responded by telling these vital members of the community that they would not be entitled to a pension and that the statute did not apply to the Borough or its beach patrol.

Plaintiffs seek declaratory relief from this Court that the Defendant is in violation of

N.J.S.A. 43:13-24 -26, the provisions which convey upon members of the beach force the right to a pension upon meeting certain criteria. Plaintiffs also seek an order directing the Defendant to comply with its obligations and establish a pension system for Plaintiffs and other members of the beach force covered under the statutory provisions. Plaintiffs also seek an award of attorneys' fees and costs, and all other relief the Court finds just and proper.

PARTIES

1. Plaintiff Erich Wolf is an individual employed by the Borough of Avalon on a seasonal basis, residing at 700 First Ave. Unit 204, Avalon, NJ 08202.

2. Plaintiff Ian Keyser is an individual employed by the Borough of Avalon on a seasonal basis, residing at 669 Old Avalon Boulevard, Avalon, NJ 08202.

3. Plaintiff Shane McGrath is an individual employed by the Borough of Avalon on a seasonal basis, residing at 21 Seaview Crossings, Cape May Court House, NJ 08210.

4. Plaintiff Danielle Smith is an individual employed by the Borough of Avalon on a seasonal basis, residing at 14 Lesley Lane, New Castle, DE.

5. Plaintiff Craig Whitehead is an individual employed by the Borough of Avalon on a seasonal basis, residing at 16 E. Narberth Terrace, Collingswood, NJ 08108.

6. Plaintiff Tyler Wolf is an individual employed by the Borough of Avalon on a seasonal basis, residing at 46 W. 19 Street, Avalon, NJ 08202.

7. At all times relevant hereto, Defendant Borough of Avalon was and remains a public entity located at 3100 Dune Drive, Avalon, NJ 08202.

8. At all times relevant hereto, Defendant has conducted and/or conducts business in the State of New Jersey.

JURISDICTION AND VENUE

9. Plaintiffs file this action pursuant to the laws, constitution, statutes, administrative codes, rules and regulations promulgated by the State of New Jersey and its agencies.

10. This court also has jurisdiction to grant declaratory relief pursuant to the Uniform Declaratory Judgements Act, N.J.S.A. 2A:16-50 *et seq.*

11. Venue is proper in Cape May County because (a) the cause(s) of action arose in Cape May County, and (b) the Defendant has conducted and/or conducts business in Cape May County. See N.J.S.A. 34:13A-19.

FACTUAL ALLEGATIONS

12. The Borough is a seaside resort community which borders the Atlantic Ocean.

13. The Borough employs a life guard force, referred to as Beach Patrol, on a seasonal basis to guard and protect the bathing beaches in the Borough.

14. Plaintiffs have been and continue to be employed by the Borough as Beach Patrol Lieutenants on a seasonal basis.

15. Plaintiff Craig Whitehead is 53 years old and has served as a member of the Borough's life guard force for approximately 35 years.

16. Plaintiff Erich Wolf is 38 years old and has served as a member of the Borough's life guard force for approximately 25 years. He anticipates continuing his employment until reaching at least 45 years of age.

17. Plaintiff Ian Keyser is 32 years old and has served as a member of the Borough's life guard force for approximately 19 years. He anticipates continuing his employment until reaching at least 45 years of age.

18. Plaintiff Shane McGrath is 40 years old and has served as a member of the

Borough's life guard force for approximately 22 years. He anticipates continuing his employment until reaching at least 45 years of age.

19. Plaintiff Danielle Smith is 33 years old and has served as a member of the Borough's life guard force for approximately 11 years. She anticipates continuing her employment until reaching at least 45 years of age.

20. Plaintiff Tyler Wolf is 36 years old and has served as a member of the Borough's life guard force for approximately 24 years. He anticipates continuing his employment until reaching at least 45 years of age.

21. In approximately January of 2022, Plaintiffs engaged in an effort to organize and collectively negotiate terms and conditions of employment.

22. Plaintiffs requested that the Borough provide a pension as required by N.J.S.A. 43:13-23, *et seq.*

23. The Borough denied Plaintiffs' request.

24. Plaintiffs cited N.J.S.A. 43:13-24 to demonstrate that as a matter of law they were entitled to a pension upon meeting certain criteria.

25. The Borough again denied the request, and asserted that the statute did not apply to the Borough or its life guard force.

26. Plaintiffs have reiterated their request for pension benefits on numerous occasions.

27. The Borough has repeatedly denied the requests and continues to assert that the statute does not apply to the Borough.

28. Absent court intervention, the Borough will not provide pensions to Plaintiffs as required by law pursuant to N.J.S.A. 43:13-24 -26.

COUNT I

DECLARATORY JUDGMENT

29. Plaintiffs hereby incorporate paragraphs 1 through 28 of this Complaint as if set forth in full.

30. There is an actual, justiciable controversy between Plaintiffs and the Borough which will not be resolved without judicial intervention.

31. The Uniform Declaratory Judgments Act empowers the courts in the State of New Jersey “to declare rights, status and other legal relations, whether or not further relief is or could be claimed.” N.J.S.A. 2A:16-51.

32. Pursuant to N.J.S.A. 2A:16-59, any declaratory judgment issued by a court in the State of New Jersey “shall have the force and effect of a final judgment.”

33. N.J.S.A. 43:13-24 provides that any member of the life guard force of a city of the fourth class who meets certain criteria concerning age and length of service are entitled to a pension.

34. N.J.S.A. 43:13-25 and -26 set forth additional circumstances where a member of the life guard force of a city of the fourth class, or the member’s widow, children, or dependents, are entitled to a pension.

35. The legislature has defined “fourth class cities” to be those which are “bordering on the Atlantic Ocean which are seaside or summer resorts.” N.J.S.A. 40A:6-4(d).

36. The Borough of Avalon is a city of the fourth class.

37. Mr. Whitehead is a member of the Borough’s life guard force who has met the eligibility criteria to receive a pension pursuant to N.J.S.A. 43:13-24 upon his retirement.

38. All other Plaintiffs intend to continue their employment with the Borough as

members of the Borough's life guard force and eventually satisfy the eligibility criteria to receive a pension pursuant to N.J.S.A. 43:13-24.

39. The Borough of Avalon refuses to recognize and comply with its obligations under N.J.S.A. 43:13-24 -26, and all other related provisions.

40. The Borough of Avalon's conduct is in violation of N.J.S.A. 43:13-24 -26.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that Defendant is a city of the fourth class for purposes of N.J.S.A. 43:13-24 -26 and must provide members of its life guard force with the rights set forth therein.
- B. Declare that Defendant has impaired the statutory rights of Plaintiffs by refusing to comply with its obligations under N.J.S.A. 43:13-24 -26.
- C. Order that the Borough of Avalon take any and all steps necessary to comply with N.J.S.A. 43:13-24 -26.
- D. Award Plaintiffs the attorneys' fees, costs, and other expenses they have incurred in bringing this action, pursuant to state law.
- E. Provide such other relief as this Court may deem just and proper.

Respectfully submitted,

O'BRIEN, BELLAND & BUSHINSKY, LLC
Attorneys for Plaintiffs

/s/ Kevin D. Jarvis

Kevin D. Jarvis, Esquire

Matthew B. Madsen, Esquire

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues subject to trial.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Kevin D. Jarvis, Esquire is hereby designated as trial counsel for Plaintiffs in the above matter.

CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that to the best of my knowledge the matter in controversy is not the subject of any other action pending in the court or the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated and as otherwise set forth herein. I further certify that I know of no party who should be joined in the action at this time.

Respectfully submitted,

O'BRIEN, BELLAND & BUSHINSKY, LLC
Attorneys for Plaintiffs

By: /s/ Kevin D. Jarvis
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Dated: March 15, 2024

Civil Case Information Statement

Case Details: CAPE MAY | Civil Part Docket# L-000113-24

Case Caption: WOLF ERICH VS BOROUGH OF AVALON

Case Initiation Date: 03/15/2024

Attorney Name: KEVIN D JARVIS

Firm Name: O'BRIEN BELLAND & BUSHINSKY, LLC

Address: 509 S. LENOLA RD BLDG 6

MOORESTOWN NJ 08057

Phone: 8567952181

Name of Party: PLAINTIFF : Wolf, Erich

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: EMPLOYMENT (OTHER THAN CEPA OR LAD)

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Erich Wolf? NO

Are sexual abuse claims alleged by: Ian Keyser? NO

Are sexual abuse claims alleged by: Shane McGrath? NO

Are sexual abuse claims alleged by: Danielle Smith? NO

Are sexual abuse claims alleged by: Craig Whitehead? NO

Are sexual abuse claims alleged by: Tyler Wolf? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

03/15/2024
Dated

/s/ KEVIN D JARVIS
Signed