

NO. D-1-GN-14-001791

**AUSTIN FIREFIGHTERS
ASSOCIATION,**

Plaintiff,

v.

CITY OF AUSTIN,

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261ST **JUDICIAL DISTRICT**

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Comes now the Plaintiff, the Austin Firefighters Association, seeking declaratory and injunctive relief, and complains of Defendant City of Austin for the reasons stated below.

I. DISCOVERY LEVEL

1. Plaintiff intends to conduct discovery under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II. JURISDICTION, VENUE, & STANDING

2. The Court has jurisdiction over this matter pursuant to Article 5, § 8 of the Texas Constitution. Venue is appropriate in this Court under Texas Civil Practice & Remedies Code § 15.002 because all or a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in Travis County.

3. Defendant does not possess immunity from suit because Plaintiff does not seek money damages. To the extent Defendant possesses immunity, such immunity is waived by Texas Local Government Code § 180.006.

4. Plaintiff Association has associational standing to make this claim on behalf of its members, fire fighters employed by the Austin Fire Department, under *Texas Association of*

Business v. Texas Air Control Board, 852 S.W.2d 440, 447–48 (Tex. 1994), because (1) its members have standing to sue in their own right; (2) the interests the Association seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

III. PARTIES

5. Plaintiff Austin Firefighters Association (“the Association”) is a labor organization that does not claim the right to strike and that represents fire fighters in the Austin Fire Department in seeking the betterment of their working conditions. Plaintiff Association is headquartered and does business in Travis County.

6. Defendant City of Austin (“the City”) is a municipal corporation duly incorporated under the laws of the State of Texas, and operating within its geographical boundaries located in Travis County as authorized by its charter. Defendant City may be served with process by serving its Mayor, Lee Leffingwell, at his office address located at City Hall, 301 West 2nd Street, 2nd Floor, Austin, Texas 78701, or wherever he may be found, or by serving its City Clerk, Jannette Goodall, at her office address located at City Hall, 301 West 2nd Street, Suite 1120, Austin, Texas 78701, or wherever she may be found.

IV. FACTUAL ALLEGATIONS

7. Defendant City is a home-rule city with a population in excess of 10,000. At all times relevant to this lawsuit, Defendant City has been governed by the Fire Fighter and Police Officer Civil Service Act, Texas Local Government Code Chapter 143, its voters having adopted the Act in an election held for that purpose.

8. The Civil Service Act requires a covered municipality to provide fire protection services within the municipality by means of a civil service fire department. Under Local

Government Code § 143.021, all “fire fighter” positions within the fire department must be classified as civil service positions. The term “fire fighter” is statutorily defined in Local Government Code § 143.003(4), and generally includes all department employees whose jobs require substantial knowledge of fire fighting and work in the fire department. The term encompasses not only fire suppression positions, but also related positions in areas such as fire prevention, fire training, fire communications, and fire medical emergency technology. Consistent with its obligations under the Civil Service Act, Defendant City has established the Austin Fire Department as a civil service fire department.

9. Areas adjoining Defendant City are served by fire departments associated with a number of Travis County Emergency Services Districts (“ESDs”) and municipalities. Although Defendant is obligated to provide fire protection to all areas in the City of Austin by means of its civil service fire department, Defendant City has entered into contractual agreements with several ESDs and municipalities under which their fire departments provide first-responder fire protection to Austin citizens residing in outlying areas of the City. Under these agreements, in addition to providing primary response to incidents within the Austin city limits, non-City of Austin fire fighters supervise and direct the work of civil service members of the Austin Fire Department.

10. These agreements go beyond what are known as “mutual aid agreements,” which allow supplemental crews from surrounding jurisdictions to be provided on request, generally during major emergencies, in order to allow a city to count on additional response in extreme situations. In contrast, the City’s agreements with the ESDs and municipalities contract out normal fire protection service within the Austin city limits, providing for ESD personnel to be dispatched as part of the City’s *initial or primary* response, and sometimes the only response,

rather than using its own civil service fire department. Other fire fighters are used instead of the Austin Fire Department to provide all or part of the needed emergency response. The persons providing first-response fire protection do the same work as Plaintiff Association's members, and do work that otherwise would be required to be performed by Plaintiff Association's members.

V. CLAIM

11. Defendant City of Austin is acting in violation of the Civil Service Act, Texas Local Government Code Chapter 143, along with Texas Local Government Code § 43.056, by contracting with the ESDs to provide fire protection service that the City is required to provide using "fire fighters" hired in accordance with the Civil Service Act. Plaintiff seeks a declaration that Defendant City's use of non-civil service fire fighters to provide primary response to incidents within Defendant's city limits violates the Local Government Code's requirement that Defendant City provide fire protection services to its citizens by means of its civil service fire department.

VI. PRAYER FOR RELIEF

For these reasons, Plaintiff asks that Defendant be cited to appear and answer and, on final trial, that Plaintiff be awarded a judgment against Defendant for the following:

A. A declaration that Defendant City is violating the Fire Fighter and Police Officer Civil Service Act, Local Government Code Chapter 143, by contracting with ESDs and municipalities to provide primary fire protection service that Austin is required to provide within its city limits utilizing its civil service fire department.

